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An Incident of ‘Piracy’ off the Coast of Suriname? The Definition of Piracy and the Use (and Misuse) of International Law Terminology

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Abstract

According to media coverage, a ‘pirate attack’ took place off the coast of Suriname in April 2018. This submission assesses whether the violent incident meets the definition of piracy under international law, reviews different (legal) definitions, and highlights the importance of the location of the attack. It is argued that the use of the term ‘piracy’ and related terminology should have been avoided, as the incident seemingly occurred within Suriname’s territorial sea.

Keywords: Piracy, Definition, Suriname, High Seas, Guyana, Armed Robbery at Sea, EEZ, Maritime Crime, UNCLOS, Jurisdiction

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1. Introduction: the Incident and its Definition by the Media

A ‘pirate attack’ reportedly took place off the coast of Suriname in April 2018 (hereinafter the ‘April incident’).¹ Twenty Surinamese and Guyanese fishermen were attacked by masked men, cut with machetes, and forced to hand over their catch.² Those who survived were reportedly forced to jump overboard, some with car batteries tied to their legs.³ Only five fishermen survived the vicious attack; three bodies have been found, and twelve remain missing.⁴ The attackers are thought to be Guyanese

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1 H Boerboom, ‘Pirate attack off Suriname leaves 16 missing and feared dead’ (*AP News*, 30 April 2018) <<https://www.apnews.com/489b058f696a4e309510feb6441ea623>> accessed 26 August 2019.

2 N Marks, ‘Pirates burn, beat, and toss fishermen overboard off Suriname: survivors’ (*Reuters*, 11 May 2018) <<https://www.reuters.com/article/us-suriname-piracy/pirates-burn-beat-and-toss-fishermen-overboard-off-suriname-survivors-idUSKBN1IC23C>> accessed 26 August 2019.

3 ‘Zeepiraten slaan toe; groot aantal vissers nog vermist 01 mei 2018’ (*STVS News Suriname*, 1 May 2018) <<https://www.youtube.com/watch?v=tZkMP1IfqY>> accessed 26 August 2019.

4 ‘Vijfde overlevende van voorval zeepiraterij terecht’ (*Politie Suriname*, 3 May 2018) <<http://www.politie.sr/vijfde-overlevende-van-voorval-zeepiraterij-terecht/>>. The remaining missing men are now considered legally dead, C Paulus, ‘OM blijft bij fikse strafeis in zeeroofzaak’ (*dwtonline*, 29 June 2019) <<http://www.dwtonline.com/laatste-nieuws/2019/06/29/om-blijft-bij-fikse-strafeis-in-zeeroofzaak/>> both accessed 27 August 2019.



due to their accented English.⁵ A number of suspects were arrested and several confessed; the criminal trial is ongoing.⁶

Small-scale attacks targeting fishing boats regularly occur on the rivers and off the Coasts of Suriname (and Guyana).⁷ Usually, these attacks result in engines and catch being taken. However, the extreme violence of the April incident seems to be exceptional.⁸ To some extent, this might be explained by linking this incident to an underlying conflict between (Guyanese) fishermen, relating to contested fishing grounds.⁹ Interestingly, almost all victims as well as the (alleged) attackers are thought to be Guyanese. Guyanese and Surinamese authorities suspect that the attack was in retaliation for the killing, in March 2018, of the alleged leader of a gang involved in several prior incidents in Surinamese waters.¹⁰ A number of violent acts, for example the April incident, the March 2018 incident,¹¹ a February 2018 robbery incident on the Marowijne river,¹² and a May 2018 robbery off the coast of Suriname¹³ are all thought to be connected.

Although more (legally) neutral terms – such as ‘aanvallen op zee’¹⁴ (attacks at sea), and ‘overval met dodelijke afloop’¹⁵ (attack resulting in death) – were used, ‘piracy’ and ‘pirates’ were most often referenced. The Dutch national public broadcaster NOS used the Dutch legal term for (maritime)

5 Boerboom (n 1).

6 I Cairo, ‘Guyanese Minister: “Verdachten hebben bekend”’ (*De Ware Tijd/Suriname Nieuws*, 12 May 2018) <<https://fathh.com/suriname/nieuws/77056/guyanese-minister-verdachten-hebben-bekend.html>>; H Boerboom, ‘Surinaamse politie pakt twee hoofdverdachten vissersmoorden op’ (*NOS*, 1 June 2018) <<https://nos.nl/artikel/2234524-surinaamse-politie-pakt-twee-hoofdverdachten-vissersmoorden-op.html>> both accessed 26 August 2019; Paulus (n 4).

7 ‘Pirates “massacre” Guyana fishermen off Suriname coast’ (*BBC*, 4 May 2018) <<https://www.bbc.com/news/world-latin-america-43999237>>; ‘Sixteen Fishermen Feared Dead After Pirate Attack (Courtesy of Gray Page)’ (*Brandenburg Marine News*, 3 May 2018) <<https://brandenburgmarine.com/news/425-sixteen-fishermen-feared-dead-after-pirate-attack-courtesy-of-gray-page>> both accessed 26 August 2019.

8 Ibid.

9 ‘Suriname authorities continue search... Attack on fishing boats “revenge for pirate captain’s death”’ (*Kaiteur News Online*, 2 May 2018) <<https://www.kaiteurnewsonline.com/2018/05/02/suriname-authorities-continue-searchattack-on-fishing-boats-revenge-for-pirate-captains-death/>> accessed 26 August 2019.

10 Marks (n 2); D Chabrol, ‘Five held in Guyana, Suriname for piracy; extradition of Guyanese suspects unnecessary’ (*Demerara Waves*, 9 May 2018) <<https://demerarawaves.com/2018/05/09/five-held-in-guyana-suriname-for-piracy-extradition-of-guyanese-suspects-unnecessary/>>; ‘Politiebericht over dodelijke aanslag op ondernemer’ (*Starnieuws Suriname*, 4 April 2018) <<http://www.starnieuws.com/index.php/welcome/index/nieuwsitem/46425>>; I Cairo, ‘Politie arresteert groot aantal verdachten piraterij’ (*De Ware Tijd/Suriname Nieuws*, 7 May 2018) <<https://fathh.com/suriname/nieuws/76693/politie-arresteert-groot-aantal-verdachte-piraten.html>> all accessed 26 August 2019.

11 ‘Politiebericht over dodelijke aanslag’ (n 10).

12 ‘Kapitein vissersboot komt om bij zeeroof’ (*De Ware Tijd/Suriname Nieuws*, 27 February 2018) <<https://fathh.com/suriname/nieuws/72606/kapitein-vissersboot-komt-om-bij-zeeroof.html>> accessed 27 August 2019.

13 N Marks and A Kuiper, ‘Pirate attack off Suriname leaves at least a dozen missing, feared dead’ (*Reuters*, 3 May 2018) <<https://www.reuters.com/article/us-suriname-piracy/pirate-attack-off-suriname-leaves-at-least-a-dozen-missing-feared-dead-idUSKBN1I42TO>> accessed 27 August 2019; H Boerboom, ‘Na bloedbad op boot bij Suriname opnieuw visser gedood’ (*NOS*, 3 May 2018) <<https://nos.nl/artikel/2230202-na-bloedbad-op-boot-bij-suriname-opnieuw-visser-gedood.html>> accessed 27 August 2019.

14 Cairo (n 10).

15 ‘Verdachte vast voor dodelijke overvallen vissersschepen Suriname’ (*NU.nl*, 4 May 2018) <<https://www.nu.nl/buitenland/5252366/verdachte-vast-dodelijke-overvallen-vissersschepen-suriname.html>> accessed 27 August 2019.



piracy ('zeeroof', literally 'sea robbery').¹⁶ Generally, in (online) newspaper articles, some form of the term 'piracy' has been used to describe the April incident: for example, 'pirate attack' by *Reuters*, *BBC*, *The New York Times*, and *The Washington Post*;¹⁷ 'zeeroof' or 'piraterij' by *NOS* and *De Ware Tijd* (Suriname);¹⁸ 'piracy' by *Demerara Waves* (Guyana);¹⁹ and 'high sea piracy attack' by *Kaieteur News* (Guyana).²⁰ As to the two affected heads of state, Suriname's President Dési Bouterse labelled the attack an 'act of piracy'²¹ ('zeeroof'), and Guyana's President David Granger 'piracy'.²² Guyana's Minister of Public Safety Khemraj Ramjattan also referred to pirates ('piraten').²³

It is interesting to assess whether the incident meets the definition of piracy under international law. It is argued that use of the term 'piracy' and related terminology should have been avoided, as the incident seemingly occurred within Suriname's territorial sea.

2. The Definition of Piracy Under International Law

The word 'piracy' has been deliberately put in quotation marks when referring to the April incident, because it is not evident that this incident was actually an act of (maritime) piracy under international law. The definition of piracy, reflecting customary international law, is found in Article 101 et seq. of the 1982 United Nations Convention on the Law of the Sea (LOSC).²⁴ This definition provides three criteria: first, two (private) vessels must be involved; second, the violent act must occur on the high seas (or in a state's exclusive economic zone (EEZ), see section 3); and third, the act must be 'committed for private ends'.

States may adopt piracy legislation – domestic definitions may replicate the LOSC definition, or may be wider (see below, Guyana's 2008 Hijacking and Piracy Act), or narrower (see below, Suriname's Criminal Code) than the international law definition. States may also criminalise attacks that

16 Article 381 Wetboek van Strafrecht (Netherlands' Criminal Code) 1881.

17 Marks and Kuiper (n 13); 'Pirates "massacre" Guyana fishermen' (n 7); 'Pirate Attack Off Suriname Leaves 16 Missing and Feared Dead' *The New York Times* (New York, 30 April 2018); H Boerboom/AP, 'Pirate attack off Suriname leaves 16 missing and feared dead' *The Washington Post* (Washington, 30 April 2018).

18 H Boerboom, 'Drie arrestaties voor bloedige zeeroof Suriname' (*NOS*, 4 May 2018) <<https://nos.nl/artikel/2230358-drie-arrestaties-voor-bloedige-zeeroof-suriname.html>>; 'Dertig arrestaties tegen piraterij in Suriname' (*NOS*, 7 May 2018) <<https://nos.nl/artikel/2230821-dertig-arrestaties-tegen-piraterij-in-suriname.html>>; Cairo (n 10); 'Vermoedelijk opnieuw een zeeroof met dodelijke afloop' (*De Ware Tijd/Suriname Nieuws*, 3 May 2018) <<https://fathh.com/suriname/nieuws/76480/vermoedelijk-opnieuw-een-zeeroof-met-dodelijke-afloop.html>> all accessed 27 August 2019.

19 Chabrol (n 10).

20 'High sea piracy attack... Several more arrested in Suriname', *Kaieteur News Online* (6 May 2018) <<https://www.kaieteurnews.com/2018/05/06/high-sea-piracy-attack-several-more-arrested-in-suriname/>> accessed 26 August 2019.

21 Boerboom (n 18).

22 'Pirates "massacre" Guyana fishermen' (n 7); G Gonsalves, 'President Granger Denounces Piracy Attack' (*Headline News Guyana*, 3 May 2018) <<https://headlinenewsguyana.com/president-granger-denounces-piracy-attack/>> accessed 26 August 2019.

23 Cairo (n 6).

24 United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (LOSC).



take place within their territorial sea or internal waters as acts of piracy under national law. For instance, Guyana's 2008 Hijacking and Piracy Act includes in its definition of piracy in section 5(a)(i) acts that occur 'on the rivers, internal waters or the territorial sea of Guyana'.²⁵ This does not aid the uniform implementation of the LOSC definition.

National piracy legislation may provide for universal (enforcement) jurisdiction over individuals having committed an act of piracy, according to Article 105 LOSC. However, only an act of piracy according to international law allows states to assume universal jurisdiction. Therefore, determining whether an attack is an act of piracy under international law is important.

Based on the available information, the April incident appears to meet the first ('two ship') requirement. Strictly speaking, the April incident comprised several attacks, however, they are referred to as singular (the incident or attack) in this submission. Based on testimonies, twenty fishermen on four fishing boats (five on each boat) were approached by (an)other (private) boat(s), and boarded and attacked by the crew of the other boat(s); one survivor speaks of his boat being approached by a boat containing ten masked men, who boarded and attacked him and his fellow fishermen.²⁶ Whether the second ('high seas') requirement is met, will be discussed in section 3.

The third ('private ends') requirement is usually seen as excluding politically motivated acts.²⁷ However, whether ideologically motivated acts are excluded (for example environmental activism in the *Arctic Sunrise* case),²⁸ is debated. The International Law Commission, in its Commentary to Article 39 of the 1956 Draft Articles Concerning the Law of the Sea, clearly indicated that an 'intention to rob (*animus furandi*) is not required. Acts of piracy may be prompted by feelings of hatred or revenge, and not merely by the desire for gain';²⁹ thus, if the April incident was retaliatory, this would likely not prevent the requirement from being met (in any event the fish catch was reportedly taken).

3. The 'High Seas' Requirement: the Importance of the Attack Location

An important issue is that an act can only be defined as piracy under international law if it has taken place on the high seas or in the EEZ – Articles 101 and 58(2) LOSC read together extend the

²⁵ Chapter 10:08 Guyana's Hijacking and Piracy Act 2008.

²⁶ H Boerboom, 'Overlevende zeeroof Suriname: wist dat ik zou sterven als ik aan boord zou blijven' (*NOS*, 6 May 2018) <<https://nos.nl/artikel/2230618-overlevende-zeeroof-suriname-wist-dat-ik-zou-sterven-als-ik-aan-boord-zou-blijven.html>> accessed 27 August 2019.

²⁷ D Guilfoyle, 'Political Motivation and Piracy: What History Doesn't Teach Us About Law' (*EJIL: Talk!*, 17 June 2013) <<https://www.ejiltalk.org/political-motivation-and-piracy-what-history-doesnt-teach-us-about-law/>> accessed 27 August 2019. See also the view that the relevant distinction is not between private/political acts, but between private/public (i.e. state sponsored) acts, A Petrig, 'Piracy' in D Rothwell, AG Oude Elferink, K Scott and T Stephens (eds), *The Oxford Handbook of the Law of the Sea* (Oxford University Press 2015) 843-865, at 847.

²⁸ AG Oude Elferink, 'The Arctic Sunrise Incident and the International Law of the Sea' (*JCLOS Blog*, 28 February 2014) <<http://site.uit.no/jclos/files/2014/02/The-Arctic-Sunrise-Incident-and-the-International-Law-of-the-Sea.pdf>> accessed 26 August 2019.

²⁹ (Emphasis added); UN Doc A/CN.4/104, 'Report of the International Law Commission on the Work of its Eighth Session' (23 April-4 July 1956) Official Records of the UNGA, 11th Session, Supplement No. 9 (A/3159), 282.



applicability of the definition of piracy to the EEZ. A violent attack occurring in a different maritime zone might constitute ‘armed robbery’³⁰ at sea (if the other requirements for the definition of armed robbery are met), but not piracy under international law.

Some United Nations Security Council (UNSC) resolutions on the situation off the coast of Somalia indicate that the high seas criterion should not be widened beyond the LOSC definition of piracy. The term ‘armed robbery at sea’ is used by the UNSC for ‘piratical’ acts occurring in the territorial sea. The UNSC stated that the Somali situation was unique. Further, the authorisations given concerning Somalia’s territorial waters to combat piracy applied only to the Somali situation, and were not to be interpreted as ‘establishing customary international law’.³¹

It is unclear where exactly the April incident took place, but media reports provide some information, including a survivor’s testimony. Cherwien Lowell (alternatively spelled Sherwin Lovell) mentioned that he jumped into the Atlantic Ocean and swam and floated eight kilometres (km) to the Surinamese shore.³² Considering that 1 nautical mile (nm) is 1.852 metres, 8 km would be 4.3 nm, which is within the 12 nm Surinamese territorial sea – this conclusion would be the same, even if eight miles would have been meant instead of km (which is approximately 7 nm). A Surinamese police force press release also states that the incident occurred in Surinamese ‘territorial waters’ (‘territoriale wateren’ in the original).³³ Other reports mention that the attack took place near the Wia Wia Bank, which also suggests it happened near to shore.³⁴

Further, Suriname’s 1910 Criminal Code (Wetboek van Strafrecht), in Article 444 provides that pursuant to the domestic definition of piracy, only acts that have taken place on the high seas (‘open zee’ in the original) constitute piracy.³⁵

On the available information, the April incident does not fall within the definition of piracy (under international law nor under Suriname’s domestic law), also meaning the attackers were not ‘pirates’. As this incident seemingly occurred in Suriname’s territorial sea, terms such as ‘piracy’, ‘pirate attack’, ‘zeeroof’, and especially ‘high sea piracy attack’, should have been avoided.

30 ‘Armed robbery at sea’ is defined in paragraph 2.2 of the Annex of IMO Resolution A.1025(26), adopted on 2 December 2009 (Agenda item 10), at the 26th Assembly Session of the IMO, Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships.

31 See UNSC Res 1816 (02-06-2008) UN Doc S/RES/1816, paras 7, 9; reaffirmed in later resolutions including UNSC Res 1846 (02-12-2008) UN Doc S/RES/1846; UNSC Res 2246 (10-11-2015) UN Doc S/RES/2246.

32 Boerboom (n 26). See also (n 34), other fishermen confirmed this account, and indicated that the incident happened near to the coast.

33 ‘Dertien verdachten in verzekering gesteld door Onderzoeksteam KPS in zaak zeepiraterij’ (*Politie Suriname*, 7 May 2018) <<http://www.politie.sr/dertien-verdachten-in-verzekering-gesteld-door-onderzoeksteam-kps-in-zaak-zeepiraterij/>> accessed 27 August 2019.

34 ‘Zeepiraten slaan toe nabij de Wia Wia Bank, aantal vissers vermist’ (*Politie Suriname*, 30 April 2018) <<http://www.politie.sr/zeepiraten-slaan-toe-nabij-de-wia-wia-bank-aantal-vissers-vermist/>>; ‘Nieuwe arrestaties in zaak zeeroof’ (*De Ware Tijd/Suriname Nieuws*, 6 May 2018) <<https://fathh.com/suriname/nieuws/76660/nieuwe-arrestaties-in-zaak-zeeroof.html>>; email from Guyanese journalist N Marks (22 November 2018), on file with the author. His statement in Marks (n 2), that the incident occurred ‘30 miles (48 km) from the coast’, is based on information from ‘public security officials in Guyana’. However, he mentioned that fishermen indicated that the incident happened much nearer to the coast. This is also the view of the Surinamese police and Lowell, see (n 32 and 33). Further, the Wiawia bank is considered a ‘tidal flat’, see <https://www.geographic.org/geographic_names/name.php?uni=-1355383&fid=4448&c=suriname> all accessed 27 August 2019.

35 Suriname’s Wetboek van Strafrecht (Criminal Code) 1910.



4. The Common Use (and Misuse) of Terms That Have a Distinct Meaning in International Law

It has been argued that the April incident has wrongly been defined as an act of ‘piracy’.³⁶ However, the Oxford Dictionary, for instance, defines (maritime) piracy as ‘[t]he practice of attacking and robbing ships at sea.’³⁷ According to this (non-legal) definition, the April incident would qualify as an act of ‘piracy’, because the fishermen were attacked at sea and their catch was taken. It seems that calling this incident ‘piracy’ – in a non-technical, non-legal sense – was therefore correct.

Terms that have a distinct meaning in international law are, however, frequently (wrongly) used.³⁸ But should the non-technical and non-legal use of words, such as ‘piracy’, be surprising, or a cause for confusion, frustration, or concern? After all, surely non-lawyers are not to be aware of correct legal terminology? And should we expect them to use the proper terminology? Also, arguably, the almost ‘automatic’ use of the word ‘piracy’ in these cases is understandable, because the term conveys a meaning (a vicious attack at sea) which is clear and attractive. Although linguistic accuracy is extremely important for lawyers, and there are legal consequences attached to the term ‘piracy’, the question arises whether it is really that terrible that ‘piracy’ is used in a non-technical sense. Should we perhaps view it as purely a technical term, the meaning of which has changed, and that has been incorporated into our everyday language? Are we (international lawyers) perhaps overly sensitive to any incorrect use of ‘our’ legal terminology, and should we perhaps learn to live with it?

5. Concluding Remarks

The non-technical use of international law terms such as ‘piracy’ seems to have become common, probably because ‘our’ terminology is used more widely and more often outside of the law. Clearly, the term ‘piracy’ provides an image – of a vicious attack at sea – that is easily comprehensible.

Nonetheless, it is important for (legal) clarity and consistency that not every violent act that takes place at sea is automatically labelled an ‘act of (maritime) piracy’. Ideally, the correct (legal) terminology should be used at all times, to avoid confusion. Therefore, for incidents taking place in a state’s territorial sea, the term ‘piracy’ should be avoided. However, as coverage of the April incident illustrates, this may be unrealistic, as both journalists and state officials tend to almost exclusively use the word ‘piracy’, and will probably continue to prefer using this term when referring to violent incidents occurring at sea. Therefore, we should probably learn to live with this (mis)use of international law terminology, although it might be frustrating at times.

³⁶ See also, in a different context, VJ Schatz, ‘The alleged seizure of the *El Hiblu 1* by rescued migrants: Not a case of piracy under the law of the sea’ (*Völkerrechtsblog*, 31 March 2019) <<https://voelkerrechtsblog.org/the-alleged-seizure-of-the-el-hiblu-1-by-rescued-migrants/>> accessed 26 August 2019, explaining why the ‘hijacking’ of the *El Hiblu 1* merchant vessel by migrants in the Mediterranean Sea in March was not an act of piracy under the LOSC.

³⁷ Oxford Dictionary (Online) <<https://www.lexico.com/en/definition/piracy>> accessed 27 August 2019.

³⁸ Errors are made in international law terminology (for example ‘genocide’). Also, for instance, the terms ‘International Criminal Court’ and ‘International Court of Justice’ are often used interchangeably.



A maritime crime, not constituting an act of piracy in this case, that took place in a part of the world that is usually less extensively covered in the media sparked this short submission. Based on the available information, it is inaccurate to describe the April incident as an act of piracy. Although the distinction is a technical one, it matters, legally speaking.