NO. _____

In The

Supreme Court of the United States

ABDI WALI DIRE; GABUL ABDULLAHI ALI; ABDI MOHAMMED UMAR; ABDI MOHAMMED GUREWARDHER; MOHAMMED MODIN HASAN,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the elements of the offense of "piracy as defined by the law of nations" in 18 U.S.C. § 1651, enacted by the Fifteenth Congress in 1819, are whatever a trial court determines an international law norm to be at the time of the offense.

2. Whether the Fourth Circuit misapplied this Court's holding in Deal v. United States, 508 U.S. 129 (1993), when it affirmed the District Court's enhanced punishment under 924(c) for "second or subsequent" convictions which occurred in the same criminal episode.

3. Whether the Petitioners received an advisement of rights adequate to inform them of their right to counsel and whether the Petitioners could have made a knowing and intelligent waiver of those rights under the circumstances of this case.

PARTIES TO THE PROCEEDING

The parties to this proceeding are Petitioners, Abdi Wali Dire ("Dire"), Gabul Abdullahi Ali ("Ali"), Abdi Mohammed Umar ("Umar"), Abdi Mohammed Gurewardher ("Gurewardher"), and Mohammed Modin Hasan ("Hasan"); and the United States of America.

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INTRODUCTION

In the first guilty verdict following a jury trial for piracy since 1819, Petitioners, Somali nationals, were convicted and imprisoned to terms of life plus eighty years for piracy, firearms, and other offenses. The Fourth Circuit Court of Appeals affirmed the rulings and judgment of the United States District Court for the Eastern District of Virginia and in so doing eschewed this Court's decisions on statutory construction and the definition of piracy in 18 U.S.C. § 1651 in favor of international law sources. The Fourth Circuit held that the intent of the Congress that enacted the statute and this Court's construction of the statute's terms no longer controlled because of subsequent pronouncements by international law sources neither ratified nor implemented by Congress. This holding contradicts this Court's jurisprudence and resurrects the thoroughly moribund concept of Federal jurisdiction for common law crimes by empowering district courts with the authority to divine the elements of criminal offenses from customary international law sources.

Two other questions warrant certiorari review. On the question presented by Petitioners' "second or subsequent" sentences for firearm convictions under 18 U.S.C. § 924(c) arising out of a single criminal episode involving simultaneous predicate offenses, the District Court and the Fourth Circuit have misapplied the statute and thereby further perpetuated a split in the circuit courts of appeal on the application of Deal v. United States, 508 U.S. 129 (1993). This split requires the Court's clarification on the issue that "second or subsequent" convictions cannot

apply to predicate offenses that are unified by time, place, conduct, and circumstances.

Finally, on the question presented of the refusal to suppress Petitioners' statements, this Court has not addressed the legal standard applicable to the protection of the constitutional rights of foreign nationals in United States' custody from unknowing and involuntary waivers of their rights against self-incrimination and to counsel. In light of continuing law enforcement efforts overseas, including anti-piracy operations, this question will likely recur, and this Court's authoritative guidance is needed.

OPINIONS BELOW

The opinion of the United States District Court denying Petitioners' Rule 12 motions to dismiss the piracy count of the Superseding Indictment is published at 747 F. Supp. 2d 599 (E.D. Va. 2010). The district court's opinion denying the motions to suppress Petitioners' statements is published at 747 F. Supp. 2d 642 (E.D. Va. 2010). The district court's opinion denying Petitioners' Rule 29 motions for judgment of acquittal on the piracy count and for concurrent sentences on the 18 U.S.C. § 924(c) counts of conviction is reprinted at App. 62a but is not otherwise published. The district court's judgments are reprinted at App. 83a, 90a, 97a, 104a, 111a. The Fourth Circuit's published decision affirming the judgments (per King, J., joined by Keegan and Davis, JJ.) is not yet printed in the Federal Reporter and is reprinted at App. 1a. The Fourth Circuit's denial of the petition for rehearing en banc is reprinted at App. 79a. Other pertinent documents are contained in the

Joint Appendix in the record of the United States Court of Appeals for the Fourth Circuit.[1]

JURISDICTION

The Fourth Circuit rendered its decision on May 23, 2012, and denied rehearing en banc on July 3, 2012. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND OTHER TEXTS INVOLVED

The Fifth Amendment to the United States Constitution provides, in pertinent part, that "No person . . . shall be compelled in any criminal case to be a witness against himself. . . ."

The Sixth Amendment to the United States Constitution provides, in pertinent part, that "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."

Title 18, Section 1651 of the United States Code provides that "Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life."

Title 18, Section 1659 of the United States Code provides:

> Whoever, upon the high seas or other waters within the admiralty and maritime jurisdiction of the United States, by surprise or open force, maliciously attacks or sets upon any vessel belonging to another, with an intent unlawfully to plunder the same, or to despoil any owner

[1] Citations to the Appendix for this Petition for Certiorari will be noted "App" and citations to the Joint Appendix contained in the record in the Fourth Circuit will be noted "JA."

> thereof of any moneys, goods, or merchandise laden on board thereof, shall be fined under this title or imprisoned not more than ten years, or both.

Title 18, Section 924 of the United States Code, reprinted at App. 138a, provides, in pertinent part:

> Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence . . . for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence []—
> (i) be sentenced to a term of imprisonment of not less than 5 years;
> (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and
> (iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.
> (B) If the firearm possessed by a person convicted of a violation of this subsection—
> [. . . .]
> (ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.
> (C) In the case of a second or subsequent conviction under this subsection, the person shall—
> (i) be sentenced to a term of imprisonment of not less than 25 years; and
> (ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

Part VII, Section 1, Article 101 of the United Nations Convention on the Law of the Seas, reprinted at App. 157a, provides:

> Piracy consists of any of the following acts:
> (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or

> the passengers of a private ship or a private aircraft, and directed:
>
> (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
>
> (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
>
> (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
>
> (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Annex II, Article 15 of the Convention on the High Seas, reprinted at App. 123a-124a, provides:

> Piracy consists of any of the following acts:
>
> (1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
>
> (a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
>
> (b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
>
> (2) 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;
>
> (3) Any act of inciting or of intentionally facilitating an act described in sub-paragraph 1 or subparagraph 2 of this article.

STATEMENT OF THE CASE

As found by the jury, Petitioners Hasan, Ali and Dire, armed with two AK-47 rifles and a rocket-propelled grenade (RPG), approached USS NICHOLAS, a U.S. Navy frigate, in a small skiff in the early morning hours of April 1, 2010, some six hundred miles off the coast of Somalia. Slip op. p. 5, App 5a. Two other boats were

also in the area: another skiff close to the NICHOLAS, and a larger ship that was further away. Slip op. at 5-6, App. 5a-6a. As the small skiff approached USS NICHOLAS, shots were fired from a rifle, the NICHOLAS returned fire with automatic weapons, and as the skiff veered away, the NICHOLAS pursued. Slip op. at 5, App. 5a. The encounter that underlies the prosecution of the Petitioners lasted less than thirty seconds. Id.

As their skiff sank, Hasan, Ali, and Dire held their hands in the air in surrender and were taken captive by crewmembers from the NICHOLAS, then placed in handcuffs and blindfolded. JA at 627. At no time did any of them board or even attempt to board NICHOLAS; they did not board NICHOLAS until they were forcibly brought aboard by sailors, handcuffed and blindfolded. The fishing boat was then completely destroyed by gunfire, burned and sunk. JA at 627-628. NICHOLAS subsequently captured a larger boat with Petitioners Gurewardher and Umar aboard. They, too, were taken into custody by the crew of NICHOLAS without any resistance or acts of violence. JA at 629-630. There was and is absolutely no dispute that Petitioners did not take control of the NICHOLAS, did not board her except as captives, and did not successfully obtain anything of value from her.

All of the Petitioners are Somali nationals, illiterate and with little if any formal education. Petitioners spoke no English and had no familiarity with the American legal system. They were interrogated on the NICHOLAS by Government

agents through an interpreter. JA at 492. The interrogations were not recorded, and no written rights waivers were used. JA at 145, 179.

At the conclusion of an eleven-day jury trial, Petitioners were found guilty of fourteen offenses: Piracy under the Law of Nations, 18 U.S.C. § 1651; Attack to Plunder a Vessel, 18 U.S.C. § 1659; Act of Violence Against Persons on a Vessel, 18 U.S.C. § 2291(a)(6); Conspiracy to Perform an Act of Violence Against Persons on a Vessel, 18 U.S.C. § 2291(a)(9); two counts of Assault With a Dangerous Weapon in the Special Maritime Jurisdiction, 18 U.S.C. § 113(a)(3); two counts of Assault with a Dangerous Weapon on Federal Officers and Employees, 18 U.S.C. § 111(a)(1); Conspiracy Involving a Firearm and a Crime of Violence, 18 U.S.C. § 924(o); two counts of Use, Carry and Possession of a Firearm in Relation to a Crime of Violence, 18 U.S.C. § 924(c)(1)(A)(iii); Use, Carry and Possession of a Destructive Device in Relation to a Crime of Violence, 18 U.S.C. §§ 924(c)(1)(A) and (B)(ii); Carrying an Explosive During the Commission of a Felony, 18 U.S.C. § 844(h)(2); and, Conspiracy to Carry an Explosive During the Commission of a Felony, 18 U.S.C. § 844(m). Slip op. pp. 6-8, App. 6a-8a. Petitioners were each sentenced to terms of imprisonment of life on the piracy count, concurrent terms of imprisonment of ten or twenty years on the other, non-924(c) counts, and consecutive terms of thirty, twenty-five, and twenty-five years on the three 924(c) counts. App. 85a, 92a, 99a, 106a, 113a.

REASONS FOR GRANTING THE WRIT

I. The Fourth Circuit's Opinion Disregards This Court's Precedent And The Intent Of The Congress That Adopted The Statutory Language In 18 U.S.C. § 1651

Until the opinion of the Fourth Circuit affirming the decision of the district court, piracy as defined by the law of nations had a settled definition of almost two hundred years' standing. This Court has been unequivocal: piracy as defined by the law of nations means robbery at sea. United States v. Furlong, 18 U.S. (5 Wheat.) 184, 204 (1820) (defining piracy as robbery on the seas and holding "Robbery on the seas is considered as an offence within the criminal jurisdiction of all nations"); United States v. Smith, 18 U.S. (5 Wheat.) 153, 162 (1820) (holding "We have, therefore, no hesitation in declaring, that piracy, by the law of nations, is robbery upon the sea, and that it is sufficiently and constitutionally defined by the fifth section of the act of 1819"). See Eugene Kontorovich, The "Define And Punish" Clause And The Limits Of Universal Jurisdiction, 103 Nw. Univ. L. R. 149, 166 (2009) ("Though jurisdictionally broad, the crime of piracy was substantively narrow. It consisted simply of robbery on the high seas.").

Congress enacted Section 1651 in 1819 in order to establish jurisdiction in Federal courts over sea robbers on the high seas, regardless of nationality of offender, vessel, or victim and in response to the Supreme Court's opinion in United States v. Palmer, 16 U.S. (3 Wheat.) 610 (1818), that the first piracy statute, An Act For The Punishment Of Certain Crimes Against The United States, Act of April 30, 1790, 1 Stat. 112, did not invoke universal jurisdiction under the law of nations so

as to give Federal courts jurisdiction over charges of piracy on foreign ships by foreign nationals. Alfred P. Rubin, The Law of Piracy, 142, 144 (Univ. Press of the Pacific 2006). It is substantively unchanged since 1819. See Samuel Pyeatt Menefee, "Yo Heave Ho!": Updating America's Piracy Laws, 21 Cal. W. Int'l L.J. 151 (1990) (outlining the historic development of what is now codified as Chapter 81 of Title 18, and, at page 161, noting that Section 1651 "is obviously derived from Section 5 of the Act of March 3, 1819. The only difference is that life imprisonment has been substituted for the death penalty.").

The Fourth Circuit determined that piracy as defined by the law of nations evolved over time to incorporate later developing customary international law norms. Slip op. at 41. This is erroneous and contradicts the understanding of the Fifteenth Congress and its intent in enacting Section 1651.

The intent of the Fifteenth Congress that enacted Section 1651 controls the meaning of the terms used. Oscar Mayer & Co. v. Evans, 441 U.S. 750, 758 (1979) (holding "It is the intent of the Congress that enacted the section that controls"). As the Fifteenth Congress understood it, "The law of nations may be considered of three kinds – to-wit, general, conventional, or customary. The first is universal, or established by the general consent of mankind, and binds all nations. The second is founded on express consent, and is not universal, and only binds those nations that have assented to it. The third is founded on tacit consent, and is only obligatory on those nations which have adopted it." Ware v. Hylton, 3 U.S. 199, 227 (1796) (Chase, J.).

This general or universal law of nations was derived from natural law and was immutable. See, e.g., The Venus, 12 U.S. (8 Cranch) 253, 297 (1814) (Marshall, C.J., dissenting) (stating "The law of nations is a law founded on the great and immutable principles of equity and natural justice"); E. De Vattel, THE LAW OF NATIONS at lviii (J. Chitty ed. 1863) (stating "Whence, as this law is immutable, and the obligations that arise from it necessary and indispensable, nations can neither make any changes in it by their conventions, dispense with it in their own conduct, nor reciprocally release each other from the observance of it"); see also The Antelope, 23 U.S. (10 Wheat.) 66 (1825) (describing the law of nations as unchanging, "As no nation can prescribe a rule for others, none can make a law of nations"); Charge to the Grand Jury for the District of Virginia (May 22, 1793), in 3 THE CORRESPONDENCE AND PUBLIC PAPERS OF JOHN JAY 480 (H. Johnston ed. 1891) (stating "It may be asked who made the laws of nations? The answer is *he* from whose *will* proceed all moral obligations, and which *will* is made known to us by reason or by revelation" [emphasis in original]); 1 WORKS OF JAMES WILSON, 149 (R. McCloskey ed. 1967) (writing "the law of nations, as well as the law of nature, is of origin divine"). This view of the law of nations held by the Fifteenth Congress and recognized by Chief Justice Marshall and the Court in The Antelope cannot be reconciled with that adopted by the Fourth Circuit.

The Fourth Circuit went on to state that "if the Congress of 1819 had believed either the law of nations generally or its piracy definition specifically to be inflexible, the Act of 1819 could easily have been drafted to specify that piracy

consisted of 'piracy as defined *on March 3, 1819* [the date of enactment], by the law of nations,' or solely of, as the defendants would have it, 'robbery at sea.'" Slip op. at 39 (emphasis and brackets in original). Yet this again illustrates the Fourth Circuit's fundamental error: The Fifteenth Congress understood the law of nations to be immutable; therefore, it would have seen the italicized language as perfectly redundant. It would have recognized that the definition of piracy as robbery at sea failed to address this Court's ruling in Palmer. And if the Fifteenth Congress imagined the law of nations could evolve, it would have understood the imperative of incorporating into Section 1651 express language of subsequent developments. This it did not do.

The history of the Assimilated Crimes Act (ACA), 18 U.S.C. § 13, demonstrates this point. The seminal enactment of the ACA in 1825 provided that:

> if any offence shall be committed in any [federal enclave], the punishment of which offence is not specially provided for by any law of the United States, such offence shall, upon a conviction in any court of the United States having recognisance thereof, be liable to, and receive the same punishment as the laws of the state in which such [federal enclave] is situated, provide for the like offence when committed within the body of any county of such state.

Act of Mar. 3, 1825, s. 3, 4 Stat. 115 (1825). In 1832, the Court held that the ACA was "limited to the laws of the several states in force at the time of its enactment" and not to state laws subsequently enacted. United States v. Paul, 31 U.S. (6 Pet.) 141, 142 (1832). Congress responded by successively reenacting the ACA to catch up with changes in States' laws. United States v. Sharpnack, 35 U.S. 286, 291

(1958) (discussing the legislative history of the ACA and its reenactments in 1866, 1874, 1898, and 1909).

Congress certainly knew that States' laws changed constantly; if it had believed that the universal law of nations did likewise, surely it would have responded by successively reenacting Section 1651 to incorporate these changes, especially after being put on notice by this Court in Paul that such reenactments were necessary to incorporate such developments. Yet Congress has never reenacted Section 1651 except as the result of occasional recodification. See Anderson v. Pacific Coast Steamship Co., 225 U.S. 187, 198-99 (1912) ("it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect, unless such intention is clearly expressed"). It therefore by implication endorsed its view that the law of nations likewise, as an immutable construct, had a settled meaning.

The Fourth Circuit's conclusion is exactly opposite and anathema to the understanding of the Congresses of the early Nineteenth Century and this Court's jurisprudence. To support the Fourth Circuit's conclusion, those Congresses would have considered it imperative, as Paul made clear, to insert into Section 1651 the express language criminalizing "piracy as defined by the law of nations on the date of the offense." But those Congresses would never have conceived of such a statutory construction because it violates their understanding that the law of nations, in its general and universal sense, was immutable. The Fourth Circuit has erroneously imposed its modern view of the law of nations as evolving customary

international law on the understanding and intent of the Fifteenth Congress when the latter employed the phrase "the law of nations" in 1819 in Section 1651.

The Fourth Circuit relies heavily on the opinion of this Court in Sosa v. Alvarez-Machain, 542 U.S. 692 (2004), to support its view of the continuous evolution of the law of nations' definition of the substantive crime of piracy. Slip op. at 38-39. Yet the Sosa Court made clear that it was analyzing jurisdiction for "a narrow set of common law actions derived from the law of nations," id. at 721, not criminal offenses derived from the law of nations. That is a critical distinction. "As enacted in 1789, the Alien Tort Statute gave the district courts 'cognizance' of certain causes of action, and the term [law of nations] bespoke a grant of jurisdiction, *not power to mold substantive law*." Id. at 713 (citation omitted) (emphasis added). By contrast, the term law of nations in Section 1651 is definitional of the crime of piracy. The panel's opinion gives district courts the very power the Sosa Court withheld: the power to mold substantive law. The fundamental difference between the question before the Court in Sosa, and its analysis thereof, is further highlighted by the Court's conclusion that Congress could "modify or cancel any judicial decision so far as it rests on recognizing an international norm as such." Id. at 731. Yet the panel's endorsement of the rationale of the district court that "[customary international law's] definition of general piracy has a norm-creating character and reflects an existing norm of customary international law that is binding on even those nations that are not a

party to the Convention, including the United States," J.A. 444, forecloses this possibility.[2]

There are no common law crimes in Federal law, and there have not been since 1812. United States v. Hudson, 11 U.S. (Cranch) 32, 34 (1812). Federal courts have no jurisdiction over common law crimes, as "[t]here are no common law offenses against the United States." United States v. Britton, 108 U.S. 199, 206 (1883). Furthermore, criminal offenses are wholly incompatible with the "post-Erie understanding [of the common law that] has identified limited enclaves in which federal courts may derive some substantive law in a common law way." Sosa, 542 U.S. at 729 (citing Erie R. Co. v. Tompkins, 304 U.S. 64 (1938)). Federal courts simply cannot derive substantive criminal law in a common law way.

The implications of the Fourth Circuit's decision are far-reaching. By endorsing a definition of "piracy as defined by the law of nations" as that contained in the United Nations Convention on the Law of the Sea of 1982, a convention not ratified by the United States nor implemented by domestic legislation, it ignores the intent of the Congress that adopted the statutory language, disregards long-established Supreme Court precedent on the definition of piracy in Section 1651, and resurrects the moribund concept of common law crimes in Federal court. This

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[2] The district court also relied heavily on the Second Circuit's opinion in Kiobel v. Royal Dutch Petroleum, 621 F.3d 111 (2d Cir. 2010), cert. granted, 132 S. Ct. 472, 181 L. Ed. 2d 292 (U.S. Oct. 17, 2011) (No. 10-1491), and that opinion's analysis of Sosa and evolving customary international law. See United States v. Hasan, 747 F. Supp. 2d 599, 630-34, 636 (E.D. Va. 2010) (citing to Kiobel twelve times). The Kiobel case is scheduled for reargument before this Court on October 1, 2012.

departure from the Court's jurisprudence of almost two centuries' duration requires redress.

II. The Circuit Courts Of Appeal Inconsistently Apply This Court's Holding In Deal v. United States, 508 U.S. 129 (1993), And The Fourth Circuit Perpetuated This Split When It Affirmed The District Court's Enhanced Punishment Under 18 U.S.C. § 924(c) For "Second Or Subsequent" Convictions That Occurred In The Same Criminal Episode

Petitioners were convicted of three 924(c) counts, related to the simultaneous use or carriage of three firearms, an RPG by Hasan, and AK-47 by Ali, and an AK-47 by Dire, in the skiff they occupied in the early morning hours of April 1, 2010. Their simultaneous use and carriage resulted in ten predicate offenses, all of which likewise occurred simultaneously. The circuit courts of appeal cannot agree on the application of Deal v. United States, 508 U.S. 129 (1993), to convictions under 18 U.S.C. § 924(c) in the same verdict arising from a single criminal episode, i.e., one in which the uses of the weapon or weapons underlying the Section 924(c) convictions are part of a single event unified in time, place, conduct, and circumstances. The Court should clarify the holding in Deal to make clear that such convictions are not "second or subsequent" convictions for purposes of 18 U.S.C. § 924(c)(1)(C).

In Deal, the defendant "committed six bank robberies on six different dates in the Houston, Texas area. In each robbery, he used a gun." 508 U.S. at 130. The Court affirmed his conviction of six 924(c) counts and the sentencing of the second through sixth such counts as "second or subsequent" counts under Section 924(c)(1)(C). Id. at 137. Yet some courts, including at times the Fourth Circuit, have applied Deal out of its factual context to multiple weapons carriages within a

single criminal episode. The Fourth Circuit's jurisprudence demonstrates the inconsistency with which even a single circuit court of appeals has applied Deal.

The seminal case in the Fourth Circuit is United States v. Camps, 32 F.3d 102 (4th Cir. 1994). "A defendant who has 'used' or 'carried' a firearm on several separate occasions during the course of a single continuing offense . . . has committed several section 924(c)(1) offenses." United States v. Camps, 32 F.3d 102, 107 (4th Cir. 1994) (citations omitted). The test to distinguish between separate occasions, according to the Camps court, was whether "[e]ach of the illegal acts . . . was consummated before the next one was initiated." Id. at 109.

The application of this test is clearly demonstrated by the factual circumstances in Camps. The defendant was convicted of conspiracy to possess with the intent to distribute cocaine base in violation of 21 U.S.C. § 846, using fire and an explosive in violation of 18 U.S.C. § 844(h)(2), and eight counts of using or carrying a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1). Id. at 103. The gun counts stemmed from three separate incidents: a December 1989 shooting, a January 7, 1990 "ambush," and a January 8, 1990 traffic stop. Id. at 105. Of critical importance, the shooting involved one gun, the ambush involved two guns, and the police recovered five guns during the traffic stop: *ergo*, eight 924(c) counts. Id. "Thus, [Camp] received one sentence for the December 1989, use, one sentence for the January 7, 1990, use, and one sentence for the January 8, 1990, use." Id. The Fourth Circuit affirmed the three consecutive sentences on the eight 924 counts of conviction "[b]ecause there were three separate

uses and/or carryings of the weapons[.]" Id. at 109. Other Fourth Circuit opinions construed Camps similarly. See United States v. Robinson, 627 F.3d 9941, 958 (4th Cir. 2010) (holding "defendant was properly sentenced [to consecutive 924 sentences] for the separate drugs-for-firearms trades alleged in Counts 3 and 9"); United States v. Zenore, 153 F.3d 725 (Table), 1998 WL 497297 (4th Cir. 1998) (unpub.) (holding "The record in this case clearly indicates Anthony Zenore's participation in two bank robberies. These two bank robberies occurred two weeks apart. Therefore, we concur that the district court was authorized to impose two consecutive sentences.").

Yet not all have done so, including the opinion below. In its opinion in the case at bar, the Fourth Circuit relied on United States v. Lighty, 616 F.3d 321 (4th Cir. 2010). Slip op. at 56, App. 56a. In Lighty, the defendant was convicted of three 924 counts and sentenced to three consecutive sentences. 616 F.3d at 370. The defendant with others conspired to and then held a murder victim at gunpoint after enticing the victim into an alley, purportedly to buy drugs. Id. at 337. A few minutes later, when a friend of the victim came to investigate, a co-defendant advanced on the friend, brandishing another gun, different from the gun holding the murder victim at gunpoint. Id. Later that night, the defendant shot and killed the victim at a different location Id. at 338.

Lighty held that "multiple, consecutive sentences under § 924(c)(1) are appropriate whenever there have been multiple, separate acts of firearm use or carriage, even when all of those acts relate to a single predicate offense." Id. at 371

(citing Camps, 32 F.3d at 106-09). Though the three counts involved conduct that occurred on the same day, the court found that the conduct constituted three separate uses, because each use was complete before the next use began: holding the victim at gunpoint, brandishing the second gun at the friend, and shooting the victim.

The opinion below also relied on United States v. Higgs, 353 F.3d 281 (4th Cir. 2003), affirming three consecutive sentences from a methodical, triple murder, and United States v. Khan, 461 F.3d 477 (4th Cir. 2006), affirming three consecutive sentences for firing three separate weapons on three separate occasions over the course of one month. The factual circumstances in all of these cases and the disparate results from those circumstances demonstrate the confusion within the Fourth Circuit on the application of Deal.

Other circuit courts of appeals have disagreed with the Fourth Circuit's approach in Petitioners' case. The Eighth Circuit has made clear that multiple firearms used or carried in a single event do not constitute a "second or subsequent conviction" under 18 U.S.C. § 924(c)(1)(C). United States v. Freisinger, 937 F.3d 383, 391 (8th Cir. 1991). In Freisinger, the defendant was stopped for drunk driving. Id. at 385. In subsequent searches of his vehicle, the police discovered drugs and a rifle and three handguns. Id. Freisinger was convicted on four 924(c) counts and appealed the convictions. The Eighth Circuit upheld the multiple convictions – one per firearm possessed – but rejected multiple, consecutive sentences on the 924 convictions: "We therefore hold that when a defendant has been convicted of more

than one violation of section 924(c)(1) because he was carrying more than one firearm during a single drug trafficking offense, the convictions after the first one are not 'second or subsequent' convictions within the meaning of the statute." Id. at 391. As a result, the Eighth Circuit ordered a sentence of five years on each 924 count, "to run concurrently to each other but consecutively to the sentence imposed on the drug trafficking conviction." Id. at 392.

The Sixth Circuit has followed a similar approach to that of the Eight Circuit. In United States v. Burnette, 170 F.3d 567, 572 (6th Cir. 1999), the court affirmed a two 924(c) convictions with the second under 924(c)(1)(C) because "In our case, the kidnapping occurred significantly before, and independent of, the actual bank robbery, rather than being in any way simultaneous. In sum, the second consecutive sentence of twenty years for Burnette was lawfully imposed." So, too, has the Second Circuit, United States v. Finley, 245 F.3d 199, 207-08 (2d Cir. 2001) (reversing second 924(c) conviction when "the predicate offenses were simultaneous or nearly so"), and the District of Columbia Circuit, United States v. Wilson, 160 F.3d 732 (D.C. Cir. 1998) (vacating second 924(c) conviction from use of firearm in two, simultaneous, predicate offenses of first degree murder and the killing of a witness to prevent him from testifying).

In light of this inter-circuit split, certiorari should be granted on the question presented pertaining the Petitioners' 18 U.S.C. § 924(c) convictions and sentences.

III. This Court Has Not Addressed The Legal Standard Applicable To The Protection Of The Constitutional Rights Of Foreign Nationals In United States' Custody From Unknowing And Involuntary Waivers Of Their Rights Against Self-Incrimination And To Counsel. Any Advisement Of Rights Given Was Inadequate And Petitioners Could Not Have Made Knowing And Intelligent Waivers Under Any Circumstances

The "advisement of rights" given prior to interrogation onboard the Navy ships was inadequate to inform Petitioners of their right to counsel. Even if the advisement of rights had not been defective, the Petitioners could not have made knowing and intelligent waivers under any circumstances. The Court of Appeals erred when it affirmed the District Court's clear error on these issues.

a. The advisement of rights was inadequate to inform Petitioners of their right to counsel

The trial court erred in finding that Petitioners received an adequate advisement of rights prior to the interrogation that took place on April 4, 2010. The scant evidence before the trial court regarding the warnings actually given to the Petitioners in no way satisfies the government's burden of showing that the proper Miranda warnings were administered. At best, the trial court could examine only the words Special Agent Knox claims to have said to the Petitioners and nothing more. The United States did not produce any evidence to show exactly how Knox's words were translated into Somali. Consequently, the trial court did not have before it sufficient evidence to determine exactly what was said to Petitioners prior to interrogation and the trial court erred in finding the warning to be adequate.

Testimony at the suppression hearing showed that Special Agent Knox, speaking through Ismail (the interpreter), recited from memory a number of

warnings at the outset of each Defendant's interview." United States v. Hasan, 747 F. Supp. 2d 666 (citing testimony at JA 157-158, 161, 164, 166). Knox did not read these rights from any pre-printed card, and further modified them as he saw fit. With regard to the advisement of the right to an attorney, Knox specifically testified that, "I told them that if they wanted a lawyer, we would give them one." JA at 147. Tellingly, "Special Agent Knox explained [during testimony at the Suppression Hearing] that he intentionally modified his articulation of the right to an attorney because he 'knew getting a lawyer on the ship was impossible.'" Hasan, 747 F. Supp. 2d at 666 (citing JA 147, 235). Ismail, the interpreter, testified that the rights as Knox gave them for translation "wasn't [sic] the Miranda like I saw it on the TV." JA at 319-320. Ismail further testified that at the time Knox told him the rights to translate, he "could see that [Knox] was tired. 36 hours he was up." Id. Further with regard to the substance of the rights administered, Ismail could not recall whether he even actually interpreted into the Somali language the advisement of the right to an attorney. JA at 355-356. There was no testimony that anyone at any time provided Petitioners with any written translation in Somali of Petitioners' legal rights either prior or subsequent to the interrogations. Despite the availability of recording equipment aboard USS NICHOLAS, Agent Knox chose not to make any audio, video, or written transcription of what exactly was said to the Petitioners prior to the April 4th interrogations.

Knox's general advisement regarding the right to an attorney, especially in the context of the circumstances unique to this case, simply does not rise to the level

required by Miranda v. Arizona, 384 U.S. 436 (1966). While there is no requirement that an advisement of rights be stated with certain exact words and phrases and no other, the advisement must nonetheless provide a defendant with a meaningful explanation of the rights to which he is entitled and the consequences of foregoing those rights. Id. at 479. Agent Knox's warning failed to convey any kind of meaningful explanation of the right to an attorney and worse, actually explained the right incorrectly. To "want" an attorney and to have a "right" to an attorney are entirely different concepts. Thus informing the Petitioners that "if they wanted a lawyer, we would give them one," JA at 147, is significantly different from informing the Petitioners that they had an absolute "right" to an attorney, as they clearly do under the United States Constitution. Agent Knox was tired when he administered the rights from memory, not reading from a preprinted car, and he modified the rights to such a degree that the words would have blended in with other less significant conversation.

The courts below failed to appreciate the significance of this distinction between a "want" and a "right" and the importance of using at least the word "right" when referring to Constitutional rights. Instead, they found Agent Knox's general attorney warning to be adequate based on the Fourth Circuit's holding in United States v. Frankson, 83 F.3d 79 (4th Cir. 1996). Slip op. p. 46, App. 46a. In Frankson, the Fourth Circuit held that a law enforcement agent's general warning that "you have the right to an attorney" and "[i] you cannot afford an attorney, the Government will get one for you" satisfied Miranda even though the warning did

not specify that the right attached prior to the interrogation. Although Frankson also involved a generalized warning, that warning nonetheless still utilized the term "*right* to an attorney." Agent Knox's warning did not. The omission by Agent Knox of the phrase "right to an attorney" implicates more than mere semantics. It changes the very nature of the warning given, diluting the significance of the right involved, and rendering the warning Constitutionally deficient under Miranda and its progeny. The trial court should have suppressed any statements obtained after the deficient warnings on April 4, 2010, and the Fourth Circuit should have corrected the trial court's failure to do so.

b. The Petitioners could not have made knowing and intelligent waivers under any circumstances

Although this Court has not set forth parameters for what constitutes a knowing, voluntary, and intelligent waiver of Miranda rights in the context of foreign nationals' extra-territorial interrogation, it is axiomatic that a valid waiver of Miranda rights "must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it."[3] Colorado v. Spring, 479 U.S. 564, 572 (1987). The United States must prove that

[3] It is, of course, Petitioners' contention that the dictates of Miranda apply in full force to these Petitioners as the United States sought to introduce Petitioners' out-of-court statements against them in a domestic court proceeding held in a United States District Court. See, e.g., United States v. Bin Laden, 132 F. Supp. 2d 168, 181-185 (2d Cir. 2001) (citing United States v. Vedugo-Urquidez, 494 U.S. 259, 264 (1990); Kastigar v. United States, 406 U.S. 441, 453 (1972)). Although this Court has not pronounced an opinion regarding application of Miranda under the present circumstances, and there was some argument in the District Court on this issue, the United States did not pursue the issue on appeal. Consequently, the Fourth Circuit assumed without deciding that Miranda would apply in this matter. Slip op. at 49 fn 19, App. 49a.

the accused understood these rights before valid waiver can be found. Berghuis v. Thompkins, 130 S. Ct. 2250, 2261-2262 (2010) (internal quotations and citations omitted). A court may look at a variety of factors to determine waiver in a particular case, including the background, experience, and conduct of the defendant. Oregon v. Bradshaw, 462 U.S. 1039, 1046 (1983). Language difficulties are an important factor in assessing knowing and intelligent waiver by a defendant. United States v. Garibay, 143 F.3d 534, 537 (9th Cir. 1998) (citation omitted) (language difficulties precluded effective waiver of Miranda rights). Further, an alien defendant's lack of knowledge of the American criminal justice system undercuts any finding of knowing waiver and supports suppression of statements. See United States v. Short, 790 F.2d 464, 469 (6th Cir. 1988) (noting "Short's English was broken and her understanding of English deficient. She apparently had no knowledge of the American criminal justice system").

In this case, under the totality of these unique circumstances, it is impossible that these illiterate Somali nationals could have made knowing and intelligent waivers of their rights, including the right to silence. Most importantly, the Petitioners did not know and had no frame of reference for understanding the rights which they were giving up by speaking. It is a legal fiction for this Court to find that Petitioners possessed even a basic understanding of the words that may have been read to them by an interpreter regarding rights to remain silent and to have counsel present for an interrogation. The Petitioners' total lack of education coupled with their complete illiteracy in their own native language distinguishes

this case from others where courts have found valid waivers made by more intelligent, more educated non-English speaking aliens or even to waivers by young or marginally intelligent American citizens. See, e.g., United States v. Yunis, 859 F.2d 953, 965 (and cases cited therein); see also United States v. Nakhoul, 596 F. Supp. 1398 (D.Mass. 1984) (Lebanese national's limited understanding of American legal system and customs required suppression).

Cases that have found knowing and intelligent waivers by foreign nationals have relied on facts conspicuously absent here. United States v. Bostic, 545 F.3d 69 (1st Cir. 2008) (defendant had Miranda form in English and Serbo-Croatian, could read and signed Serbo-Croatian form, and spoke English); United States v. Shi, 525 F.3d 709 (9th Cir. 2008) (Defendant signed Miranda warnings given in writing in Mandarin and explained by Mandarin-speaking agent); United States v. Castro-Higaero, 473 F.3d 880 (8th Cir. 2007) (interpreter on the phone could communicate effectively as established by verbatim transcript of the conversation reviewed by the court); United States v. Cristobal, 293 F.3d 134 (4th Cir. 2002) (Cuban-born defendant equally proficient in English as Spanish and had been Mirandized before); Svsonvong v. Meschner, 171 F.3d 614 (6th Cir. 1999) (defendant read warnings in English and native Laotian; court reviewed word-for-word Laotian translation with independent interpreter); United States v. Guay, 108 F.3d 545 (4th Cir. 1997) (French Canadians had sufficient English proficiency as established by recorded interviews); Villafuente v. Lewis, 75 F.3d 1330, 1341 (9th Cir. 1996) (warnings given orally and in writing in both English and Spanish); United States

v. Yunis, 859 F.2d 953 (D.C. Cir. 1988) (defendant made corrections to written statement, showing his understanding of rights, and also read Arabic copy of Miranda in addition to English warnings).

In short, the combined effect of the Petitioners' unique social backgrounds rendered each of them incapable of making a knowing and intelligent waiver of his Miranda rights. Any and all statements made by the Petitioners before the appointment of counsel under the present legal proceedings, therefore, should have been suppressed by the trial court.

CONCLUSION

Based on the foregoing argument, Petitioners respectfully request that the Court grant their petition for a writ of certiorari.

Respectfully submitted this the 1st day of October, 2012.

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No. 11-4317

Appeals from the United States District Court
for the Eastern District of Virginia, at Norfolk.
Mark S. Davis, District Judge.
(2:10-cr-00056-MSD-FBS-3; 2:10-cr-00056-MSD-FBS-2;
2:10-cr-00056-MSD-FBS-5; 2:10-cr-00056-MSD-FBS-4;
2:10-cr-00056-MSD-FBS-1)

Argued: September 20, 2011

Decided: May 23, 2012

Before KING, DAVIS, and KEENAN, Circuit Judges.

Affirmed by published opinion. Judge King wrote the opinion, in which Judge Davis and Judge Keenan joined.

COUNSEL

ARGUED: James R. Theuer, Norfolk, Virginia; Jon Michael Babineau, RIDDICK BABINEAU, PC, Norfolk, Virginia; David Wayne Bouchard, DAVID WAYNE BOUCHARD, Chesapeake, Virginia, for Appellants. Benjamin L. Hatch, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee. **ON BRIEF:** William James Holmes, Virginia Beach, Virginia, for Appellant Gabul Abdullahi Ali; James E. Short, JAMES E. SHORT, PLC, Chesapeake, Virginia, for Appellant Abdi Mohammed Umar. Neil H. MacBride, United States Attorney, Alexandria, Virginia, Joseph E. DePadilla, Assistant United States Attorney, John S. Davis, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia, for Appellee. Michael S. Nachmanoff, Federal Public Defender, Geremy C. Kamens, Assistant Federal Public Defender, Jeffrey C. Corey, Research & Writing Attorney, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Alexandria, Virginia, for Amicus Supporting Appellants.

OPINION

KING, Circuit Judge:

In the early morning hours of April 1, 2010, on the high seas between Somalia and the Seychelles (in the Indian Ocean off the east coast of Africa), the defendants — Abdi Wali Dire, Gabul Abdullahi Ali, Abdi Mohammed Umar, Abdi Mohammed Gurewardher, and Mohammed Modin Hasan — imprudently launched an attack on the USS Nicholas, having confused that mighty Navy frigate for a vulnerable merchant ship. The defendants, all Somalis, were swiftly apprehended and then transported to the Eastern District of Virginia, where they were convicted of the crime of piracy, as proscribed by 18 U.S.C. § 1651, plus myriad other criminal offenses. In this

appeal, the defendants challenge their convictions and life-plus-eighty-year sentences on several grounds, including that their fleeting and fruitless strike on the Nicholas did not, as a matter of law, amount to a § 1651 piracy offense. As explained below, we reject their contentions and affirm.

I.

A.

According to the trial evidence, the USS Nicholas was on a counter-piracy mission in the Indian Ocean when, lit to disguise itself as a merchant vessel, it encountered the defendants shortly after midnight on April 1, 2010.[1] The Nicholas was approached by an attack skiff operated by defendant Hasan and also carrying defendants Dire and Ali, while defendants Umar and Gurewardher remained with a larger mothership some distance away. From their posts on the Nicholas, crew members could see by way of night-vision devices that Hasan was armed with a loaded rocket-propelled grenade launcher (commonly referred to as an "RPG"), and that Dire and Ali carried AK-47 assault rifles.

The captain of the USS Nicholas, Commander Mark Kesselring, directed his gunners to man their stations and prepare to fire, and ordered his unarmed personnel inside the skin of the ship for safety. When the defendants' attack skiff was within sixty feet of the Nicholas's fantail (its lowest and thus most accessible point), Dire and Ali discharged the first shots — bursts of rapid, automatic fire from their AK-47s aimed at the Nicholas and meant to attain its surrender. The Nicholas's crew responded in kind, resulting in an exchange of fire that lasted less than thirty seconds. Bullets from Dire and Ali's AK-47s struck the Nicholas near two of its crew members,

[1]We recite the evidence in the light most favorable to the government, as the prevailing party at trial. *See United States v. Singh*, 518 F.3d 236, 241 n.2 (4th Cir. 2008).

but the defendants' brief attack was (thankfully) casualty-free. Dire, Ali, and Hasan then turned their skiff and fled, with the Nicholas in pursuit.

During the chase, sailors on the USS Nicholas observed a flashing light on the horizon — a beacon from Umar and Gurewardher to lead the attack skiff back to the mothership. Commander Kesselring, however, managed to keep the Nicholas between the defendants' two vessels to thwart the attempted reunion. Meanwhile, Dire, Ali, and Hasan threw various items from the skiff overboard into the Indian Ocean, discarding the RPG, the AK-47s, and a ladder that would have enabled them to board the Nicholas. About thirty minutes into the pursuit, the Nicholas captured the three defendants in the skiff. Thereafter, the Nicholas chased and captured the two defendants in the mothership. A suspected second attack skiff, which had appeared on radar but did not close on the Nicholas, was never found.

The defendants' strike on the USS Nicholas was consistent with an accustomed pattern of Somali pirate attacks, designed to seize a merchant ship and then return with the vessel and its crew to Somalia, where a ransom would be negotiated and secured. Indeed, on April 4, 2010, during questioning aboard the Nicholas, the defendants separately confessed to participating willingly in a scheme to hijack a merchant vessel, and they provided details about their operation.

B.

The grand jury in the Eastern District of Virginia returned a six-count indictment against the defendants on April 20, 2010, and a fourteen-count superseding indictment (the operative "Indictment") on July 7, 2010. The Indictment, which alleged facts consistent with the subsequent trial evidence, contained the following charges:

- Count One — Piracy as defined by the law of nations (18 U.S.C. § 1651);

- Count Two — Attack to plunder a vessel (18 U.S.C. § 1659);
- Count Three — Act of violence against persons on a vessel (18 U.S.C. §§ 2291(a)(6) and 2290(a)(2));
- Count Four — Conspiracy to perform an act of violence against persons on a vessel (18 U.S.C. §§ 2291(a)(9) and 2290(a)(2));
- Counts Five and Six — Assault with a dangerous weapon within a special maritime jurisdiction (18 U.S.C. § 113(a)(3));
- Counts Seven and Eight — Assault with a dangerous weapon on federal officers and employees (18 U.S.C. § 111(a)(1) and (b));
- Count Nine — Conspiracy involving a firearm and a crime of violence (18 U.S.C. § 924(o));
- Counts Ten and Eleven — Using, carrying, and possessing a firearm in relation to a crime of violence (18 U.S.C. § 924(c)(1)(A)(iii));
- Count Twelve — Using, carrying, and possessing a destructive device in relation to a crime of violence (18 U.S.C. § 924(c)(1)(A) and (c)(1)(B)(ii));
- Count Thirteen — Carrying an explosive during the commission of a felony (18 U.S.C. § 844(h)(2)); and
- Count Fourteen — Conspiracy to carry an explo-

sive during the commission of a felony (18 U.S.C. § 844(m)).[2]

The Indictment identified the Eastern District of Virginia as the proper venue under 18 U.S.C. § 3238, which provides that "[t]he trial of all offenses begun or committed upon the high seas . . . shall be in the district in which the offender, or any one of two or more joint offenders, is arrested or is first brought."

At the conclusion of an eleven-day trial, conducted between November 9 and 24, 2010, the jury returned separate verdicts of guilty against all defendants on all counts. The sentencing hearing took place on March 14, 2011, and final judgments were entered on March 18, 2011. The district court dismissed Count Thirteen for being multiplicitous with Count Twelve, and sentenced each of the defendants to life plus eighty years (960 months) on the remaining convictions. Specifically, the court imposed mandatory life sentences for the Count One piracy offense; concurrent sentences of 120 months each on Counts Two, Five, and Six, and of 240 months each on Counts Three, Four, Seven, Eight, Nine, and Fourteen; plus consecutive sentences of 300 months each on Counts Ten and Eleven, and of 360 months on Count Twelve. The defendants have timely noted their appeals, and we possess jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

II.

In these consolidated appeals, the defendants first contend that their ill-fated attack on the USS Nicholas did not constitute piracy under 18 U.S.C. § 1651, which provides in full:

[2]Counts One through Three, Five through Eight, and Ten through Thirteen included allegations of aiding and abetting. *See* 18 U.S.C. § 2(a) ("Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.").

> Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.

According to the defendants, the crime of piracy has been narrowly defined for purposes of § 1651 as robbery at sea, i.e., seizing or otherwise robbing a vessel. Because they boarded the Nicholas only as captives and indisputably took no property, the defendants contest their convictions on Count One, as well as the affixed life sentences.

A.

The defendants' piracy contention is one that they unsuccessfully presented at multiple stages of the district court proceedings. Prior to their trial, the defendants moved to dismiss Count One under Rule 12 of the Federal Rules of Criminal Procedure. By its published opinion of October 29, 2010, the district court denied relief, premised on its determination that the Indictment "set forth facts that are sufficient, if proven true, to constitute the crime of piracy as defined by the law of nations, in violation of 18 U.S.C. § 1651." *United States v. Hasan*, 747 F. Supp. 2d 599, 602 (E.D. Va. 2010) ("*Hasan I*").[3] In so ruling, the court concluded — contrary to the defendants' posited robbery requirement — that piracy as defined by § 1651's incorporated law of nations encompasses, inter alia, acts of violence committed on the high seas for private ends. *See id.* at 640-42.

During the trial, at the close of the government's case-in-chief, Hasan renewed his motion to dismiss Count One, which the district court denied from the bench. The court also rejected the defendants' proposed jury instruction delineating

[3]Dire, having been the first to file, is the lead defendant in these consolidated appeals, but Hasan was the first named defendant in the district court proceedings.

the elements of the Count One piracy offense, in favor of an instruction consistent with its *Hasan I* opinion. Finally, following the trial, four of the defendants moved under Federal Rule of Criminal Procedure 29 for judgments of acquittal on Count One; the court denied those motions by its unpublished opinion of March 9, 2011. *See United States v. Hasan*, No. 2:10-cr-00056, slip op. at 2 (E.D. Va. Mar. 9, 2011) ("*Hasan II*").[4]

1.

The *Hasan I* opinion was issued on the heels of the August 17, 2010 published opinion in *United States v. Said*, 757 F. Supp. 2d 554 (E.D. Va. 2010) (Jackson, J.), wherein a different judge of the Eastern District of Virginia essentially took these defendants' view of the piracy offense by recognizing a robbery element. Like these defendants, the *Said* defendants have been charged with piracy under 18 U.S.C. § 1651 for attacking — but not seizing or otherwise robbing — a United States Navy ship. *See Said*, 757 F. Supp. 2d at 556-57 (describing indictment's allegations that, around 5:00 a.m. on April 10, 2010, *Said* defendants fired at least one shot on USS Ashland from skiff in Gulf of Aden). The *Said* court granted the defendants' pretrial motion, pursuant to Federal Rule of Criminal Procedure 12, to dismiss the piracy count from the indictment because no taking of property was alleged. *Id.* at 556.[5]

[4]Although the district court identified the four Rule 29 movants as Hasan, Gurewardher, Umar, and Ali, *see Hasan II*, slip op. at 3, the record reflects that they were Hasan, Gurewardher, Umar, and Dire. The *Hasan II* opinion is found at J.A. 1053-69. (Citations herein to "J.A. __" refer to the contents of the Joint Appendix filed by the parties in these appeals.)

[5]We heard oral argument in the government's interlocutory appeal from the *Said* opinion on March 25, 2011, and that same day ordered the parties to file supplemental briefs addressing the legal propriety of the procedure employed by the district court to dismiss the piracy count from the indictment. Thereafter, on April 20, 2011, we placed the *Said* appeal in abeyance pending our decision herein. Counsel for the *Said* defendants then

As the *Said* court recognized, article I of the Constitution accords Congress the power "[t]o define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations." U.S. Const. art. I, § 8, cl. 10 (the "Define and Punish Clause"). In its present form, the language of 18 U.S.C. § 1651 can be traced to an 1819 act of Congress, which similarly provided, in pertinent part:

> That if any person or persons whatsoever, shall, on the high seas, commit the crime of piracy, as defined by the law of nations, and such offender or offenders, shall afterwards be brought into or found in the United States, every such offender or offenders shall, upon conviction thereof, . . . be punished . . . .

See Act of Mar. 3, 1819, ch. 77, § 5, 3 Stat. 510, 513-14 (the "Act of 1819"). Whereas today's mandatory penalty for piracy is life imprisonment, however, the Act of 1819 commanded punishment "with death." *Id.* at 514. Examining the Act of 1819 in its *United States v. Smith* decision of 1820, the Supreme Court recognized:

> There is scarcely a writer on the law of nations, who does not allude to piracy, as a crime of a settled and determinate nature; and whatever may be the diversity of definitions, in other respects, all writers concur, in holding, that robbery, or forcible depredations upon the sea, *animo furandi*,[6] is piracy.

18 U.S. (5 Wheat.) 153, 161 (1820). Accordingly, the *Smith*

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submitted an amicus curiae brief in support of the defendants in this appeal. In tandem with today's decision, we are issuing a per curiam opinion vacating the *Said* opinion and remanding for further proceedings. *See United States v. Said*, No. 10-4970, ___ F.3d ___ (4th Cir. 2012).

[6]The Latin term "*animo furandi*" means "with intention to steal." *Black's Law Dictionary* 87 (6th ed. 1990).

Court, through Justice Story, articulated "no hesitation in declaring, that piracy, by the law of nations, is robbery upon the sea." *Id.* at 162.

Invoking the principle that a court "must interpret a statute by its ordinary meaning at the time of its enactment," the *Said* court deemed *Smith* to be the definitive authority on the meaning of piracy under 18 U.S.C. § 1651. *See Said*, 757 F. Supp. 2d at 559 (citing *Dir., Office of Workers' Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 275 (1994), for the proposition that courts "interpret Congress' use of [a] term . . . in light of [its] history, and presume Congress intended the phrase to have the meaning generally accepted in the legal community at the time of enactment"). The *Said* court noted that it was the first court since the 1800s to be tasked with "interpreting the piracy statute . . . as it applies to alleged conduct in international waters." *Id.* at 558. Looking to courts that have addressed the piracy statute post-*Smith* in other contexts, the *Said* court concluded that "the discernible definition of piracy as 'robbery or forcible depredations committed on the high seas' under § 1651 has remained consistent and has reached a level of concrete consensus in United S[t]ates law." *Id.* at 560.[7]

[7]In concluding that the definition of piracy under 18 U.S.C. § 1651 has remained unchanged since the Supreme Court disposed of *Smith* in 1820, the *Said* court cited only two modern decisions: *Taveras v. Taveraz*, 477 F.3d 767, 772 n.2 (6th Cir. 2007) (parental child abduction action brought under the Alien Tort Statute; observing that "[a] fundamental element of the offense of piracy is that the acts of robbery or depredation must have been committed *upon the high seas*," and rejecting piracy as a basis for jurisdiction because the underlying events "did not occur upon the high seas"); and *United States v. Madera-Lopez*, 190 F. App'x 832, 836 (11th Cir. 2006) (unpublished) (constitutional challenge to the Maritime Drug Law Enforcement Act; noting *Smith*'s declaration that "piracy, by the law of nations, is robbery upon the sea," in the course of deeming *Smith* unhelpful to Madera-Lopez's argument). The next most recent decision named by the *Said* court was issued in the late 1800s. *See United States v. Barnhart*, 22 F. 285, 288 (C.C.D. Or. 1884) (federal manslaughter pros-

The *Said* court also reviewed the legislative history of § 1651 and detected no congressional modifications to *Smith*'s definition of piracy. *See Said*, 757 F. Supp. 2d at 562. For example, the court observed that, "in 1948, Congress comprehensively revised all of Title 18 of the United S[t]ates Criminal Code," but "§ 1651 was not substantively updated." *Id.* "Indeed," the court noted, "the only substantive change to § 1651 since its enactment has been the removal of the death penalty for the offense as opposed to the current penalty of life imprisonment." *Id.*

Additionally, the *Said* court discerned support for a static definition of piracy under § 1651 from the existence of the statute criminalizing an attack to plunder a vessel, 18 U.S.C. § 1659, which provides:

> Whoever, upon the high seas or other waters within the admiralty and maritime jurisdiction of the United States, by surprise or open force, maliciously attacks or sets upon any vessel belonging to another, with an intent unlawfully to plunder the same, or to despoil any owner thereof of any moneys, goods, or merchandise laden on board thereof, shall be fined under this title or imprisoned not more than ten years, or both.

The court perceived that, because § 1659 targets "exactly the conduct charged against [the *Said* defendants] of shooting at the USS Ashland with an AK-47 rifle," it would be rendered redundant by extending the meaning of piracy under § 1651 to include that same violent conduct. *See Said*, 757 F. Supp.

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ecution under "Indian country" jurisdiction; distinguishing the instant manslaughter offense, over which the federal courts possess exclusive jurisdiction, from "[p]iracy, or robbing on the high seas," a violation of the law of nations for which "the courts of every nation in the civilized world" have concurrent jurisdiction).

2d at 562-63 (observing, inter alia, that "two sections in the same chapter of the criminal code should not be construed such that one is made completely superfluous"). The court was also troubled by "the far-reaching consequence of" interpreting § 1651 and § 1659 to reach the same conduct, which could include "an act as minor as a sling-shot assault, a bow and arrow, or even throwing a rock at a vessel." *Id.* at 563. The court deemed it illogical, "in light of the ten year imprisonment penalty Congress promulgated for a violation of § 1659," that a defendant who committed such a minor act was meant to be exposed "to the penalty of life in prison for piracy under § 1651." *Id.*

Finally, although the *Said* court acknowledged contemporary international law sources defining piracy to encompass the *Said* defendants' violent conduct, the court deemed such sources to be too "unsettled" to be authoritative. *See Said*, 757 F. Supp. 2d at 563-66. The court further determined that relying on those international law sources would violate due process, explaining that, if "the definition of piracy [were adopted] from the[ ] debatable international sources whose promulgations evolve over time, defendants in United States courts would be required to constantly guess whether their conduct is proscribed by § 1651[,] render[ing] the statute unconstitutionally vague." *Id.* at 566. Thereby undeterred from employing the "clear and authoritative" definition in *Smith* "of piracy as sea robbery," the court dismissed the piracy count from the *Said* indictment. *Id.* at 567.

2.

Here, the district court took a different tack, as laid out in its sweeping *Hasan I* opinion denying these defendants' pretrial motion to dismiss the Count One piracy charge from their Indictment. That is, the court focused on piracy's unusual status as a crime defined by the law of nations and subject to universal jurisdiction.

a.

The district court began by recognizing that, "[f]or centuries, pirates have been universally condemned as *hostis humani generis* — enemies of all mankind — because they attack vessels on the high seas, and thus outside of any nation's territorial jurisdiction, . . . with devastating effect to global commerce and navigation." *Hasan I*, 747 F. Supp. 2d at 602. The court then turned its attention to the Define and Punish Clause, and specifically the potential "double redundancy [presented] by pairing 'Piracies' with 'Felonies committed on the high Seas' and 'Offences against the Law of Nations,' the latter two categories being broader groupings of offenses within which piracy was already included." *Id.* at 605 (quoting U.S. Const. art. I, § 8, cl. 10).

The district court perceived that, by nonetheless including "Piracies" in the Define and Punish Clause, the Framers distinguished that crime from "Felonies committed on the high Seas" and "Offences against the Law of Nations" — a sensible distinction to make in light of what would have been known to the Framers: "that piracy on the high seas was a unique offense because it permitted nations to invoke universal jurisdiction, such that any country could arrest and prosecute pirates in its domestic courts, irrespective of the existence of a jurisdictional nexus." *Hasan I*, 747 F. Supp. 2d at 605 (citing 4 William Blackstone, *Commentaries* *71 (describing piracy, in the mid-1700s, as an "offence against the universal law of society," "so that every community hath a right, by the rule of self-defence," to punish pirates); Eugene Kontorovich, *The "Define and Punish" Clause and the Limits of Universal Jurisdiction*, 103 Nw. U. L. Rev. 149, 164-67 (2009)). "Indeed, by the Eighteenth Century," as the district court observed, "the international crime of piracy was well established as the *only* universal jurisdiction crime." *Id.*; *see The Chapman*, 5 F. Cas. 471, 474 (N.D. Cal. 1864) (No. 2602) (quoting "the celebrated argument by Mr. (afterward Chief Justice) Marshall, in the Robbins Case," that "piracy,

under the law of nations, which alone is punishable by all nations, can only consist in an act which is an offense against all").

With that history in mind, the district court recognized that the Define and Punish Clause "accords to Congress the special power of criminalizing piracy in a manner consistent with the exercise of universal jurisdiction." *Hasan I*, 747 F. Supp. 2d at 605. The court further recognized, however, that Congress encountered early difficulties in criminalizing "general piracy" (that is, piracy in contravention of the law of nations), rather than solely "municipal piracy" (i.e., piracy in violation of United States law). *See id.* at 606. On the one hand, "[w]hile municipal piracy is flexible enough to cover virtually any overt act Congress chooses to dub piracy, it is necessarily restricted to those acts that have a jurisdictional nexus with the United States." *Id.* (citing *Dole v. New Eng. Mut. Marine Ins. Co.*, 7 F. Cas. 837, 847 (C.C.D. Mass. 1864) (No. 3966) (explaining that, although "many artificial offences have been created which are to be deemed to amount to piracy," "piracy created by municipal statute can only be tried by that state within whose territorial jurisdiction, on board of whose vessels, the offence thus created was committed")). On the other hand, "general piracy can be prosecuted by any nation, irrespective of the presence of a jurisdictional nexus." *Id.* (citing *Sosa v. Alvarez-Machain*, 542 U.S. 692, 762 (2004) (Breyer, J., concurring in part and concurring in the judgment) ("[I]n the 18th century, nations reached consensus not only on the substantive principle that acts of piracy were universally wrong but also on the jurisdictional principle that any nation that found a pirate could prosecute him.")). Importantly, though, "because it is created by international consensus, general piracy is restricted in substance to those offenses that the international community agrees constitute piracy." *Id.*

The district court elucidated that, in the absence of federal common law power to apply the law of nations, "Congress had to enact a municipal law that adequately embodied the

international crime of piracy," requiring legislation "that was broad enough to incorporate the definition of piracy under the law of nations (and, in so doing, invoke universal jurisdiction) but narrow enough to exclude conduct that was beyond the scope of that definition." *Hasan I*, 747 F. Supp. 2d at 610. Congress's first effort in that regard, a 1790 act, proved unsuccessful. *See id.* at 612 (discussing Act of Apr. 30, 1790, ch. 9, § 8, 1 Stat. 112 (the "Act of 1790")). By Chief Justice Marshall's 1818 decision in *United States v. Palmer*, the Supreme Court ruled that — because the wording of the Act of 1790 evidenced an intent to criminalize "offences against the United States, not offences against the human race" — the Act did not "authorize the courts of the Union to inflict its penalties on persons who are not citizens of the United States, nor sailing under their flag, nor offending particularly against them." 16 U.S. (3 Wheat.) 610, 631 (1818). The *Palmer* decision thus announced the Act of 1790's failure to define piracy as a universal jurisdiction crime.

Within a year of *Palmer*, as the district court recounted, "Congress passed the Act of 1819 to make clear that it wished to proscribe not only piratical acts that had a nexus to the United States, but also piracy as an international offense subject to universal jurisdiction." *Hasan I*, 747 F. Supp. 2d at 612. Of course, the Act of 1819 "is nearly identical to" the current piracy statute, 18 U.S.C. § 1651. *See id.* at 614 ("The only significant difference between 18 U.S.C. § 1651 and § 5 of the Act of 1819 is the penalty prescribed: the former substitutes mandatory life imprisonment for death, the mandatory penalty prescribed by the latter."). In key part, both § 1651 and the Act of 1819 proscribe piracy simply "as defined by the law of nations."[8]

[8]Notably, "the effectiveness of the Act of 1819 was limited in duration to just one year, requiring supplemental legislation to prevent its provisions from expiring." *Hasan I*, 747 F. Supp. 2d at 613 (citing *United States v. Corrie*, 25 F. Cas. 658, 663 (C.C.D.S.C. 1860) (No. 14,869)). Hence, "Congress extended § 5 of the Act by" way of an 1820 act. *See id.* at 613-14 (discussing Act of May 15, 1820, ch. 113, § 2, 3 Stat. 600 (the "Act of 1820")). Additionally, §§ 4 and 5 of the Act of 1820 "condemned the slave trade as piracy, thereby attaching the universal opprobrium piracy had attained to the slave trade." *Id.* at 613.

The district court observed that Chapter 81 of Title 18, entitled "Piracy and Privateering," contains not only § 1651, but also other provisions condemning acts of piracy. *See Hasan I*, 747 F. Supp. 2d at 614. The court specifically cited 18 U.S.C. § 1659 (the statute criminalizing an attack to plunder a vessel), as well as § 1652 (deeming a "pirate" to be "a citizen of the United States [who] commits any murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince, or state, or on pretense of authority from any person") and § 1653 (defining a "pirate" as "a citizen or subject of any foreign state [who] is found and taken on the sea making war upon the United States, or cruising against the vessels and property thereof, or of the citizens of the same, contrary to the provisions of any treaty existing between the United States and the state of which the offender is a citizen or subject, when by such treaty such acts are declared to be piracy"). Nevertheless, the court emphasized that those other statutes — unlike § 1651 — simply "proscribe[ ] piracy in the 'municipal' sense by dubbing various acts as piracy even though they may not necessarily fall within the definition of general piracy recognized by the international community." *Hasan I*, 747 F. Supp. 2d at 614.

b.

The district court in *Hasan I* astutely traced the meaning of "piracy" under the law of nations, from the time of the Act of 1819 to the modern era and the crime's codification at 18 U.S.C. § 1651. The court commenced with the Supreme Court's 1820 decision in *United States v. Smith*, relating that Justice Story easily concluded that "the Act of 1819 'sufficiently and constitutionally' defined piracy by expressly incorporating the definition of piracy under the law of nations." *See Hasan I*, 747 F. Supp. 2d at 616 (quoting *Smith*, 18 U.S. (5 Wheat.) at 162). The district court also recounted that, "[t]o ascertain how the law of nations defined piracy, the [*Smith*] Court consulted 'the works of jurists, writing pro-

fessedly on public law[s,] the general usage and practice of nations[, and] judicial decisions recognising and enforcing [the law of nations on piracy].'" *Id.* (fifth alteration in original) (quoting *Smith*, 18 U.S. (5 Wheat.) at 160-61). The *Smith* Court thereupon announced that "whatever may be the diversity of definitions, in other respects, all writers concur, in holding, that robbery, or forcible depredations upon the sea, *animo furandi*, is piracy." 18 U.S. (5 Wheat.) at 161; *see also id.* at 162 (expressing "no hesitation in declaring, that piracy, by the law of nations, is robbery upon the sea"). Further, because the *Smith* prisoner and his associates were, at the time they allegedly plundered and robbed a Spanish vessel, "freebooters, upon the sea," the Court deemed the case to be one of piracy punishable under the Act of 1819. *Id.* at 163.

Having noted that "[n]o other Supreme Court decision since *Smith* has directly addressed the definition of general piracy," and recognizing the necessity of looking to foreign sources to determine the law of nations, the district court then focused on case law from other countries. *See Hasan I*, 747 F. Supp. 2d at 614, 616 & n.16. The court deemed the Privy Council of England's 1934 decision in *In re Piracy Jure Gentium*,[9] [1934] A.C. 586 (P.C.), to be "[t]he most significant foreign case dealing with the question of how piracy is defined under international law." *Hasan I*, 747 F. Supp. 2d at 616.[10] There, the defendants were "a number of armed Chinese nationals" who, while "cruising in two Chinese junks" on

[9]The Latin term "*jure gentium*" means "[b]y the law of nations." *Black's Law Dictionary* 852 (6th ed. 1990). Thus, "piracy *jure gentium*" is another way of saying "general piracy."

[10]As the district court explained, "[t]he Privy Council served, in part, as an appeals court from the local courts in the various colonies of the British Empire," and "also reviewed disputed legal questions referred to it by the Crown and recommended resolutions for such questions." *Hasan I*, 747 F. Supp. 2d at 616 n.17 (citing Roget V. Bryan, Comment, *Toward the Development of a Caribbean Jurisprudence: The Case for Establishing a Caribbean Court of Appeal*, 7 J. Transnat'l L. & Pol'y 181, 183-84 (1998)).

the high seas, had chased a Chinese cargo vessel "for over half an hour, during which shots were fired by the attacking party." *See In re Piracy Jure Gentium*, [1934] A.C. at 587. Similar to the present case, however, those defendants were captured before accomplishing any robbery. *Id.* The defendants were transported to Hong Kong for trial and found guilty of piracy, but only subject to the question of the hour: "'Whether an accused person may be convicted of piracy in circumstances where no robbery has occurred.'" *Id.* at 587-88. Premised on the Full Court of Hong Kong's subsequent determination that a robbery was required, the defendants were ultimately acquitted. *Id.* at 588.

Though with no intent to disturb that judgment, the Privy Council revisited the issue upon referral from "His Majesty in Council." *See In re Piracy Jure Gentium*, [1934] A.C. at 588 ("The decision of the Hong Kong court was final and the present proceedings are in no sense an appeal from that Court, whose judgment stands."). The precise question before the Privy Council was "'whether actual robbery is an essential element of the crime of piracy jure gentium, or whether a frustrated attempt to commit a piratical robbery is not equally piracy jure gentium.'" *Id.* Significantly, the Privy Council answered: "'Actual robbery is not an essential element in the crime of piracy jure gentium. A frustrated attempt to commit a piratical robbery is equally piracy jure gentium.'" *Id.*

In so ruling, the Privy Council consulted a multitude of domestic and foreign authorities, including our Supreme Court's decision in *Smith*. *See In re Piracy Jure Gentium*, [1934] A.C. at 596-97. Rather than construing *Smith* to provide an "exhaustive" definition of piracy by equating it with robbery at sea, the Privy Council declared *Smith*'s piracy definition "unimpeachable as far as it goes," but confined "to the facts under consideration." *Id.* at 596 ("He would be a bold lawyer to dispute the authority of [Justice Story], but the criticism upon [*Smith*'s delineation of piracy] is that the learned judge was considering a case where . . . [t]here was no doubt

about the robbery . . . ."). Moreover, the Privy Council recognized that, while *Smith* is "typical" of authorities suggesting "that robbery is an essential ingredient of piracy," more recent cases compel "the opposite conclusion." *Id.* at 197. For example, the Privy Council cited *The Ambrose Light*, 25 F. 408 (S.D.N.Y. 1885) (concluding that vessel was properly seized for engaging in piratical expedition rather than lawful warfare), as "the American case . . . where it was decided . . . that an armed ship must have the authority of a State behind it, and if it has not got such an authority, it is a pirate even though no act of robbery has been committed by it." *In re Piracy Jure Gentium*, [1934] A.C. at 598. The Privy Council also explained that the respective timing of the competing authorities is of great consequence, in "that international law has not become a crystallized code at any time, but is a living and expanding branch of the law." *Id.* at 597. To substantiate its view that "piracy" under the law of nations had expanded beyond sea robbery (if it ever was so narrow), the Privy Council pointed to a 1926 League of Nations subcommittee report stating that, "according to international law, piracy consists in sailing the seas for private ends without authorization from the government of any State with the object of committing depredations upon property or acts of violence against persons." *Id.* at 599 (internal quotation marks omitted).

In addition to the Privy Council's *In re Piracy Jure Gentium* decision, the district court in *Hasan I* examined Kenya's 2006 *Republic v. Ahmed* prosecution of "ten Somali suspects captured by the United States Navy on the high seas" — "[t]he most recent case on [general piracy] outside the United States of which [the district court was] aware." *See Hasan I*, 747 F. Supp. 2d at 618. The High Court of Kenya affirmed the *Ahmed* defendants' convictions for piracy *jure gentium*, culling from international treaties a modern definition of piracy that encompasses acts of violence and detention. *See Hasan I*, 747 F. Supp. 2d at 618 (citing *Ahmed v. Republic*, Crim. App. Nos. 198, 199, 201, 203, 204, 205, 206 & 207 of 2008 (H.C.K. May 12, 2009) (Azangalala, J.)); *see also* James

Thuo Gathii, *Agora: Piracy Prosecution: Kenya's Piracy Prosecutions*, 104 Am. J. Int'l L. 416, 422 (2010) (describing allegations that *Ahmed* defendants hijacked Indian vessel and held its crew captive for two days).

As detailed in *Hasan I*, "there are two prominent international agreements that have directly addressed, and defined, the crime of general piracy." *See* 747 F. Supp. 2d at 618. The first of those treaties is the Geneva Convention on the High Seas (the "High Seas Convention"), which was adopted in 1958 and ratified by the United States in 1961, rendering the United States one of today's sixty-three parties to that agreement. The "starting point" for the High Seas Convention was *The Harvard Research in International Law Draft Convention on Piracy*, 26 Am. J. Int'l L. 743 (1932), "which sought to catalogue all judicial opinions on piracy and codify the international law of piracy." *Hasan I*, 747 F. Supp. 2d at 619. Under the High Seas Convention,

> [p]iracy consists of any of the following acts:
>
> (1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
>
> (a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
>
> (b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
>
> (2) 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;

> (3) Any act of inciting or of intentionally facilitating an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

Geneva Convention on the High Seas, art. 15, *opened for signature* Apr. 29, 1958, 13 U.S.T. 2312, 450 U.N.T.S. 11 (entered into force Sept. 30, 1962).

The second pertinent treaty is the United Nations Convention on the Law of the Sea (the "UNCLOS"), which has amassed 162 parties since 1982 — albeit not the United States, which has not ratified the UNCLOS "but has recognized that its baseline provisions reflect customary international law." *See United States v. Alaska*, 503 U.S. 569, 588 n.10 (1992) (internal quotation marks omitted); *see also Hasan I*, 747 F. Supp. 2d at 619 (explaining that United States has not ratified UNCLOS due to disagreement with deep seabed mining provisions unrelated to piracy (citing 1 Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 2-2 (4th ed. 2004)). Relevant here, the UNCLOS provides that

> [p]iracy consists of any of the following acts:
>
> (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
>
> (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
>
> (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
>
> (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate-ship or aircraft;

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

U.N. Convention on the Law of the Sea, art. 101, *opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994). Upon comparing the High Seas Convention with the UNCLOS, the district court in *Hasan I* recognized that the latter treaty "defines piracy in exactly the same terms as the [former agreement], with only negligible stylistic changes." *See* 747 F. Supp. 2d at 620. The court also observed that the UNCLOS "represents the most recent international statement regarding the definition . . . of piracy." *Id.*

c.

Turning to the contentions of the parties herein, the district court related the defendants' position "that the authoritative definition of piracy under the law of nations, and thus within the meaning of 18 U.S.C. § 1651, is provided by the Supreme Court's decision in *Smith*." *Hasan I*, 747 F. Supp. 2d at 620-21. According to the defendants, because their Indictment did not allege "that they committed any actual robbery on the high seas," the Count One piracy charge had to be dismissed. *Id.* at 621. For its part, however, the government defended Count One on the premise "that *Smith* neither foreclosed the possibility that piracy included conduct other than robbery nor precluded the possibility that the definition of piracy under the law of nations might later come to include conduct other than robbery." *Id.* In response, the district court recognized that "if the definition of piracy under the law of nations can evolve over time, such that the modern law of nations must be applied, rather than any recitation of the state of the law in the early Nineteenth Century," the court need not determine "[w]hether *Smith* was limited to its facts and not intended to be exhaustive, or whether its description of piracy was exhaustive but only represented the definition of piracy accepted at that time by the international community." *Id.* at 622. The court then embarked on the relevant analysis.

First, the district court interpreted 18 U.S.C. § 1651 as an unequivocal demonstration of congressional intent "to incorporate . . . any subsequent developments in the definition of general piracy under the law of nations." *Hasan I*, 747 F. Supp. 2d at 623. The court rationalized:

> The plain language of 18 U.S.C. § 1651 reveals that, in choosing to define the international crime of piracy by [reference to the "law of nations"], Congress made a conscious decision to adopt a flexible — but at all times sufficiently precise — definition of general piracy that would automatically incorporate developing international norms regarding piracy. Accordingly, Congress necessarily left it to the federal courts to determine the definition of piracy under the law of nations based on the international consensus at the time of the alleged offense.

Id. (citing *Ex parte Quirin*, 317 U.S. 1, 29-30 (1942), where the Supreme Court reiterated its 1820 ruling in *Smith* that "[a]n Act of Congress punishing 'the crime of piracy, as defined by the law of nations' is an appropriate exercise of its constitutional authority to 'define and punish' the offense, since it has adopted by reference the sufficiently precise definition of international law" (citations omitted)). The district court further gleaned that Congress intended to adopt "a flexible definition for general piracy" from the history of § 1651 — especially the passage of its forerunner Act of 1819 in the wake of the Supreme Court's 1818 *Palmer* decision quelling any notion that general piracy had been, up to that time, sufficiently defined and proscribed by domestic statutory law. *See Hasan I*, 747 F. Supp. 2d at 623-24. The court noted that *Palmer* highlighted Congress's powerlessness to "control the contours of general piracy," in "that developing international norms may alter the offense's accepted definition, albeit at a glacial pace." *Id.* at 624. Thus, according to the court, the Act of 1819's simple incorporation of the law of nations made sense, because it relieved Congress of "having to revise the

general piracy statute continually to mirror the international consensus definition." *Id.* As written, the Act of 1819, and now 18 U.S.C. § 1651, "automatically incorporate[ ]" advancements "in the definition of general piracy under the law of nations." *Id.*[11]

"Having concluded that Congress's proscription of 'piracy as defined by the law of nations' in 18 U.S.C. § 1651 necessarily incorporates modern developments in international law," the district court next endeavored to "discern the definition of piracy under the law of nations at the time of the alleged offense in April 2010." *Hasan I*, 747 F. Supp. 2d at 630. In so doing, the court observed that the law of nations is ascertained today via the same path followed in 1820 by the Supreme Court in *Smith*: consultation of "'the works of

[11]The district court noted that reading 18 U.S.C. § 1651 to require application of the contemporary definition of general piracy comports with both fundamental fairness and Supreme Court precedent. That is, it "would be fundamentally unfair" to "permit[ ] the prosecution of acts that have ceased to be violations of the law of nations" — such as acts occurring outside the three-mile boundary demarcating a nation's territorial waters from the high seas in 1820, but within the twelve-mile boundary set by international law today. *See Hasan I*, 747 F. Supp. 2d at 625. Moreover, an assemblage of Supreme Court decisions "demonstrates that use of the phrase 'law of nations' contemplates a developing set of international norms." *See id.* at 625-29 (discussing *Sosa v. Alvarez-Machain*, 542 U.S. 692, 724-25 (2004) (explaining that the Alien Tort Statute's "jurisdictional grant is best read as having been enacted on the understanding that the common law would provide a cause of action for the modest number of international law violations with a potential for personal liability at the time [including piracy]," but allowing that courts may recognize additional common law claims "based on the present-day law of nations"); *United States v. Arjona*, 120 U.S. 479, 484-86 (1887) (extending the longstanding obligation under the law of nations "of one nation to punish those who within its own jurisdiction counterfeit the money of another nation," to a duty to protect the "more recent custom among bankers of dealing in foreign securities"); *The Antelope*, 23 U.S. (10 Wheat.) 66, 120-22 (1825) (ruling that the slave trade, though "contrary to the law of nature," was then "consistent with the law of nations," but acknowledging that "[a] right . . . vested in all, by the consent of all, can be divested . . . by consent")).

jurists, writing professedly on public law[s];'" consideration of "'the general usage and practice of nations;'" and contemplation of "'judicial decisions recognising and enforcing that law.'" *See Hasan I*, 747 F. Supp. 2d at 630 (quoting *Smith*, 18 U.S. (5 Wheat.) at 160-61). Engaging in that analysis, the court concluded:

> As of April 1, 2010, the law of nations, also known as customary international law, defined piracy to *include* acts of violence committed on the high seas for private ends without an actual taking. More specifically, . . . the definition of general piracy under modern customary international law is, at the very least, reflected in Article 15 of the 1958 High Seas Convention and Article 101 of the 1982 UNCLOS.

Id. at 632-33; *see also id.* at 630 ("Today, 'the law of nations has become synonymous with the term "customary international law," which describes the body of rules that nations in the international community universally abide by, or accede to, out of a sense of legal obligation and mutual concern.'" (quoting *Vietnam Ass'n for Victims of Agent Orange v. Dow Chem. Co.*, 517 F.3d 104, 116 (2d Cir. 2008))). Narrowing customary international law to one of those two treaties, the court chose the UNCLOS, which — in addition to "contain[-ing] a definition of general piracy that is, for all practical purposes, identical to that of the High Seas Convention" — "has many more states parties than the High Seas Convention" and "has been much more widely accepted by the international community than the High Seas Convention." *Id.* at 633 (footnote omitted).

In the course of its discussion of the High Seas Convention and the UNCLOS, the district court recognized that "'[t]reaties are proper evidence of customary international law because, and insofar as, they create legal obligations akin to contractual obligations on the States parties to them.'" *Hasan I*, 747 F. Supp. 2d at 633 (quoting *Kiobel v. Royal Dutch*

Petroleum Co., 621 F.3d 111, 137 (2d Cir. 2010)). According to the court, "[w]hile all treaties shed some light on the customs and practices of a state, 'a treaty will only constitute sufficient proof of a norm of customary international law if an overwhelming majority of States have ratified the treaty, and those States uniformly and consistently act in accordance with its principles.'" *Id.* (emphasis omitted) (quoting *Kiobel*, 621 F.3d at 137). "In this regard," the court emphasized, "it is also important to understand that a treaty can either 'embod[y] or create[ ] a rule of customary international law,' and such a rule 'applies beyond the limited subject matter of the treaty and *to nations that have not ratified it.*'" *Id.* (alterations in original) (quoting *Kiobel*, 621 F.3d at 138). With those principles in mind, the court recognized:

> There were 63 states parties to the High Seas Convention as of June 10, 2010, including the United States, and there were 161 states parties to UNCLOS (including the European Union) as of October 5, 2010, including Somalia. The 161 states parties to UNCLOS represent the "overwhelming majority" of the 192 Member States of the United Nations, and the 194 countries recognized by the United States Department of State. UNCLOS's definition of piracy therefore represents a widely accepted norm, followed out of a sense of agreement (or, in the case of the states parties, treaty obligation), that has been recognized by an overwhelming majority of the world.
>
> The status of UNCLOS as representing customary international law is enhanced by the fact that the states parties to it include all of the nations bordering the Indian Ocean on the east coast of Africa, where the incident in the instant case is alleged to have taken place: South Africa, Mozambique, Tanzania, Kenya, and Somalia. *See Kiobel*, 621 F.3d at 137-38 (noting that a treaty's evidentiary value for assessing

> customary international law depends on the number of parties and the parties' relative influence on the international issue). Also significant in determining whether UNCLOS constitutes sufficient proof of a norm of customary international law is the fact that both the United States and Somalia, two countries that clearly have an influence on the piracy issue, have each ratified, and thus accepted, a treaty containing the exact same definition of general piracy.
>
> Moreover, although the definition of general piracy provided by the High Seas Convention and UNCLOS is not nearly as succinct as "robbery on the sea," the definitions are not merely general aspirational statements, but rather specific enumerations of the elements of piracy reflecting the modern consensus view of international law. Accordingly, UNCLOS's definition of general piracy has a norm-creating character and reflects an existing norm of customary international law that is binding on even those nations that are not a party to the Convention, including the United States.

Hasan I, 747 F. Supp. 2d at 633-34 (footnote and citations omitted).[12]

[12]Expounding on the applicability of the UNCLOS herein, the district court observed:

> The fact that the United States has not signed or ratified UNCLOS does not change the conclusion reached above regarding its binding nature. While the United States' failure to sign or ratify UNCLOS does bar the application of UNCLOS as *treaty law* against the United States, it is not dispositive of the question of whether UNCLOS constitutes customary international law, because such a determination relies not only on the practices and customs of the United States, but instead of the entire international community. In any event, while the United States has refused to sign UNCLOS because of . . . regulations related to deep seabed exploration and mining, in 1983, President Ronald

The district court further observed "that UNCLOS does not represent the first time that acts of violence have been included in the definition of general piracy." *Hasan I*, 747 F. Supp. 2d at 635. Rather, even accepting that "actual robbery on the high seas" was once an essential element of general piracy, "the view that general piracy does not require an actual robbery on the sea has certainly gained traction since the Nineteenth Century, as evidenced by [intervening case law], the Harvard Draft Convention on Piracy, the High Seas Convention, and UNCLOS." *Id.* The court took especial note of Kenya's recent reliance on the UNCLOS to define general piracy in the 2006 *Republic v. Ahmed* case, concluding:

> Reagan announced that the United States would accede to those provisions of UNCLOS pertaining to "traditional uses" of the ocean. Schoenbaum, *supra*, § 2-2 ("With respect to the 'traditional uses' of the sea, therefore, the United States accepts [UNCLOS] as customary international law, binding upon the United States."). No succeeding Presidential Administration has taken a contrary position. Accordingly, with the exception of its deep seabed mining provisions, the United States has consistently accepted UNCLOS as customary international law for more than 25 years. [*See* Restatement (Third) of the Foreign Relations Law of the United States pt. 5, intro. note (1986) ("For purposes of this Restatement, [the UNCLOS] as such is not law of the United States. However, many of the provisions of the [UNCLOS] follow closely provisions in the [High Seas Convention] to which the United States is a party and which largely restated customary law as of that time. [Moreover], by express or tacit agreement accompanied by consistent practice, the United States, and states generally, have accepted the substantive provisions of the [UNCLOS], other than those addressing deep sea-bed mining, as statements of customary law binding upon them apart from the [UNCLOS].")].

Hasan I, 747 F. Supp. 2d at 634-35 (citations omitted). The court also addressed the defendants' assertion "that the significance of the accession by the United States to the High Seas Convention is diminished by the fact that implementing legislation was never adopted by Congress." *Id.* at 633 n.30. According to the court, the lack of implementing legislation was unimportant, because "it does not diminish the wide acceptance of the general piracy definition by the international community." *Id.*

> This actual state practice by Kenya, the country currently most involved in prosecuting piracy, as well as the active support of such practice by other nations, which continue to bring other alleged pirates to Kenya for prosecution, is indicative of the fact that the definition of piracy contained in the High Seas Convention and UNCLOS have attained the status of a binding rule of customary international law.

Hasan I, 747 F. Supp. 2d at 636. Additionally, the court recognized that "[c]ontemporary scholarly sources . . . appear to agree that the definition of piracy in UNCLOS represents customary international law." *Id.* at 636 & n.32 (citing pertinent works of scholars). "While writers on the issue do present disagreements regarding the definition of general piracy," the court acknowledged, "such disagreements do not implicate the core definition provided in UNCLOS." *Id.* at 637 (explaining that "writers [instead] disagree about the outer boundaries of the definition of general piracy, such as whether UNCLOS's requirement of 'private ends' prohibits its application to terrorist activities, or whether piracy can arise in situations involving just one ship rather than two").

Significantly, the district court rejected the defendants' contention — endorsed by the *Said* court — that the piracy statute, 18 U.S.C. § 1651, "cannot be read to include mere acts of violence committed in an effort to rob another vessel on the high seas, because doing so would render . . . superfluous" the attack-to-plunder-a-vessel statute, 18 U.S.C. § 1659. *See Hasan I*, 747 F. Supp. 2d at 637. The court in *Hasan I* articulated that, although the defendants were "correct in their assertion that reading § 1651 to include acts of violence without an actual taking would render punishable as general piracy acts that also fall within § 1659," the defendants defectively ignored "the distinct jurisdictional scopes provided by § 1651 and § 1659." *Id.* That is, "[w]hile § 1659 applies only to acts by United States citizens or foreign nationals 'set[ting]

upon' U.S. citizens or U.S. ships, § 1651 provides for the prosecution of general piracy (as opposed to municipal piracy) with the ability to invoke universal jurisdiction. Therefore, 18 U.S.C. § 1659 is not superfluous." *Id.* (second alteration in original).

The *Hasan I* opinion further rejected the *Said*-approved theory "that applying the contemporary customary international law definition of general piracy violates fundamental due process protections." *See Hasan I*, 747 F. Supp. 2d at 637-38 ("In short, Defendants contend that construing § 1651 to demand a flexible definition of general piracy reflecting developing international norms would necessarily subject them to punishment for crimes that are unconstitutionally vague."). According to *Hasan I*, "§ 1651's express incorporation of the definition of piracy provided by 'the law of nations,' which is today synonymous with customary international law, provides fair warning of what conduct is proscribed by the statute." *Id.* at 638. In support of that conclusion, the district court in *Hasan I* recapped the Supreme Court's 1820 holding in *Smith* "that, by incorporating the definition of piracy under the law of nations, Congress had proscribed general piracy as clearly as if it had enumerated the elements of the offense in the legislation itself." *Hasan I*, 747 F. Supp. 2d at 639 (citing *Smith*, 18 U.S. (5 Wheat.) at 159-60). The district court also determined that the "reasoning in *Smith* applies equally to the application of § 1651 today," explaining:

> [I]n order for a definition of piracy to fall within the scope of § 1651, the definition must . . . be sufficiently established to become customary international law. Importantly, the high hurdle for establishing customary international law, namely the recognition of a general and consistent practice among the overwhelming majority of the international community, necessarily imputes to Defendants fair warning of what conduct is forbidden under

> § 1651. Such general and consistent practice is certainly reflected by the fact that an overwhelming majority of countries have ratified UNCLOS, which reflects the modern definition of general piracy. Just as the Supreme Court found in *Smith* that the definition of piracy was readily ascertainable, it is apparent today that UNCLOS (to which Somalia acceded in 1989, over twenty years ago) reflects the definitive modern definition of general piracy under customary international law. In fact, while the Court recognizes the difference between imputed and actual notice for due process purposes, it is far more likely that the Defendants, who claim to be Somali nationals, would be aware of the piracy provisions contained in UNCLOS, to which Somalia is a party, than of *Smith*, a nearly two hundred year-old case written by a court in another country literally half a world away.

Hasan I, 747 F. Supp. 2d at 639. Summarizing "'[t]hat is certain which is, by necessary reference, made certain,'" the district court reiterated that § 1651's definition of general piracy was rendered "certain" by the statute's incorporation of the law of nations. *Id.* (alteration in original) (quoting *Smith*, 18 U.S. (5 Wheat.) at 159-60).

d.

For its final *Hasan I* undertaking, the district court measured the Count One piracy charge in the defendants' Indictment against "the statutory requirements set forth in 18 U.S.C. § 1651," including "the necessarily incorporated elements of general piracy established by customary international law." *Hasan I*, 747 F. Supp. 2d at 640. The court recognized that the defendants' motion to dismiss Count One turned on § 1651's first condition (that the defendants "committed the act of 'piracy as defined by the law of nations'"), and not its second and third requirements (respectively, that the piracy was com-

mitted "'on the high seas'" and that the defendants thereafter were "'brought into or found in the United States'"). *Id.*

The district court then reaffirmed that, as of the alleged offense date of April 2010, the definition of piracy under the law of nations was found in the substantively identical High Seas Convention and UNCLOS, the latter having "been accepted by the overwhelming majority of the world as reflecting customary international law." *Hasan I*, 747 F. Supp. 2d at 640. Mirroring those treaties, the court pronounced that "piracy within the meaning of [§] 1651 consists of any of the following acts and their elements:"

> (A) (1) any illegal act of violence or detention, or any act of depredation; (2) committed for private ends; (3) on the high seas or a place outside the jurisdiction of any state; (4) by the crew or the passengers of a private ship . . . ; (5) and directed against another ship . . . , or against persons or property on board such ship . . . ; or
>
> (B) (1) any act of voluntary participation in the operation of a ship . . . ; (2) with knowledge of the facts making it a pirate ship; or
>
> (C) (1) any act of inciting or of intentionally facilitating (2) an act described in subparagraph (A) or (B).

Id. at 640-41 (footnotes omitted).

The district court concluded that defendants Ali and Dire were adequately charged in Count One under subparagraph (A), in that the Indictment alleged "that, while on the high seas, they boarded an assault boat, cruised towards the USS Nicholas, and opened fire upon the Navy frigate with AK-47s." *Hasan I*, 747 F. Supp. 2d at 641. As for defendant

Hasan, the court suggested that subparagraphs (A), (B), and (C) authorized the piracy charge against him, because he allegedly "boarded [the] assault boat with an RPG, with co-conspirators Ali and Dire carrying AK-47s, and cruised towards the USS Nicholas, where Ali and Dire opened fire on the USS Nicholas with their AK-47s." *Id.* (ruling that the Indictment "adequately charges Hasan with general piracy as a voluntary and knowing participant in Ali and Dire's assault"). Finally, the court sustained Count One against defendants Gurewardher and Umar under subparagraphs (B) and (C), premised on the allegation "that they maintained the seagoing vessel[ ] from which the assault boat carrying Hasan, Ali, and Dire was launched, while their co-conspirators set out to attack the USS Nicholas." *Id.* The matter then proceeded to trial, where the government adduced evidence consistent with the facts alleged in the Indictment.

3.

Faithful to its *Hasan I* opinion, the district court instructed the jury on Count One, over the defendants' objection,

> that the Law of Nations defines the crime of piracy to [include] any of the three following actions:
>
> (A) any illegal acts of violence or detention or any act of depredation committed for private ends on the high seas or a place outside the jurisdiction of any state by the crew or the passengers of a private ship and directed against another ship or against persons or property on board such ship; or
>
> (B) any act of voluntary participation in the operation of a ship with knowledge of facts making it a pirate ship; or
>
> (C) any act of inciting or of intentionally facilitating an act described in (A) or (B) above.

Excerpt of Proceedings (Jury Instructions) at 18-19, *United States v. Hasan*, No. 2:10-cr-00056 (E.D. Va. Nov. 22, 2010; filed July 28, 2011), ECF No. 356. The court also specified "that an assault with a firearm as alleged in the indictment in this case, if proven beyond a reasonable doubt, is an illegal act of violence." *Id.* at 19.[13] The jury found each of the defendants guilty of the Count One piracy offense by a general verdict.

Rebuffing the post-trial entreaties for judgments of acquittal on Count One, the district court observed in its *Hasan II* opinion of March 9, 2011, that it was being asked to "reconsider its decision regarding the definition of 'piracy,' as used in 18 U.S.C. § 1651, in light of a Congressional Research Service ('CRS') report entitled *Piracy: A Legal Definition*." *See Hasan II*, slip op. at 3. The CRS report was issued on October 19, 2010 — just ten days prior to the filing of *Hasan I* — and had not been considered by the district court in rendering that earlier decision. *See id.* at 3-4 & n.1 (attributing its non-contemplation of the CRS report to the fact that such "reports, though public domain materials, are generally not made directly available to the public [or] to the federal courts[,] but instead only become public when released by a member of Congress"). In any event, the court deemed the CRS report unhelpful to the defendants, explaining:

> [T]he report does not appear to contain discussion of any relevant historical precedent that was not also discussed by the Court in its [*Hasan I* opinion]. Neither does the report appear to contain any original substantive legal analysis regarding the proper definition of piracy under the law of nations. Instead, the report merely discusses the fact that "[a] recent

[13]The defendants proposed an instruction defining piracy as "'robbery, or forcible depredations upon the sea,'" and requiring the government to prove that, among other things, the defendants "took and carried away the personal goods of another." J.A. 585.

> development in a piracy trial in federal court in Norfolk, VA" — namely, the decision in *United States v. Said*, [757 F. Supp. 2d 554 (E.D. Va. 2010)] — "has highlighted a potential limitation in the definition of piracy under the United States Code."

Id. at 4 (quoting R. Chuck Mason, Cong. Research Serv., R41455, *Piracy: A Legal Definition* summ. (Oct. 19, 2010)). Because the court "was, of course, well aware of the decision in *Said* when it issued its [*Hasan I* opinion]," it concluded that the CRS report "provide[d] no basis for [reconsideration of] the definition of piracy under the law of nations as used in 18 U.S.C. § 1651." *Id.* at 4-5.[14] Having found no meritorious premise for relief, the court validated the defendants' Count One piracy convictions. *See id.* at 5-6, 16-17.

B.

On appeal, the defendants maintain that the district court erred with respect to Count One both by misinstructing the jury on the elements of the piracy offense, and in refusing to award post-trial judgments of acquittal. Each aspect of the defendants' position obliges us to assess whether the court took a mistaken view of 18 U.S.C. § 1651 and the incorporated law of nations. *See United States v. Kellam*, 568 F.3d 125, 132 (4th Cir. 2009) (observing that we "review de novo a district court's ruling on a motion for a judgment of acquittal"); *United States v. Singh*, 518 F.3d 236, 249, 251 (4th Cir. 2008) (recognizing that we "review a trial court's jury instructions for abuse of discretion," and that "a district court abuses its discretion when it makes an error of law" (internal quotation marks omitted)).

[14]It is noteworthy that the CRS report of October 19, 2010, was updated to include a discussion of the *Hasan I* opinion. *See* R. Chuck Mason, Cong. Research Serv., R41455, *Piracy: A Legal Definition* summ. (Dec. 13, 2010) (advising that "[t]he divergent U.S. district court rulings [in *Said* and *Hasan I*] may create uncertainty in how the offense of piracy is defined").

Simply put, we agree with the conception of the law outlined by the court below. Indeed, we have carefully considered the defendants' appellate contentions — endorsed by the amicus curiae brief submitted on their behalf, *see supra* note 5 — yet remain convinced of the correctness of the trial court's analysis.

The crux of the defendants' position is now, as it was in the district court, that the definition of general piracy was fixed in the early Nineteenth Century, when Congress passed the Act of 1819 first authorizing the exercise of universal jurisdiction by United States courts to adjudicate charges of "piracy as defined by the law of nations." Most notably, the defendants assert that the "law of nations," as understood in 1819, is not conterminous with the "customary international law" of today. The defendants rely on Chief Justice Marshall's observation that "[t]he law of nations is a law founded on the great and immutable principles of equity and natural justice," *The Venus*, 12 U.S. (8 Cranch) 253, 297 (1814) (Marshall, C.J., dissenting), to support their theory that "[t]he Congress that enacted the [Act of 1819] did not view the universal law of nations as an evolving body of law." Br. of Appellants 12; *see also* Br. of Amicus Curiae 11 (arguing that, in 1819, "'the law of nations' was well understood to refer to an immutable set of obligations — not evolving practices of nations or future pronouncements of international organizations that did not yet exist").

The defendants' view is thoroughly refuted, however, by a bevy of precedent, including the Supreme Court's 2004 decision in *Sosa v. Alvarez-Machain*. *See supra* note 11. The *Sosa* Court was called upon to determine whether Alvarez could recover under the Alien Tort Statute, 28 U.S.C. § 1350 (the "ATS"), for the U.S. Drug Enforcement Administration's instigation of his abduction from Mexico for criminal trial in the United States. *See* 542 U.S. at 697. The ATS provides, in full, that "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in

violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. Significantly, the ATS predates the criminalization of general piracy, in that it was passed by "[t]he first Congress . . . as part of the Judiciary Act of 1789." *See Sosa*, 542 U.S. at 712-13 (citing Act of Sept. 24, 1789, ch. 20, § 9, 1 Stat. 77 (authorizing federal district court jurisdiction over "all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States")). Yet the *Sosa* Court did not regard the ATS as incorporating some stagnant notion of the law of nations. Rather, the Court concluded that, while the first Congress probably understood the ATS to confer jurisdiction over only the three paradigmatic law-of-nations torts of the time — including piracy — the door was open to ATS jurisdiction over additional "claim[s] based on the present-day law of nations," albeit in narrow circumstances. *See id.* at 724-25. Those circumstances were lacking in the case of Alvarez, whose ATS claim could not withstand being "gauged against the current state of international law." *See id.* at 733.

Although, as the defendants point out, the ATS involves civil claims and the general piracy statute entails criminal prosecutions, there is no reason to believe that the "law of nations" evolves in the civil context but stands immobile in the criminal context. Moreover, if the Congress of 1819 had believed either the law of nations generally or its piracy definition specifically to be inflexible, the Act of 1819 could easily have been drafted to specify that piracy consisted of "piracy as defined *on March 3, 1819* [the date of enactment], by the law of nations," or solely of, as the defendants would have it, "robbery upon the sea." The government helpfully identifies numerous criminal statutes "that incorporate a definition of an offense supplied by some other body of law that may change or develop over time," *see* Br. of Appellee 18 (citing, inter alia, 16 U.S.C. § 3372(a)(2)(A) (the Lacey Act, prohibiting commercial activities involving "any fish or wildlife taken, possessed, transported, or sold in violation of any law or any regulation of any State or in violation of any for-

eign law")); that use the term "as defined by" or its equivalent to "incorporate definitions that are subject to change after statutory enactment," *see id.* at 19 (citing, e.g., 18 U.S.C. § 1752(b)(1)(B) (prescribing punishment for illegal entry into White House or other restricted buildings or grounds where "the offense results in significant bodily injury as defined by [18 U.S.C. § 2218(e)(3)]")); and that explicitly "tie the statutory definition to a particular time period," *see id.* at 21 (citing 22 U.S.C. § 406 (exempting from statutory limitations on the export of war materials "trade which might have been lawfully carried on before the passage of this title [enacted June 15, 1917], under the law of nations, or under the treaties or conventions entered into by the United States, or under the laws thereof")). Additionally, the government underscores that Congress has explicitly equated piracy with "robbery" in other legislation, including the Act of 1790 that failed to define piracy as a universal jurisdiction crime.

For their part, the defendants highlight the Assimilated Crimes Act (the "ACA") as a statute that expressly incorporates state law "in force at the time of [the prohibited] act or omission." *See* 18 U.S.C. § 13(a). That reference was added to the ACA, however, only after the Supreme Court ruled that a prior version was "limited to the laws of the several states in force at the time of its enactment," *United States v. Paul*, 31 U.S. (6 Pet.) 141, 142 (1832) — a limitation that the Court has not found in various other statutes incorporating outside laws and that we do not perceive in 18 U.S.C. § 1651's proscription of "piracy as defined by the law of nations."

Additional theories posited by the defendants of a static piracy definition are no more persuasive. For example, the defendants contend that giving "piracy" an evolving definition would violate the principle that there are no federal common law crimes. *See* Br. of Appellants 32 (citing *United States v. Hudson*, 11 U.S. (7 Cranch) 32, 34 (1812), for the proposition "that federal courts have no power to exercise 'criminal jurisdiction in common-law cases'"). The 18 U.S.C. § 1651 piracy

offense cannot be considered a common law crime, however, because Congress properly "ma[de] an act a crime, affix[ed] a punishment to it, and declare[d] the court that shall have jurisdiction of the offence." *See Hudson*, 11 U.S. (7 Cranch) at 34. Moreover, in its 1820 *Smith* decision, the Supreme Court unhesitatingly approved of the piracy statute's incorporation of the law of nations, looking to various sources to ascertain how piracy was defined under the law of nations. *See Smith*, 18 U.S. (5 Wheat.) at 159-61.

The defendants would have us believe that, since the *Smith* era, the United States' proscription of general piracy has been limited to "robbery upon the sea." But that interpretation of our law would render it incongruous with the modern law of nations and prevent us from exercising universal jurisdiction in piracy cases. *See Sosa*, 542 U.S. at 761 (Breyer, J., concurring in part and concurring in the judgment) (explaining that universal jurisdiction requires, inter alia, "substantive uniformity among the laws of [the exercising] nations"). At bottom, then, the defendants' position is irreconcilable with the noncontroversial notion that Congress intended in § 1651 to define piracy as a universal jurisdiction crime. In these circumstances, we are constrained to agree with the district court that § 1651 incorporates a definition of piracy that changes with advancements in the law of nations.

We also agree with the district court that the definition of piracy under the law of nations, at the time of the defendants' attack on the USS Nicholas and continuing today, had for decades encompassed their violent conduct. That definition, spelled out in the UNCLOS, as well as the High Seas Convention before it, has only been reaffirmed in recent years as nations around the world have banded together to combat the escalating scourge of piracy. For example, in November 2011, the United Nations Security Council adopted Resolution 2020, recalling a series of prior resolutions approved between 2008 and 2011 "concerning the situation in Somalia"; expressing "grave[ ] concern[ ] [about] the ongoing threat that

piracy and armed robbery at sea against vessels pose"; and emphasizing "the need for a comprehensive response by the international community to repress piracy and armed robbery at sea and tackle its underlying causes." Of the utmost significance, Resolution 2020 reaffirmed "that international law, as reflected in the [UNCLOS], sets out the legal framework applicable to combating piracy and armed robbery at sea."[15] Because the district court correctly applied the UNCLOS definition of piracy as customary international law, we reject the defendants' challenge to their Count One piracy convictions, as well as their mandatory life sentences.

III.

The defendants raise several additional appellate contentions, which we are also content to reject.

A.

First, the defendants contend that the district court erroneously denied their individual motions to suppress statements they made on April 4, 2010, when questioned aboard the USS Nicholas three days after their capture. They assert that the interviews contravened the Fifth Amendment, because the investigators failed to adequately advise them of their right to counsel, and did not obtain knowing and intelligent waivers of their rights to counsel and to remain silent before soliciting their statements. Of course, under *Miranda v. Arizona*, a suspect in custody

> must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he

[15]Notably, as one of the permanent members of the Security Council, the United States supported the adoption of Resolution 2020, which was approved by a unanimous Security Council.

> cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

384 U.S. 436, 479 (1966). Once the proper warnings have been given, the suspect "may knowingly and intelligently waive [his] rights and agree to answer questions or make a statement." *Id.*

1.

The district court conducted a pretrial evidentiary hearing concerning the defendants' suppression motions on September 10-11, 2010, and denied the motions by its published opinion of October 29, 2010. *See United States v. Hasan*, 747 F. Supp. 2d 642, 656 (E.D. Va. 2010) ("*Hasan III*").[16] Material to the suppression issue, the court's *Hasan III* opinion enumerated the following facts.

On April 4, 2010, Naval Criminal Investigative Service ("NCIS") Special Agent Michael Knox, accompanied by NCIS Special Agent Theodore Mordecai and interpreter Aziz Ismail, questioned the five defendants — Dire, Ali, Umar, Gurewardher, and Hasan — aboard the USS Nicholas. *See Hasan III*, 747 F. Supp. 2d at 666. Two days earlier, on April 2, Special Agent Knox had participated in onboard interviews with three of the defendants, during which Ismail (then posted with Special Agent Mordecai on another Navy vessel, the USS Farragut) provided translation services via satellite telephone. *See id.* at 659. Ismail, a naturalized United States citizen, was born, reared, and educated in Somalia and "speaks the same dialect of Somali that Defendants speak." *Id.* During the April 2 interviews, "Hasan and Dire both represented that

[16]For the sake of clarity, we acknowledge that the opinion defined herein as "*Hasan III*" was issued on the same day as the pretrial *Hasan I* opinion denying the defendants' joint motion to dismiss the Count One piracy charge. As such, *Hasan III* predates the *Hasan II* opinion withholding post-trial relief from the Count One convictions.

they were fishermen who had been kidnapped by the other Defendants and forced to engage in piracy," but "Gurewardher immediately confessed to being a pirate and engaging in piratical operations." *Id.* at 660. Ismail and Mordecai were thereafter taken by helicopter from the Farragut to the Nicholas to assist Knox in person with the April 4 questioning of all five defendants. *Id.* at 666.[17]

The defendants were brought on April 4, 2010, to the centerline passageway of the USS Nicholas, where they were interviewed first individually and then as a group. *See Hasan III*, 747 F. Supp. 2d at 666. Neither Special Agents Knox and Mordecai nor interpreter Ismail was "visibly armed," and other "armed personnel were several feet away, and only in the vicinity when the defendants came and went"; meanwhile, the defendants "were handcuffed but not blindfolded." *Id.* At the outset of each interview, "Knox, speaking through Ismail, recited from memory a number of warnings." *Id.* Knox was "an experienced NCIS agent who convincingly testified that he has given *Miranda* warnings approximately 500 times and can recite them from memory." *Id.* at 668.

According to Special Agent Knox, he advised each defendant "'that they have the right to remain silent; that at any time they could . . . request to be taken back to their holding area[;] and . . . that if they wanted a lawyer, we would give them one.'" *Hasan III*, 747 F. Supp. 2d at 666 (quoting J.A. 147). Knox had "intentionally modified his articulation of [the defendants'] right to attorneys because he 'knew getting a lawyer on the ship was impossible,'" *id.* (quoting J.A. 147); in any event, none of the defendants requested a lawyer. Fol-

[17]The district court suppressed Gurewardher's April 2 confession because, on that date, "Special Agent Knox failed to advise him adequately of his Fifth Amendment rights, as required by *Miranda*." *See Hasan III*, 747 F. Supp. 2d at 659-66. That ruling is not at issue in this appeal, which focuses on the adequacy of the *Miranda* warnings given to the defendants on April 4.

lowing the warnings, Knox read each defendant a "cleansing statement" that he had received earlier that day by email and also "'slightly modified to fit the situation.'" *Id.* (quoting J.A. 148). The "cleansing statement" advised, inter alia, "'that the interview with me today is a new interview'"; that "'[j]ust because you talked to me or someone else before does not mean you have to do so today'"; and that, "'[i]f you choose to talk to me today, anything you say can be used against you in court.'" *Id.* at 667 (quoting J.A. 149).

Other government witnesses, including Special Agent Mordecai and interpreter Ismail, "all corroborated the fact that Special Agent Knox administered warnings to Defendants, although their recollections of the warnings varied slightly." *Hasan III*, 747 F. Supp. 2d at 667. Ismail "recall[ed] translating both an explanation by Special Agent Knox that Defendants had the right not to say anything and the written 'cleansing statement' as read by Knox," but also "indicat[ed] that the warnings were not delivered as they are on television." *Id.* Additionally, "Ismail acknowledg[ed] that he may have translated warnings relating to the use of statements in court and the availability of an attorney for Defendants, but simply [did] not recall." *Id.* Ismail was more clear "that he asked each Defendant at the conclusion of [Knox's] warnings if that Defendant understood, and each Defendant . . . said 'yes' in Somali." *Id.* at 667-68. Other testimony indicated that the defendants instead nodded their heads, but no witness "perceived anything indicating that any of the Defendants had *not* understood the warnings," and "at no point did any of the Defendants show any sign of reluctance or confusion." *Id.* at 668. Although "Ali and Dire initially claimed [that they had] been forced to participate in the attack [on the USS Nicholas,] eventually, upon a few minutes of [individual] questioning, each Defendant admitted to being a pirate, and Hasan, Ali, and Dire each admitted to specific roles in the [Nicholas] attack" — information that was reconfirmed during the subsequent group interview. *Id.* (internal quotation marks omitted).

2.

Evaluating the evidence before it, the district court found "that Special Agent Knox did, in fact, administer the warnings he recalled to each of the Defendants at the beginning of each of their interviews on April 4, 2010." *Hasan III*, 747 F. Supp. 2d at 669. The court also determined that "no deficiency appears to exist in Special Agent Knox's modified warning with respect to Defendants' right to an attorney." *Id.* (relying on *United States v. Frankson*, 83 F.3d 79 (4th Cir. 1996), for the proposition that Knox's warning was adequate even though he "only advised Defendants that counsel would be provided to them if they wanted one, and therefore did not specify that Defendants had the right to the presence of an attorney prior to questioning").

The district court deemed it a closer question whether the defendants — being "non-English speaking and illiterate Somali nationals, without any connection to the United States" — could have "knowingly and intelligently waived their Fifth Amendment rights against self-incrimination." *See Hasan III*, 747 F. Supp. 2d at 669 (expressing sympathy to the defendants' portrait of "conditions in Somalia," including a "barely functional" government, a dearth of lawyers, and the absence of "individual freedoms protecting persons who wish to refuse to answer questions from authorities"). For guidance, the district court looked to *Berghuis v. Thompkins*, in which the Supreme Court recently clarified that "waivers can be established [by] formal or express statements of waiver," but also can be "implied from all the circumstances." *See* 130 S. Ct. 2250, 2261 (2010). Cognizant of the principle that no waiver — express or implied — can be established absent the prosecution's "showing that the accused understood [his] rights," *see id.*, the district court confronted the defendants' assertion that they did not understand Special Agent Knox's *Miranda* warnings. *See Hasan III*, 747 F. Supp. 2d at 670. The court rejected that assertion, explaining:

[T]he evidence before the Court indicates that Special Agent Knox did, in fact, ask each Defendant if he understood the rights that had just been given to him. Although the testimony diverges as to the precise nature of Defendants' response — Special Agents Knox and Mordecai recalled only nodding and/or the lack of any indication of not understanding, whereas [interpreter] Ismail recalls each Defendant verbally saying "Yes" in Somali — the testimony is uniform in suggesting understanding, as opposed to lack thereof, on the part of Defendants. Ultimately, Defendants were adequately warned of their rights against self-incrimination under the Fifth Amendment in accordance with the requirements of *Miranda*. The *Miranda* rights were recited to Defendants, through Ismail, . . . in their native language. At no point did Defendants claim that they did not understand the words being recited by Ismail, or that Ismail was not speaking their native language or dialect. Moreover, during the entire interview process, Defendants were awake, alert, drug-free, and engaged.

Of course, whether Defendants actually understood their Fifth Amendment rights against self-incrimination remains a somewhat close question. Defendants argue that their upbringing in a country that has become increasingly lawless in recent decades rendered them incapable of understanding the *Miranda* rights recited . . . .

Nevertheless, it appears . . . that the inquiry as to whether a defendant understood the recitation of the Fifth Amendment rights focuses not on the defendant's understanding of the U.S. criminal justice system, the democratic form of government, and/or the concept of individual rights, but rather on whether

> the defendant could, merely as a linguistic matter, comprehend the words spoken to him.
>
> Although Defendants have asserted through counsel that they are illiterate, there is no evidence showing them to be of below-average intelligence or to suffer from any mental disabilities. Accordingly, although Defendants may have a hard time understanding the notion of individual rights such as those guaranteed by the Fifth Amendment, that does not mean that they could not have or did not understand their options upon Special Agent Knox's recitation of the *Miranda* warnings and the "cleansing statement." Even assuming that Defendants may not have grasped the nature and processes of the United States judicial system — which would admittedly appear to be a rather fair assumption in this case, based on the limited record before the Court — they nevertheless must have understood, from the translated words uttered by Special Agent Knox alone, that they did not have to speak with him, and that they could request counsel. Needless to say, despite current conditions in Somalia, the concept of an attorney is not a foreign one there.

Hasan III, 747 F. Supp. 2d at 670-71 (citations omitted). Premised on that analysis, the court concluded that each of the defendants "knowingly and intelligently waived [his] Fifth Amendment rights against self-incrimination." *Id.* at 671-72.[18]

[18]To constitute a valid waiver, the suspect's rights must be relinquished not only "knowingly and intelligently," but also "voluntarily." *See Miranda*, 384 U.S. at 444. The defendants alleged in the district court that their statements were coerced, in "that they were detained in uncomfortable and oppressive conditions, and that they were threatened with being thrown overboard into shark-infested waters if they did not admit guilt." *Hasan III*, 747 F. Supp. 2d at 672. The court disbelieved the defendants, however, instead crediting the government's evidence that the defendants

3.

On appeal, the defendants contend that the district court erred in finding that Special Agent Knox's warnings adequately advised them of their Fifth Amendment rights in accordance with *Miranda*. More specifically, they assert that the court could not determine the exact content of the warnings based on Knox's testimony. The defendants further posit that the warnings were constitutionally deficient because Knox did not convey to them that they had a "right" to a lawyer; rather he stated "that if they wanted a lawyer, we would give them one." J.A. 147. Even if the warnings comported with the *Miranda* requirements, however, the defendants insist that the district court was wrong in concluding that they could have knowingly and intelligently waived their rights.[19]

In assessing the district court's denial of the defendants' suppression motions, we review the court's factual findings for clear error and its legal determinations de novo. *See United States v. Holmes*, 670 F.3d 586, 591 (4th Cir. 2012). And we are obliged to view the evidence "in the light most favorable to the government," as the prevailing party below. *See United States v. Montieth*, 662 F.3d 660, 664 (4th Cir. 2011) (internal quotation marks omitted).

We perceive no clear error in the district court's findings

"were treated safely, humanely, and respectfully throughout the entire duration of their captivity on board the USS Nicholas, and were at no time, including during . . . the April 4, 2010 interviews, threatened or mistreated in any way." *Id.* The defendants now concede the voluntariness of their statements.

[19]Because the government has not argued otherwise, we assume without deciding that the Fifth Amendment rights implicated by *Miranda* "apply even 'to the custodial interrogation of a foreign national outside the United States by [U.S.] agents . . . engaged in a criminal investigation.'" *See Hasan III*, 747 F. Supp. 2d at 657 (alterations in original) (quoting *United States v. Rommy*, 506 F.3d 108, 131 (2d Cir. 2007)).

concerning the content of the *Miranda* warnings, in that the court reasonably accepted the testimony of Special Agent Knox. Although the court acknowledged that there were "slight variations in the recollections of the various witnesses," it deemed "the testimony offered by the Government to be substantially consistent and credible." *Hasan III*, 747 F. Supp. 2d at 668. As we have emphasized, "[w]hen findings are based on determinations regarding the credibility of witnesses, we give even greater deference to the trial court's findings." *United States v. Hall*, 664 F.3d 456, 462 (4th Cir. 2012) (internal quotation marks omitted).

We are further satisfied that the district court committed no legal error in concluding that Special Agent Knox's warnings sufficiently advised the defendants of their right to counsel. Again, the court found that Knox advised the defendants "'that if they wanted a lawyer, we would give them one.'" *Hasan III*, 747 F. Supp. 2d at 666 (quoting J.A. 147). To be sure, there is, as the defendants point out, an obvious distinction between wanting a lawyer and having a right to a lawyer. But Knox did not ask the defendants simply: "Do you want a lawyer?" Rather, he declared "that if they wanted a lawyer, we would *give* them one." J.A. 147 (emphasis added). Knox's unqualified offer to give the defendants a lawyer upon their request conveyed to the defendants that they had an entitlement — a right — to a lawyer. *Cf. Frankson*, 83 F.3d at 82 ("Given the common sense understanding that an unqualified statement lacks qualifications, all that police officers need do is convey the general rights enumerated in *Miranda*.").

Put succinctly, Special Agent Knox was not obligated to actually verbalize the phrase "right to a lawyer" when his warning "effectively convey[ed] the same meaning." *See United States v. Sanchez*, 422 F.2d 1198, 1201 (2d Cir. 1970) (concluding that defendants were adequately advised of right to counsel with warnings that they "'need make no statements without the presence of an attorney'" and "'[if] you couldn't afford an attorney, an attorney will be provided for you'").

Indeed, no "precise formulation of the warnings" or "talismanic incantation [is] required to satisfy [*Miranda*'s] strictures." *California v. Prysock*, 453 U.S. 355, 359 (1981). The relevant "inquiry is simply whether the warnings reasonably convey to a suspect his rights as required by *Miranda*." *Florida v. Powell*, 130 S. Ct. 1195, 1204 (2010) (alterations and internal quotation marks omitted). We agree with the district court that Knox's warnings did just that.

The defendants persist that their statements should have been suppressed regardless of the adequacy of the *Miranda* warnings, because they could not have validly waived their Fifth Amendment rights against self-incrimination. That is, the defendants maintain that any waiver of their rights was not knowing and intelligent because of the language barrier, their unfamiliarity with the American legal system, the social and political conditions in their native Somalia, and their illiteracy and overall lack of education.

For a waiver to be knowing and intelligent, it "must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). As we have explained, "[t]he determination of whether a waiver was knowing and intelligent requires an examination of the totality of the circumstances surrounding the interrogation, including the suspect's intelligence and education, age and familiarity with the criminal justice system, and the proximity of the waiver to the giving of the *Miranda* warnings." *Correll v. Thompson*, 63 F.3d 1279, 1288 (4th Cir. 1995) (alteration and internal quotation marks omitted).

The district court found that there was "no evidence showing [the defendants] to be of below-average intelligence or to suffer from any mental disabilities." *Hasan III*, 747 F. Supp. 2d at 671. Yet even "[i]n cases involving defendants with low intellectual ability, the knowingness of the waiver often turns on whether the defendant expressed an inability to understand

the rights as they were recited." *United States v. Robinson*, 404 F.3d 850, 861 (4th Cir. 2005) (concluding that defendant's "below average I.Q. does not make him per se incapable of intelligently waiving his rights"). Here, the court determined that "the testimony is uniform in suggesting [the defendants'] understanding" of their Fifth Amendment rights. *Hasan III*, 747 F. Supp. 2d at 670. That the defendants were non-English speakers "does not necessarily thwart an effective waiver" of those rights, *United States v. Guay*, 108 F.3d 545, 549 (4th Cir. 1997), particularly since the court ascertained that Special Agent Knox's warnings "were recited to [the defendants], through Ismail, the interpreter, in their native language." *Hasan III*, 747 F. Supp. 2d at 670.

We think the district court made a "fair assumption" that the defendants "may not have grasped the nature and processes of the United States judicial system." *Hasan III*, 747 F. Supp. 2d at 671. Nevertheless, there is no indication that the defendants did not understand "the concept of an attorney," which, as the district court found, "is not a foreign [concept in Somalia]." *Id.* Moreover, it is not necessary that "a criminal suspect know and understand every possible consequence of a waiver of the Fifth Amendment privilege." *Colorado v. Spring*, 479 U.S. 564, 574 (1987). Rather, the "main purpose of *Miranda* is to ensure that an accused is advised of and understands the right to remain silent and the right to counsel." *Berghuis*, 130 S. Ct. at 2261. Based on the totality of the circumstances, we discern no error in the court's conclusion that the defendants "must have understood, from the translated words uttered by Special Agent Knox alone, that they did not have to speak with him, and that they could request counsel." *Hasan III*, 747 F. Supp. 2d at 671. We therefore affirm the court's denial of the defendants' suppression motions.[20]

[20]Because the district court properly denied the suppression motions, we need not reach the defendants' appellate contention that their convictions of the RPG-related offenses (Counts Twelve through Fourteen) cannot stand absent their April 4, 2010 statements. *See* Br. of Appellants 63-67.

B.

Next, defendant Hasan maintains that the district court erred in denying his motion to dismiss the Indictment's charges against him pursuant to the Juvenile Delinquency Act, 18 U.S.C. §§ 5031-5042 (the "JDA"), on the ground that the government failed to establish that he was at least eighteen years of age at the time of his alleged offenses.[21] The court rejected Hasan's JDA contention by the pretrial *Hasan III* opinion of October 29, 2010. *See* 747 F. Supp. 2d at 672-73.

In doing so, the district court placed on the government "'the initial burden of proving [Hasan's] age,'" thereby requiring the government to "'offer prima facie evidence of [his] adult status.'" *See Hasan III*, 747 F. Supp. 2d at 673 (quoting *United States v. Juvenile Male*, 595 F.3d 885, 897 (9th Cir. 2010)). The court recognized that "'a previous statement from [Hasan] that he is an adult can constitute such prima facie evidence,'" and that, "[i]f the Government adequately presents such prima facie evidence, '[t]he burden then shifts to the defense to come forward with evidence of [Hasan's] juvenile status.'" *Id.* (second alteration in original) (quoting *Juvenile Male*, 595 F.3d at 897). In that circumstance, the government would then have "'an opportunity to rebut [such evidence] with any additional information' available." *Id.* (alteration in original) (quoting *Juvenile Male*, 595 F.3d at 897).

[21]As we have explained, "[t]he primary purpose of the JDA is 'to remove juveniles from the ordinary criminal process in order to avoid the stigma of a prior criminal conviction and to encourage treatment and rehabilitation.'" *United States v. Blake*, 571 F.3d 331, 344 (4th Cir. 2009) (quoting *United States v. Juvenile Male*, 554 F.3d 456, 460 (4th Cir. 2009)). The JDA "defines a 'juvenile' as a person who has not attained his eighteenth birthday or who committed an alleged offense prior to his eighteenth birthday, and who has not attained his twenty-first birthday prior to the filing of the [federal criminal charge]." *Juvenile Male*, 554 F.3d at 459 n.2 (citing 18 U.S.C. § 5031).

Resolving conflicting testimony, the district court found that Hasan told "Special Agents Knox and Mordecai during the April 4, 2010 interview that he was (or believed himself to be) between 24 and 26 years old." *Hasan III*, 747 F. Supp. 2d at 676. Accordingly, the court concluded that the government satisfied its burden of making a prima facie showing of Hasan's adult status, and shifted the burden "to Hasan to produce credible evidence that he [was], in fact, a minor, notwithstanding his statements to the contrary." *Id.* Explaining why "Hasan's testimony at the evidentiary hearing simply did not meet that burden," the court observed:

> The credibility of [Hasan's] testimony [that he did not know the day or year of his birth but had been told by unnamed neighbors that he was eighteen years old] was questionable, and he testified that he could produce no corroborating documentary evidence or testimony from others. Although Hasan's lack of knowledge about his own birth date or birth year is rendered less surprising and/or suspect by the testimony of [interpreter] Ismail [that most Somalis do not know their exact birth date, but generally know their birth year], Hasan's testimony nevertheless contradicted itself as much as it did the testimony of Special Agents Knox and Mordecai.

Id. at 676-77 (footnote omitted). In the end, the court found — "[b]ased on [its] observation of Hasan during his testimony, as well as on the content of that testimony" — that Hasan's "self-serving testimony that he is currently only 18 years old" was not credible and deserved little weight. *Id.* at 677.

Without contesting the district court's use of the burden-shifting scheme to establish his age, Hasan asserts on appeal that the court erroneously accepted the "contradictory and vague testimony" of Special Agents Knox and Mordecai in satisfaction of the government's prima facie showing. *See* Br.

of Appellants 50. We disagree. The court reasonably observed that, "[a]lthough the agents' notes and testimony varied slightly from each other, the variance was effectively explained" and "nowhere in their notes or testimony is there any suggestion whatsoever that Hasan told them he was under the age of 18." *Hasan III*, 747 F. Supp. 2d at 676. Moreover, the court found Knox and Mordecai "to be credible witnesses, and their testimony to be credible and substantially consistent in all material respects." *Id.* Given the "highly deferential standard of review, we are not in a position to disturb the court's credibility finding." *See United States v. Nicholson*, 611 F.3d 191, 208 (4th Cir. 2010). Because Hasan does not challenge the court's ruling that his testimony failed to rebut the government's prima facie evidence of his adult status, the conclusion that the protections of the JDA did not apply and the denial of Hasan's motion to dismiss must be affirmed.

C.

Lastly, the defendants fault the district court for declining to merge, for sentencing purposes, their three convictions under 18 U.S.C. § 924(c) — Counts Ten through Twelve — into a single § 924(c) offense. The defendants were convicted for their use of the two AK-47s in Counts Ten and Eleven under 18 U.S.C. § 924(c)(1)(A)(iii), which provides in pertinent part that "any person who, during and in relation to any crime of violence . . . for which the person may be prosecuted in a court of the United States, uses or carries a firearm . . . shall . . . if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years." Count Twelve was aimed at the defendants' use of the RPG and charged under § 924(c)(1)(A) and (c)(1)(B)(ii), mandating a sentence of "not less than 30 years" for use of a destructive device in relation to a crime of violence.

Significantly, the district court considered Count Twelve to be the first conviction under § 924(c), and Counts Ten and Eleven to be second or subsequent § 924(c) convictions, thus

subjecting the defendants to minimum twenty-five-year sentences on Counts Ten and Eleven under § 924(c)(1)(C)(i) ("In the case of a second or subsequent conviction under this subsection, the person shall[ ] be sentenced to a term of imprisonment of not less than 25 years . . . ."). And, following the directive of § 924(c)(1)(D)(ii), the court ordered consecutive sentences for the § 924(c) convictions — twenty-five years (300 months) each on Counts Ten and Eleven, plus thirty years (360 months) on Count Twelve.

Notwithstanding the defendants' contentions to the contrary, we conclude that the district court imposed proper sentences. Our precedent dictates the conclusion "that multiple, consecutive sentences under § 924(c)(1) are appropriate whenever there have been multiple, separate acts of firearm use or carriage, *even when all of those acts relate to a single predicate offense*." *United States v. Lighty*, 616 F.3d 321, 371 (4th Cir. 2010) (emphasis added) (citing *United States v. Camps*, 32 F.3d 102, 106-09 (4th Cir. 1994)). Moreover, as the district court observed in its post-trial *Hasan II* opinion, the attack on the USS Nicholas actually involved "eight distinct counts in the Superseding Indictment charging 'crimes of violence.'" *Hasan II*, slip op. at 16. That the defendants used their weapons contemporaneously during the same attack does not diminish the number of predicate offenses. *See United States v. Higgs*, 353 F.3d 281, 333-34 (4th Cir. 2003) (affirming three consecutive § 924(c) sentences where uses related to a near-simultaneous triple murder (citing *Deal v. United States*, 508 U.S. 129, 132 (1993)). Thus, the separate "uses" of the firearms need not be tallied because there were multiple predicate crimes of violence. *See United States v. Khan*, 461 F.3d 477, 493 n.9 (4th Cir. 2006) (concluding that court was not required to count the "uses" of firearms where defendant's "four crime-of-violence convictions constitute separate predicate offenses, [such that] each may support a consecutive § 924(c) sentence").

IV.

Pursuant to the foregoing, we affirm the convictions and sentences of each of the defendants.

AFFIRMED

FILED: May 23, 2012

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-4310 (L)
(2:10-cr-00056-MSD-FBS-3)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ABDI WALI DIRE

Defendant - Appellant

THE FEDERAL PUBLIC DEFENDER

Amicus Supporting Appellant

No. 11-4311
(2:10-cr-00056-MSD-FBS-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

GABUL ABDULLAHI ALI

Defendant - Appellant

OFFICE OF THE FEDERAL PUBLIC DEFENDER

Amicus Supporting Appellant

No. 11-4312
(2:10-cr-00056-MSD-FBS-5)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ABDI MOHAMMED UMAR

Defendant - Appellant

OFFICE OF THE FEDERAL PUBLIC DEFENDER

Amicus Supporting Appellant

No. 11-4313
(2:10-cr-00056-MSD-FBS-4)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ABDI MOHAMMED GUREWARDHER

Defendant - Appellant

OFFICE OF THE FEDERAL PUBLIC DEFENDER

Amicus Supporting Appellant

No. 11-4317
(2:10-cr-00056-MSD-FBS-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MOHAMMED MODIN HASAN

Defendant - Appellant

OFFICE OF THE FEDERAL PUBLIC DEFENDER

Amicus Supporting Appellant

JUDGMENT

In accordance with the decision of this court, the judgments of the district court are affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA

v. **Criminal No. 2:10cr56**

MOHAMMED MODIN HASAN,

GABUL ABDULLAHI ALI,

ABDI WALI DIRE,

ABDI MOHAMMED GUREWARDHER,

ABDI MOHAMMED UMAR,

Defendants.

OPINION AND ORDER

This matter is before the Court on motions for acquittal, pursuant to Rule 29 of the Federal Rules of Criminal Procedure, filed by defendants Mohammed Modin Hasan ("Hasan"), Docket No. 226, Gabul Abdullahi Ali ("Ali"), Docket No. 224, Abdi Wali Dire ("Dire"), Docket No. 229, Abdi Mohammed Gurewardher ("Gurewardher"), Docket No. 225, and Abdi Mohammed Umar ("Umar"), Docket No. 229 (collectively, the "Defendants"), as well as a motion filed by Hasan for "proper" sentencing on Defendants' convictions under 18 U.S.C. § 924. Docket No. 258. All of the foregoing motions have been briefed, and are now ripe for decision. After examination of the briefs and the record, the Court has determined that a hearing on the instant motions is unnecessary, as

the facts and legal arguments are adequately presented, and the decisional process would not be aided significantly by oral argument. For the reasons stated herein, the Court will **GRANT** Defendants' motions to dismiss Count Thirteen as multiplicitous at the time of sentencing, but now **DENIES** Defendants' other motions for acquittal and Hasan's motion relating to 18 U.S.C. § 924.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The factual background and procedural history of this matter were already set forth in substantial part in this Court's October 29, 2010 Opinions and Orders. See Docket Nos. 178 at 2-4 & 179 at 3-6. Trial by jury in this matter commenced on November 9, 2010, and on November 24, 2010, the jury returned unanimous verdicts, finding each Defendant guilty of all fourteen counts charged in the Superseding Indictment in this matter. Defendants thereafter filed the motions currently before the Court, and the Government filed responses to each such motion.

II. STANDARD OF REVIEW

In considering motions for acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure, this Court must adhere to the admonition of the United States Court of Appeals for the Fourth Circuit that "convictions must be upheld if 'there is substantial evidence, taking the view most favorable to the Government,'" to support them. United States v. Moye, 454 F.3d 390, 394 (4th Cir. 2006) (en banc) (quoting Glasser v. United States, 315 U.S. 60, 80

(1942)). "[I]n the context of a criminal action, substantial evidence is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." United States v. Burgos, 94 F.3d 849, 862 (4th Cir. 1996) (en banc). "In evaluating the sufficiency of the evidence to support a criminal conviction, [the Court must] view the evidence in the light most favorable to the government, drawing all reasonable inferences in its favor." Move, 454 F.3d at 394. The Court must also bear in mind that "the uncorroborated testimony of one witness or of an accomplice may be sufficient to sustain a conviction." United States v. Wilson, 115 F.3d 1185, 1190 (4th Cir. 1997).

III. DISCUSSION

A. Motions for Acquittal on Count One

Hasan, Ali, Gurewardher, and Umar move the Court for acquittal on Count One, which charged Defendants with the offense of piracy as defined by the law of nations, in violation of 18 U.S.C. §§ 1651 and 2. The motion filed by Gurewardher in this connection requests that the Court reconsider its decision regarding the definition of "piracy," as used in 18 U.S.C. § 1651, in light of a Congressional Research Service ("CRS") report entitled Piracy: A Legal Definition (the "report"), which was prepared by CRS Legislative Attorney R. Chuck Mason and issued on October 19, 2010, ten days before this Court issued its Opinion and Order on that issue. See Docket No.

225 Ex. A. Gurewardher correctly presumes that this Court did not consider that report in reaching its decision.[1] However, the report does not appear to contain discussion of any relevant historical precedent that was not also discussed by the Court in its Opinion and Order. Neither does the report appear to contain any original substantive legal analysis regarding the proper definition of piracy under the law of nations. Instead, the report merely discusses the fact that "[a] recent development in a piracy trial in federal court in Norfolk, VA"—namely, the decision in United States v. Said, 2:10cr57, 2010 WL 3893761 (E.D. Va. Aug. 17, 2010)—"has highlighted a potential limitation in the definition of piracy under the United States Code." Docket No. 225 Ex. A, Summary. This Court was, of course, well aware of the decision in Said when it issued its Opinion and Order in this matter. Consequently, the report provides no basis for this Court to

[1] It should be noted in this connection that CRS reports, though public domain materials, are generally not made directly available to the public—or, for that matter, to the federal courts—but instead only become public when released by a member of Congress. See, e.g., Congressional Research Service, Annual Report Fiscal Year 2009, at 37 (indicating that "CRS reports are available online to the congressional community," but also that "the CRS Web site is accessible only to House and Senate offices and other legislative branch agencies") (available at http://www.loc.gov/crsinfo/about/crs09_annrpt.pdf); Stephanie Strom, "Group Seeks Public Access to Congressional Research," N.Y. Times, May 5, 2009, http://www.nytimes.com/2009/05/05/us/05research.html; Elizabeth Williamson, "Information, Please," Wash. Post, February 19, 2007, http://www.washingtonpost.com/wp-dyn/content/article/2007/02/18/AR2007021801064_pf.html.

reconsider its prior determination regarding the definition of piracy under the law of nations as used in 18 U.S.C. § 1651.

Hasan's motion for acquittal on Count One focuses on a different issue, attacking an analogy drawn by the Government, during oral argument on defendants' prior motions to dismiss Count One, between 18 U.S.C. § 1651 and the various iterations of the Assimilative Crimes Act (the "ACA"), currently codified as 18 U.S.C. § 13. Hasan argues that a comparative review of the legislative history of the ACA and its predecessors reveals that the Government's analogy is inapposite, and that this Court's definition of piracy under the law of nations is inconsistent with what Hasan considers to be the divergent congressional intent manifest in, on the one hand, 18 U.S.C. § 1651 and, on the other hand, the various iterations of the ACA and its predecessors.

In response, the Government urges that Hasan's arguments in this connection are nothing more than a motion for reconsideration of the Court's prior decision disguised as a Rule 29 motion for acquittal. The Government also correctly notes that the analogy that it previously advocated with the ACA figured nowhere in the Court's analysis of the proper definition of piracy under the law of nations. In other words, the absence from the Court's analysis of any comparative discussion of the ACA's legislative history indicates that the Court considered, and rejected, the contention that such legislative history was relevant to that analysis.

Consequently, Hasan's attempt to revisit that issue in his instant motion for acquittal also provides no basis for this Court to reconsider its prior determination with regard to Count One. For the foregoing reasons, the instant motions for acquittal on Count One will be denied.

B. Motions for Acquittal on Count Thirteen

Count Thirteen charged Defendants with carrying an explosive during the commission of a felony, in violation of 18 U.S.C. §§ 844(h)(2), 3238, and 2. This Court previously concluded "that the statutes underlying Counts Twelve and Thirteen impermissibly overlap for purposes of the Blockburger test," but explained that neither needed to "be dismissed as multiplicitous at [that] time, because they would, notwithstanding their overlapping elements, still constitute greater and lesser included offenses." Docket No. 179 at 115. Instead, the Court explained that "[s]hould Ali be convicted on both Counts, he may move at that time to have the lesser count dismissed." Id. Ali and the other Defendants, all of whom the jury convicted on both Counts at trial, now so move. The Government indicates in its response that it "does not oppose dismissal of the lesser included count Thirteen as to all defendants after the imposition of sentence pursuant to Count Twelve." Docket No. 230 at 1. Consequently, in light of this Court's previous analysis and the agreement of the parties, the

Court will grant Defendants' motions to dismiss Count Thirteen as multiplicitous at the time of sentencing.

C. Motions for Acquittal on Counts Twelve through Fourteen

Hasan claims that insufficient evidence was presented at trial to support the jury's guilty verdict with respect to Counts Twelve, Thirteen, and Fourteen of the Superseding Indictment, which respectively charged Defendants with using, carrying, and possessing a destructive device in relation to a crime of violence, in violation of 18 U.S.C. §§ 924(c)(1)(A), 924(c)(1)(B)(ii), 3238, and 2; carrying an explosive during the commission of a felony, in violation of 18 U.S.C. §§ 844(h)(2), 3238, and 2; and conspiracy to carry an explosive during the commission of a felony, in violation of 18 U.S.C. §§ 844(m) and 3238. Specifically, Hasan argues that no evidence established that the object seen by various Government witnesses being held by Hasan during the attack on the U.S.S. Nicholas was, in fact, a functioning rocket-propelled grenade ("RPG") and launcher, and that expert testimony at trial established that, although an actual launcher would, by itself, constitute a destructive device, an inert rocket would not. Neither, Hasan argues, would a long tube that was not, in fact, an RPG launcher. Hasan cites United States v. Blackburn, 940 F.2d 107 (4th Cir. 1991), for the proposition that the burden was on the Government to prove that Defendants possessed all of the requisite

components to use the RPG, and that the Government failed to meet that burden.

Hasan's counsel previously moved for acquittal on these Counts pursuant to Rule 29 during trial, making the same arguments as he does now. Docket No. 252 at 64-67 (Trial Tr. vol. 5, 1047:13-1050:4, Nov. 18, 2010). The Government responded to those arguments in detail, id. at 67-69 (1050:8-1052:12), counsel for the other Defendants adopted the arguments of Hasan's counsel, id. at 69 (1052:13-23), and the Court heard further argument from Hasan's counsel. Id. at 69-71 (1052:25-1054:5). The Court then proceeded to deny the Defendants' motion, noting that the evidence at trial included confessions by Defendants that Hasan was, in fact, carrying an RPG, as well as testimony by Government witnesses that they had seen Hasan holding an object that they identified, based on their experience, as an RPG. Id. at 71 (1054:6-24). The Court explained that "at [that] stage of [the] proceedings, viewing the evidence in the light most favorable to the government, [it could not] say that no rational trier of facts could have found defendants guilty as to . . . these counts requiring the explosive device and the explosive and destructive device." Id. (1054:19-24).

As the Government points out in response to the instant motion, Defendants presented no evidence in this connection during their case, or any additional arguments or authority at any

subsequent time, that would alter the Court's prior conclusion in this regard. Hasan is certainly correct to cite Blackburn for the proposition that, as a matter of law, "[a] defendant must possess every essential part necessary to construct a destructive device" in order to "be deemed in possession of" such a device. 940 F.2d at 110. However, the Government correctly rejoins that the jury heard testimony at trial regarding Defendants' confession that Hasan was, in fact, carrying an RPG during the attack on the U.S.S. Nicholas. Those confessions were corroborated by the observations of several members of the ship's crew, providing an adequate factual basis to support the jury's guilty verdicts on Counts Twelve, Thirteen, and Fourteen.

The Government correctly notes that even "circumstantial evidence . . . may be sufficient to support a guilty verdict even though it does not exclude every reasonable hypothesis consistent with innocence." United States v. Jackson, 863 F.2d 1168, 1173 (4th Cir. 1989); accord United States v. Osborne, 514 F.3d 377 (4th Cir.), cert. denied, 553 U.S. 1075 (2008) (quoting Jackson). Moreover, as the Government also notes, firearms need not be recovered (and shown to be genuine and functioning) in order for a defendant to be convicted for possessing them. See, e.g., United States v. Jones, 907 F.2d 456, 460 (4th Cir. 1990), superseded on other grounds as recognized in United States v. Byrd, 995 F.2d 536, 538-39 (4th Cir. 1993); accord United States v. Lewis, 960 F.2d

147, 1992 WL 82486, at *1-2 (4th Cir. Apr. 23, 1992) (unpublished per curiam table decision) (affirming a conviction under 18 U.S.C. § 924(c)(1) on the basis of eyewitness testimony and the defendant's own statement to an FBI Special Agent despite the defendant's subsequent claim that he had used an air gun, not a revolver, in robbing a bank). Although the analogy to Jones and Lewis is admittedly imperfect, because the statutory definitions of "destructive device" and "explosive" differ from the definition of "firearm" for these purposes, the Court nevertheless remains unconvinced that Blackburn precluded the jury from finding the Defendants guilty of Counts Twelve, Thirteen, and Fourteen on the basis of the substantial evidence offered by the Government at trial. Consequently, Hasan's renewed motion will be denied.

D. Motions for Acquittal for Lack of Jurisdiction

Hasan's motion for acquittal also renews, without any additional argument, Defendants' motions to dismiss Counts Seven through Fourteen of the Superseding Indictment for lack of subject-matter jurisdiction. Docket No. 227 at 7. This Court previously addressed, in detail, the jurisdictional arguments advanced by Defendants in those motions, finding them to be unpersuasive. See Docket No. 179 at 67-72 (Counts Nine through Eleven), 72-76 (Counts Seven and Eight), 76-78 (Counts Thirteen and Fourteen). Hasan has provided the Court with no new basis for reconsidering those conclusions, and the instant motion will be denied.

E. Motion for "Proper Sentencing" under 18 U.S.C. § 924

Counts Ten, Eleven, and Twelve of the Superseding Indictment charged Defendants with using and carrying firearms and a destructive device—to wit, two AK-47s and an RPG—during and in relation to, and possessing such firearms and destructive device in furtherance of, a crime of violence, in violation of 18 U.S.C. § 924(c). The Superseding Indictment charged eight such underlying crimes of violence. Although Hasan acknowledges that § 924(c) expressly provides that sentences imposed pursuant to it must run consecutive "to the punishment provided for [the underlying] crime of violence," 18 U.S.C. § 924(c)(1)(A), he argues that such sentences pursuant to § 924(c) may not run consecutive to each other, citing as authority the Fourth Circuit's decision in United States v. Camps, 32 F.3d 102, 107 (4th Cir. 1994). Hasan reads Camps to allow terms of imprisonment imposed pursuant to § 924 to run consecutively to each other only when "[e]ach of the illegal acts . . . was consummated before the next one was initiated." Camps, 32 F.3d at 109. Since Counts Ten through Twelve relate to a single criminal event—Hasan, Ali, and Dire's attack on the U.S.S. Nicholas—Hasan argues that the sentences imposed for Counts Ten through Twelve must run concurrently with one another.

Hasan's argument is without merit, and inconsistent with both the United States Supreme Court's decision in Deal v. United States, 508 U.S. 129 (1993), and subsequent Fourth Circuit

jurisprudence. The Court will deal with each such source of authority in turn.

In Deal, the Supreme Court considered whether convictions on multiple § 924(c) counts within a single indictment could constitute "second or subsequent conviction[s]" for purposes of the statutory sentence enhancement provided by 18 U.S.C. § 924(c)(1)(C). The Court determined that "conviction," as used in that section, "refers to the finding of guilt by a judge or jury that necessarily precedes the entry of a final judgment of conviction," and that "[u]nlike a judgment on several counts, findings of guilt on several counts are necessarily arrived at successively in time." Deal, 508 U.S. at 132 & 133 n.1. Consequently, the Court concluded that § 924(c)(1)(C)'s statutory sentence enhancement can apply to multiple counts charged in the same indictment.

Turning to subsequent Fourth Circuit jurisprudence, this Court previously addressed Camps in its October 29, 2010 Opinion and Order, in connection with Ali's motion to dismiss or consolidate various Counts of the Superseding Indictment as multiplicitous. See Docket No. 179 at 113-14. There, Ali argued that, inter alia, Counts Ten through Twelve were multiplicitous, in violation of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, because they divided a single crime into three separate offenses. However, as this Court noted in its Opinion and

Order, "'[i]t is now firmly established that the imposition of separate consecutive sentences for multiple § 924(c) violations occurring during the same criminal episode are lawful.'" United States v. Higgs, 353 F.3d 281, 333 (4th Cir. 2003) (quoting United States v. Burnette, 170 F.3d 567, 572 (6th Cir. 1999)).

This Court construed Camps as being consistent with later decisions by the Fourth Circuit, noting in particular the Fourth Circuit's recent decision in United States v. Lighty, 616 F.3d 321, 370-71 (4th Cir. 2010). Any questions as to the significance of the Fourth Circuit's references in Camps to using or carrying a firearm on "separate occasions," in which each illegal act "was consummated before the next one was initiated," appear to have been resolved by Lighty:

> In United States v. Camps, 32 F.3d 102 (4th Cir.1994), we addressed the question of whether multiple consecutive sentences could be imposed under § 924(c)(1) if those convictions arose out of the events of a single predicate offense . . . . We answered that question in the affirmative, noting that multiple, consecutive sentences under § 924(c)(1) are appropriate whenever there have been multiple, separate acts of firearm use or carriage, even when all of those acts relate to a single predicate offense.

616 F.3d at 370-71 (internal citation omitted).

The Fourth Circuit's decision in United States v. Khan, 461 F.3d 477 (4th Cir. 2006) (2-1 decision), cert. denied, 550 U.S. 956 (2007), sheds further light on its interpretation of § 924(c)(1)(C), and further demonstrates the incorrectness of Hasan's argument here. In Khan, the majority explained that "[a]s long as

the imposition of multiple § 924(c) sentences does not violate the Double Jeopardy Clause, we will uphold those sentences in accordance with the plain language of the statute." Id. at 493.

The dissent in Khan articulated an argument similar to that advanced by Hasan here. Although the dissent acknowledged that "[u]nlike most circuits, [the Fourth Circuit] allow[s] multiple § 924(c) convictions for conduct in the same underlying offense," Khan, 461 F.3d at 502 (Goodwin, J., dissenting) (citing Camps, 32 F.3d at 107-08), it noted that in United States v. Luskin, 926 F.2d 372 (4th Cir. 1991), the Fourth Circuit had, "for that case only, accepted the government's concession that multiple firearms carried at one time can result in only one § 924(c) sentence." Khan, 461 F.3d at 502. The dissent explained that it "would apply this rule to all cases where the different firearms relate to the same objective, have the same effect on the predicate crime, and are used or carried proximately in time." Id. The dissent further urged that "[i]n applying Camps and Luskin, we must determine how many 'uses' are represented by the acts a defendant performed with firearms." Id. at 503.

The majority opinion in Khan responded directly to the dissent's arguments. The majority, relying on the Supreme Court's decision in Deal, explained that "there is no housekeeping requirement under the statute or Luskin obliging either the government or the district court to present the facts in such a

manner as to align the use of a particular firearm with a particular predicate offense." Id. at 494. Moreover, since "Khan was convicted of four predicate crimes of violence, not a 'single predicate offense,'" the majority explained that it did not need to "count 'uses.'" Id. at 493 n.9. The majority further emphasized that it "has expressly and consistently rejected the notion that . . . convictions" arising from activities close in time to each other must "be considered a single 'episode' for purposes of underpinning a § 924(c) violation." Id. (citing Luskin, 926 F.2d at 376) ("there is no 'episode' test under section 924(c)").

Notwithstanding the foregoing authority, Hasan cites the United States Court of Appeals for the Eighth Circuit's decision in United States v. Freisinger, 937 F.2d 383 (8th Cir. 1991), in support of his argument against consecutive § 924(c) convictions. In Freisinger, the Eighth Circuit held "that when a defendant has been convicted of more than one violation of section 924(c)(1) because he was carrying more than one firearm during a single drug trafficking offense, the convictions after the first one are not 'second or subsequent' convictions within the meaning of" 18 U.S.C. § 924(c)(1)(C). 937 F.2d at 391. The Eighth Circuit's decision in this regard, however, is dubious in light of the Supreme Court's subsequent decision in Deal and is, in any case, expressly contradicted by the Fourth Circuit's jurisprudence discussed above, which of course constitutes binding precedent for this Court.

In this case, Defendants were found to have used, carried, and/or possessed two firearms and a destructive device during and in relation to and/or in furtherance of their attack on the U.S.S. Nicholas. Specifically, the evidence showed that Ali and Dire each used, carried, and/or possessed an AK-47, and that Hasan used, carried, and/or possessed an RPG during the attack: three separate weapons held by three separate individuals, acting in concert. Although that attack, as a practical matter, constituted a discrete event, it nevertheless served as a predicate for eight distinct counts in the Superseding Indictment charging "crimes of violence." The Court has already determined that Counts Ten, Eleven, and Twelve do not violate the Double Jeopardy Clause, and each Defendant was found guilty of each of those eight crimes of violence. Consequently, since the number of each Defendant's convictions for crimes of violence exceeds the number of each Defendant's § 924(c) convictions, this Court, pursuant to the Fourth Circuit's reasoning in Khan, need not "count uses," but may instead impose its sentences on the § 924(c) Counts consecutively to the other Counts of the Superseding Indictment and consecutively to each other. Accordingly, Hasan's motion must be denied.

IV. CONCLUSION

For the foregoing reasons, Defendants' unopposed motions to dismiss Count Thirteen of the Superseding Indictment as multiplicitous will be **GRANTED** at the time of sentencing, but

Defendants' other motions for acquittal, and Hasan's motion relating to 18 U.S.C. § 924, are hereby **DENIED**.

The Clerk is **DIRECTED** to send a copy of this Opinion and Order to the United States Attorney's Office in Norfolk, Virginia, and to counsel for each of the Defendants.

IT IS SO ORDERED.

/s/ MSD
Mark S. Davis
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
March 9, 2011

FILED: July 3, 2012

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-4310 (L)
(2:10-cr-00056-MSD-FBS-3)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ABDI WALI DIRE

Defendant - Appellant

THE FEDERAL PUBLIC DEFENDER

Amicus Supporting Appellant

No. 11-4311
(2:10-cr-00056-MSD-FBS-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

GABUL ABDULLAHI ALI

Defendant - Appellant

OFFICE OF THE FEDERAL PUBLIC DEFENDER

Amicus Supporting Appellant

No. 11-4312
(2:10-cr-00056-MSD-FBS-5)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ABDI MOHAMMED UMAR

Defendant - Appellant

OFFICE OF THE FEDERAL PUBLIC DEFENDER

Amicus Supporting Appellant

No. 11-4313
(2:10-cr-00056-MSD-FBS-4)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ABDI MOHAMMED GUREWARDHER

Defendant - Appellant

OFFICE OF THE FEDERAL PUBLIC DEFENDER

Amicus Supporting Appellant

No. 11-4317
(2:10-cr-00056-MSD-FBS-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MOHAMMED MODIN HASAN

Defendant - Appellant

OFFICE OF THE FEDERAL PUBLIC DEFENDER

Amicus Supporting Appellant

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

AO 245B (Rev. 12/03)(VAED rev. 2) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Norfolk Division

UNITED STATES OF AMERICA

v.

Case Number: 2:10cr56-003

USM Number: 75679-083

ABDI WALI DIRE

Defendant's Attorney: David Bouchard

Defendant.

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty on Counts 1-14 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of the following count(s) involving the indicated offense(s).

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
T. 18, USC, Sections 1651, 3238 and 2	Piracy under the Law of Nations	Felony	April 1, 2010	1
T. 18, USC, Sections 1659, 3238 and 2	Attack to Plunder Vessel	Felony	April 1, 2010	2
T. 18, USC, Sections 2291(a)(6), 2290(a)(2), 3238 and 2	Act of Violence Against Persons on a Vessel	Felony	April 1, 2010	3
T. 18, USC, Sections 2291(a)(9), 2290(a)(2) and 3238	Conspiracy to Perform Act of Violence Against Persons on a Vessel	Felony	April 1, 2010	4
T. 18, USC, Sections 113(a)(3), 3238 and 2	Assault with a Dangerous Weapon in the Special Maritime Jurisdiction	Felony	April 1, 2010	5
T. 18, USC, Sections 113(a)(3), 3238 and 2	Assault with a Dangerous Weapon in the Special Maritime Jurisdiction	Felony	April 1, 2010	6
T.18, USC, Sections 111(a)(1), 111(b), 3238 and 2	Assault with a Dangerous Weapon on Federal Officers and Employees	Felony	April 1, 2010	7
T.18, USC, Sections 111(a)(1), 111(b), 3238 and 2	Assault with a Dangerous Weapon on Federal Officers and Employees	Felony	April 1, 2010	8
T.18, USC, Sections 924(o) and 3238	Conspiracy Involving Firearm and a Crime of Violence	Felony	April 1, 2010	9
T.18, USC, Sections 924(c)(1)(A)(iii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	10
T.18, USC, Sections 924(c)(1)(A)(iii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	11
T.18, USC, Sections 924(c)(1)(A), 924(c)(1)(B)(ii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	12
T.18, USC, Sections 844(m) and 3238	Conspiracy to Carry an Explosive During the Commission of a Felony	Felony	April 1, 2010	14

Case Number: 2:10cr56-003
Defendant's Name: ABDI WALI DIRE

Count 13 is dismissed pursuant to order of the Court filed on March 9, 2011.

As pronounced on March 14, 2011, the defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 18 day of March, 2011.

/s/

Mark S. Davis
United States District Judge

Case Number: 2:10cr56-003
Defendant's Name: ABDI WALI DIRE

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **ONE LIFE TERM plus 960 months**, consecutive. The term consists of LIFE on Count 1, One Hundred Twenty (120) months on Count 2, Two Hundred Forty (240) months on Count 3, Two Hundred Forty (240) months on Count 4, One Hundred Twenty (120) months on Count 5, One Hundred Twenty (120) months on Count 6, Two Hundred Forty (240) months on Count 7, Two Hundred Forty (240) months on Count 8, Two Hundred Forty (240) months on Count 9, and Two Hundred Forty (240) months on Count 14, all to be served concurrently to each other and to the Life term; as well as Three Hundred (300) months on Count 10, Three Hundred (300) months on Count 11, and Three Hundred Sixty (360) months on Count 12, all to be served consecutively to the concurrent terms and to each other.

The Court considers Count 12 to be the first conviction under the 18 U.S.C. § 924(c) Counts and Counts 10 and 11 to be the second or subsequent convictions under the 18 U.S.C. § 924(c) Counts for purposes of 18 U.S.C. § 924(c)(1)(C).

The Court makes the following recommendations to the Bureau of Prisons:

(1) The defendant shall be incarcerated in a facility where there are other Somali speaking individuals, subject to the Bureau of Prisons' policies and procedures.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Case Number: 2:10cr56-003
Defendant's Name: ABDI WALI DIRE

SUPERVISED RELEASE

Upon any release from imprisonment that might occur, the defendant shall be on supervised release for a term of **FIVE (5) YEARS.** This term consists of Five (5) years on Count 1, Three (3) years on Count 2, Three (3) years on Count 3, Three (3) years on Count 4, Three (3) years on Count 5, Three (3) years on Count 6, Three (3) years on Count 7, Three (3) years on Count 8, Five (5) years on Count 9, Five (5) years on Count 10, Five (5) years on Count 11, Five years on Count 12, and Three (3) years on Count 14, all to run concurrently.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within fifteen (15) days of release on supervised release and at least two (2) periodic drug tests thereafter, as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependants and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Case Number: 2:10cr56-003
Defendant's Name: ABDI WALI DIRE

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) As a condition of any supervised release that might occur, upon completion of the term of imprisonment, the defendant is to be surrendered to a duly-authorized immigration official of the Department of Homeland Security Bureau of Immigration and Customs Enforcement for a deportation review in accordance with established procedures provided by the Immigration and Naturalization Act, 8 U.S.C. 1101 et seq. As a further condition of supervised release, if ordered deported, the defendant shall remain outside the United States.

Case Number: 2:10cr56-003
Defendant's Name: ABDI WALI DIRE

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 7.

Count	Assessment	Fine	Restitution
1	$100.00	$0.00	$0.00
2	$100.00	$0.00	$0.00
3	$100.00	$0.00	$0.00
4	$100.00	$0.00	$0.00
5	$100.00	$0.00	$0.00
6	$100.00	$0.00	$0.00
7	$100.00	$0.00	$0.00
8	$100.00	$0.00	$0.00
9	$100.00	$0.00	$0.00
10	$100.00	$0.00	$0.00
11	$100.00	$0.00	$0.00
12	$100.00	$0.00	$0.00
14	$100.00	$0.00	$0.00
TOTALS:	**$1,300.00**	**$0.00**	**$0.00**

FINES

No fines have been imposed in this case.

Case Number: 2:10cr56-003
Defendant's Name: ABDI WALI DIRE

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

The special assessment shall be due in full immediately.

Any balance remaining unpaid on the special assessment at the inception of supervision, shall be paid by the defendant in installments of not less than $50.00 per month, until paid in full. Said payments shall commence 60 days after defendant's supervision begins.

At the time supervision commences, the probation officer shall take into consideration the defendant's economic status as it pertains to his ability to pay the special assessment ordered and shall notify the court of any change that may need to be made to the payment schedule.

Any special assessment, restitution, or fine payments may be subject to penalties for default and delinquency.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

AO 245B (Rev. 12/03)(VAED rev. 2) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Norfolk Division

UNITED STATES OF AMERICA

v.

Case Number: 2:10cr56-002

USM Number: 75677-083

GABUL ABDULLAHI ALI

Defendant's Attorney: William Holmes

Defendant.

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty on Counts 1-14 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of the following count(s) involving the indicated offense(s).

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
T. 18, USC, Sections 1651, 3238 and 2	Piracy under the Law of Nations	Felony	April 1, 2010	1
T. 18, USC, Sections 1659, 3238 and 2	Attack to Plunder Vessel	Felony	April 1, 2010	2
T. 18, USC, Sections 2291(a)(6), 2290(a)(2), 3238 and 2	Act of Violence Against Persons on a Vessel	Felony	April 1, 2010	3
T. 18, USC, Sections 2291(a)(9), 2290(a)(2) and 3238	Conspiracy to Perform Act of Violence Against Persons on a Vessel	Felony	April 1, 2010	4
T. 18, USC, Sections 113(a)(3), 3238 and 2	Assault with a Dangerous Weapon in the Special Maritime Jurisdiction	Felony	April 1, 2010	5
T. 18, USC, Sections 113(a)(3), 3238 and 2	Assault with a Dangerous Weapon in the Special Maritime Jurisdiction	Felony	April 1, 2010	6
T.18, USC, Sections 111(a)(1), 111(b), 3238 and 2	Assault with a Dangerous Weapon on Federal Officers and Employees	Felony	April 1, 2010	7
T.18, USC, Sections 111(a)(1), 111(b), 3238 and 2	Assault with a Dangerous Weapon on Federal Officers and Employees	Felony	April 1, 2010	8
T.18, USC, Sections 924(o) and 3238	Conspiracy Involving Firearm and a Crime of Violence	Felony	April 1, 2010	9
T.18, USC, Sections 924(c)(1)(A)(iii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	10
T.18, USC, Sections 924(c)(1)(A)(iii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	11
T.18, USC, Sections 924(c)(1)(A), 924(c)(1)(B)(ii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	12
T.18, USC, Sections 844(m) and 3238	Conspiracy to Carry an Explosive During the Commission of a Felony	Felony	April 1, 2010	14

Case Number: 2:10cr56-002
Defendant's Name: GABUL ABDULLAHI ALI

Count 13 is dismissed pursuant to order of the Court filed on March 9, 2011.

As pronounced on March 14, 2011, the defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 18 day of March, 2011.

/s/ MSD
Mark S. Davis
United States District Judge

Case Number: 2:10cr56-002
Defendant's Name: GABUL ABDULLAHI ALI

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **ONE LIFE TERM plus 960 months**, consecutive. The term consists of LIFE on Count 1, One Hundred Twenty (120) months on Count 2, Two Hundred Forty (240) months on Count 3, Two Hundred Forty (240) months on Count 4, One Hundred Twenty (120) months on Count 5, One Hundred Twenty (120) months on Count 6, Two Hundred Forty (240) months on Count 7, Two Hundred Forty (240) months on Count 8, Two Hundred Forty (240) months on Count 9, and Two Hundred Forty (240) months on Count 14, all to be served concurrently to each other and to the Life term; as well as Three Hundred (300) months on Count 10, Three Hundred (300) months on Count 11, and Three Hundred Sixty (360) months on Count 12, all to be served consecutively to the concurrent terms and to each other.

The Court considers Count 12 to be the first conviction under the 18 U.S.C. § 924(c) Counts and Counts 10 and 11 to be the second or subsequent convictions under the 18 U.S.C. § 924(c) Counts for purposes of 18 U.S.C. § 924(c)(1)(C).

The Court makes the following recommendations to the Bureau of Prisons:

(1) The defendant shall be incarcerated in a facility where there are other Somali speaking individuals, subject to the Bureau of Prisons' policies and procedures.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Case Number: 2:10cr56-002
Defendant's Name: GABUL ABDULLAHI ALI

SUPERVISED RELEASE

Upon any release from imprisonment that might occur, the defendant shall be on supervised release for a term of **FIVE (5) YEARS.** This term consists of Five (5) years on Count 1, Three (3) years on Count 2, Three (3) years on Count 3, Three (3) years on Count 4, Three (3) years on Count 5, Three (3) years on Count 6, Three (3) years on Count 7, Three (3) years on Count 8, Five (5) years on Count 9, Five (5) years on Count 10, Five (5) years on Count 11, Five years on Count 12, and Three (3) years on Count 14, all to run concurrently.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within fifteen (15) days of release on supervised release and at least two (2) periodic drug tests thereafter, as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependants and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Case Number: 2:10cr56-002
Defendant's Name: GABUL ABDULLAHI ALI

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) As a condition of any supervised release that might occur, upon completion of the term of imprisonment, the defendant is to be surrendered to a duly-authorized immigration official of the Department of Homeland Security Bureau of Immigration and Customs Enforcement for a deportation review in accordance with established procedures provided by the Immigration and Naturalization Act, 8 U.S.C. 1101 et seq. As a further condition of supervised release, if ordered deported, the defendant shall remain outside the United States.

Case Number: 2:10cr56-002
Defendant's Name: GABUL ABDULLAHI ALI

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 7.

Count	Assessment	Fine	Restitution
1	$100.00	$0.00	$0.00
2	$100.00	$0.00	$0.00
3	$100.00	$0.00	$0.00
4	$100.00	$0.00	$0.00
5	$100.00	$0.00	$0.00
6	$100.00	$0.00	$0.00
7	$100.00	$0.00	$0.00
8	$100.00	$0.00	$0.00
9	$100.00	$0.00	$0.00
10	$100.00	$0.00	$0.00
11	$100.00	$0.00	$0.00
12	$100.00	$0.00	$0.00
14	$100.00	$0.00	$0.00
TOTALS:	**$1,300.00**	**$0.00**	**$0.00**

FINES

No fines have been imposed in this case.

Case Number: 2:10cr56-002
Defendant's Name: GABUL ABDULLAHI ALI

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

The special assessment shall be due in full immediately.

Any balance remaining unpaid on the special assessment at the inception of supervision, shall be paid by the defendant in installments of not less than $50.00 per month, until paid in full. Said payments shall commence 60 days after defendant's supervision begins.

At the time supervision commences, the probation officer shall take into consideration the defendant's economic status as it pertains to his ability to pay the special assessment ordered and shall notify the court of any change that may need to be made to the payment schedule.

Any special assessment, restitution, or fine payments may be subject to penalties for default and delinquency.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

AO 245B (Rev. 12/03)(VAED rev. 2) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Norfolk Division

UNITED STATES OF AMERICA

v.

Case Number: 2:10cr56-005

USM Number: 75672-083

ABDI MOHAMMED UMAR

Defendant's Attorney: James Short

Defendant.

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty on Counts 1-14 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of the following count(s) involving the indicated offense(s).

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
T. 18, USC, Sections 1651, 3238 and 2	Piracy under the Law of Nations	Felony	April 1, 2010	1
T. 18, USC, Sections 1659, 3238 and 2	Attack to Plunder Vessel	Felony	April 1, 2010	2
T. 18, USC, Sections 2291(a)(6), 2290(a)(2), 3238 and 2	Act of Violence Against Persons on a Vessel	Felony	April 1, 2010	3
T. 18, USC, Sections 2291(a)(9), 2290(a)(2) and 3238	Conspiracy to Perform Act of Violence Against Persons on a Vessel	Felony	April 1, 2010	4
T. 18, USC, Sections 113(a)(3), 3238 and 2	Assault with a Dangerous Weapon in the Special Maritime Jurisdiction	Felony	April 1, 2010	5
T. 18, USC, Sections 113(a)(3), 3238 and 2	Assault with a Dangerous Weapon in the Special Maritime Jurisdiction	Felony	April 1, 2010	6
T.18, USC, Sections 111(a)(1), 111(b), 3238 and 2	Assault with a Dangerous Weapon on Federal Officers and Employees	Felony	April 1, 2010	7
T.18, USC, Sections 111(a)(1), 111(b), 3238 and 2	Assault with a Dangerous Weapon on Federal Officers and Employees	Felony	April 1, 2010	8
T.18, USC, Sections 924(o) and 3238	Conspiracy Involving Firearm and a Crime of Violence	Felony	April 1, 2010	9
T.18, USC, Sections 924(c)(1)(A)(iii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	10
T.18, USC, Sections 924(c)(1)(A)(iii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	11
T.18, USC, Sections 924(c)(1)(A), 924(c)(1)(B)(ii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	12
T.18, USC, Sections 844(m) and 3238	Conspiracy to Carry an Explosive During the Commission of a Felony	Felony	April 1, 2010	14

Case Number: 2:10cr56-005
Defendant's Name: ABDI MOHAMMED UMAR

Count 13 is dismissed pursuant to order of the Court filed on March 9, 2011.

As pronounced on March 14, 2011, the defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 18 day of March, 2011.

/s/

Mark S. Davis
United States District Judge

Case Number: 2:10cr56-005
Defendant's Name: ABDI MOHAMMED UMAR

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **ONE LIFE TERM plus 960 months**, consecutive. The term consists of LIFE on Count 1, One Hundred Twenty (120) months on Count 2, Two Hundred Forty (240) months on Count 3, Two Hundred Forty (240) months on Count 4, One Hundred Twenty (120) months on Count 5, One Hundred Twenty (120) months on Count 6, Two Hundred Forty (240) months on Count 7, Two Hundred Forty (240) months on Count 8, Two Hundred Forty (240) months on Count 9, and Two Hundred Forty (240) months on Count 14, all to be served concurrently to each other and to the Life term; as well as Three Hundred (300) months on Count 10, Three Hundred (300) months on Count 11, and Three Hundred Sixty (360) months on Count 12, all to be served consecutively to the concurrent terms and to each other.

The Court considers Count 12 to be the first conviction under the 18 U.S.C. § 924(c) Counts and Counts 10 and 11 to be the second or subsequent convictions under the 18 U.S.C. § 924(c) Counts for purposes of 18 U.S.C. § 924(c)(1)(C).

The Court makes the following recommendations to the Bureau of Prisons:

(1) The defendant shall be incarcerated in a facility where there are other Somali speaking individuals, subject to the Bureau of Prisons' policies and procedures.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Case Number: 2:10cr56-005
Defendant's Name: ABDI MOHAMMED UMAR

SUPERVISED RELEASE

Upon any release from imprisonment that might occur, the defendant shall be on supervised release for a term of **FIVE (5) YEARS.** This term consists of Five (5) years on Count 1, Three (3) years on Count 2, Three (3) years on Count 3, Three (3) years on Count 4, Three (3) years on Count 5, Three (3) years on Count 6, Three (3) years on Count 7, Three (3) years on Count 8, Five (5) years on Count 9, Five (5) years on Count 10, Five (5) years on Count 11, Five years on Count 12, and Three (3) years on Count 14, all to run concurrently.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. As reflected in the presentence report, the defendant presents a low risk of future substance abuse and therefore, the court hereby suspends the mandatory condition for substance abuse testing as defined by T.18 USC 3563(a)(5). However, this does not preclude the U.S. Probation Office from administering drug tests as they deem appropriate.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependants and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Case Number: 2:10cr56-005
Defendant's Name: ABDI MOHAMMED UMAR

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) As a condition of any supervised release that might occur, upon completion of the term of imprisonment, the defendant is to be surrendered to a duly-authorized immigration official of the Department of Homeland Security Bureau of Immigration and Customs Enforcement for a deportation review in accordance with established procedures provided by the Immigration and Naturalization Act, 8 U.S.C. 1101 et seq. As a further condition of supervised release, if ordered deported, the defendant shall remain outside the United States.

Case Number: 2:10cr56-005
Defendant's Name: ABDI MOHAMMED UMAR

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 7.

Count	Assessment	Fine	Restitution
1	$100.00	$0.00	$0.00
2	$100.00	$0.00	$0.00
3	$100.00	$0.00	$0.00
4	$100.00	$0.00	$0.00
5	$100.00	$0.00	$0.00
6	$100.00	$0.00	$0.00
7	$100.00	$0.00	$0.00
8	$100.00	$0.00	$0.00
9	$100.00	$0.00	$0.00
10	$100.00	$0.00	$0.00
11	$100.00	$0.00	$0.00
12	$100.00	$0.00	$0.00
14	$100.00	$0.00	$0.00
TOTALS:	**$1,300.00**	**$0.00**	**$0.00**

FINES

No fines have been imposed in this case.

Case Number: 2:10cr56-005
Defendant's Name: ABDI MOHAMMED UMAR

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

The special assessment shall be due in full immediately.

Any balance remaining unpaid on the special assessment at the inception of supervision, shall be paid by the defendant in installments of not less than $50.00 per month, until paid in full. Said payments shall commence 60 days after defendant's supervision begins.

At the time supervision commences, the probation officer shall take into consideration the defendant's economic status as it pertains to his ability to pay the special assessment ordered and shall notify the court of any change that may need to be made to the payment schedule.

Any special assessment, restitution, or fine payments may be subject to penalties for default and delinquency.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

AO 245B (Rev. 12/03)(VAED rev. 2) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Norfolk Division

UNITED STATES OF AMERICA

v.

Case Number: 2:10cr56-004

USM Number: 75675-083

ABDI MOHAMMED GUREWARDHER

Defendant's Attorney: Jon Babineau

Defendant.

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty on Counts 1-14 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of the following count(s) involving the indicated offense(s).

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
T. 18, USC, Sections 1651, 3238 and 2	Piracy under the Law of Nations	Felony	April 1, 2010	1
T. 18, USC, Sections 1659, 3238 and 2	Attack to Plunder Vessel	Felony	April 1, 2010	2
T. 18, USC, Sections 2291(a)(6), 2290(a)(2), 3238 and 2	Act of Violence Against Persons on a Vessel	Felony	April 1, 2010	3
T. 18, USC, Sections 2291(a)(9), 2290(a)(2) and 3238	Conspiracy to Perform Act of Violence Against Persons on a Vessel	Felony	April 1, 2010	4
T. 18, USC, Sections 113(a)(3), 3238 and 2	Assault with a Dangerous Weapon in the Special Maritime Jurisdiction	Felony	April 1, 2010	5
T. 18, USC, Sections 113(a)(3), 3238 and 2	Assault with a Dangerous Weapon in the Special Maritime Jurisdiction	Felony	April 1, 2010	6
T.18, USC, Sections 111(a)(1), 111(b), 3238 and 2	Assault with a Dangerous Weapon on Federal Officers and Employees	Felony	April 1, 2010	7
T.18, USC, Sections 111(a)(1), 111(b), 3238 and 2	Assault with a Dangerous Weapon on Federal Officers and Employees	Felony	April 1, 2010	8
T.18, USC, Sections 924(o) and 3238	Conspiracy Involving Firearm and a Crime of Violence	Felony	April 1, 2010	9
T.18, USC, Sections 924(c)(1)(A)(iii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	10
T.18, USC, Sections 924(c)(1)(A)(iii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	11
T.18, USC, Sections 924(c)(1)(A), 924(c)(1)(B)(ii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	12
T.18, USC, Sections 844(m) and 3238	Conspiracy to Carry an Explosive During the Commission of a Felony	Felony	April 1, 2010	14

Case Number: 2:10cr56-004
Defendant's Name: ABDI MOHAMMED GUREWARDHER

Count 13 is dismissed pursuant to order of the Court filed on March 9, 2011.

As pronounced on March 14, 2011, the defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 18 day of March, 2011.

/s/ MSD
Mark S. Davis
United States District Judge

Case Number: 2:10cr56-004
Defendant's Name: ABDI MOHAMMED GUREWARDHER

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of ONE LIFE TERM plus 960 months, consecutive. The term consists of LIFE on Count 1, One Hundred Twenty (120) months on Count 2, Two Hundred Forty (240) months on Count 3, Two Hundred Forty (240) months on Count 4, One Hundred Twenty (120) months on Count 5, One Hundred Twenty (120) months on Count 6, Two Hundred Forty (240) months on Count 7, Two Hundred Forty (240) months on Count 8, Two Hundred Forty (240) months on Count 9, and Two Hundred Forty (240) months on Count 14, all to be served concurrently to each other and to the Life term; as well as Three Hundred (300) months on Count 10, Three Hundred (300) months on Count 11, and Three Hundred Sixty (360) months on Count 12, all to be served consecutively to the concurrent terms and to each other.

The Court considers Count 12 to be the first conviction under the 18 U.S.C. § 924(c) Counts and Counts 10 and 11 to be the second or subsequent convictions under the 18 U.S.C. § 924(c) Counts for purposes of 18 U.S.C. § 924(c)(1)(C).

The Court makes the following recommendations to the Bureau of Prisons:

(1) The defendant shall be incarcerated in a facility where there are other Somali speaking individuals, subject to the Bureau of Prisons' policies and procedures.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Case Number: 2:10cr56-004
Defendant's Name: ABDI MOHAMMED GUREWARDHER

SUPERVISED RELEASE

Upon any release from imprisonment that might occur, the defendant shall be on supervised release for a term of **FIVE (5) YEARS.** This term consists of Five (5) years on Count 1, Three (3) years on Count 2, Three (3) years on Count 3, Three (3) years on Count 4, Three (3) years on Count 5, Three (3) years on Count 6, Three (3) years on Count 7, Three (3) years on Count 8, Five (5) years on Count 9, Five (5) years on Count 10, Five (5) years on Count 11, Five years on Count 12, and Three (3) years on Count 14, all to run concurrently.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within fifteen (15) days of release on supervised release and at least two (2) periodic drug tests thereafter, as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependants and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Case Number: 2:10cr56-004
Defendant's Name: ABDI MOHAMMED GUREWARDHER

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) As a condition of any supervised release that might occur, upon completion of the term of imprisonment, the defendant is to be surrendered to a duly-authorized immigration official of the Department of Homeland Security Bureau of Immigration and Customs Enforcement for a deportation review in accordance with established procedures provided by the Immigration and Naturalization Act, 8 U.S.C. 1101 et seq. As a further condition of supervised release, if ordered deported, the defendant shall remain outside the United States.

Case Number: 2:10cr56-004
Defendant's Name: ABDI MOHAMMED GUREWARDHER

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 7.

Count	Assessment	Fine	Restitution
1	$100.00	$0.00	$0.00
2	$100.00	$0.00	$0.00
3	$100.00	$0.00	$0.00
4	$100.00	$0.00	$0.00
5	$100.00	$0.00	$0.00
6	$100.00	$0.00	$0.00
7	$100.00	$0.00	$0.00
8	$100.00	$0.00	$0.00
9	$100.00	$0.00	$0.00
10	$100.00	$0.00	$0.00
11	$100.00	$0.00	$0.00
12	$100.00	$0.00	$0.00
14	$100.00	$0.00	$0.00
TOTALS:	**$1,300.00**	**$0.00**	**$0.00**

FINES

No fines have been imposed in this case.

Case Number: 2:10cr56-004
Defendant's Name: ABDI MOHAMMED GUREWARDHER

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

The special assessment shall be due in full immediately.

Any balance remaining unpaid on the special assessment at the inception of supervision, shall be paid by the defendant in installments of not less than $50.00 per month, until paid in full. Said payments shall commence 60 days after defendant's supervision begins.

At the time supervision commences, the probation officer shall take into consideration the defendant's economic status as it pertains to his ability to pay the special assessment ordered and shall notify the court of any change that may need to be made to the payment schedule.

Any special assessment, restitution, or fine payments may be subject to penalties for default and delinquency.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

AO 245B (Rev. 12/03)(VAED rev. 2) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Norfolk Division

UNITED STATES OF AMERICA

v.

Case Number: 2:10cr56-001

USM Number: 75673-083

MOHAMMED MODIN HASAN

Defendant's Attorney: James Theuer

Defendant.

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty on Counts 1-14 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of the following count(s) involving the indicated offense(s).

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
T. 18, USC, Sections 1651, 3238 and 2	Piracy under the Law of Nations	Felony	April 1, 2010	1
T. 18, USC, Sections 1659, 3238 and 2	Attack to Plunder Vessel	Felony	April 1, 2010	2
T. 18, USC, Sections 2291(a)(6), 2290(a)(2), 3238 and 2	Act of Violence Against Persons on a Vessel	Felony	April 1, 2010	3
T. 18, USC, Sections 2291(a)(9), 2290(a)(2) and 3238	Conspiracy to Perform Act of Violence Against Persons on a Vessel	Felony	April 1, 2010	4
T. 18, USC, Sections 113(a)(3), 3238 and 2	Assault with a Dangerous Weapon in the Special Maritime Jurisdiction	Felony	April 1, 2010	5
T. 18, USC, Sections 113(a)(3), 3238 and 2	Assault with a Dangerous Weapon in the Special Maritime Jurisdiction	Felony	April 1, 2010	6
T.18, USC, Sections 111(a)(1), 111(b), 3238 and 2	Assault with a Dangerous Weapon on Federal Officers and Employees	Felony	April 1, 2010	7
T.18, USC, Sections 111(a)(1), 111(b), 3238 and 2	Assault with a Dangerous Weapon on Federal Officers and Employees	Felony	April 1, 2010	8
T.18, USC,Sections 924(o) and 3238	Conspiracy Involving Firearm and a Crime of Violence	Felony	April 1, 2010	9
T.18, USC, Sections 924(c)(1)(A)(iii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	10
T.18, USC, Sections 924(c)(1)(A)(iii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	11
T.18, USC, Sections 924(c)(1)(A), 924(c)(1)(B)(ii), 3238 and 2	Use, Carry, and Possession of Firearm in Relation to Crime of Violence	Felony	April 1, 2010	12
T.18, USC, Sections 844(n) and 3238	Conspiracy to Carry an Explosive During the Commission of a Felony	Felony	April 1, 2010	14

Case Number: 2:10cr56-001
Defendant's Name: MOHAMMED MODIN HASAN

Count 13 is dismissed pursuant to order of the Court filed on March 9, 2011.

As pronounced on March 14, 2011, the defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 18 day of March, 2011.

/s/ MSD
Mark S. Davis
United States District Judge

Case Number: 2:10cr56-001
Defendant's Name: MOHAMMED MODIN HASAN

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of ONE LIFE TERM plus 960 months, consecutive. The term consists of LIFE on Count 1, One Hundred Twenty (120) months on Count 2, Two Hundred Forty (240) months on Count 3, Two Hundred Forty (240) months on Count 4, One Hundred Twenty (120) months on Count 5, One Hundred Twenty (120) months on Count 6, Two Hundred Forty (240) months on Count 7, Two Hundred Forty (240) months on Count 8, Two Hundred Forty (240) months on Count 9, and Two Hundred Forty (240) months on Count 14, all to be served concurrently to each other and to the Life term; as well as Three Hundred (300) months on Count 10, Three Hundred (300) months on Count 11, and Three Hundred Sixty (360) months on Count 12, all to be served consecutively to the concurrent terms and to each other.

The Court considers Count 12 to be the first conviction under the 18 U.S.C. § 924(c) Counts and Counts 10 and 11 to be the second or subsequent convictions under the 18 U.S.C. § 924(c) Counts for purposes of 18 U.S.C. § 924(c)(1)(C).

The Court makes the following recommendations to the Bureau of Prisons:

(1) The defendant shall be incarcerated in a facility where there are other Somali speaking individuals, subject to the Bureau of Prisons' policies and procedures.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Case Number: 2:10cr56-001
Defendant's Name: MOHAMMED MODIN HASAN

SUPERVISED RELEASE

Upon any release from imprisonment that might occur, the defendant shall be on supervised release for a term of **FIVE (5) YEARS.** This term consists of Three (3) years on Counts 2 through 8, and Count 14, and a term of Five (5) years on Count 1 and Counts 9 through 12, all to run concurrently.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within fifteen (15) days of release on supervised release and at least two (2) periodic drug tests thereafter, as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependants and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Case Number: 2:10cr56-001
Defendant's Name: MOHAMMED MODIN HASAN

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) As a condition of any supervised release that might occur, upon completion of the term of imprisonment, the defendant is to be surrendered to a duly-authorized immigration official of the Department of Homeland Security Bureau of Immigration and Customs Enforcement for a deportation review in accordance with established procedures provided by the Immigration and Naturalization Act, 8 U.S.C. 1101 et seq. As a further condition of supervised release, if ordered deported, the defendant shall remain outside the United States.

Case Number: 2:10cr56-001
Defendant's Name: MOHAMMED MODIN HASAN

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 7.

Count	Assessment	Fine	Restitution
1	$100.00	$0.00	$0.00
2	$100.00	$0.00	$0.00
3	$100.00	$0.00	$0.00
4	$100.00	$0.00	$0.00
5	$100.00	$0.00	$0.00
6	$100.00	$0.00	$0.00
7	$100.00	$0.00	$0.00
8	$100.00	$0.00	$0.00
9	$100.00	$0.00	$0.00
10	$100.00	$0.00	$0.00
11	$100.00	$0.00	$0.00
12	$100.00	$0.00	$0.00
14	$100.00	$0.00	$0.00
TOTALS:	**$1,300.00**	**$0.00**	**$0.00**

FINES

No fines have been imposed in this case.

Case Number: 2:10cr56-001
Defendant's Name: MOHAMMED MODIN HASAN

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

The special assessment shall be due in full immediately.

Any balance remaining unpaid on the special assessment at the inception of supervision, shall be paid by the defendant in installments of not less than $50.00 per month, until paid in full. Said payments shall commence 60 days after defendant's supervision begins.

At the time supervision commences, the probation officer shall take into consideration the defendant's economic status as it pertains to his ability to pay the special assessment ordered and shall notify the court of any change that may need to be made to the payment schedule.

Any special assessment, restitution, or fine payments may be subject to penalties for default and delinquency.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

T.I.A.S. No. 5200, 13 U.S.T. 2312, 1962 WL 70199 (U.S. Treaty)

UNITED STATES OF AMERICA
Multilateral

Law of the Sea: Convention on the High Seas

Done at Geneva April 29, 1958;

Ratification advised by the Senate of the United States of America May 26, 1960;

Ratified by the President of the United States of America March 24, 1961;

Ratification of the United States of America deposited with the Secretary-General of the United Nations April 12, 1961;

Proclaimed by the President of the United States of America November 9, 1962;

Entered into force September 30, 1962.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

CONVENTION

ON THE HIGH SEAS

UNITED NATIONS

1958

Annex II

CONVENTION ON THE HIGH SEAS

Article 1

Article 2

Article 3

Article 4

Article 5

Article 32

Article 33

Article 34

Article 35

Article 36

Article 37

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

*1 WHEREAS the Convention on the High Seas, adopted by the United Nations Conference on the Law of the Sea, Geneva, February 24 to April 27, 1958, was opened for signature from April 29 to October 31, 1958, and during that period was signed in behalf of the United States of America and forty-eight other States;

WHEREAS a certified copy of the text of the said Convention, in the Chinese, English, French, Russian, and Spanish languages, is word for word as follows:

UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

CONVENTION

ON THE HIGH SEAS

UNITED NATIONS

1958

Annex II[FN1]

FN1. The text of the convention printed herein constituted Annex II to the Final Act of the United Nations Conference on the Law of the Sea, which was certified by the Legal Counsel, for the Secretary-General of the United Nations. [Footnote added by the Department of State.]

End of Footnote(s).**CONVENTION ON THE HIGH SEAS**

The States Parties to this Convention,

Desiring to codify the rules of international law relating to the high seas,

Recognizing that the United Nations Conference on the Law of the Sea, held at Geneva from 24 February to 27 April 1958, adopted the following provisions as generally declaratory of established principles of international law,

Have agreed as follows:

Article 1

The term "high seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of a State.

Article 2

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, *inter alia*, both for coastal and non-coastal States:

(1) Freedom of navigation;

(2) Freedom of fishing;

(3) Freedom to lay submarine cables and pipelines;

(4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

Article 3

1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international convention accord:

(*a*) To the State having no seacoast, on a basis of reciprocity, free transit through their territory; and

(*b*) To ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to seaports and the use of such ports.

2. States situated between the sea and a State having no sea-coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea-coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions.

Article 4

Every State, whether coastal or not, has the right to sail ships under its flag on the high seas.

Article 5

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 6

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article 7

The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an inter-governmental organization flying the flag of the organization.

Article 8

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. For the purposes of these articles, the term "warship" means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

Article 9

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Article 10

1. Every State shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard *inter alia* to:

(*a*) The use of signals, the maintenance of communications and the prevention of collisions;

(*b*) The manning of ships and labour conditions for crews taking into account the applicable international labour instruments;

(*c*) The construction, equipment and seaworthiness of ships.

2. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance.

Article 11

1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Article 12

1. Every State shall require the master of a ship sailing under its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers,

(*a*) To render assistance to any person found at sea in danger of being lost;

(*b*) To proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(*c*) After a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

2. Every coastal State shall promote the establishment and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and-where circumstances so require-by way of mutual regional arrangements co-operate with neighbouring States for this purpose.

Article 13

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall *ipso facto* be free.

Article 14

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 15

Piracy consists of any of the following acts:

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

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

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

(2) 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;

(3) Any act of inciting or of intentionally facilitating an act described in sub-paragraph 1 or subparagraph 2 of this article.

Article 16

The acts of piracy, as defined in article 15, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

Article 17

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 15. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 18

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 19

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 20

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

Article 21

A seizure on account of piracy may only be carried out by warships or military aircraft, or other ships or aircraft on government service authorized to that effect.

Article 22

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(*a*) That the ship is engaged in piracy; or

(*b*) That the ship is engaged in the slave trade; or

(*c*) That, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in sub-paragraphs (*a*), (*b*) and (*c*) above, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

Article 23

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 24 of the Convention on the Territorial Sea and the Contiguous Zone, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship are within the limits of the territorial sea, or as the case may be within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft:

(*a*) The provisions of paragraph 1 to 3 of this article shall apply *mutatis mutandis;*

(*b*) The aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an enquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

7. Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

Article 24

Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject.

Article 25

1. Every State shall take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radio-active materials or other harmful agents.

Article 26

1. All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 27

Every State shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article 28

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction

who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Article 29

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

Article 30

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States Parties to them.

Article 31

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 32

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 33

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 31. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 34

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 35

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 36

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 31:

(*a*) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 31, 32 and 33;

(*b*) Of the date on which this Convention will come into force, in accordance with article 34;

(*c*) Of requests for revision in accordance with article 35.

Article 37

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 31.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

FOR AFGHANISTAN:
A. R. PAZHWAK
Oct. 30, 1958

FOR ALBANIA:

FOR ARGENTINA:
A. LESCURE

FOR AUSTRALIA:
E. Ronald WALKER
30th October 1958

FOR AUSTRIA:
Dr. Franz MATSCH
Oct. 27th 1958

FOR THE KINGDOM OF BELGIUM:

FOR BOLIVIA:
M. TAMAYO
17th October, 1958

FOR BRAZIL:

Reservation to article 9: The Government of the People's Republic of Bulgaria considers that the principle of international law according to which ships have complete immunity from the jurisdiction of any State other than the flag State relates without any restriction to all government ships.

Declaration: The Government of the People's Republic of Bulgaria considers that the definition of piracy given in the Convention does not cover certain acts which under contemporary international law should be considered as acts of piracy and does not serve to ensure freedom of navigation on international sea routes.

FOR BULGARIA:
Dr. VOUTOV
31st October 1958

FOR THE UNION OF BURMA:

With a reservation[FN2] to article 9 and a declaration[FN3]; texts of both attached.

FN2. *Text of the reservation:*

To article 9: The Government of the Byelorussian Soviet Socialist Republic considers that the principle of international law according to which a ship on the high seas is not subject to any jurisdiction except that of the flag State applies without restriction to all government ships.

FN2. *Text of the declaration:*

The Government of the Byelorussian Soviet Socialist Republic considers that the definition of piracy given in the Convention does not cover certain acts which under contemporary international law should be considered as acts of piracy and does not serve to ensure freedom of navigation on international sea routes.

End of Footnote(s).

FOR THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC:
K. KISELEV
30. X. 1958

FOR CAMBODIA:

FOR CANADA:
George A. DREW

FOR CEYLON:
C. COREA
30/X/58

FOR CHILE:

FOR CHINA:
LIU Chieb

Yu-chi HSUEH

FOR COLOMBIA:
Juan URIBE HOLGUÍN

José Joaquín CAICEDO CASTILLA

FOR COSTA RICA:
Raúl TREJOS FLORES

FOR CUBA:

F. V. GARCÍA AMADOR

With the following reservation to article 9:

"The Government of the Czechoslovak Republic holds that under international law in force government ships operated for commercial purposes also enjoy on the high seas complete immunity from the jurisdiction of any State other than the flag State."

FOR CZECHOSLOVAKIA:
Karel KURKA[FN4]
FN4. *Declaration:* "The Government of the Czechoslovak Republic maintains that the notion of piracy as defined in the Convention is neither in accordance with the present international law nor with the interest of safeguarding the freedom of navigation on the high seas."

30 October 1958

FOR DENMARK:
Max SORENSEN

T. OLDENBURG

FOR THE DOMINICAN REPUBLIC:
A. ALVAREZ AYBAR

FOR ECUADOR:

FOR EL SALVADOR:

FOR ETHIOPLA:

FOR THE FEDERATION OF MALAYA:

FOR FINLAND:
G. A. GRIPENBERG
27 octobre 1958

FOR FRANCE:
G. GEORGES-PICOT

30 octobre 1958

FOR THE FEDERAL REPUBLIC OF GERMANY:
Werner DANKWORT
30 October 1958

FOR GHANA:
Richard QUARSHIE

K. B. ASANTE

FOR GREECE:

FOR GUATEMALA:
L. AYCINENA SALAZAR

FOR HAITI:
RIGAL

FOR THE HOLY SEE:
P. DEMEUR
30.4.1958

FOR HONDURAS:

FOR HUNGARY:

Subject to reservation[FN5] attached to article 9:
FN5. *Text of the reservation:*

Dr SZITA JÁNOS[FN6]
FN6. *Declaration:*

31.X.1958

FOR ICELAND:
H. G. ANDERSEN

FOR INDIA:

FOR INDONESIA:[FN7]
FN7. Ratification deposited Aug. 10, 1961, with the following reservation:

FN1. The Indonesian Waters consist of the territorial sea and the internal waters of Indonesia.

FN2. The Indonesian territorial sea is a maritime belt of a width of twelve nautical miles, the outer limit of which is measured perpendicular to the baselines or points on the baselines which consist of straight lines connecting the outermost points on the low water mark of the outermost islands or part of such islands comprising Indonesian territory with the provision that in case of straits of a width of not more than twenty four nautical

miles and Indonesia is not the only coastal state the outer limit of the Indonesian territorial sea shall be drawn at the middle of the strait.

FN3. The Indonesian internal waters are all waters lying within the baselines mentioned in paragraph 2.

FN4. One nautical mile is sixty to one degree of latitude."

FN2. Should read "internal". (Source: United Nations letter of Apr. 27, 1962, file no. C.N.73.1962. TREATIES-3.)

Ahmad SOEBARDJO
8th May 1958

FOR IRAN:

Subject to reservations[FN8]
FN8. *Translation by the Secretariat:* In signing the Convention on the High Seas, I make the following reservations:

Dr. A. MATINE-DAFTARY
May 28, 1958

FOR IRAQ:

FOR IRELAND:
Frank AIKEN
2-10-1958

FOR ISRAEL:
Shabtai ROSENNE

FOR ITALY:

FOR JAPAN:

FOR THE HASHEMITE KINGDOM OF JORDAN:

FOR THE REPUBLIC OF KOREA:

FOR LAOS:

FOR LEBANON:
N. SADAKA
29 mai 1958

FOR LIBERIA:
Rocheforte L. WEEKS
27/5/58

FOR LIBYA:

FOR THE GRAND DUCHY OF LUXEMBOURG:

FOR MEXICO:

FOR MONACO:

FOR MOROCCO:

FOR NEPAL:
Rishikesh SHAHA

FOR THE KINGDOM OF THE NETHERLANDS:
C. SCHURMANN
31 October 1958

FOR NEW ZEALAND:
Foss SHANAHAN
29 October 1958

FOR NICARAGUA:

FOR THE KINGDOM OF NORWAY:

FOR PAKISTAN:
Aly KHAN
31st October 1958

FOR PANAMA:
Carlos SUCRE C.
2.5.1958

FOR PARAGUAY:

FOR PERU:

FOR THE PHILIPPINE REPUBLIC:

FOR POLAND:

The Government of the Polish People's Republic considers that the rule expressed in article 9 applies to all ships owned or operated by a State.

J. WINIEWICZ[FN9]
FN9. *Declaration:* "The Government of the Polish People's Republic considers that the definition of piracy as contained in the Convention does not fully correspond with the present state of international law in this respect."

Oct., 31, 58

FOR PORTUGAL:

Sous réserve de ratification

Vasco Vieira GARIN
28 octobre 1958

With the following reservation to article 9: The Government of the Romanian People's Republic considers that the principle of international law according to which a ship on the high seas is not subject to any jurisdiction except that of the flag State applies to all government ships regardless of the purpose for which they are used.

FOR ROMANIA:
M. MAGHERU[FN10]
FN1. The Government of the Romanian People's Republic considers that the definition of piracy as given in article 15 of the Convention on the High Seas does not cover certain acts which under contemporary international law should be considered as acts of piracy.

31 octobre 1958

FOR SAN MARINO:

FOR SAUDI ARABIA:

FOR SPAIN:

FOR THE SUDAN:

FOR SWEDEN:

FOR SWITZERLAND:
Paul RUEGGER
24 mai 1958

FOR THAILAND:
LUANG CHAKRAPANI SRISILVISUDDHI

Major General Dr. jur. Ambhorn SRIJAYANTA

Chapikorn SRESHTHAPUTRA

FOR TUNISIA:
Mongi SLIM
Le 30 octobre 1958

FOR TURKEY:

With a reservation[FN11] to article 9 and a declaration;[FN12] texts of both attached.

FN11. *Text of the reservation:*

To article 9: The Government of the Ukrainian Soviet Socialist Republic considers that the principle of international law according to which a ship on the high seas is not subject to any jurisdiction except that of the flag State applies without restriction to all government ships.

FN12. *Text of the declaration:*

The Government of the Ukrainian Soviet Socialist Republic considers that the definition of piracy given in the Convention does not cover certain acts which under contemporary international law should be considered as acts of piracy and does not serve to ensure freedom of navigation on international sea routes.

End of Footnote(s).

FOR THE UKRAINIAN SOVIET SOCIALIST REPUBLIC:
L. PALAMARTCHOUK
30 October 1958

FOR THE UNION OF SOUTH AFRICA:

With a reservation[FN13] to article 9 and a declaration;[FN14] texts of both attached.

FN13. *Text of the reservation:*

To article 9: The Government of the Union of Soviet Socialist Republics considers that the principle of international law according to which a ship on the high seas is not subject to any jurisdiction except that of the flag State applies without restriction to all government ships.

FN14. *Text of the declaration:*

The Government of the Union of Soviet Socialist Republics considers that the definition of piracy given in the Convention does not cover certain acts which under contemporary international law should be considered as acts of piracy and does not serve to ensure freedom of navigation on international sea routes.

End of Footnote(s).

FOR THE UNION OF SOVIET SOCIALIST REPUBLICS:
V. ZORINE
30 October 1958

FOR THE UNITED ARAB REPUBLIC:

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:
Pierson DIXON
9 Sept. 1958

FOR THE UNITED STATES OF AMERICA:
Arthur H. DEAN
15 Sept. 1958

FOR URUGUAY:
Victor POMES

FOR VENEZUELA:

Ad referendum
Carlos SOSA RODRÍGUEZ
October 30th 1958

FOR VIET-NAM:

FOR YEMEN:

FOR YUGOSLAVIA:

Avec la réserve de ratification

Milan BARTOS

V. POPOVIC

WHEREAS the Senate of the United States of America by their resolution of May 26, 1960, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the said Convention;

WHEREAS the said Convention was duly ratified by the President of the United States of America on March 24, 1961, in pursuance of the said advice and consent of the Senate;

WHEREAS it is provided in Article 34 of the said Convention that the Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary General of the United Nations;

WHEREAS instruments of ratification were deposited with the Secretary General of the United Nations by the following Governments on the dates indicated: Poland, with a reservation, on October 31, 1958, Afghanistan on April 28, 1959, the United Kingdom of Great Britain and Northern Ireland, with a declaration, on March 14, 1960, Haiti on March 29, 1960, the Union of Soviet Socialist Republics, with a reservation and a declaration, on November 22, 1960, the Ukrainian Soviet Socialist Republic, with a reservation and a declaration, on January 12, 1961, the Byelorussian Soviet Socialist Republic, with a reservation and a declaration on February 27, 1961, the United States of America on April 12, 1961, Indonesia, with a reservation, on August 10, 1961, Venezuela on August 15, 1961, Czechoslovakia, with a reservation and a declaration, on August 31, 1961, Israel on September 6, 1961, Guatemala on November 27, 1961, Hungary, with a reservation and a declaration on December 6, 1961, Rumania, with a reservation and a declaration, on December 12, 1961, and Bulgaria, with a reservation and a declaration on August 31, 1962; instruments of accession were deposited with the Secretary General of the United Nations by the following Governments on the dates indicated: Cambodia on March 21, 1960, the Federation of Malaya on December 21, 1960, Senegal on April 25, 1961, and the Malagasy Republic on July 31, 1962; and the Secretary General of the United Nations was informed in a communication received on June 26, 1961 from Nigeria and in a communication received on March 13, 1962 from Sierra Leone that those Governments consider themselves bound by the Convention;

AND WHEREAS, pursuant to the aforesaid provision of Article 34 of the said Convention, the Convention entered into force on September 30, 1962;

NOW, THEREFORE, be it known that I, John F. Kennedy, President of the United States of America, do hereby proclaim and make public the said Convention to the end that the same and every article and clause thereof shall be observed and fulfilled with good faith, on and after September 30, 1962, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed,

DONE at the city of Washington this ninth day of November in the year of our Lord one thousand nine hundred sixty-two and of the Independence of the United States of America the one hundred eighty-seventh.

JOHN F KENNEDY
[SEAL]
By the President:

DEAN RUSK
Secretary of State

T.I.A.S. No. 5200, 13 U.S.T. 2312, 1962 WL 70199 (U.S. Treaty)
END OF DOCUMENT

Section 924 Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*); or

(D) willfully violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (*o*) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922,

shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in

by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a second or subsequent conviction under this subsection, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(*l*), 922(n), or 924(b) of this title; and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term "serious drug offense" means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which—

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46,

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(i)(1) A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both.

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

(j) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

(k) A person who, with intent to engage in or to promote conduct that—

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

(3) constitutes a crime of violence (as defined in subsection (c)(3)),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.

(*l*) A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(m) A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

(n) A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

(*o*) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

(p) Penalties Relating To Secure Gun Storage or Safety Device.—

(1) In general.—

(A) Suspension or revocation of license; civil penalties.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

(ii) subject the licensee to a civil penalty in an amount equal to not more than $2,500.

(B) Review.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

(2) Administrative remedies.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.

(Added Pub. L. 90–351, title IV, §902, June 19, 1968, 82 Stat. 233; amended Pub. L. 90–618, title I, §102, Oct. 22, 1968, 82 Stat. 1223; Pub. L. 91–644, title II, §13, Jan. 2, 1971, 84 Stat. 1889; Pub. L. 98–473, title II, §§223(a), 1005(a), Oct. 12, 1984, 98 Stat. 2028, 2138; Pub. L. 99–308, §104(a), May 19, 1986, 100 Stat. 456; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–570, title I, §1402, Oct. 27, 1986, 100 Stat. 3207–39; Pub. L. 100–649, §2(b), (f)(2)(B), (D), Nov. 10, 1988, 102 Stat. 3817,

3818; Pub. L. 100–690, title VI, §§6211, 6212, 6451, 6460, 6462, title VII, §§7056, 7060(a), Nov. 18, 1988, 102 Stat. 4359, 4360, 4371, 4373, 4374, 4402, 4403; Pub. L. 101–647, title XI, §1101, title XVII, §1702(b)(3), title XXII, §§2203(d), 2204(c), title XXXV, §§3526–3529, Nov. 29, 1990, 104 Stat. 4829, 4845, 4857, 4924; Pub. L. 103–159, title I, §102(c), title III, §302(d), Nov. 30, 1993, 107 Stat. 1541, 1545; Pub. L. 103–322, title VI, §60013, title XI, §§110102(c), 110103(c), 110105(2), 110201(b), 110401(e), 110503, 110504(a), 110507, 110510, 110515(a), 110517, 110518(a), title XXXIII, §§330002(h), 330003(f)(2), 330011(i), (j), 330016(1)(H), (K), (L), Sept. 13, 1994, 108 Stat. 1973, 1998–2000, 2011, 2015, 2016, 2018–2020, 2140, 2141, 2145, 2147; Pub. L. 104–294, title VI, §603(m)(1), (n)–(p)(1), (q)–(s), Oct. 11, 1996, 110 Stat. 3505; Pub. L. 105–386, §1(a), Nov. 13, 1998, 112 Stat. 3469; Pub. L. 107–273, div. B, title IV, §4002(d)(1)(E), div. C, title I, §11009(e)(3), Nov. 2, 2002, 116 Stat. 1809, 1821; Pub. L. 108–174, §1(2), (3), Dec. 9, 2003, 117 Stat. 2481; Pub. L. 109–92, §§5(c)(2), 6(b), Oct. 26, 2005, 119 Stat. 2100, 2102; Pub. L. 109–304, §17(d)(3), Oct. 6, 2006, 120 Stat. 1707.)

Amendment of Section

Pub. L. 100–649, §2(f)(2)(B), (D), Nov. 10, 1988, 102 Stat. 3818, as amended by Pub. L. 101–647, title XXXV, §3526(b), Nov. 29, 1990, 104 Stat. 4924; Pub. L. 105–277, div. A, §101(h) [title VI, §649], Oct. 21, 1998, 112 Stat. 2681–480, 2681–528; Pub. L. 108–174, §1, Dec. 9, 2003, 117 Stat. 2481, provided that, effective 25 years after the 30th day beginning after Nov. 10, 1988, subsection (a)(1) of this section is amended by striking "this subsection, subsection (b), (c), or (f) of this section, or in section 929" and inserting "this chapter", subsection (f) of this section is repealed, and subsections (g) through (*o*) of this section are redesignated as subsections (f) through (n), respectively, of this section.

References in Text

The Internal Revenue Code of 1986, referred to in subsec. (d)(1), is set out as Title 26, Internal Revenue Code.

Section 5845(a) of that Code, referred to in subsec. (d)(1), is classified to section 5845(a) of Title 26.

The Controlled Substances Act, referred to in subsecs. (c)(2), (d)(3)(B), (e)(2)(A)(i), (g)(2), and (k)(1), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsecs. (c)(2), (d)(3)(B), (e)(2)(A)(i), (g)(2), and (k)(1), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§951 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

Amendments

2006—Subsecs. (c)(2), (e)(2)(A)(i). Pub. L. 109–304, §17(d)(3)(A), substituted "chapter 705 of title 46" for "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

Subsec. (g)(2). Pub. L. 109–304, §17(d)(3), substituted "801 et seq." for "802 et seq." and "chapter 705 of title 46" for "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

Subsec. (k)(1). Pub. L. 109–304, §17(d)(3)(A), substituted "chapter 705 of title 46" for "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

2005—Subsec. (a)(1). Pub. L. 109–92, §5(c)(2)(A), substituted "(f), or (p)" for "or (f)" in introductory provisions.

Subsec. (c)(5). Pub. L. 109–92, §6(b), added par. (5).

Subsec. (p). Pub. L. 109–92, §5(c)(2)(B), added subsec. (p).

2002—Subsec. (a)(7). Pub. L. 107–273, §11009(e)(3), added par. (7).

Subsec. (e)(1). Pub. L. 107–273, §4002(d)(1)(E), substituted "under this title" for "not more than $25,000".

1998—Subsec. (c)(1). Pub. L. 105–386, §1(a)(1), added par. (1) and struck out former par. (1) which read as follows: "Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years, and if the firearm is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, to imprisonment for ten years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to imprisonment for thirty years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried."

Subsec. (c)(4). Pub. L. 105–386, §1(a)(2), added par. (4).

1996—Subsec. (a)(1)(B). Pub. L. 104–294, §603(n), repealed Pub. L. 103–322, §330002(h). See 1994 Amendment note below.

Pub. L. 104–294, §603(m)(1)(A), amended directory language of Pub. L. 103–322, §110507. See 1994 Amendment note below.

Subsec. (a)(2). Pub. L. 104–294, §603(m)(1)(B), amended directory language of Pub. L. 103–322, §110507(2). See 1994 Amendment note below.

Subsec. (a)(5), (6). Pub. L. 104–294, §603(*o*), redesignated par. (5), relating to punishment for juveniles, as (6).

Subsec. (c)(1). Pub. L. 104–294, §603(p)(1), amended directory language of Pub. L. 103–322, §110102(c)(2). See 1994 Amendment note below.

Subsec. (i). Pub. L. 104–294, §603(r), redesignated subsec. (i), relating to death penalty for gun murders, as (j).

Subsec. (j). Pub. L. 104–294, §603(r), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(3). Pub. L. 104–294, §603(q), inserted closing parenthesis before comma at end.

Subsec. (k). Pub. L. 104–294, §603(r), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 104–294, §603(s), amended directory language of Pub. L. 103–322, §110504. See 1994 Amendment note below.

Pub. L. 104–294, §603(r), redesignated subsec. (k) as (*l*). Former subsec. (*l*) redesignated (m).

Subsecs. (m) to (*o*). Pub. L. 104–294, §603(r), redesignated subsecs. (*l*) to (n) as (m) to (*o*), respectively.

1994—Subsec. (a)(1). Pub. L. 103–322, §330016(1)(K), substituted "fined under this title" for "fined not more than $5,000" in concluding provisions.

Pub. L. 103–322, §330011(i), amended directory language of Pub. L. 101–647, §3528. See 1990 Amendment note below.

Pub. L. 103–322, §110201(b)(1), which directed the striking of "paragraph (2) or (3) of" in subsec. (a)(1), could not be executed because of prior amendment by Pub. L. 103–159. See 1993 Amendment note below.

Subsec. (a)(1)(B). Pub. L. 103–322, §330002(h), which directed amendment of subpar. (B) by substituting "(r)" for "(q)", was repealed by Pub. L. 104–294, §603(n), which provided that §330002(h) shall be considered never to have been enacted.

Pub. L. 103–322, §110507(1), as amended by Pub. L. 104–294, §603(m)(1)(A), struck out "(a)(6)," after "(a)(4),".

Pub. L. 103–322, §110103(c), which substituted "(v), or (w)" for "or (v)", was repealed by Pub. L. 103–322, §110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Pub. L. 103–322, §110102(c)(1), which substituted "(r), or (v) of section 922" for "or (q) of section 922", was repealed by Pub. L. 103–322, §110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(2). Pub. L. 103–322, §110507(2), as amended by Pub. L. 104–294, §603(m)(1)(B), inserted "(a)(6)," after "subsection".

Subsec. (a)(3). Pub. L. 103–322, §330016(1)(H), substituted "fined under this title" for "fined not more than $1,000".

Subsec. (a)(4). Pub. L. 103–322, §330016(1)(K), substituted "fined under this title" for "fined not more than $5,000".

Subsec. (a)(5). Pub. L. 103–322, §330016(1)(H), substituted "fined under this title" for "fined not more than $1,000" in par. (5) relating to knowing violations of subsec. (s) or (t) of section 922.

Pub. L. 103–322, §110201(b)(2), added par. (5) relating to punishment for juveniles.

Subsec. (b). Pub. L. 103–322, §330016(1)(L), substituted "fined under this title" for "fined not more than $10,000".

Subsec. (c)(1). Pub. L. 103–322, §330011(j), amended directory language of Pub. L. 101–647, §3527. See 1990 Amendment note below.

Pub. L. 103–322, §110510(b), which directed the amendment of subsec. (c)(1) by striking "No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed under this subsection.", was executed by striking the last sentence, which read "No person sentenced

under this subsection shall be eligible for parole during the term of imprisonment imposed herein.", to reflect the probable intent of Congress.

Pub. L. 103–322, §§110102(c)(2), 110105(2), as amended by Pub. L. 104–294, §603(p)(1), temporarily amended subsec. (c)(1) by inserting ", or semiautomatic assault weapon," after "short-barreled shotgun". See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (d)(1). Pub. L. 103–322, §110401(e), substituted "or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms" for "the seized firearms".

Subsec. (e)(1). Pub. L. 103–322, §110510(a), struck out before period at end ", and such person shall not be eligible for parole with respect to the sentence imposed under this subsection".

Subsec. (e)(2)(A)(i). Pub. L. 103–322, §330003(f)(2), substituted "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)" for "the first section or section 3 of Public Law 96–350 (21 U.S.C. 955a et seq.)".

Subsec. (i). Pub. L. 103–322, §60013, added subsec. (i) relating to death penalty for gun murders.

Subsec. (i)(1). Pub. L. 103–322, §330016(1)(L), substituted "fined under this title" for "fined not more than $10,000" in par. (1) of subsec. (i) relating to knowing violations of section 922(u).

Subsec. (j). Pub. L. 103–322, §110503, added subsec. (j).

Subsec. (k). Pub. L. 103–322, §110504(a), as amended by Pub. L. 104–294, §603(s), added subsec. (k).

Subsec. (*l*). Pub. L. 103–322, §110515(a), added subsec. (*l*).

Subsec. (m). Pub. L. 103–322, §110517, added subsec. (m).

Subsec. (n). Pub. L. 103–322, §110518(a), added subsec. (n).

1993—Subsec. (a)(1). Pub. L. 103–159, §102(c)(1), struck out "paragraph (2) or (3) of" before "this subsection" in introductory provisions.

Subsec. (a)(5). Pub. L. 103–159, §102(c)(2), added par. (5).

Subsec. (i). Pub. L. 103–159, §302(d), added subsec. (i).

1990—Subsec. (a)(1). Pub. L. 101–647, §3528, as amended by Pub. L. 103–322, §330011(i), substituted "(3) of this subsection" for "3 of this subsection" in introductory provisions.

Pub. L. 101–647, §2203(d), struck out ", and shall become eligible for parole as the Parole Commission shall determine" before period at end.

Subsec. (a)(1)(B). Pub. L. 101–647, §2204(c), substituted "(k), or (q)" for "or (k)".

Subsec. (a)(2). Pub. L. 101–647, §3529(1), substituted "subsection" for "subsections" and inserted a comma after "10 years".

Subsec. (a)(3). Pub. L. 101–647, §2203(d), struck out ", and shall become eligible for parole as the Parole Commission shall determine" before period at end.

Subsec. (a)(4). Pub. L. 101–647, §1702(b)(3), added par. (4).

Subsec. (c)(1). Pub. L. 101–647, §3527, as amended by Pub. L. 103–322, §330011(j), struck out "imprisonment for" before "life imprisonment without release".

Pub. L. 101–647, §1101(2), which directed amendment of first sentence by "inserting 'or a destructive device,' after 'a machinegun,' wherever the term 'machine gun' appears, in section 924(c)(1)", was executed by inserting the new language after "a machinegun," once in the first sentence and once in the second sentence to reflect the probable intent of Congress.

Pub. L. 101–647, §1101(1), inserted "and if the firearm is a short-barreled rifle, short-barreled shotgun to imprisonment for ten years," after "sentenced to imprisonment for five years,".

Subsec. (e)(2). Pub. L. 101–647, §3529(2), (3), struck out "and" at end of subpar. (A)(ii) and substituted "; and" for period at end of subpar. (B)(ii).

Subsecs. (f) to (h). Pub. L. 101–647, §3526(a), redesignated subsec. (f) relating to punishment for traveling from any State or foreign country into another State to obtain firearms for drug trafficking purposes as subsec. (g) and redesignated former subsec. (g) as (h).

1988—Subsec. (a). Pub. L. 100–690, §6462, in par. (1), inserted "or 3" and substituted ", (c), or (f)" for "or (c)" in introductory provisions and struck out "(g), (i), (j)," after "(f)," in subpar. (B), added par. (2), and redesignated former par. (2) as (3).

Subsec. (c)(1). Pub. L. 100–690, §7060(a), substituted "crime (including a crime of violence or drug trafficking crime which" for "crime,, including a crime of violence or drug trafficking crime, which", "device) for" for "device, for", "crime, be sentenced" for "crime,, be sentenced", and "crime in which" for "crime, or drug trafficking crime in which".

Pub. L. 100–690, §6460(1), (2)(A), substituted "thirty years. In" for "ten years. In" and "twenty years, and if" for "ten years, and if".

Pub. L. 100–690, §6460(2)(B), which directed amendment of subsec. (c)(1) by striking "20 years" and inserting "life imprisonment without release" was executed by substituting "life imprisonment without release" for "twenty years" to reflect the probable intent of Congress because "20 years" did not appear.

Subsec. (c)(2). Pub. L. 100–690, §6212, amended par. (2) generally. Prior to amendment, par. (2) read as follows: "For purposes of this subsection, the term 'drug trafficking crime' means any felony violation of Federal law involving the distribution, manufacture, or importation of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))."

Subsec. (e)(1). Pub. L. 100–690, §7056, inserted "committed on occasions different from one another," after "or both,".

Subsec. (e)(2)(B). Pub. L. 100–690, §6451(1), inserted ", or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult," after "one year".

Subsec. (e)(2)(C). Pub. L. 100–690, §6451(2), added subpar. (C).

Subsec. (f). Pub. L. 100–690, §6211, added subsec. (f) relating to punishment for traveling from any State or foreign country into another State to obtain firearms for drug trafficking purposes.

Pub. L. 100–649, §2(b)(2), added subsec. (f) relating to penalty for violating section 922(p).

Subsec. (g). Pub. L. 100–690, §6211, added subsec. (g).

1986—Subsec. (a). Pub. L. 99–308, §104(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Whoever violates any provision of this chapter or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or in applying for any license or exemption or relief from disability under the provisions of this chapter, shall be fined not more than $5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine."

Subsec. (c)(1). Pub. L. 99–308, §104(a)(2)(C)–(E), designated existing provision as par. (1), and substituted "violence or drug trafficking crime," for "violence" in four places and inserted ", and if the firearm is a machinegun, or is equipped with a firearm silencer or firearm muffler, to imprisonment for ten years" after "five years", ", and if the firearm is a machinegun, or is equipped with a firearm silencer or firearm muffler, to imprisonment for twenty years" after "ten years", and "or drug trafficking crime" before "in which the firearm was used or carried".

Subsec. (c)(2), (3). Pub. L. 99–308, §104(a)(2)(F), added pars. (2) and (3).

Subsec. (d). Pub. L. 99–308, §104(a)(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Any firearm or ammunition involved in or used or intended to be used in, any violation of the provisions of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, shall be subject to seizure and forfeiture and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter."

Subsec. (d)(1). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (e). Pub. L. 99–308, §104(a)(4), added subsec. (e).

Subsec. (e)(1). Pub. L. 99–570, §1402(a), substituted "for a violent felony or a serious drug offense, or both" for "for robbery or burglary, or both".

Subsec. (e)(2). Pub. L. 99–570, §1402(b), amended par. (2) generally, substituting provisions defining terms "serious drug offense" and "violent felony" for provisions defining "robbery" and "burglary".

1984—Subsec. (a). Pub. L. 98–473, §223(a), which directed amendment of subsec. (a) by striking out ", and shall become eligible for parole as the Board of Parole shall determine" effective Nov. 1, 1987, pursuant to section 235 of Pub. L. 98–473, as amended, could not be executed because quoted language no longer appears due to general amendment of subsec. (a) by Pub. L. 99–308, §104(a)(1). See 1986 Amendment note above.

Subsec. (c). Pub. L. 98–473, §1005(a), amended subsec. (c) generally, substituting provisions setting forth mandatory, determinate sentence for persons who use or carry firearms during and in relation to any Federal crime of violence for provisions setting out a minimum sentencing scheme for the use or carrying, unlawfully, of a firearm during a Federal felony.

1971—Subsec. (c). Pub. L. 91–644, in first sentence, substituted "felony for which he" for "felony which" in items (1) and (2) and inserted ", in addition to the punishment provided for the commission of such felony," before "be sentenced", and in second sentence substituted "for not less than two nor more than twenty-five years" for "for not less than five years nor more than 25 years", inserted "in the case of a

second or subsequent conviction" after "suspend the sentence", and prohibited term of imprisonment imposed under this subsec. to run concurrently with any term for commission of the felony.

1968—Subsec. (a). Pub. L. 90–618 inserted provision authorizing the Board of Parole to grant parole to a person convicted under this chapter.

Subsec. (b). Pub. L. 90–618 inserted "or any ammunition" after "a firearm".

Subsecs. (c), (d). Pub. L. 90–618 added subsec. (c), redesignated former subsec. (c) as (d), and as so redesignated, substituted "section 5845(a) of that Code" for "section 5848(1) of said Code".

Effective Date of 2005 Amendment

Amendment by section 5(c)(2) of Pub. L. 109–92 effective 180 days after Oct. 26, 2005, see section 5(d) of Pub. L. 109–92, set out as a note under section 922 of this title.

Effective Date of 1996 Amendment

Section 603(m)(2) of Pub. L. 104–294 provided that: "The amendments made by paragraph (1) [amending this section] shall take effect as if the amendments had been included in section 110507 of the Act referred to in paragraph (1) [Pub. L. 103–322] on the date of the enactment of such Act [Sept. 13, 1994]."

Section 603(p)(2) of Pub. L. 104–294 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if the amendment had been included in section 110102(c)(2) of the Act referred to in paragraph (1) [Pub. L. 103–322] on the date of the enactment of such Act [Sept. 13, 1994]."

Effective and Termination Dates of 1994 Amendment

Amendment by sections 110102(c) and 110103(c) of Pub. L. 103–322 repealed 10 years after Sept. 13, 1994, see section 110105(2) of Pub. L. 103–322, formerly set out as a note under section 921 of this title.

Section 330011(i) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 3528 of Pub. L. 101–647 took effect.

Section 330011(j) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 3527 of Pub. L. 101–647 took effect.

Effective Date of 1990 Amendment

Amendment by section 1702(b)(3) of Pub. L. 101–647 applicable to conduct engaged in after end of 60-day period beginning on Nov. 29, 1990, see section 1702(b)(4) of Pub. L. 101–647, set out as a note under section 921 of this title.

Section 2203(d) of Pub. L. 101–647 provided that the amendment by that section is effective with respect to any offense committed after Nov. 1, 1987.

Effective Date of 1988 Amendment; Sunset Provision

Amendment by section 2(b) of Pub. L. 100–649 effective 30th day beginning after Nov. 10, 1988, and amendment by section 2(f)(2)(B), (D) effective 25 years after such effective date, see section 2(f) of Pub. L. 100–649, as amended, set out as a note under section 922 of this title.

Effective Date of 1986 Amendment

Amendment by Pub. L. 99–308 effective 180 days after May 19, 1986, see section 110(a) of Pub. L. 99–308, set out as a note under section 921 of this title.

Effective Date of 1984 Amendment

Amendment by section 223(a) of Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–618 effective Dec. 16, 1968, see section 105 of Pub. L. 90–618, set out as a note under section 921 of this title.

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PART VII

HIGH SEAS

SECTION 1. GENERAL PROVISIONS

Article86

Application of the provisions of this Part

The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.

Article87

Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:

(a) freedom of navigation;

(b) freedom of overflight;

(c) freedom to lay submarine cables and pipelines, subject to Part VI;

(d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;

(e) freedom of fishing, subject to the conditions laid down in section 2;

(f) freedom of scientific research, subject to Parts VI and XIII.

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

Article88

Reservation of the high seas for peaceful purposes

The high seas shall be reserved for peaceful purposes.

Article89

Invalidity of claims of sovereignty over the high seas

No State may validly purport to subject any part of the high seas to its sovereignty.

Article90

Right of navigation

Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.

Article91

Nationality of ships

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article92

Status of ships

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article93

Ships flying the flag of the United Nations, its specialized agencies

and the International Atomic Energy Agency

The preceding articles do not prejudice the question of ships employed on the official service of the United Nations, its specialized agencies or the International Atomic Energy Agency, flying the flag of the organization.

Article94

Duties of the flag State

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. In particular every State shall:

(a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and

(b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, *inter alia*, to:

(a) the construction, equipment and seaworthiness of ships;

(b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;

(c) the use of signals, the maintenance of communications and the prevention of collisions.

4. Such measures shall include those necessary to ensure:

(a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;

(b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;

(c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

Article95

Immunity of warships on the high seas

Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

Article96

Immunity of ships used only on government non-commercial service

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Article97

Penal jurisdiction in matters of collision or any other incident of navigation

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Article98

Duty to render assistance

1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

(a) to render assistance to any person found at sea in danger of being lost;

(b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.

Article99

Prohibition of the transport of slaves

Every State shall take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall *ipso facto* be free.

Article100

Duty to cooperate in the repression of piracy

All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

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Article101

Definition of piracy

Piracy consists of any of the following acts:

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

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

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

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

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

Article102

Piracy by a warship, government ship or government aircraft

whose crew has mutinied

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

Article103

Definition of a pirate ship or aircraft

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article104

Retention or loss of the nationality of a pirate ship or aircraft

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article105

Seizure of a pirate ship or aircraft

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article106

Liability for seizure without adequate grounds

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure.

Article107

Ships and aircraft which are entitled to seize on account of piracy

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

Article108

Illicit traffic in narcotic drugs or psychotropic substances

1. All States shall cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions.

2. Any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request the cooperation of other States to suppress such traffic.

Article109

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Unauthorized broadcasting from the high seas

1. All States shall cooperate in the suppression of unauthorized broadcasting from the high seas.

2. For the purposes of this Convention, "unauthorized broadcasting" means the transmission of sound radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls.

3. Any person engaged in unauthorized broadcasting may be prosecuted before the court of:

(a) the flag State of the ship;

(b) the State of registry of the installation;

(c) the State of which the person is a national;

(d) any State where the transmissions can be received; or

(e) any State where authorized radio communication is suffering interference.

4. On the high seas, a State having jurisdiction in accordance with paragraph 3 may, in conformity with article 110, arrest any person or ship engaged in unauthorized broadcasting and seize the broadcasting apparatus.

Article110

Right of visit

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:

(a) the ship is engaged in piracy;

(b) the ship is engaged in the slave trade;

(c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;

(d) the ship is without nationality; or

(e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

4. These provisions apply *mutatis mutandis* to military aircraft.

5. These provisions also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service.

Article111

Right of hot pursuit

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.

3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.

4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

6. Where hot pursuit is effected by an aircraft:

(a) the provisions of paragraphs 1 to 4 shall apply *mutatis mutandis*;

(b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the

aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.

8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

Article112

Right to lay submarine cables and pipelines

1. All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.

2. Article 79, paragraph 5, applies to such cables and pipelines.

Article113

Breaking or injury of a submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable, shall be a punishable offence. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article114

Breaking or injury by owners of a submarine cable or pipeline

of another submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to provide that, if persons subject to its jurisdiction who are the owners of a submarine cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Article 115

Indemnity for loss incurred in avoiding injury

to a submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

SECTION 2. CONSERVATION AND MANAGEMENT OF THE LIVING RESOURCES OF THE HIGH SEAS

Article 116

Right to fish on the high seas

All States have the right for their nationals to engage in fishing on the high seas subject to:

(a) their treaty obligations;

(b) the rights and duties as well as the interests of coastal States provided for, *inter alia*, in article 63, paragraph 2, and articles 64 to 67; and

(c) the provisions of this section.

Article 117

Duty of States to adopt with respect to their nationals

measures for the conservation of the living resources of the high seas

All States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

Article 118

Cooperation of States in the conservation and management

of living resources

States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end.

Article119

Conservation of the living resources of the high seas

1. In determining the allowable catch and establishing other conservation measures for the living resources in the high seas, States shall:

(a) take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(b) take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.

2. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned.

3. States concerned shall ensure that conservation measures and their implementation do not discriminate in form or in fact against the fishermen of any State.

Article120

Marine mammals

Article 65 also applies to the conservation and management of marine mammals in the high seas.