

DOWN WITH THE SHIP: THE PROSECUTION OF PIRATICAL ACTS IN *UNITED STATES v. ALI*

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Abstract: Following the November 2008 pirate attack on the Danish merchant ship *CEC Future*, interpreter and negotiator Ali Mohamed Ali was arrested and charged in the United States with four inchoate offenses related to his actions aboard the ship: conspiracy to commit piracy on the high seas, aiding and abetting piracy on the high seas, conspiracy to commit hostage taking, and aiding and abetting hostage taking. Using the *Charming Betsy* canon, the U.S. Court of Appeals for the D.C. Circuit held that the charge of aiding and abetting piracy was improperly dismissed because Ali's actions did not have to be committed on the high seas. Using the same analysis, the court reached the opposite conclusion for the conspiracy to commit piracy charge—holding that it was properly dismissed by the district court. Addressing the hostage taking charges, the court rejected Ali's due process argument, reversing the lower court, and held that he could have reasonably anticipated being haled into court. Though the future utility of this ruling is unclear, the court's focus on the interplay between domestic and international law provides important modern precedent as the international community fights to end piracy across the globe.

INTRODUCTION

Though the international seafaring community has been plagued by acts of piracy on the high seas for centuries, the frequency of piratical acts has increased dramatically in the last few decades.¹ One such act involved the ransom of crewmembers on the Danish merchant ship *CEC Future* by a band of Somali pirates whose interpreter and negotiator, Ali Mohamed Ali, was later arrested in the United States.² Ali was charged with conspiracy to commit piracy on the high seas, aiding and abetting piracy on the high seas, conspiracy to commit hostage taking, and aiding and abetting hostage taking.³ In *United States v. Ali*, the

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¹ Michael Reisman & Bradley T. Tennis, *Combating Piracy in East Africa*, 35 YALE J. INT'L L. ONLINE 14, 15 (2009), http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5943&context=fss_papers [<https://perma.cc/FT8M-5AVU>].

² *United States v. Ali*, 718 F.3d 929, 932–33 (D.C. Cir. 2013).

³ *Id.* at 933–34.

U.S. Court of Appeals for the D.C. Circuit affirmed the decision of the District Court in part and reversed in part, holding that the charge of conspiracy to commit piracy was properly dismissed, but that the remaining three charges were legally sufficient and should not have been limited or dismissed.⁴

Part I of this Comment provides a brief background of piracy in the Horn of Africa, as well as the factual and procedural history of *United States v. Ali*. Part II provides a discussion of the reasoning utilized by the court to determine which of the government's allegations were legally sufficient. Part II also explores the court's holding regarding the proper dismissal of the charge of conspiracy to commit piracy and the due process arguments employed by Ali and accepted by the lower court. Part III argues that the court correctly dismissed the charge of conspiracy to commit piracy, but that the future effect of the decision in the United States is unknown due to national and international efforts to curb Somali piracy through alternative means.

I. BACKGROUND

A. Piracy in East Africa

Piracy off the Somali coast has come to public attention in recent years following the well-known pirate attack on the *Maersk Alabama*—the inspiration for and true story behind the 2013 film *Captain Phillips*—which featured a five-day standoff between U.S. Navy SEALs and a gang of Somali pirates who had captured the 17,000-ton cargo ship off the Horn of Africa.⁵ The frequency of acts of piracy such as this has grown most dramatically off the coast of East Africa, where there were 222 incidents in 2009 alone—a sharp increase from the 134 attacks in 2008 and 60 in 2007.⁶ These types of attacks are particularly lucrative

⁴ *Id.* at 932.

⁵ See Tricia Escobedo, *Controversy Surrounds New Tom Hanks Movie, 'Captain Phillips,'* CNN (Oct. 8, 2013), <http://www.cnn.com/2013/10/08/showbiz/captain-phillips-movie-controversy/> [<https://perma.cc/4EUX-PX9L>]; Robert D. McFadden & Scott Shane, *In Rescue of Captain, Navy Kills 3 Pirates*, N.Y. TIMES (Apr. 12, 2009), <http://www.nytimes.com/2009/04/13/world/africa/13pirates.html> [<https://perma.cc/9FHS-9T4H>]. The Horn of Africa is the easternmost region of the African continent and is home to numerous countries, including Djibouti, Eritrea, Ethiopia, and Somalia. *Horn of Africa*, ENCYC. BRITANNICA ONLINE, <http://www.britannica.com/place/Horn-of-Africa> [<https://perma.cc/6TXM-B6Q2>] (last updated July 3, 2015). Some definitions also encompass portions of Kenya, Sudan, South Sudan, and Uganda. *Id.* The Horn of Africa region is also referred to as the Somali peninsula. *Id.*

⁶ INT'L MARITIME ORG., REPORTS ON ACTS OF PIRACY AND ARMED ROBBERY AGAINST SHIPS: ANNUAL REPORT—2009, at 2 (2010), <http://www.imo.org/en/OurWork/Security/SecDocs/Documents/PiracyReports/152-Annual2009.pdf> [<https://perma.cc/HVX4-QC3M>]. Of the 222 incidents that took place in 2009, 204 took place in international waters, only fifteen took place in territorial waters, and three took place in a port area. *Id.* at annex 2, 3. INT'L MARITIME ORG., REPORTS ON ACTS OF PIRACY AND ARMED ROBBERY AGAINST SHIPS: ANNUAL REPORT—2008, at 1 (2009), <http://www.imo.org/>

in the Gulf of Aden, a natural sea link between the Red Sea and the Arabian Sea, situated between the Arabian Peninsula and the Horn of Africa, and bounded by the Somali coast to the South and the Yemeni coast to the North.⁷ Pirates have increasingly exploited the high maritime traffic in the area, as well as the lack of deterrence from a weak Somali government, by hijacking large commercial ships and ransoming the crews for exorbitant sums of money.⁸

B. Attack on the *CEC Future*

Mere months before the famous capture and subsequent rescue of Captain Phillips, the Danish merchant ship *CEC Future* was overtaken on the high seas as it traveled through the Gulf of Aden carrying cargo owned by a U.S. corporation.⁹ On November 7, 2008, a band of Somali pirates boarded the *CEC Future* armed with AK-47s and a rocket-propelled grenade, seized the crew, and rerouted the ship toward Eyl, an infamous Somali pirate port.¹⁰ Two days later, on November 9, interpreter and negotiator Ali Mohamed Ali boarded the ship off the coast of Somalia at Point Raas Binna.¹¹ With the exception of a matter of minutes, the ship traversed only territorial waters while Ali was on board.¹²

Upon boarding the ship, Ali immediately began negotiations with Clipper Group, the Danish shipping firm which owned the *CEC Future*.¹³ He conversed initially with “Steven,” a hired middleman, before communicating directly with

en/OurWork/Security/SecDocs/Documents/PiracyReports/133-Annual2008.pdf [https://perma.cc/G579-6ZEU].

⁷ Ali, 718 F.3d at 932; *Gulf of Aden*, ENCYC. BRITANNICA ONLINE, <http://www.britannica.com/place/Gulf-of-Aden> [https://perma.cc/9GC8-53GL] (last visited Apr. 6, 2016). Piracy in the Gulf of Aden threatens one of the most essential maritime passages in the world—the Suez Canal. *Counter-Piracy Operations*, N. ATL. TREATY ORG. (Mar. 26, 2015), http://www.nato.int/cps/en/natohq/topics_48815.htm [https://perma.cc/MUM7-UGDP].

⁸ Ali, 718 F.3d at 932. Between 2005 and 2013, Somali pirates made an estimated \$400 million in ransoms paid for hijacked ships and crew. Faith Karimi, *African Pirates Use Millions of Dollars in Ransom on Drugs, Real Estate, Prostitutes*, CNN (Nov. 2, 2013), <http://www.cnn.com/2013/11/02/world/africa/horn-of-africa-piracy-loot/> [https://perma.cc/B3CC-JNNY].

⁹ Ali, 718 F.3d at 933; see Escobedo, *supra* note 5.

¹⁰ Ali, 718 F.3d at 933; see also Rob Walker, *Inside Story of Somali Pirate Attack*, BBC NEWS (June 4, 2009), <http://news.bbc.co.uk/2/hi/africa/8080098.stm> [https://perma.cc/JAT5-7UF2].

¹¹ Ali, 718 F.3d at 933.

¹² *Id.* The government provided evidence that Ali boarded the *CEC Future* in territorial waters on November 9, that the ship then sailed through international waters—the high seas—on that day and possibly the next, and that the ship then stopped in Somali waters near Eyl where it remained until the deal was completed. *United States v. Ali (Ali III)*, 885 F. Supp. 2d 55, 58 (D.D.C. 2012). The government further admitted that Ali did not make a call to the Clipper Group until the ship had returned to territorial waters. *Id.*

¹³ See *The Pirate Negotiator*, NPR (May 1, 2015), <http://www.npr.org/2015/05/01/403537252/the-pirate-negotiator> [https://perma.cc/MHR2-GSUH]. Ali’s ability to negotiate in English resulted from his travel to the United States on a student visa and his subsequent work in the United States after obtaining asylee status. *United States v. Ali (Ali I)*, 870 F. Supp. 2d 10, 15 (D.D.C. 2012).

Clipper Group CEO Per Gullestrup.¹⁴ Negotiations continued until January 2009, when Ali and the owners of the *CEC Future* agreed to a \$1.7 million ransom.¹⁵ The ransom was paid in full on January 14, 2009, delivered by parachute drop onto the deck of the ship in an orange, watertight container.¹⁶ For his services, Ali received one percent of the total ransom less expenses, amounting to \$16,500.¹⁷ Additionally, he received \$75,000 via wire transfer into a personal bank account—a supplementary demand he made during the negotiations.¹⁸ Ali and the pirates released the crew of the *CEC Future* and disembarked the ship on January 16, 2009.¹⁹

C. Ali's Prosecution

In June 2010, more than a year after the seizure, Ali was appointed Director General of the Ministry of Education for the Republic of Somaliland, a self-declared independent state within Somalia.²⁰ During this time, federal prosecutors had begun to build a case against Ali, and in March 2011, invited him to attend a fictitious conference on education in Raleigh, North Carolina.²¹ Ali entered the United States on April 20, 2011 with the intention of attending the sham conference.²² He was arrested immediately upon arrival at Dulles International Airport.²³

II. DISCUSSION

A. Charges

Following his arrest, Ali faced a four-count grand jury indictment on inchoate offenses related to his actions aboard the *CEC Future*.²⁴ Ali allegedly violated 18 U.S.C. §§ 371 and 1651 by conspiring to commit piracy under the law of nations.²⁵ Under count two, Ali was charged with aiding and abetting piracy un-

¹⁴ *The Pirate Negotiator*, *supra* note 13.

¹⁵ *Ali*, 718 F.3d at 933.

¹⁶ Walker, *supra* note 10.

¹⁷ *Ali*, 718 F.3d at 933.

¹⁸ *Id.*

¹⁹ *Ali I*, 870 F. Supp. 2d at 15.

²⁰ *Ali*, 718 F.3d at 933.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ See *United States v. Ali*, 718 F.3d 929, 933, 935 (D.C. Cir. 2013).

²⁵ *Id.* at 933; see also 18 U.S.C. §§ 371, 1651 (2012). Section 371 provides, in pertinent part, that it is a crime when “two or more persons conspire . . . to commit any offense against the United States.” § 371.

der 18 U.S.C. §§ 2 and 1651.²⁶ Counts three and four regarded conspiracy to commit hostage taking and aiding and abetting hostage taking in violation of 18 U.S.C. §§ 2 and 1203.²⁷

Ali filed a motion to dismiss all four charges as legally defective.²⁸ The District Court in *United States v. Ali (Ali II)* dismissed the first count of conspiracy to commit piracy, finding that the definition of piracy under international law did not contain a provision for conspiratorial liability and that the federal conspiracy statute could not be construed to apply in the international context.²⁹ The court limited count two of aiding and abetting piracy to only those acts committed on the high seas, based on its conclusion that the piracy statute did not apply in territorial waters.³⁰ The District Court then upheld counts three and four, stating that due process did not preclude the exercise of jurisdiction over those counts because Ali was subject to universal jurisdiction for piratical acts committed on the high seas.³¹

The District Court later dismissed counts three and four in *United States v. Ali (Ali III)*, upon the discovery that the government had no evidence Ali had acted upon the high seas because his actions took place almost entirely within territorial waters, save a matter of minutes.³² Without proof that Ali had invoked universal jurisdiction by committing an act on the high seas, he had no expectation of being haled into court, and due process precluded the exercise of jurisdiction over those counts.³³ The government in *Ali* sought to challenge the District Court's dismissal of counts one, three, and four, and the limitation of count two.³⁴

²⁶ *Ali*, 718 F.3d at 933; see also 18 U.S.C. §§ 2, 1651. Section 1651 states, "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." § 1651 (emphasis added).

²⁷ *Ali*, 718 F.3d at 934; see also 18 U.S.C. §§ 2, 1203. Section 1203 provides that criminal penalties shall be sought against "whoever, whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts or conspires to do so . . ." § 1203(a).

²⁸ *Ali*, 718 F.3d at 934.

²⁹ *Id.*; *United States v. Ali (Ali II)*, 885 F. Supp. 2d 17, 34 (D.D.C. 2012).

³⁰ *Ali II*, 885 F. Supp. 2d at 32.

³¹ *Id.* at 44–45. Universal jurisdiction is based solely on the nature of the crime committed and can therefore be exerted by a country without any direct connection to the offense. See PRINCETON PROJECT ON UNIVERSAL JURISDICTION, THE PRINCETON PRINCIPLES ON UNIVERSAL JURISDICTION 23–24 (2001), https://lapa.princeton.edu/hosteddocs/unive_jur.pdf [<https://perma.cc/QUP9-RZTD>] (last visited Apr. 6, 2016). It is used in most instances to prosecute acts, such as genocide, that are recognized as serious crimes under international law. See *id.*

³² 885 F. Supp. 2d 55, 58, 60, 62 (D.D.C. 2012).

³³ *Id.* at 59–60.

³⁴ *Ali*, 718 F.3d at 934.

B. Extraterritoriality and Charming Betsy

Because Ali was arrested and charged in the United States, the court's decision-making in *United States v. Ali* turned on its interpretation of federal criminal law.³⁵ The court relied on two common judicial presumptions to reach its decision: first, the presumption against the extraterritorial effect of statutes, which was utilized to determine the application of the relevant federal criminal statutes to Ali's actions.³⁶ The strength of this presumption is such that the court cannot construe a statute containing ambiguous language to have an extraterritorial effect without additional support.³⁷

The second prong of the analysis required use of the *Charming Betsy* canon, which states that an act of Congress should never be construed to violate the law of nations if any other possible interpretation of the statute exists.³⁸ Together, these presumptions were employed by the court to ensure a proper and limited application of federal criminal law in the international context.³⁹ They do not limit the actions of Congress, but rather limit the scope of interpretation available to the court.⁴⁰ In the present case, the court used these presumptions to both dismiss count one and to uphold count two.⁴¹

C. Aiding and Abetting Piracy Charges

Aiding and abetting is an inchoate offense that allows a defendant to be charged for his acts during the commission of a crime.⁴² In response to the charge of aiding and abetting piracy, Ali argued that he should escape liability because section 1651 requires acts of piracy to be committed "on the high seas."⁴³ He claimed that it was not enough for the act of piracy itself to be committed on the high seas, but that the statute required his own acts of aiding and abetting to have occurred outside territorial waters.⁴⁴ The District Courtulti-

³⁵ See *id.* at 935.

³⁶ *Id.* at 935–36.

³⁷ See *id.* at 935.

³⁸ *Id.*; see *Murray v. Schooner Charming Betsy*, 6 Cranch 64, 118 (1804). *Charming Betsy* involved a cargo ship sold to a U.S. citizen and subsequently captured by a U.S. warship. *Charming Betsy*, 6 U.S. at 64–65. The U.S. government claimed the trading violated the non-intercourse law, which banned trade between the United States and France. *Id.* at 117. In determining whether the law had been violated, Chief Justice John Marshall famously stated that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains . . ." *Id.* at 118.

³⁹ See *Ali*, 718 F.3d at 935–36.

⁴⁰ *Id.* at 935.

⁴¹ See *id.* at 933, 936, 942.

⁴² 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."); *Ali*, 718 F.3d at 935.

⁴³ 18 U.S.C. § 1651; see *Ali*, 718 F.3d at 936.

⁴⁴ *Ali*, 718 F.3d at 936.

mately agreed with this interpretation, limiting the charge to Ali's acts committed during the few minutes the ship traversed outside of territorial waters while he was onboard.⁴⁵

In assessing the issue, the D.C. Circuit broke the analysis into two separate questions: first whether the *Charming Betsy* canon would prevent the prosecution of Ali for aiding and abetting piracy, and second, whether "the presumption against extraterritoriality [is] applicable to acts of aiding and abetting piracy not committed on the high seas."⁴⁶ As to the first question, the court determined what constitutes piracy under the law of nations by looking to the definition provided in the U.N. Convention on the Law of the Sea (UNCLOS).⁴⁷ Within its definition of piracy, UNCLOS states that piracy includes "any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)," such as voluntary operation or acts of violence committed by crew or passengers of a private ship.⁴⁸ The court reasoned that this definition reflected the inclusion of aider and abettor liability in the international understanding of piracy.⁴⁹ Further, the court stated that because this subparagraph did not contain explicit geographic limits in its language, particularly where those limits existed in other subparagraphs of the statute, the definition did not mean to confine aider and abettor liability to those acts committed on the high seas.⁵⁰ Thus, the court found no *Charming Betsy* issue present in relation to count two.⁵¹

In addition to *Charming Betsy*, Ali argued that the piracy statute was specifically limited to the high seas and the government therefore sought to use the aiding and abetting statute to stretch the extraterritorial scope of the piracy statute to include acts committed in territorial waters.⁵² The court held that because section 1651 referenced not only the high seas, but also the definition of piracy as stated in the law of nations, it intended to incorporate the extraterritorial application of the UNCLOS definition of piracy.⁵³ Thus, the court found that although the offense required *someone* to commit a piratical act while on the high seas, Ali could be liable for aiding and abetting that act without having been on the high seas himself.⁵⁴

⁴⁵ *Id.* at 933; *Ali II*, 885 F. Supp. 2d at 32.

⁴⁶ *Ali*, 718 F.3d at 936.

⁴⁷ *Id.*

⁴⁸ United Nations Convention on the Law of the Sea, art. 101, Dec. 10, 1982, 1833 U.N.T.S. 397, 436 [hereinafter UNCLOS]. Article 101(a) states that piracy includes "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." Subparagraph (b) states, "[Piracy consists of] 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." *Id.*

⁴⁹ *Ali*, 718 F.3d at 937.

⁵⁰ *See id.*

⁵¹ *Id.*

⁵² *Id.* at 939–40.

⁵³ *Id.* at 940–41.

⁵⁴ *Id.* at 941.

D. Conspiracy to Commit Piracy Charges

Using the same step-by-step analysis, the court reached the opposite conclusion for the charge of conspiracy to commit piracy.⁵⁵ The court noted that where UNCLOS explicitly endorsed liability for aiding and abetting, it was silent as to conspiratorial liability.⁵⁶ Thus, the *Charming Betsy* doctrine cautions against allowing section 371 to supplant international law.⁵⁷ Absent sufficient evidence that Congress intended to preempt international law, the court held that *Charming Betsy* required the dismissal of the conspiracy charge.⁵⁸

E. The Hostage-Taking Charges

Counts three and four, conspiracy to commit hostage taking and aiding and abetting hostage taking, did not face the same challenges as counts one and two because section 1203—the statute governing hostage taking—unambiguously provides the extraterritorial scope of the crime and criminalizes Ali’s conduct.⁵⁹ Ali’s primary argument therefore reflects a constitutional challenge as to the implications of due process on the extraterritorial application of a criminal statute.⁶⁰

The D.C. Circuit, deciding this question as a matter of first impression, turned to the reasoning of several other circuits and found that due process requires “a sufficient nexus between the defendant and the United States, so that such application would not be arbitrary or fundamentally unfair.”⁶¹ The court also turned to the well-established proposition that the court will only assert jurisdiction over a defendant who could have reasonably anticipated being haled into court.⁶² Ali argued that because Somalia was not a party to the International Convention Against the Taking of Hostages, he could not have anticipated the application of U.S. law to his actions.⁶³ The court did not agree.⁶⁴ It reasoned instead that the Convention provided global notice of the acts subject to prosecution and that according to precedent, fair warning did not require specific knowledge of U.S. law, but simply that the conduct in question would subject Ali to prosecution somewhere.⁶⁵

⁵⁵ See *id.* at 941–42.

⁵⁶ *Id.* at 942.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 942–43.

⁶⁰ *Id.*

⁶¹ *Id.* at 943 (quoting *United States v. Davis*, 905 F.2d 245, 248–49 (9th Cir. 1990)).

⁶² *Id.* at 944.

⁶³ See *id.* at 945.

⁶⁴ See *id.*

⁶⁵ *Id.*

The court therefore affirmed the District Court's dismissal of count one, reversed the narrowing of count two to include only those acts committed by Ali on the high seas, and reversed the dismissal of counts three and four.⁶⁶

III. ANALYSIS

A. Practical Impacts of Ali's Prosecution

In *Ali*, the court found that a hostage negotiator could be prosecuted for aiding and abetting piracy, consistent with the law of nations, but could not be prosecuted for conspiracy to commit piracy where there was no basis for conspiratorial liability in international law.⁶⁷ Additionally, the court held that Ali's prosecution for acts committed outside the United States did not violate due process.⁶⁸ In making these decisions, the court relied on basic tenets of international law—namely the presumption against extraterritorial effect and the *Charming Betsy* canon—to make a proper determination as to the incorporation of domestic and international law.⁶⁹ The reasoning applied by the court with regard to the extraterritorial effect of federal criminal statutes was not only proper, but serves as invaluable modern precedent in an area of international jurisprudence not often litigated.⁷⁰

The charges in *Ali* added an additional layer of complication to the prosecution of piratical acts in U.S. courts because Ali was not charged with committing acts of piracy, but for two inchoate offenses relating to piracy.⁷¹ The court correctly used *Charming Betsy* to reason that section 1651 and the UNCLOS definition of piracy embrace the extraterritorial effect of aider and abettor liability but fail to endorse the federal conspiracy statute.⁷² The court's decision extends liability to those who aid and abet piratical acts, thus appearing to enlarge the net of prosecution and provide another avenue through which the United States can act to deter Somali piracy.⁷³

Though the decision did extend liability to those who aid or abet, it did not extend liability for conspiracy.⁷⁴ Taken together, the two prongs of this decision serve as proof that the court did not use its logic merely to broaden the ability of

⁶⁶ *Id.* at 947.

⁶⁷ United States v. Ali, 718 F.3d 929, 942, 947 (D.C. Cir. 2013).

⁶⁸ *Id.* at 944.

⁶⁹ *See id.* at 935–36.

⁷⁰ *See id.* at 941; Jessica Piquet, Note, *Changing Tides: An Adaptable Prosecution Approach to Piracy's Shifting Problem*, 52 COLUM. J. TRANSNAT'L L. 238, 242 (2013) (analyzing the three most common prosecution models used in combatting Somali piracy).

⁷¹ *Ali*, 718 F.3d at 935.

⁷² *See id.* at 942.

⁷³ *See id.* at 940, 945.

⁷⁴ *Id.* at 942.

the U.S. government to prosecute piratical acts.⁷⁵ To the contrary, the court's decision prevents any extension of the extraterritorial application of federal laws beyond what is provided in international law.⁷⁶ Thus, the decision allows for the creation of liability for acts that aid or abet piracy as a form of liability separate and distinct from piracy itself, without straying from the international definition and understanding of piratical acts.⁷⁷

B. The Future of Pirates in U.S. Courts

The D.C. Circuit's rejection of Ali's claims of due process protection shines an important spotlight on the recent efforts of the United States to prosecute piracy and reverse the dramatic escalation of piratical activity seen in the Middle East in recent years.⁷⁸ The court's rejection of Ali's argument that he could not be charged in the United States—because of the general due process protection against prosecution for a crime for which the defendant could not anticipate being haled into court—set an important precedent in an age where many modern states are reluctant to prosecute piracy cases because of potential questions regarding the legitimacy of universal jurisdiction.⁷⁹

Though this decision opened up the metaphorical floodgates for the U.S. government to put pirates on trial, the multilateral approach taken by the State Department in recent years leaves the future importance of this determination uncertain.⁸⁰ The U.S. government has recently renewed efforts to combat piracy using a multilateral approach including diplomatic engagement, military power, collaboration with the private sector, targeting networks, and development and governance.⁸¹ As part of this approach, the United States has pushed to deter piracy by enhancing the capacity of Somalia, as well as other states in the region, to prosecute suspected pirates in their own legal systems.⁸² Ultimately, though

⁷⁵ *See id.*

⁷⁶ *See id.*

⁷⁷ *See id.* at 941.

⁷⁸ *See* Reisman & Tennis, *supra* note 1, at 14, 18.

⁷⁹ *See Ali*, 718 F.3d at 944; Sandra L. Hodgkinson, *The Governing International Law on Maritime Piracy*, in PROSECUTING MARITIME PIRACY: DOMESTIC SOLUTIONS TO INTERNATIONAL CRIMES 13, 16 (Michael P. Scharf et al. eds., 2015).

⁸⁰ *Ali*, 718 F.3d at 940, 945; Thomas Kelly, Principal Deputy Assistant Sec'y, Bureau of Political-Military Affairs, Remarks at Combating Piracy Week: The U.S. Government's Approach to Countering Somali Piracy (Oct. 25, 2012), <http://www.state.gov/t/pm/rls/rm/199929.htm> [<https://perma.cc/PU72-YQCX>] (“[T]he most durable long-term solution to piracy, the strategic solution, is the re-establishment of stability in Somalia. Once Somalia has a viable government capable of policing its own territory, piracy will fade away. We are encouraged that the end of Somalia's eight-year political transition occurred in September, culminating in a new provisional constitution, parliament, and president.”).

⁸¹ Kelly, *supra* note 80.

⁸² *See id.*

the number of future prosecutions in U.S. courts will likely be small, the precedent created by the D.C. Circuit can be easily applied in future disputes.⁸³

C. Piracy as a Crime of Universal Jurisdiction

For years, courts have grappled with cases involving the prosecution of pirates, making determinations as to “who qualifies as a pirate, what acts constitute piracy under the law of nations, whether ancillary offenses can be prosecuted, and whether the piratical acts have occurred on the high seas.”⁸⁴ The court’s decision in *Ali* provides clear responses to those questions and a road map for future courts in all jurisdictions to use in making similar determinations regarding the extraterritoriality of statutes used to prosecute piratical acts and related offenses.⁸⁵

Piracy is perhaps the oldest and most widely acknowledged crime of universal jurisdiction.⁸⁶ As such, international law permits states to define and prescribe punishment for piracy as a crime of universal concern.⁸⁷ Being the most widely recognized crime of universal jurisdiction, the jurisprudence surrounding international prosecution of piracy shapes the subsequent use of universal jurisdiction to prosecute offenses related to genocide, war crimes, and crimes against humanity.⁸⁸ The development of the law of piracy has been and continues to be an integral part of the international legal system.⁸⁹ In U.S. courts, unless and until there are steps made to write international law into the U.S. Code, the court’s decision in *Ali* makes clear the necessity for cohesion between federal law and the law of nations and provides a foundation for future courts to make similar determinations.⁹⁰ The ultimate goal of anti-piracy efforts in the United States and beyond is a re-stabilized Somalia that can police its own waters.⁹¹ If and when

⁸³ See *Ali*, 718 F.3d at 947; Kelly, *supra* note 80.

⁸⁴ Lora A. Lucero, Annotation, *Construction and Application of Federal Piracy Statute*, 18 U.S.C.A. § 1651, *Criminalizing Piracy Under the Law of Nations*, 91 A.L.R. Fed. 2d 163 (2015).

⁸⁵ See *Ali*, 718 F.3d at 935–36 (requiring two-step analysis of extraterritorial scope of the statute and application of *Charming Betsy*).

⁸⁶ See *id.* at 935. For almost two centuries, piracy has been recognized as an offense against the law of nations. See *United States v. Smith*, 18 Wheat. 153, 161 (1820). Piracy’s status as a crime of universal jurisdiction derives from the belief that a pirate is an enemy of all nations and his acts are crimes against humanity, and thus punishable anywhere. See Hodgkinson, *supra* note 79, at 15.

⁸⁷ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 404 (AM. LAW INST. 1987).

⁸⁸ See *Ali*, 718 F.3d at 935; Ryan P. Kelley, Note, *UNCLOS, but No Cigar: Overcoming Obstacles to the Prosecution of Maritime Piracy*, 95 MINN. L. REV. 2285, 2295 (2011) (evaluating the status of piracy in international law and the current framework created by UNCLOS).

⁸⁹ See Joel H. Samuels, *How Piracy Has Shaped the Relationship Between American Law and International Law*, 59 AM. U.L. REV. 1231, 1231 (2010) (revisiting piracy’s role in the incorporation of international law into domestic law in light of increased piratical activity in recent years).

⁹⁰ See *Ali*, 718 F.3d at 936. See generally, John F. Coyle, *The Case for Writing International Law into the U.S. Code*, 56 B.C.L. REV. 433 (2015) (suggesting federal statutes would be given full effect by courts if re-drafted to incorporate international law).

⁹¹ See Reisman & Tennis, *supra* note 1, at 22; Kelly, *supra* note 80.

that stability is established, it is likely that piracy in the Horn of Africa will simply fade away.⁹²

CONCLUSION

In *United States v. Ali*, the court found that although the international definition of piracy did embrace aider and abettor liability, it did not invoke the same or similar language in reference to conspiratorial liability. Additionally, the court held that Ali's due process arguments could not hold water, and that he could reasonably anticipate being haled into court in the United States. The D.C. Circuit correctly focused its analysis of each issue on the interplay between domestic and international law, and the well-accepted notion that federal law should not be read to conflict with international law. Although the utility of the precedent in future U.S. court cases is unclear, the decision provides modern precedent—in waters not often traveled—as the international community fights to end Somali piracy for good.

⁹² Kelly, *supra* note 80.