

P Vrancken *South Africa and the Law of the Sea* (2011)

Chapter 14 Update¹

Page 407, footnote 2

Replace “5–22.” with “5–22; T. Potgieter “Oceans economy, blue economy, and security: Notes on the South African potential and developments” (2018) 14 *Journal of the Indian Ocean Region* 49–70.”.

Page 407, footnote 6

Replace “UNSC Resolution 1540 [UN Doc. S/RES/1540 (2004)].” with “UNSC Res. 1540 (2004) and UNSC Res. 1977 (2011).”.

Page 408, footnote 9

The footnote should read as follows:

(2002) 10 AYIL 663, (2005) 13 AJICL 96. Adopted: 9 July 2002; EIF: 26 December 2003. South Africa ratified the Protocol in 2003.

Page 409, line 4

Replace “(DSP)²² adopted by the AU Assembly in 2004.” with “(DSP) adopted by the AU Assembly in 2004.²²”.

Page 409, footnote 22

The footnote should read as follows:

Available at <https://au.int/sites/default/files/documents/30849-doc-solemn_declaration_on_cadsp_0.pdf>.

Page 409, footnote 25

Replace “43–56.” with “43–56; O.A. Touray “The Common African Defence and Security Policy” (2005) 104/417 *African Affairs* 635–656.”.

Page 410, footnote 29

The footnote should read as follows:

Adopted: 31 January 2005; EIF: 18 December 2009. Available at <https://au.int/sites/default/files/treaties/7788-treaty-0031_-_african_union_non-aggression_and_common_defence_pact_e.pdf>. South Africa has not yet ratified the CDP, after signing it in 2006.

Page 411, line 5

Insert the following:

The AIMS “was born out of the need to address maritime security concerns that threatened African waters and the ability to benefit from their resources”.^{41A} It involves promoting inter-agency and transnational cooperation and coordination on maritime security,^{41B} the establishment around the continent of standardised regional maritime headquarters with maritime operational coordination centres having “mutualised response capabilities”^{41C} and additional steps to address a wide range of threats and vulnerabilities

¹ The research assistance of Ms Rachael Chasakara is gratefully acknowledged.

within the African maritime domain, including: transnational organised crimes such as “Money Laundering, Illegal Arms and Drug Traffic, Piracy and Armed Robbery at Sea, Illegal Oil bunkering / Crude Oil Theft along African coasts, Maritime Terrorism, Human Trafficking, Human Smuggling and Asylum Seekers Travelling by Sea”; IUU fishing and other environmental crimes such as “deliberate shipwrecking and oil spillage as well as dumping of toxic wastes”; vulnerable legal framework; and the “[l]ack of and/or poorly maintained aids to navigation and modern hydrographic surveys, up-to-date nautical charts and maritime safety information in a number of AU Member States”.^{41D}

The 2016 African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter)^{41E} follows the lead of the PSC and the AIMS by expecting that the States Parties will: take responsibility for the defence of their maritime integrity;^{41F} establish national coordinating structures and maritime awareness centres;^{41G} domesticate the relevant international legal instruments;^{41H} adopt policies that guarantee the availability of the necessary resources;^{41I} share the financial responsibilities of maritime security;^{41J} fulfil their flag State responsibilities and exercise port State control within their jurisdictions;^{41K} develop and implement sound migration policies;^{41L} “develop and implement balanced and integrated strategies aimed at combating drug trafficking and related challenges in the maritime domain”;^{41M} and provide the highest possible level of mutual legal assistance.^{41N}

Page 411, footnote 41A

After footnote 41, insert the following footnote:

V. Nmehielle & T. Pasipanodya “African Union” in P. Vrancken & M. Tsamenyi (eds) *The Law of the Sea – The African Union and its Member States* (2017) 52.

Page 411, footnote 41B

After footnote 41A, insert the following footnote:

Paragraph 31 AIMS.

Page 411, footnote 41C

After footnote 41B, insert the following footnote:

Paragraph 32 AIMS.

Page 411, footnote 41D

After footnote 41C, insert the following footnote:

Paragraph 16 AIMS.

Page 411, footnote 41E

After footnote 41D, insert the following footnote:

(2017) 2 JOLGA 90. Adopted: 15 October 2016; EIF: not yet. South Africa has not signed the Charter.

Page 411, footnote 41F

After footnote 41E, insert the following footnote:

Article 6 Lomé Charter.

Page 411, footnote 41G

After footnote 41F, insert the following footnote:

Article 7 Lomé Charter.

Page 411, footnote 41H

After footnote 41G, insert the following footnote:
Article 8 Lomé Charter.

Page 411, footnote 41I

After footnote 41H, insert the following footnote:
Article 9 Lomé Charter.

Page 411, footnote 41J

After footnote 41I, insert the following footnote:
Article 10 Lomé Charter.

Page 411, footnote 41K

After footnote 41J, insert the following footnote:
Article 15 Lomé Charter.

Page 411, footnote 41L

After footnote 41K, insert the following footnote:
Article 16 Lomé Charter.

Page 411, footnote 41M

After footnote 41L, insert the following footnote:
Article 17 Lomé Charter.

Page 411, footnote 41N

After footnote 41M, insert the following footnote:
Article 40 Lomé Charter.

Page 411, footnote 43

The footnote should read as follows:

Adopted: 14 August 2001; EIF: 2 March 2004. Available at
<http://www.sadc.int/files/3613/5292/8367/Protocol_on_Politics_Defence_and_Security20001.pdf>.

Page 412, footnote 54

Replace the first sentence with: Adopted: 26 August 2003; EIF: not yet. Available at
<http://www.sadc.int/files/2913/5333/8281/SADC_Mutual_Defence_Pact2003.pdf>.

Page 413, footnote 62

Replace “49–91.” with “49–91; M. Tondini “The use of force in the course of maritime law enforcement operations” (2017) 4 *Journal on the Use of Force and International Law* 253–272. See further M Fink *Maritime Interception and the Law of Naval Operations: A Study of Legal Bases and Legal Regimes in Maritime Interception Operations* (2018).”.

Page 414, line 11

Replace “self-defence” with “self-defence ...”.

Page 414, footnote 64

Replace “*bellum and jus*” with “*bellum and jus*”.

Page 415, footnote 73

Add the following:

See further J.W. Houck & N.M. Anderson “The United States, China, and Freedom of navigation in the South China Sea” (2014) 13 *Washington University Global Studies Law Review* 441–452; T. Melchiorre and T. Pleta “Military activities in the exclusive economic zone. A contentious issue of the international law of the Sea” (2018) 8(2) *Journal of Security and Sustainability Issues* 127–142.

Page 415, footnote 74

Add the following:

See further A. Proelss “Article 58” in A. Proelss (ed.) *United Nations Convention on the Law of the Sea – A Commentary* (2017) 444–457.

Page 416, footnote 77

The footnote should read as follows:

A. Proelss “Article 59” in Proelss (n. 74) 458–463.

Page 416, footnote 78

The footnote should read as follows:

See J.L. Morris & R.M. Clark “Measurement and signature intelligence” in M.M. Lowenthal & R.M. Clark (eds) *The Five Disciplines of Intelligence Collection* (2015) 187.

Page 416, footnote 81

Replace “seas.” with “seas; A. Proelss “Article 60” in Proelss (n. 74) 464–480; A.R. Maggio “Article 80” in Proelss (n. 74) 628–633.”.

Page 417, footnote 85

Add the following:

See further R.A. Barnes “Article 19” in Proelss (n. 74) 186–196.

Page 417, footnote 88

Replace “51–68. “Currently” with “51–68; C.M. Soon “Restrictions on foreign military activities in the exclusive economic zone: Major powers’ ‘lawfare’” (2016) 42 *Journal of the Singapore Armed Forces* 12–22. “Currently”.

Page 418, footnote 95

Add the following:

See further S. Huh & K. Nishimoto “Article 246” in Proelss (n. 74) 1649–1664.

Page 418, footnote 97

Replace “LOSC. The” with “LOSC. See further S. Huh & K. Nishimoto “Article 248” in Proelss (n. 74) 1673–1679; S. Huh & K. Nishimoto “Article 249” in Proelss (n. 74) 1679–1690. The”.

Page 420, footnote 102

The footnote should read as follows:

480 UNTS 45, (1963) 2 ILM 889. Adopted: 5 August 1963; EIF: 10 October 1963.

Page 420, footnote 106

The second sentence should read as follows:

Adopted: 10 September 1996; EIF: not yet.

Page 420, footnote 114

The footnote should read as follows:

955 UNTS 116, (1971) 10 ILM 145. Adopted: 11 February 1971; EIF: 18 May 1972.

Page 421, line 13

Insert the following:

South Africa ratified in 2019 the 2017 Treaty on the Prohibition of Nuclear Weapons,^{120A} in terms of which the States Parties undertake “never under any circumstances to ... [d]evelop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices”.^{120B} In addition, the Treaty compels the States Parties to “take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under th[e] Treaty undertaken by persons or on territory under [their] jurisdiction or control”.^{120C}

Page 421, footnote 119

The first sentence should read as follows:

729 UNTS 161, (1968) 7 ILM 889. Adopted: 1 July 1968; EIF: 5 March 1970.

Page 421, footnote 120

Replace “159–181.” with “159–181; M. Onderco and A.-M. Van Wyk “Birth of a norm champion: How South Africa came to support the NPT’s indefinite extension” (2019) 26 *The Nonproliferation Review* 23–41.”

Page 421, footnote 120A

After footnote 120, insert the following footnote:

Adopted: 7 July 2017; EIF: not yet. Available at

<https://treaties.un.org/doc/Treaties/2017/07/20170707%2003-42%20PM/Ch_XXVI_9.pdf>.

Page 421, footnote 120B

After footnote 120A, insert the following footnote:

Article 1(1)(a).

Page 421, footnote 120C

After footnote 120B, insert the following footnote:

Article 5(2).

Page 422, footnote 128

Replace “(2010)” with “(2014)”.

Page 423, footnote 135

Replace “1015 UNTS 163” with “1015 UNTS 164, (1972) 11 ILM 313. Adopted: 10 April 1972; EIF: 26 March 1975” and “1974 UNTS 45” with “1974 UNTS 45, (1993) 32 ILM 800; adopted: 13 January 1993; EIF: 29 April 1997”.

Page 425, footnote 146

The footnote should read as follows:

Section 13(1) WMDA read with s. 1 WMDA. See GN 455 of 1997 [GG 17872 of 27 March 1997]; GN 75 of 2004 [GG 25948 of 29 January 2004]; GN 491 of 2019 [GG 42337 of 29 March 2019]; GN 492 of 2019 [GG 42337 of 29 March 2019]; GN 493 of 2019 [GG 42337 of 29 March 2019]; GN 494 of 2019 [GG 42337 of 29 March 2019]; and GN 495 of 2019 [GG 42337 of 29 March 2019].

Page 428, footnote 164

The footnote should read as follows:

Adopted: 1 July 1999; EIF: 6 December 2002. Available at <<https://au.int/en/treaties/oau-convention-prevention-and-combating-terrorism>>. South Africa ratified the PCTC in 2002.

Page 428, footnote 169

The footnote should read as follows:

1316 UNTS 205. Adopted: 17 December 1979; EIF: 3 June 1983.

Page 429, footnote 178

The footnote should read as follows:

1678 UNTS 222, (1988) 27 ILM 672, (1988) 11 LOSB 14. Adopted: 10 March 1988; EIF: 1 March 1992.

Page 429, footnote 179

Replace “[IMO Doc. LEG/CONF.15/21]” with “[IMO Doc. LEG/CONF.15/21; adopted: 14 October 2005; EIF: 28 July 2010]”.

Page 435, footnote 219

Replace “[IMO Doc. LEG/CONF.15/22]” with “[IMO Doc. LEG/CONF.15/22; adopted: 14 October 2005; EIF: 28 July 2010]”.

Page 437, footnote 230

The footnote should read as follows:

2149 UNTS 284, (1998) 37 ILM 249. Adopted: 15 December 1997; EIF: 23 May 2001.

Page 441, footnote 253

Replace “186–194.” with “186–194; A. Dunne *The Proliferation Security Initiative: Legal Considerations and Operational Realities* (2013).”

Page 441, footnote 254

The footnote should read as follows:

Adopted: 1 July 2004; EIF: not yet. Available at <<https://au.int/en/treaties/protocol-oau-convention-prevention-and-combating-terrorism>>.

Page 441, footnote 258

Replace “ILM 270]” with “ILM 270; adopted: 9 December 1999; EIF: 10 April 2002]”.

Page 441, footnote 259

Replace “1490 UNTS 96” with “1490 UNTS 96. Adopted: 3 July 1977; EIF: 22 April 1985”.

Page 443, footnote 268

Add the following:

Adopted: 15 November 2000; EIF: 29 September 2003.

Page 443, footnote 269

Add the following:

Adopted: 31 May 2001; EIF: 3 July 2005.

Page 444, line 3

Replace “may trade in conventional arms²⁷² unless” with “may trade in or possess controlled items²⁷² unless”.

Page 444, lines 6–7

Replace “to trade in conventional arms” with “to trade in or possess controlled items”.

Page 444, line 10

Replace “any goods” with “any goods, articles, materials or substances”.

Page 444, line 13

Replace “2004” with “2012”.

Page 444, lines 15–18

Delete the sentence.

Page 444, footnote 271

Replace “UNTS 137] which will be given effect in South African law by the Prohibition or Restriction of Certain Conventional Weapons Act, 2008 [Act 18 of 2008] when the latter comes into effect” with “UNTS 137; adopted: 10 October 1980; EIF: 2 December 1983], which was given effect in South African law by s. 2(a) of the Prohibition or Restriction of Certain Conventional Weapons Act, 2008 [Act 18 of 2008]”.

Page 444, footnote 272

The list of controlled items was published in terms of s. 27(3) CACA by GN 321 of 2012 [GG 35272 of 2012].

Page 444, footnote 274

Replace “13” with “13(1)”.

Page 444, footnote 275

Replace “24(1)” with “24(1)(a)”.

Page 444, footnote 278

The footnote should read as follows:

Made in terms of s. 27 CACA and published by GN R326 of 2012 [GG 35283 of 20 April 2012].

Page 444, footnote 279

The footnote should read as follows:

Regulations 5(1) and 6 CACR.

Page 444, footnote 280

The footnote should read as follows:

Regulation 5(3) CACR.

Page 445, footnote 281

The footnote should read as follows:

The term “convey” means “to transport controlled items through or over the territory of the Republic, its territorial waters or its airspace to any other place or destination outside the Republic, whether or not such controlled items are off-loaded” and the term “conveyance” must be interpreted accordingly [s. 1(vii) CACA]. See P. Vrancken & E. van der Berg “The South African regulation of the conveyance of munitions at sea” (2005) 30 SAYIL 150–155 on the position before amendments came into effect in 2012.

Page 445, footnote 283

Add the following:

See also M. Mngadi “Russian cargo ship: ‘Explosives additives’ found did not have transit permit” [available at <<https://www.news24.com/SouthAfrica/News/russian-cargo-ship-explosives-additives-found-did-not-have-transit-permit-20180824>>].

Page 457, footnote 381

Replace “17–30.” with “17–30; H. Liwǎng “Piracy off West Africa from 2010 to 2014: An analysis” (2017) 16 *WMU Journal of Maritime Affairs* 385–403; D. Siebels *Maritime Security in East and West Africa* (2020).”.

Page 458, footnote 388

Replace “1–22.” with “1–22; P. Vrancken “The role of the African Union in combating piracy” (2014) 1 *Acta Criminologica: Southern African Journal of Criminology* 53–75.”.

Page 458, footnote 390

Add the following:

See further D. Guilfoyle “Article 100” in Proelss (n. 74) 733–737.

Page 459, lines 13–14

The text should read as follows:

has been extended every year since then.⁴⁰⁰ Other global role players contributed to the

Page 459, footnote 397

Replace “1851.” with “1851 (2008).”.

Page 459, footnote 399

Delete the footnote.

Page 459, footnote 400

The footnote should read as follows:

See para. 7 of UNSC Res. 1897 (2009), para. 7 of UNSC Res. 1950 (2010), para. 9 of UNSC Res. 2020 (2011), para. 12 of UNSC Res. 2077 (2012), para. 12 of UNSC Res. 2125 (2013), para. 13 of UNSC Res. 2184 (2014), para. 14 of UNSC Res. 2246 (2015), para. 14 of UNSC Res. 2316 (2016), para. 14 of UNSC Res. 2383 (2017), para. 14 of UNSC Res. 2442 (2018) and para. 14 of UNSC Res. 2500 (2019).

Page 460, line 3

Replace “Africa is eligible to sign” with “Africa has signed”.

Page 460, footnote 402

- (a) Delete “the 2009 Circular on Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery against Ships [IMO Doc. MSC.1/Circ.1333];”.
- (b) Replace “2.2.” with “2.2]; the 2011 Resolution on the Implementation of Best Management Practice Guidance [IMO Doc. MSC 89/25/Add.4]; the 2012 Interim Guidance to Private Maritime Security Companies Providing Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area [IMO Doc. MSC.1/Circ.1443]; the 2012 Revised Interim Guidance to Shipowners, Ship Operators and Shipmasters on the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area [MSC.1/Circ.1405/Rev.2]; and the 2015 Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery against Ships [IMO Doc. MSC.1/Circ.1333/Rev.1].”.

Page 460, footnote 404

- (a) Delete the first sentence.
- (b) Replace “1918, the” with “1918 (2010), the”.
- (c) Delete “of UN Doc. S/RES/1918”.

Page 461, lines 12–14

The text should read as follows:

Several years after the AU Mission to Somalia (AMISOM) was deployed on the ground,⁴⁰⁹ Heads of State and Government adopted in 2016 the African Charter on Maritime Security and Safety and Development in Africa (CMSSD),^{409A} two of the objectives of which are to prevent and suppress piracy as well as promote and enhance cooperation in the fight against piracy.^{409B} To that end, the Charter contains provisions relating to the socio-economic measures that can assist in preventing crimes at sea^{409C} and compels the States Parties to cooperate and coordinate their actions in combating acts of piracy.^{409D} As far as it is concerned, South Africa sees the problem of

Page 461, last line

Delete “However, the SA Navy has until”.

Page 461, footnote 409

Replace “UNSC Resolution 1772” with UNSC Res. 1772 (2007)”.

Page 461, footnote 409A

After footnote 409, insert the following footnote:

(2017) 2 JOLGA 90. Adopted: 15 October 2016; EIF: not yet.

Page 461, footnote 409B

After footnote 409A, insert the following footnote:

Article 3(a) and (d) CMSSD.

Page 461, footnote 409C

After footnote 409B, insert the following footnote:

Article 5 CMSSD.

Page 461, footnote 409D

After footnote 409C, insert the following footnote:

Article 32(1) CMSSD.

Page 461, footnote 411

Replace “43–62.” with “43–62; A.T. Weldemichael *Piracy in Somalia – Violence and Development in the Horn of Africa* (2019).”.

Page 462, lines 1–2

The text should read as follows:

“The SA Navy, in cooperation with the South African Air Force, has been involved in anti-piracy patrols in the Mozambican Channel under Operation Copper since the SAS *Mendi* commenced patrols in 2011”.⁴¹⁴

Page 462, footnote 414

The footnote should read as follows:

D. Wingrin “Navy acknowledges challenges” [available at <<http://www.sashippingnews.com/2018/06/07/navy-acknowledges-challenges/>>].

Page 462, footnote 415

Delete the footnote.

Page 462, footnote 416

Add the following:

See further D. Guilfoyle “Article 110” in Proelss (n. 74) 767–772.

Page 462, footnote 418

Add the following:

See further D. Guilfoyle “Article 107” in Proelss (n. 74) 755–759.

Page 462, footnote 419

Add the following:

See further A. Proelss “Article 58” in Proelss (n. 74) 454–457.

Page 462, footnote 420

Add the following:

See further D. Guilfoyle “Article 105” in Proelss (n. 74) 749–753.

Page 462, footnote 421

Add the following:

See further D. Guilfoyle “Article 106” in Proelss (n. 74) 753–755.