**Naval War College Review**

Volume 36
Number 4 *July-August*

Article 4

1983

# Offshore Maritime Terrorism: lnternational Implications and the Legal Response

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# Offshore Maritime Terrorism: International Implications and the Legal Response

by
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Offshore maritime terrorism is a crime waiting to happen. Even so, that such maritime terrorism has not yet gripped the public's attention, nor stirred polemical debate in legal circles, nor produced pronounced policy reactions by governmental officials is hardly surprising. To date, not a single incident involving an illicit seizure or destruction of an offshore drilling platform or rig has been reported. Consequently, policy contingencies in the event such acts are perpetrated have been kept cloistered and thus remain cloaked in legal ambiguities—a situation not unlike aircraft "skyjacking" prior to the intense proliferation of incidents during the early 1970s.[1]

Nevertheless, the international political milieu of the early 1980s differs markedly from that of a decade ago. In this regard, since 1970 politically inspired terrorist violence has attracted ever increasing attention as it has grown in frequency and pervasiveness. Terrorism apparently not only is becoming psychologically accepted as an anticipated—indeed, some would argue practically an inevitable[2]—facet of the international political process; it also is being actively legitimized as a policy instrument to intimidate governments and to influence public opinion.

Concurrent with the disturbing rise in terrorism over the past decade has come an equally sensational albeit wholly unrelated development: the rapid growth in energy demands to meet burgeoning needs created by accelerated industrialization and modernization programs worldwide. Correspondingly, as the search for more exploitable hydrocarbon energy resources has proceeded, so too has the allure and economic feasibility of offshore drilling ventures increased. Regrettably, the proliferation of such offshore operations implicitly carries with it concomitant opportunities for being potential targets of terrorist groups.

Appreciating these observations, this article seeks to achieve three principal aims. First, it undertakes a discussion and evaluation of the threat posed by terrorists to offshore maritime structures. Second, an analysis is

performed of the status such terrorist acts would assume under international law, especially with reference to coastal state jurisdiction, the relevance of international piracy law, and the doctrine of state responsibility. Third, an assessment is made of the present capacity of coastal states to dissuade and curtail maritime terrorism. Toward this latter end, some policy-oriented recommendations for fashioning an effective, more clearly elaborated antiterrorist deterrent program for seaward drilling structures are profferred for reflection and critical consideration.

## The Terrorist Threat to Offshore Structures

Transnational terrorism has become a stark fact of modern life. Recent data indicate that in 1981 more than 2,500 terrorist incidents occurred worldwide, including at least 600 assassinations, 960 bombings, and 825 facility attacks.[3] *Inter alia*, the unremitting widening economic gap between rich and poor nations, aggravated by the attendant socio-psychological dislocation and frustration it produces; the easy market access any interested purchasers have to conventional weapons and explosives; and, the rather blatant political, financial, ideological, and material support given by some governments to radically militant organizations or "national liberation movements"—these factors in combination have served to foster and facilitate conspicuous resort to terrorist violence worldwide.

As stated earlier, hydrocarbon resources extracted from the oceans' depths are assuming increasing importance for the world economy. As demand for and expectation of petroleum and natural gas have intensified, so too the amount of commercially available land-based supply has been depleted. Consequently, in recent years declining exploitable reserves on land, coupled with advancements in appropriate oceanic engineering technology, have enhanced the economic feasibility of moving offshore to undertake deep-water drilling ventures.

As evidence of this trend, in 1969 world production of crude totaled 15.2 billion barrels, of which some 2.26 billion barrels (or 14.9 percent) came from offshore wells; by 1980 the world crude production total had reached 21.8 billion barrels, but the offshore contribution had climbed to exceed 5 billion barrels (or about 23 percent).[4] When viewed within the context of the persistent increase projected for world energy consumption, and the lucrative exploitation opportunities afforded by potential offshore hydrocarbon resource reserves,[5] it is not unexpected that drilling operations have proliferated offshore. Accordingly, thousands of platforms related to oil and gas extraction have been constructed on continental shelves throughout the world. In this connection, operation platforms off the United States' coast alone in January 1981 reportedly numbered more than 3,800.[6] Perhaps of greater salience for this study, the world fleet of offshore mobile drilling rigs is growing dramatically. Whereas in March 1982, 527 rigs were operating,[7]

by May the number had risen to 592,[8] and by early 1983, the petroleum industry calculates the number of available offshore drilling rigs to reach 720.[9] Save for Antarctica, these rigs operate seaward from every continent.

To be sure, multinational oil companies are among the most prominent, profitable, and economically visible corporate actors engaged in international trade and commerce. To wit, worldwide investment for petroleum exploration and exploitation in 1980 approximated $100 billion (of which nearly $75 billion was allocated by US industry alone).[10] As would be expected, the increasingly sophisticated technology needed to extract hydrocarbon resources from environmentally inhospitable deep-water sites (such as the North Sea) have necessitated more extensive capital outlays. Thus, the sheer magnitude of the economic investment required by multinational corporations to construct and maintain offshore drilling installations render them all the more enticing as targets for a terrorist attack.[11]

As of this writing no noteworthy terrorist actions have yet been launched against any offshore drilling structures. Nevertheless, recent patterns of terrorist activities in Western Europe suggest that a new trend may be on the rise, one that counts as prime targets local power plants and other industrial facilities such as nuclear generators, oil tank farms, and gas pipeline systems.[12] If this indeed is the case, any of the seventy or so North Sea drilling rigs would provide attractive targets. Costing up to $2 billion each, these platforms supply much of the energy needs for the North Sea nations. Accordingly, they are considered vital national assets by Great Britain, Norway, West Germany and the Netherlands, and to this end, special patrol vessels, troops, and aircraft have been committed and assigned by these governments to defend their offshore structures from the prospect of terrorist attacks. Put tersely, for these nations the threat of terrorism is perceived as being very real and, consequently, is taken quite seriously.[13]

***Possible Terrorist Strategies.*** Before proceeding to the international legal nuances earmarking terrorism in general and its applicability to offshore drilling structures in particular, brief mention is merited about possible terrorist strategies. Four main options or tactical designs seem most plausible for a terrorist unit to undertake in executing an attack against maritime structures.

- First, terrorists could opt to sabotage the connecting pipeline system and pumping machinery between the deep-water facility and its onshore relay stations. Logistically, this option would allow for a relatively simple operation, entailing less risk than a sea-based attack, with potentially the same results, i.e., the production facility would be crippled, and widespread media attention would be galvanized on the attack.

- A second conceivable scenario would find the terrorists merely issuing a threat to destroy the facility unless some political precondition is met or monetary extortion is paid. Admittedly, this option could allow sufficient time for the crew to evacuate the platform and reduce the possible loss of human life. Even so, were the facility to be destroyed, technology worth millions of corporate dollars would be lost; and, perhaps even more important, it is likely there would be considerable environmental degradation and ecological damage if an oil spill or well blowout occurred.
- Still another plan would involve "hijacking" the offshore facility. That is, terrorists could attack a rig either by surface ship, submersible vessel, or from the air (viz., by helicopter), capture the crew, and hold them and the structure hostage for ransom or political extortion. This situation would present the traditional negotiating confrontation between hostage-takers and the respective authorities.
- Last, though certainly not least in terms of probability, some terrorist organization might decide to destroy a drilling platform without warning and claim "credit" for the act *ex post facto*. In this manner, the profound fear of indiscriminate injury stemming from terrorism, as well as the focus of media publicity upon the perpetrators could be achieved with graphic results, and very likely with only a minimal chance of apprehension.

***Assessment.*** In sum, terrorist activities are expressly designed to produce psychological and symbolic effects rather than to attain physical or material gains. Attacks aimed at innocent victims—for example, a rig crew or living resources in the ocean—could be especially effective in that these victims would become highly salient pawns in a tense bargaining situation. As a consequence, such perceptions could engender sympathy from the public and, coincidentally, increase pressure upon governmental authorities to succumb to the terrorists' demands. Herein is couched a catch-22 paradox associated with terrorism generally: On the one hand, if a government reacts too vehemently or capriciously against terrorist activities (e.g., by suspending civil rights and liberties), then it may appear to the citizenry as being overly repressive and authoritarian. On the other hand, should a government's policy toward terrorism be perceived as weak, indecisive, or nonassertive, then very likely that response might foster further attacks over the short term.

## The Status of Offshore Maritime Terrorism in Contemporary International Law

There is little doubt amongst Western expert commentators that terrorists in general should be regarded as international criminals. More to the legal point, terrorism essentially is viewed as a stateless crime, ostensibly directed against all states. Even so, securing a universal consensus on the legal niceties

of terrorism has not been so neatly achieved. As one commentator has observed: "The United Nations, in view of the ideological and political divisions among its 150 member states [has] not reach[ed] any agreement on a definition of terrorism. Nevertheless, as a result of the extreme vulnerabilities of our complex society and the growing challenge to governments presented by non-state groups having access to modern weapons capabilities, a new sense of greater realism about 'terrorism' is slowly emerging."[14]

This "greater realism" and the implicit need to scotch—or at least patently discourage—transnational terrorism through international legal conduits has become unmistakably evident. In recent years, specific antiterrorist conventions concerning aviation hijacking,[15] crimes against diplomats and other protected persons,[16] hostage-taking,[17] and terrorism per se[18] have been promulgated. Relatedly, international condemnation of the Khomeini regime's blatant support in 1979 of the Iranian "students'" illegal seizure of the United States embassy and jailing of its official personnel suggests that a government's recognized legitimacy under international law can be grievously undermined by its use, advocacy, or indulgence of overt terrorism.

Notwithstanding this, while terrorism has become a manifest reality of contemporary world politics, its exact status under international law remains open to conjecture and polemical interpretation. The chief difficulty for this confusion seems to lie in the subjectivity of defining precisely what constitutes an act of terrorism. That is, the somewhat hackneyed bromide, "One man's terrorist is another man's freedom fighter," plainly presents the key problem; i.e., politics intrudes into the domain of international law, and consequently muddies the waters of universal juridical interpretation. Would destruction of an offshore drilling platform by some minority ethnic group or nationality, avowedly done in pursuit of securing its own political independence and recognized national homeland, entail a breach of international law? It follows logically that such an act would indeed abrogate international legal norms. However, what if said terrorist action had been directed at a regime whose domestic and foreign policies were themselves perceived as being legally suspect, say, for instance by defending or endorsing colonialism, imperialism, or apartheid? The answer for this query comes not so fast.

The point here is that terrorism in general suffers from an imprecise status in international law, save for certain specified crimes.[19] Violent terrorist acts directed at privately owned offshore drilling facilities are likely also to be viewed selectively as either episodes in a process of self-determination or as base crimes committed against the law of nations. Undoubtedly, in substantial measure political convenience is likely to prove to be the preeminent arbiter in interpreting the legitimacy of such acts. Respective to the legal jurisdiction over terrorist activities perpetrated against offshore structures, however, recent developments pertaining to the law of the sea have contributed significantly to making the situation less ambiguous both legally and politically.

***Legal Jurisdiction over Offshore Maritime Terrorism.***

**1. Maritime Zone Delimitations.** Inasmuch as offshore drilling structures legally may be classified as "artificial islands" under customary international law (as well as under most domestic legal systems).[20] they assume particular relevance in the emergent law of the sea. Since late 1973 diplomats from some 160 nations have been formally engaged in a series of complex, protracted negotiations—the third United Nations Conference on the Law of the Sea (UNCLOS III)—an aim of which is to produce a comprehensive multilateral treaty for regulating use and exploitation of the world's oceans.[21] These negotiations have produced the United Nations Convention on Law of the Sea signed at Montego Bay, Jamaica, on 10 December 1982 (the United States is not a signatory). Importantly, this treaty very likely will come to be regarded by the vast majority of states as the modernized codification of ocean law. Hence, those provisions in the Convention which specifically are applicable to artificial islands, especially as regards their jurisdiction and the coastal state's responsibilities, merit particular attention here.

***a. The Territorial Sea.*** Since the seventeenth century, international law has mandated that a belt of sea (inclusive of the airspace above and the seabed and subsoil below) three nautical miles in breadth be reserved for the coastal state's exclusive sovereign jurisdiction. Since World War II, however, this customary tenet of law has come under increasing challenge; consequently, the international community's contemporary consensus as embodied in the draft text affirms that a territorial sea may extend out to a distance of rwelve nautical miles.[22] Accordingly, any fixed facilities operating offshore within this zone, be they privately or governmentally owned would be subject to the sovereign legal jurisdiction, regulation, and, presumably, protection of the coastal state. As a result, all acts of terrorism directed against installations situated in territorial waters perforce not only would constitute violations of international law generally but also would abrogate domestic law specifically.

***b. The Exclusive Economic Zone.*** In the currently emergent law of the sea, a novel departure from traditional maritime zonal delimitations has rapidly evolved. This rather radical modification, known as the exclusive economic zone (EEZ) entails an extensive assertion of coastal state jursidiction over contiguous marine waters, principally for purposes of resource management and development. Extending seaward not beyond 200 nautical miles, the "exclusive economic zone is an area beyond and adjacent to the territorial sea,"[23] in which the coastal state exercises:

> (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the seabed and subsoil and the superjacent waters, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations, and structures;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention.[24]

Of special relevance for this study, coastal state jurisdiction explicitly is provided for those activities on "artificial islands, installations, and structures." In relevant part, Article 60 of the 1982 LOS Convention stipulates that:

1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:

(a) artificial islands;

(b) installations and structures for the purposes provided for in article 56 and other economic purposes;

(c) installations and structures which may interfere with the exercise of the rights of the coastal States in the zone.

2. The coastal State shall have exclusive jursidiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal health, safety and immigration laws and regulations.[25]

Of related importance, coastal states may establish around these facilities "reasonable safety zones" of up to 500 meters, within which "it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures."[26] Presumably, unauthorized activities detected in these safety zones could serve as a reasonable cause for the coastal state's legal intervention into a suspected related incident involving immobile installations in an EEZ.

*c. The Outer Continental Shelf.* Still another aspect of the law of the sea relevant to offshore maritime installations—and thus to terrorist actions taken against them—concerns access to continental shelf areas. Article 77 of the 1982 UNCLOS III Convention provides that "The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources."[27] That permission from a coastal state is required before undertaking extractive measures on the continental shelf is unmistakably assured by Article 80, which, in full, mandates that: "Article 60 applies *mutatis mutandis* to artificial islands, installations and structures on the continental shelf."[28] Put succinctly, this provision imbues a state's government with the exclusive rights to construct, authorize and regulate artificially implanted facilities located within a 200-mile economic zone seaward from its coast.

To summarize, legal jurisdiction over all activities occurring on or around man-made installations as far seaward as 200 nautical miles ultimately will fall under the supervisory, regulatory, and enforcement aegis of the coastal state's government. To this end, should acts of marine terrorism occur

against offshore extractive structures in these zones, a coastal state would be duly authorized under the 1982 LOS Convention to take appropriate steps in rejoinder, whether they be nonviolent or involving use of force. The fact that such installations only could be constructed *in situ* by means of a licensing arrangement with the coastal state's government further substantiates this conclusion.

**2. Offshore Maritime Terrorism as Piracy.** As mentioned, terrorism can be aptly viewed as a stateless crime directed against international society. Similarly, the classic legal perception of piracy holds that "Pirates being the common enemies of all mankind, and all nations having an equal interest in their apprehension and punishment, they may be lawfully captured on the high seas by the armed vessels of any particular State, and brought within its territorial jurisdiction, for trial in its tribunals."[29] One might suitably infer that overt acts of maritime terrorism perpetrated against the crew of an offshore facility conceivably could qualify as modern day piratical acts under international law. Unlike nearly all other aspects comprising the changing law for the oceans, however, present legal norms pertaining to piracy have remained locked in custom and correspondingly sealed by the legal 1958 Geneva Convention on the High Seas.[30] As a consequence, serious juridicial and definitional difficulties arise when one equates offshore maritime terrorism with the traditional international law pertinent to piracy.

As defined by customary international law, an act of piracy *jure gentium* had to be "adequate in degree—for instance, robbery, destruction by fire, or other injury to persons or property."[31] Moreover, said act must have been committed on the high seas, as opposed to similar illicit acts committed within some states' jurisdiction.[32] Lastly, the perpetrators, "at the time of the commission of the act, should be in fact free from lawful authority . . . in the predicament of outlaws."[33] Thus the international crime of piracy *jure gentium* came to be predicated upon indiscriminate plunder by a private vessel against commercial vessels on the high seas.

During the twentieth century, the traditional definition of piracy as robbery on the high seas became more comprehensively refined by the so-called Harvard Research on International Law Group. In 1932, the Harvard Researchers' Draft Convention on Piracy concluded that: "Piracy is any of the following acts, committed in a place not within the territorial jurisdiction of any state:

"Any act of violence or of depredation committed with intent to rob, rape, wound, enslave, imprison or kill a person or with intent to steal or destroy property, for private ends and without bona fide purpose of asserting a claim of right, provided that the act is connected with an attack on or from the sea or in or from the air. If the act is connected with an attack which starts from

on board ship, either that ship or another ship which is involved must be a pirate ship or a ship without national character."[34] While not a legally binding codification, the Harvard Group's conception of piracy introduced the notion of "private ends" motivation as a necessary element for an act of piracy to occur.

Significantly, this precondition subsequently was codified into the 1958 Geneva Convention on the High Seas. Article 15(1)(a) of that instrument stipulates piracy to be: "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 on the high seas, against another ship or aircraft or against persons or property on board ship or aircraft."[35] According to this provision, then, piracy as a crime was not limited to robbery, plunder or pillage at sea. So long as: an act of violence occurred on the high seas or outside the jurisdiction of any coastal state; it was committed for private, as opposed to public reasons; and, it was performed by a private vessel against another vessel—then, the criteria for international piracy would be met in full.

Though admittedly slightly abridged, it bears noting that the 1958 Geneva definition of piracy was inserted practically verbatim into the 1982 UNCLOS III Convention as Article 101:

> 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 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).[36]

The traditional legal character and criteria of piracy as international crime thus was preserved for its application to contemporary acts and incidents.

The relevance which piracy's conceptual evolution as a normative consideration under international law holds for acts of offshore maritime terrorism is clear: Such latter depredations fail to meet the definitional test of piracy on at least four counts. First, although admittedly earmarked as illegal violence or detention, an incident involving maritime terrorism is not likely to be perpetrated for "private ends." Rather, the motive most likely is apt to be *politically* inspired, thereby rendering the action more suitably subsumed under international law as a facet of war, belligerency, or aggression.[37] Second, an act of maritime terrorism taken aboard or against a stationary platform literally would not involve a vessel-to-vessel encounter. (Mobile

rigs might be considered vessels under admiralty law.) Rather, a vessel-to-fixed facility incident would transpire. Third, the high seas qualifications for piratical acts would go unfulfilled. Because of their explicit extractive purpose, offshore extractive installations, with only a paucity of conceivable exceptions, would be located within the territorial jurisdiction of some coastal state. Continental shelves rarely extend seaward beyond the 200-nautical-mile EEZ delimitation; consequently, all activities on these platforms would be subsumed under the jurisdictional purview of the appropriate coastal state. Incidents of terrorism would not be any exception.

**3. Offshore Maritime Terrorism and Coastal State Control**. Coastal State control over offshore facilities vis-à-vis terrorist threats should be viewed in at least three lights: national regulation, maintenance of public order, and national defense. Each of these responsibilities relates to the security of the structure, and thus have important implications for effectuating antiterrorist policies.

***a. National Regulation.*** As defined, national regulation entails "the imposition of requirements on some aspect of the design, construction, operation or maintenance of an offshore structure with which the owners or operators of the structure must comply or be liable under civil law."[38] To be sure, the regulatory authority possessed by a coastal state's government provides a convenient vehicle for protecting offshore structures.

Obviously, coastal state regulations could be fashioned in such a manner that they would render offshore installations less vulnerable to attack. Specifically, regulations could be designed purposefully to improve a structure's physical security by requiring builders to use reinforced materials that are more highly resistant to explosives, as well as to enhance appropriate damage control systems; and to improve administrative and inspection security systems that could more expeditiously deter, dissuade, or detect an impending terrorist attack.[39]

As previously noted, international law recognizes the right of each coastal state to construct artificial islands or fixed platforms in the waters off its shores. In this connection, national regulation of offshore rigs and structures must be designed prudentially and comprehensively to ensure that it encompasses a myriad of relevant activities. Sale of mineral rights leases on the outer continental shelf; conservation and management of continental shelf resources; approval of pipeline conduits over and on the shelf region; domestic construction of vessels and semisubmersible drilling rigs operating offshore; promotion of safety for life and property on and under coastal waters; establishment of shipping lanes and vessel traffic control patterns; creation and enforcement of environmental standards and antipollution policies—all these are activities appropriate for regulation oversight by the national government. Even so, for offshore structures, most coastal states

have tended to deal with such regulation in a piecemeal fashion, i.e., by applying disparate legislative provisions enacted at different times, often done with unrelated purposes in mind.[40] The point to be underscored here simply is that the welter of governmental agencies involved—many of which frequently may have conflicting jurisdictional priorities—poses a significant problem for coastal states in regulating, construction, supervision and protection of offshore extractive facilities.[41] Consolidation of regulatory responsibility therefore into a more centralized comprehensive legislative scheme would seem to proffer better opportunities for dealing with offshore maritime terrorism.

***b. Maintenance of Public Order.*** There is no question that the ocean energy industry constitutes a prime national asset against which terrorists could inflict serious damage and in the process generate widespread sensationalistic publicity. Further, there is little doubt regarding the legal parameters of such acts. Jurisdictionally, they fall within the territorial legal purview of the coastal state, and are thus made subject to its criminal laws, as well as its domestic means of enforcement and prosecution.

However, for many coastal states a major obstacle seemingly impeding adoption of national antiterrorist response plans is the yet unclear situation regarding specific *in situ* jurisdiction. Does the protection responsibility for offshore structures fall principally to private oil companies defending their own corporate property? Or, is it attributable more so to local government agencies enforcing their regional laws offshore? Or, perhaps the proper responding agency should be the coast guard, presumably an armed service empowered to enforce national maritime regulations? Not to be overlooked, what role should a state's navy play in undertaking protective measures against terrorists as part of its mission to defend the nation against enemies in coastal waters? While each of these queries suggests plausible and well intentioned options, the distinct realization surfaces that responsibilities could overlap, policies could be duplicated (or worse, neglected), and contingency reactions confused. Expressed tersely, a coastal state's responsibility for law enforcement offshore must be unambiguous, resolute, and clearly defined.

As discussed above, authority for a coastal state's maintenance of public order over extractive activities offshore has been clearly stipulated in international law. Most recently, the UNCLOS III Convention provides in Article 73 that: "The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention."[42] For many coastal states, the most plausible national alternative for sustaining public order over ocean space offshore would be an agency trained

particularly for that purpose. Such an organization would be a coast guard-like force, possessing the authority to "make inquiries, examinations, inspections, searches, and arrests upon the high seas and [territorial] waters" in order to prevent, detect and suppress violations of a coastal state's municipal laws.[43] Moreover, determination of the most appropriate agency to enforce criminal law against terrorist activities offshore must ultimately rest with the coastal state government, based upon proven maritime capabilities and experience.

*c. **National Defense.*** Responsibility for safeguarding offshore drilling platforms from terrorist attacks initially rests with the corporate owner or operator, unless of course the facility is government-owned. Nevertheless, a fine line exists between what constitutes an attack made by profiteering criminals, politically inspired terrorists acting alone, terrorists acting on behalf of another state (i.e., mercenaries performing surrogate warfare), or some foreign state's regular armed forces operating under the guise of terrorists. Depending upon the case, the attack might be construed as an action necessitating either a law-enforcement response or a national defense (i.e., military) response. Because of time constraints the need for expeditious reaction, and the possibility of interagency confusion or misappropriation, having a force capable of performing both roles would appear very desirable. For most coastal states, their national coast guards could perform this mission adequately. For other states where particular geographical circumstances or environmental conditions make regular coast guard patrols impractical or overly onerous, maintaining a ready reserve strike force that is specifically trained for the eventualities of such terrorist attacks would entail a welcome measure of added security.

## Recommendations for Policy Consideration

As gleaned from the legal analysis and political observations above, some policy-oriented recommendations vis-à-vis offshore maritime terrorism seem appropriate. Accordingly, two pertinent approaches for policy consideration loom apparent: prevention, and punishment.

***Preventative Measures.*** The best cure for offshore maritime terrorism is intentional dissuasion through prevention. Generally speaking, prevention against such terrorist attacks can be achieved in great part by pursuing a threefold policy-oriented strategy consisting of "The Three P's": *Planning, Preparedness,* and *Performance.*

In planning, there is an integral need to consider a wide variety of conceivable terrorist situations and scenarios; risk assessment of platform vulnerability should be performed, evaluated, and appraised. Contingency plans and options should be drawn up and distributed throughout the facility's operational hierarchy on a "need-to-know" basis. Put tersely,

the more thorough the planning, the more prepared the offshore facility is likely to be.

With regard to preparedness, training programs assume critical import. Written instructions outlining how and when to implement emergency plans should be made accessible to decision makers, and command-control communications networks should be set up to ensure constant interface between a sea-based structure and the requisite industry officials, as well as relevant law enforcement agencies, on shore. More specifically, several defensive measures can be effected to enhance security preparedness. For example, backgrounds of employees having access to the drilling platform should be carefully screened for past criminal involvement or linkages to suspect political groups. All materials and containers brought onto a facility should be inspected judiciously to guard against smuggling of explosives or weapons aboard. Fixed schedules should be assigned so as to prevent unauthorized entry to a platform, and specific blocking procedures should be devised in the event they become necessary.[44]

Not to be overlooked actual performance of contingency plans needs to be tested. Regularized practice sessions, as well as unscheduled ad hoc drills, would serve to familiarize personnel with contingency options and thereby facilitate their appropriate responses. In particular, simulation exercises involving mock terrorist attacks could be highly instructive for underscoring strengths and also revealing weaknesses in various contingency preparations. Important to realize, these precautions in and of themselves won't prevent terrorist attacks against offshore drilling rigs or structures. They will serve as deterrents at best and may function to minimize facility damage and casualties to the crew, while maximizing opportunities for apprehension and punishment of the terrorists.

## Conclusion

As intimated by the analysis in this study, several conclusions about offshore maritime terrorism can be posited. First, recent evidence suggests that terrorist incidents have increased in frequency and pervasion during the last decade. Similarly, in that same period persistent worldwide demands for additional energy resources have made offshore hydrocarbon development economically feasible and thus an attractive exploitation option. This tendency to go offshore can be expected to continue throughout the 1980s and 1990s. Accordingly, then, offshore drilling rigs and platforms owned and operated by multinational corporate concerns very likely may become more favorably viewed as potential targets for attack or extortion by terrorist groups.

Regarding legal jurisdiction over terrorist attacks affecting offshore drilling facilities, international law plainly assigns responsibility to the coastal state. Moreover, should the 1982 Draft Convention on the Law of the

Sea enter into force, this legal jurisdiction would be extended seaward to 200 nautical miles for those states party to the treaty.

Concerning the precise legal status of offshore maritime terrorist activities, they in all likelihood would not be considered as acts of piracy under international law. Consequently response to maritime terrorism directed against offshore extractive installations should be subsumed most aptly under the jurisdictional purview of the coastal state's law enforcement agencies. A coast guard-like force trained in antiterrorist tactics would seem particularly well suited to this task.

In conclusion, it warrants observation that the best cure for offshore maritime terrorism would appear to be overt deterrence through premeditated prevention. Even so, some recent evidence suggests that many coastal states today may be ill-prepared to deal efficaciously with a terrorist situation were it to be perpetrated against a facility off their shores.[45] If this speculation actually is more fact than fancy, then it is not presumptuous to assume that, for all intents and purposes, an open invitation for such attacks may have been issued to terrorist groups everywhere. That indeed would be lamentable. Given the political vagaries of the contemporary international order, callous indifference or myopic incredulity by governments toward possible terrorist threats is patently inexcusable. Put bluntly, for offshore installations in particular, to be forewarned about terrorism is to facilitate forearmament against terrorism. The time is not too early to begin.

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## Notes

1. For an insightful study, see Nancy D. Joyner, *Aerial Hijacking as an International Crime* (Dobbs Ferry, N.Y.: Oceana, 1974).

2. See, e.g., Claire Sterling, *The Terror Network: The Secret War of International Terrorism* (New York: Holt, Rinehart, Winston, 1981).

3. This data is extrapolated from "Statistics: Terrorism, January-September 1981, by Risk International," reprinted in *Terrorism*, v. 5, no. 4, 1982, pp. 371-372.

4. American Petrolenm Institute, *Basic Petroleum Data Book*, v. II (Washington: May 1982), sec. XI, Table 1.

5. In 1981, the US Geological Survey estimated that for the United States alone proven crude reserves offshore ranged from a near-certain 16.9 billion barrels to a possible 43.5 billion barrels (with a mean of 28 billion barrels). Similarly, proven offshore natural gas reserves ranged from a near-certain 117 trillion cubic feet (tcf) to possibly as much as 230.6 tcf (with a mean of 167.0 tcf). *1982 Basic Petroleum Data Book*, sec. II, Table 4.

6. The exact figure was 3,834. *Ibid.*, sec. XI, Table 13.

7. *1982 Offshore Contractors & Equipment Directory*, 14th ed. (Tulsa, Okla.: Penn Well Books, 1982), p. 328.

8. W.D. Moore III, "Offshore Drilling Maintains Fast Pace," *Oil & Gas Journal*, 3 May 1982, p. 145. Of this number 20 rigs are idle.

9. *Ibid.*

10. R.W. Frick and J.W. Hegglund, "Financing International Oil and Gas Projects," *World Oil*, May 1981, p. 207; "U.S. Capital Outlay to Soar to a record $74.7 billion," *Oil & Gas Journal*, 16 February 1981, pp. 57-61.

11. This point is constantly made throughout terrorists' writings. For example, as expressed by Carlos Marighella in his "Minimanual," "It is necessary for every urban guerrilla [i.e., terrorist] to keep in mind always that he can only maintain his existence if he is disposed to kill the police, . . . and if he is determined—truly determined—to expropriate the wealth of the big capitalists, the latifundists, and the

imperialists." Carlos Marighella, "From the 'Minimanual,'" in Walter Laqueur, ed., *The Terrorism Reader* (New York: Meridian, 1978), p. 161.

12. John F. Ehersole, "International Terrorism and the Defense of Offshore Facilities," U.S. Naval Institute *Proceedings*, September 1979, p. 56.

13. A. Robert Matt, "Maritime Terrorism—An Unacceptable Risk," Part I, *Ocean Industry*, February 1981, p. 66.

14. Ray S. Cline, "Foreword," in Yonah Alexander, ed., *Control of Terrorism: International Documents* (New York: Crane Russak, 1979), p. vii.

15. Convention on Offenses and Certain Other Acts Committed on Board Aircraft, 20 U.S.T. 2941, T.I.A.S. No. 6768 (entered into force 4 December 1969), reprinted in *ibid.*, pp. 45-54; Convention on the Suppression of Unlawful Seizure of Aircraft (Hijacking), 22 U.S.T. 7192, T.I.A.S. No. 7192 (entered into force 14 October 1971), reprinted in *ibid.*, pp. 55-61; and Convention on the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage), 24 U.S.T. 564, T.I.A.S. No. 7570 (entered into force 26 January 1970), reprinted in *ibid.*, pp. 63-70.

16. Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance, T.I.A.S. No. 8413 (promulgated 2 February 1971), reprinted in *ibid.*, pp. 71-75; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, T.I.A.S. No. 8532 (entered into force 20 February 1977), reprinted in *ibid.*, pp. 77-85.

17. International Convention Against the Taking of Hostages, U.N. Doc. A/C.6/34/L.23 (4 December 1979), (opened for signature 18 December 1979), reprinted in *International Legal Materials*, November 1979, pp. 1456-63.

18. European Convention on the Suppression of Terrorism, Great Britain Cmnd. 7031 (1977), (entered into force 4 August 1978), reprinted in Alexander, pp. 87-109.

19. Namely, those cited in notes 15-18 *supra*. For treatments of the difficulties inherent in defining terrorism, see Thomas M. Franck and Bert B. Lockwood, Jr., "Preliminary Thoughts Towards an International Terrorism Convention," *American Journal of International Law*, January 1974, pp. 69-70 and John Dugard, "Towards the Definition of International Terrorism," American Society of International Law *Proceedings*, November 1973, pp. 94-100.

20. See N. Papadakis, *The International Legal Regime of Artificial Islands* (Leyden, Netherlands: Sijthoff, 1977). As treated in this study, an offshore structure is considered to be any facility constructed on or emplaced in ocean space for purposes of work accommodation or technology mounting and which, in functioning, remains relatively stationary.

21. See generally David L. Larson, ed., *Major Issues of the Law of the Sea* (Durham, N.H.: University of New Hampshire, 1976); Anne L. Hollick, *U.S. Foreign Policy and the Law of the Sea* (Princeton, N.J.: Princeton University Press); and "Law of the Sea XIV" (Symposium Issue), *San Diego Law Review*, v. 19, no. 3, 1982.

22. Third United Nations Conference on the Law of the Sea, Convention on the Law of the Sea and Resolutions I-IV, Working Paper 1 (4 June 1982) [Hereinafter cited as 1982 UNCLOS III Convention].

23. *Ibid.*, Article 55.

24. *Ibid.*, Article 56.

25. *Ibid.*, Article 60, para. 1 and 2. Provision is also made for giving due notice and publicity of constructing such installations and after abandonment ensuring their removal. *Ibid.*, Article 60, para. 3.

26. *Ibid.*, Article 60, para. 4.

27. *Ibid.*, Article 77, para 1. As therein defined, "'natural resources' pertain to mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil." *Ibid.*, Article 77, para. 4.

28. *Ibid.*, Article 60.

29. Henry Wheaton, *Elements of International Law* (Oxford: Clarendon Press, 1936), p. 162. See also Barry H. Dubner, *The Law of International Sea Piracy* (The Hague: Martinus Nijhoff, 1980).

30. *Done* 29 April 1958 [1962] 2 U.S.T. 2312, T.I.A.S. No. 5200, 327 U.N.T.S. 3. See the discussion in the text *infra*, at notes 34-36.

31. Wheaton, p. 163 n. 83.

32. *Ibid.*

33. *Ibid.*

34. Harvard Research in International Law, "Draft Convention on Piracy, with Comment," in *American Journal of International Law Supplement*, v. 26, 1932, p. 764, Article 3.

35. 1958 Geneva Convention on the High Seas, Article 15, para. 1(a).

36. 1982 UNCLOS III Convention, Article 101. But compare the contentions of Clyde H. Crockett, "Toward a Revision of the International Law of Piracy," *DePaul Law Review*, v. 26, 1976, pp. 78-99.

37. Dubner, p. 7. Also see Crockett, pp. 78-80.

38. J. Christian Kessler, "Legal Issues in Protecting Offshore Structures" (Arlington, Va.: Center for Naval Analyses, 1976), pp. 1-2.

39. *Ibid.*, p. 2.

40. With respect to the United States, see the discussion in Kessler, pp. 2-23; Max K. Morris and John W. Kindt, "The Law of the Sea: Domestic and International Considerations Arising from the Classification of Floating Nuclear Power Plants and Their Breakwaters as Artificial Islands," *Virginia Journal of International Law*, Winter 1979, pp. 299-319; and Note, "The Regulation of Deepwater Ports," *Virginia Journal of International Law*, Summer 1975, pp. 927-957.

41. For example, agencies in the US Government having specific legislative mandates affecting offshore maritime activities include, *inter alia*, the following: The Bureau of Law Mauagement and the US Geological Survey in the Department of Interior; the Federal Power Commission; the Interstate Commerce Commission; the Nuclear Regulatory Commission; the Maritime Administration in the Department of Commerce; the Office of Pipeline Safety and the Coast Guard in the Department of Transportation; and, the Corps of Engineers in the Department of the Army. Kessler, pp. 4-17.

42. 1982 UNCLOS III Couvention, Article 73.

43. 14 U.S.C. 89.

44. See Desmoud Wettern, "North Sea: Drilling Oil in Troubled Waters," US Naval Institute *Proceedings*, December 1977, pp. 40-48; Ebersole, pp. 54-60; and Jac K. Watson, "The Defense of Offshore Structures" (Arlington, Va.: Center for Naval Analyses, 1976), pp. 23-30.

45. See Linda Gillan, "Oil Field Terrorism: Nobody Wants the Bomb," *World Oil*, v. 193, October 1981, pp. 140-142; Matt, "Maritime Terrorism—An Unacceptable Risk (Part II)," pp. 93-98; *Ibid.*, (Part III), pp. 59-63.

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