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Abstract

This Note argues that the United States currently lacks jurisdiction to prevent off-shore broadcasts by U.S citizens on foreign-registered ships. Part I reviews the problems created by these 'radio pirates' in the United States and the United Kingdom. Part II analyzes current federal law, international admiralty law, and the ITC, none of which authorize the seizure of a foreign-registered ship. Part III proposes that sections of the British Marine, &c., Broadcasting (Offences) Act (the 'MBOA') be used as a model for legislation in this area. This Note concludes that Congress should enact legislation allowing the FCC to enforce prohibitions on off-shore broadcasts by U.S. citizens on foreign-registered ships.

NOTES

THE CASE OF THE *SARAH*: A TESTING GROUND FOR THE REGULATION OF RADIO PIRACY IN THE UNITED STATES

INTRODUCTION

In 1987, the Federal Communications Commission (the "FCC"),[1] acting through the U.S. Coast Guard, seized the *Sarah*, a Honduran-registered ship operated by U.S. citizens, which broadcasted radio signals off the coast of Long Beach, New York.[2] The FCC claimed that the International Telecommunication Convention (the "ITC")[3] enabled it to prevent off-shore radio broadcasts by U.S. citizens transmitting from a foreign-registered vessel,[4] but the complaint was dismissed without deciding whether the ITC was applicable to this situation.[5]

This Note argues that the United States currently lacks jurisdiction to prevent off-shore broadcasts by U.S. citizens on foreign-registered ships. Part I reviews the problems created

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1. The FCC was created by 47 U.S.C. § 151 (1982), to govern and regulate communications within the United States. The purpose of Title 47 is to establish guidelines for the entire field of wire and radio communication. *Id.* Section 151 expressly provides that the purpose of the Communication Act is to regulate

> interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of promoting safety of life and property through the use of wire and radio communications, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the "Federal Communications Commission," which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Chapter.

Id.

2. Miller, *U.S. Raids Ship and Charges 2 In Radio Scheme*, N.Y. Times, July 29, 1987, at B1, col. 4.

3. International Telecommunications Convention, Nov. 6, 1982, S. TREATY DOC. No. 99-6, 99th Cong., 1st Sess. (1985) [hereinafter ITC].

4. Complaint at 2-3, United States v. Weiner, No. 87-0890M (E.D.N.Y. filed July 28, 1987); Smith, *The Ship Hits the Fan*, Village Voice, Aug. 11, 1987, at 17, col. 1.

5. *See* Smith, *supra* note 4. On October 17, 1988, the radio pirates resumed broadcasting from the *Sarah*. McQuiston, *Pirate Radio Station Goes On and Off Air From a Ship Off L.I.*, N.Y. Times, Oct. 18, 1988, at B4, col. 4.

by these "radio pirates"[6] in the United States and the United Kingdom. Part II analyzes current federal law, international admiralty law, and the ITC, none of which authorize the seizure of a foreign-registered ship. Part III proposes that sections of the British Marine, &c., Broadcasting (Offences) Act (the "MBOA")[7] be used as a model for legislation in this area. This Note concludes that Congress should enact legislation allowing the FCC to enforce prohibitions on off-shore broadcasts by U.S. citizens on foreign-registered ships.

I. *HISTORICAL PERSPECTIVE OF RADIO PIRACY AND THE PROBLEMS IT PRESENTS*

The United States has not had an extensive history of dealing with radio piracy.[8] In fact, there is only one reported case of an extraterritorial broadcast that was received within the United States and prosecuted by the U.S. government.[9] In *United States v. McIntire*, the defendant began broadcasting offshore after the loss of his radio license.[10] These broadcasts interfered with licensed radio broadcasts in Utah and New Jersey.[11] The FCC was able to enjoin these broadcasts under the Communications Act of 1934 (the "Communications Act"),[12] because the Reverend McIntire broadcasted from a U.S.-registered ship.[13] The court cited the overriding national interest in maintaining the orderly use of the nation's airwaves and the adverse effects of unlicensed broadcasts on the public

6. *See* Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82. This Convention provides evidence that labeling the crew members of the *Sarah* as "radio pirates" is a misnomer. Article 15 of the Convention defines "piracy" as being "illegal acts of violence, detention, or act of depredation, committed for private ends." 13 U.S.T. at 2317, T.I.A.S. No. 5200, at 6, 450 U.N.T.S. at 90. The use of the term "piracy" has traditionally been limited to situations where one uses force to seize other vessels, Davison v. Seal-Skins, 7 F. Cas. 192, 193 (C.C. Conn. 1835) (No. 3661), or "such acts of violence or felonious taking on the high seas as upon land would constitute the crime of robbery," The Ambrose Light, 25 F. 408, 416 (D.C.N.Y. 1885). The act of transmitting radio signals does not appear to fall within the parameters of these definitions.

7. The Marine, &c., Broadcasting (Offences) Act, 1967, ch. 41.

8. *See infra* notes 9-14 and accompanying text.

9. United States v. McIntire, 365 F. Supp. 618, *modified and aff'd*, 370 F. Supp. 1301 (D.N.J. 1974).

10. *Id.* at 620-21.

11. *Id.* at 621.

12. 47 U.S.C. § 301 (1982).

13. *See McIntire*, 365 F. Supp. at 621.

interest.[14] While the broadcasts made by the *Sarah* raise similar concerns for communications policy, the Communications Act does not enable the FCC to act against a foreign-registered ship.[15]

The *Sarah*, which was anchored four and one-half miles off the coast of Long Beach, New York, transmitted radio signals that were received within the United States.[16] The crew members were charged with defrauding the United States[17] and violating article 30 of the Radio Regulations promulgated pursuant to the ITC.[18] Article 30 prohibits "[t]he establishment of and use of broadcasting stations on board ships, aircrafts, or any other floating or airborne objects outside national territories."[19] There are conflicting claims as to whether the *Sarah*'s broadcasts interfered with a registered licensed broadcast.[20]

Unlike the United States, the United Kingdom has attempted to combat radio piracy since the early 1960s.[21] In 1961, the Commercial Neutral Broadcasting Company, a private commercial organization, made the first-ever sea broadcasts to British listeners.[22] While there were several other such stations, the most famous of the British radio pirates was Radio Caroline, which was operated between 1964 and 1967 by Brit-

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14. *McIntire*, 370 F. Supp. at 1303 (citing National Broadcasting Corp. v. United States, 319 U.S. 190 (1943)). Section 301 of the Communications Act provides:

> It is the purpose of this chapter, among other things, to maintain control of the United States over all channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license.

47 U.S.C. § 301.

15. *See infra* notes 46-58 and accompanying text.

16. *See* Miller, *supra* note 2, at B1, col. 4.

17. Complaint at 1, United States v. Weiner, No. 87-0890M (E.D.N.Y. filed July 28, 1987).

18. 1 International Telecommunication Union Radio Regulations, art. 30, at RR30-1 (1982) [hereinafter Radio Regulations].

19. *Id.*

20. Interview with Margaret Mayo, counsel to Allan Weiner, a crew member of the *Sarah* (Sept. 21, 1987). Ms. Mayo asserts that these claims of interference were never verified. The District Attorney asserts in the complaint that the crew members were interfering with other licensed broadcasts. Complaint at 4, United States v. Weiner, No. 87-0890M (E.D.N.Y. filed July 28, 1987).

21. J. HIND & S. MOSCO, REBEL RADIO 12 (1985).

22. *Id.*

ish citizens on a foreign-registered vessel.[23] The British government was unable to stop the broadcasts under the then-existing law.[24] It was the ever-increasing popularity of Radio Caroline's broadcasts that compelled the House of Commons to view radio piracy as a serious problem.[25] The success of the pirate stations is evidenced by the fact that the British government's Egg Marketing Board and the government-controlled British Petroleum Company were advertising on pirate stations, while, ironically, the House of Commons sought ways to halt these same broadcasts.[26]

It was not until 1967, when the MBOA was enacted, that the United Kingdom gained control over its radio-piracy problem.[27] The MBOA made all activities associated with radio-pirate transmissions illegal[28] and enabled British authorities to enforce these prohibitions.[29] Because it created a cause of action as to the British citizens operating the vessel, the government could act against such individuals even though the transmissions emanated from a foreign-registered ship.[30] Thus, the MBOA was effective in halting off-shore radio piracy in the United Kingdom.[31]

The single greatest danger presented by radio piracy is the harmful interference with an emergency broadcast that the pirate broadcast may create.[32] Radio pirates are unlicensed and therefore may arbitrarily select a wave-length on which to broadcast.[33] These wave-lengths may have already been allocated to others through national licensing or international

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23. *Id.*

24. *Id.* at 13.

25. *Id.* at 12. It is estimated that at one time Radio Caroline alone had upwards of seven million listeners. *Id.*

26. *See* Farnsworth, *Britain Turns Off Her Pirate Radio Stations, but One Owner Won't Give Up His Ships*, N.Y. Times, Aug. 15, 1967, at 17, col. 3.

27. J. HIND & S. MOSCO, *supra* note 21, at 13.

28. *See infra* notes 130-56 and accompanying text.

29. J. HIND & S. MOSCO, *supra* note 21, at 13.

30. *See id.*

31. *Id.*

32. *See* van Panhuys & van Emde Boas, *Legal Aspects of Pirate Broadcasting (a Dutch Approach)*, 60 AM. J. INT'L L. 303, 305 (1966) (reiterating the dangers of harmful interference).

33. *Id.*

agreement.[34] Thus, a pirate broadcast may interfere with a licensed station's broadcast.[35] The result is confusion in broadcasting, undermining the nation's strong interest in protecting airwaves and regulatory structure.[36] Furthermore, pirate signals may affect sea- and air-navigation signals, thus becoming a concern to international authorities.[37] For example, Radio Andorra, a pirate station transmitting to British listeners, interfered with licensed broadcasts in the United Kingdom, Italy, and Sweden.[38]

Harmful interference with legitimate broadcasts is not the only problem presented by radio piracy. Other problems include the pirates' evasion of taxes,[39] and the nonpayment of royalties,[40] copyright fees,[41] and performing rights fees that are owed to performers whose records are played on these stations.[42] Thus, the impact of such unregulated broadcasts on national and international concerns indicates that they should be governed by the country most affected by such broadcasts, namely, the nation receiving transmissions that are intended for its citizens.

II. *APPLICABLE FEDERAL STATUTES AND INTERNATIONAL MARITIME LAW*

The FCC is constrained from exercising jurisdiction over broadcasts from ships such as the *Sarah*. The Communications Act authorizes the FCC to act only against U.S.-registered vessels.[43] Furthermore, international admiralty treaties limit the jurisdiction of the United States's authorities over foreign-reg-

34. *See* Hunnings, *Pirate Broadcasting in European Waters*, 14 INT'L & COMP. L.Q. 410, 412 (1965) (discussing the allocation of radio waves).

35. *See supra* notes 32-34 and accompanying text.

36. *See* United States v. McIntire, 370 F. Supp. 1301, 1303 (D.N.J. 1974).

37. *See* Smith, *Pirate Broadcasting*, 41 S. CAL. L. REV. 769, 772 (1968) (discussing the problems of interference with sea- and air-navigation signals).

38. *Id.* at 772 n.6.

39. *Id.* at 773. If the radio pirates pay taxes on money they earn then there is no violation of the "fiscal" provision found in the Territorial Seas Convention. *See infra* note 67 and accompanying text.

40. *Id.*

41. *Id.*

42. *Id.* This is not a problem in the United States since § 110(5) of the Copyright Act provides for royalty-free radio play of copyrighted musical compositions. 17 U.S.C. § 110(5) (1982).

43. *See infra* notes 46-58 and accompanying text.

istered vessels.[44] Finally, the ITC does not authorize the United States to unilaterally seize a foreign-registered vessel; rather, it encourages consultation with the nation of registry.[45] Thus, none of the current applicable laws and treaties authorized the FCC to seize the *Sarah*.

A. *The Communications Act of 1934: Its Inapplicability to Foreign-Registered Vessels*

The Communications Act, which governs the FCC's powers, sets out the situations in which a federal license must be obtained prior to engaging in radio transmissions.[46] Section 301(e) of the Communications Act is the only subsection that discusses transmissions that do not emanate from the United States or its possessions.[47] The subsection provides that "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio upon any vessel or aircraft of the United States (except as provided in

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44. *See infra* notes 59-77 and accompanying text.

45. *See infra* notes 78-127 and accompanying text.

46. *See* Communications Act, 47 U.S.C. § 301 (1982). Title 47 created the FCC as the governing administrative body relative to communications law (telegraphs, telephones, and radiotelegraphs). *See id.* The situations in which a federal license is required in order to transmit radio signals are as follows:

> (a) from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District; or
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> (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or
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> (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or
>
> (d) within any State when the effects of such use extend beyond the borders of said State, or when the interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or
>
> (e) upon any vessel or aircraft of the United States (except as provided in section 303(t) of this title); or
>
> (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Id.

47. *See* 47 U.S.C. § 301(e).

section 303(t)) of this title."[48] Thus, only vessels "of the United States" are required to obtain a federal license.[49]

The term "of the United States," used in section 301(e), is distinguishable from the term "belonging to the United States" used elsewhere in the Act. The case of *United States v. McIntire* provides some evidence of what is a vessel "of the United States."[50] While the court did not give any precise definition, it mentioned that the vessel was registered with the United States.[51] In contrast, the *Sarah* was registered with Honduras.[52]

Further evidence that the term "of the United States" relates to registration of the vessel can be inferred by comparing sections 301[53] and 305[54] of the Communications Act. Section 301 lists the situations when a federal license is required to engage in radio transmissions.[55] Section 301(e) specifically requires possession of such a license when broadcasting "upon any vessel or aircraft of the United States."[56] Section 305, on the other hand, asserts that "[r]adio stations belonging to and operated by the United States shall not be subject to the provisions of sections 301 and 303 . . . ."[57] Thus, it may be pre-

48. *Id.* Section 303(t) grants an exemption, subject to agreement between the United States and a foreign nation, to aircrafts registered in the United States and operated by an aircraft operator who is subject to regulation by the government of the foreign nation. *See* 47 U.S.C. § 303(t) (1982).

49. *See id.*

50. 365 F. Supp. 618, 622 (D.N.J. 1973), *modified and aff'd*, 370 F. Supp. 1301 (D.N.J. 1974). In *McIntire* the FCC sought to enjoin radio broadcasts that were made from a vessel at sea, beyond the territorial limits of the United States, and without a license. *Id.* at 620-21. The court held that the ITC broadened the powers of the FCC against those who would broadcast from beyond U.S. territorial boundaries in violation of § 301(e) and the ITC. *Id.* at 622. The court applied art. 7, § 1(1) of the ITC Radio Regulations of 1959, 12 U.S.T. 2377, 2480, T.I.A.S. No. 4893, entered into force on Oct. 23, 1961. *Id.* This provision reflects article 30 of the Radio Regulations of the ITC of 1982. *Compare id. with supra* note 18 (the two provisions are nearly identical).

51. *See McIntire*, 365 F. Supp. at 621.

52. *See supra* note 2 and accompanying text.

53. 47 U.S.C. § 301.

54. 47 U.S.C. § 305(a) (1982).

55. *See supra* note 46.

56. 47 U.S.C. § 301(e).

57. 47 U.S.C. § 305 (1982 & Supp. III 1985). If § 301(e) of Title 47 means ships belonging to and operated by the United States, then this section, which requires that these vessels obtain a license, would be in direct conflict with § 305(a), which provides that such vessels (i.e. those belonging to and operated by the United States) are excluded from the requirement of obtaining a license. *See supra* note 54.

sumed that 301(e) is speaking of registration with U.S. authorities,[58] while section 305(a) excludes vessels belonging to the U.S. government from section 301.

Since the *Sarah* is registered with Honduras, the Communications Act does not require it to obtain an FCC license. Furthermore, it does not give the FCC any basis to proceed against a radio pirate. Therefore, it is necessary to analyze international law to see if and when it confers jurisdiction to the United States over a foreign-registered vessel.

B. *International Maritime Treaties Applicable to Jurisdiction*

There are two multilateral treaties that generally govern issues of one nation's jurisdiction over vessels of other nations: the Convention of the Territorial Seas and the Contiguous Zone (the "Territorial Seas Convention")[59] and the Convention of the High Seas (the "High Seas Convention").[60] The *Sarah* was subject to the Territorial Sea Convention because it broadcasted within the "contiguous zone" of the United States.[61] Sea-borne radio broadcasts, however, can be transmitted from either within the territorial limits of a nation,[62] or from the high seas.[63] Therefore, both treaties must be analyzed to see what actions the United States can take regarding broadcasts inside and outside its territorial seas.

1. Convention on the Territorial Seas and the Contiguous Zone

The Territorial Seas Convention governs matters of international admiralty law when a vessel of one nation is within

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58. *See supra* notes 46-57 and accompanying text.

59. Apr. 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 [hereinafter Territorial Seas Convention].

60. Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82 [hereinafter High Seas Convention].

61. Territorial Seas Convention, *supra* note 59, art. 24(2), 15 U.S.T. at 1612, T.I.A.S. No. 5639, at 7, 516 U.N.T.S. at 220. Article 24(2) provides that "[t]he contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured." The *Sarah* was four and one-half miles off the shore of the United States. *See supra* note 2 and accompanying text.

62. *See, e.g.*, United States v. Betteridge, 43 F. Supp. 53 (N.D. Ohio 1942) (defendants transmitted broadcasts from mobile radio station in violation of the Communications Act).

63. *See supra* note 38 and accompanying text. Radio Andorra transmitted to British listeners from the high seas. *Id.*

another nation's "contiguous zone."[64] The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.[65] The *Sarah*, which was four and one-half miles off-shore, was within the United States's contiguous zone.[66] The Territorial Seas Convention provides that a nation may exercise control over ships of another nation when it is necessary to "[p]revent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea."[67] Regulation of these enumerated activities is necessary to prevent obvious and measurable detriment to the community.[68] There is no evidence that pirate broadcasting harms a nation in any of these four areas.[69] In fact, in the United Kingdom, the public views such broadcasts favorably and not as a public detriment.[70] Thus, the Territorial Seas Convention does not allow the FCC to seize a foreign-registered vessel because the radio broadcasts do not fall within one of the exceptions allowing the United States to act against a foreign-registered vessel.

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64. Territorial Seas Convention, *supra* note 59, art. 1, 15 U.S.T. at 1608, T.I.A.S. No. 5639, at 1, 516 U.N.T.S. at 206-08. Article 1, in defining the contiguous zone, provides as follows:

> 1. The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.
>
> 2. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

Id. *See* FRIEDMANN, LISSITZYN & PUGH, INTERNATIONAL LAW CASES AND MATERIALS 601-03 (1967).

65. *See supra* note 61; *see also* Smith, *supra* note 37, at 779.

66. *See supra* note 2 and accompanying text.

On December 27, 1988, President Reagan issued an executive proclamation that extends the territorial waters of the United States from three miles to twelve miles. Proclamation No. 5928, 54 Fed. Reg. 777 (1989); *see* Rosenthal, *Reagan Extends Territorial Waters to 12 Miles*, N.Y. Times, Dec. 29, 1988, at A17, col 1. This action was taken pursuant to the Third United Nations Convention on the Law of the Sea, *opended for signature* Dec. 10, 1982, art. 3, U.N. Doc. A/CONF.62/122, *reprinted in* 21 I.L.M. 1261, 1272 (1982) [hereinafter the Convention]. Although the United States has adopted the twelve-mile limit provided for by the Convention, it has not yet become a party to the Convention.

67. Territorial Seas Convention, *supra* note 59, art. 24(1)(a), 15 U.S.T. at 1612, T.I.A.S. No. 5639, at 7, 516 U.N.T.S. at 220.

68. Smith, *supra* note 37, at 780.

69. *Id.*

70. *Id.*

2. Convention of the High Seas

The High Seas Convention governs matters of international admiralty law when a vessel is not within the territorial sea or internal waters of a nation.[71] Article 2 provides that the high seas are open to all nations and that "no State may validly purport to subject any part of them to its sovereignty."[72]

Article 5 of the High Seas Convention permits each nation to fix its own requirements as to the registration of vessels.[73] The only non-domestic requirement placed upon this registration process is that there be some "genuine link" between the vessel and the nation.[74] Furthermore, article 6 provides that

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71. High Seas Convention, *supra* note 60, arts. 1-2, 13 U.S.T. at 2314, T.I.A.S. No. 5200, at 3, 450 U.N.T.S. at 82. The member states to the Convention sought to codify rules of international law relating to the high seas. Article 1 of the Convention defines "high seas" as "all parts of the sea that are not included in the territorial sea or in the internal waters of a State." *Id.*

72. *Id.* art. 2, 13 U.S.T. at 2314, T.I.A.S. No. 5200, at 3-4, 450 U.N.T.S. at 82-84. Article 2 provides, in part:

> Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, *inter alia*, both for coastal and non-coastal States:
> (1) Freedom of navigation;
> (2) Freedom of fishing;
> (3) Freedom to lay submarine cables and pipelines;
> (4) Freedom to fly over the high seas.
> These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

Id. There is some speculation as to whether broadcasting from the high seas is included as one of the other freedoms that are recognized by international law. Smith, *supra* note 37, at 776-78; van Panhuys & van Emde Boas, *supra* note 32, at 313-14. There are three views. *Id.* The first contends that it is not included since it is not expressly mentioned and therefore not contemplated by the drafters. *Id.* A second view uses a "reasonableness" test that asks whether broadcasting on the high seas is a reasonable freedom. *Id.* A third view is a broad interpretation of the words "other freedoms" that would allow for any peaceful activity on the high seas that is not otherwise prohibited by international law. *Id.*

73. High Seas Convention, *supra* note 60, art. 5, 13 U.S.T. at 2315, T.I.A.S. No. 5200, at 4, 450 U.N.T.S. at 84-86. Article 5(1) provides as follows:

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

Id.

74. FRIEDMANN, LISSITZYN & PUGH, *supra* note 64, at 576-77. This standard is

the jurisdiction granted by article 5 is exclusive to that nation unless there is some exceptional case when an international treaty provides otherwise.[75] Thus, radio broadcasts from a vessel on the high seas into a nation can only be controlled by the nation of registry. The High Seas Convention does, however, permit a nation to act against a foreign-registered vessel if a specific international treaty enables such action.[76] The FCC claims the ITC is such a treaty, enabling it to act against vessels inside and outside the territorial seas of the United States.[77]

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not difficult to meet and is usually determined by the registration requirements of the nation with which the vessel is registered. *Id.* The registration requirements for Honduras are particularly easy to meet. *See* Smith, *supra* note 37, at 783 n.29. Once the vessel is registered, the nation must then "effectively exercise its jurisdiction and control in administrative, technical, and social matters" over such vessels. High Seas Convention, *supra* note 60, art. 5, 13 U.S.T. at 2315, T.I.A.S. No. 5200, at 4, 450 U.N.T.S. at 84-86.

Questions have arisen concerning the issue of a "non-genuine link" between a vessel and its registrant nation. *See* Hunnings, *supra* note 34, at 425; Smith, *supra* note 37, at 780-82; van Panhuys & van Emde Boas, *supra* note 32, at 318-19. There is a concern that individuals may seek to register their vessels with certain nations so that they may be able to fly the registrant nation's flag as a "flag of convenience." *Id.* Attempts have been made to use and draw an analogy to the *Nottebohm* case in order to prevent this type of registration. The Nottebohm Case (Second Phase) (Liechtenstein v. Guat.), 1955 I.C.J. 4 (Judgment of June 4).

In *Nottebohm*, the International Court of Justice held that one nation does not necessarily have to accept another nation's citizenry requirements if certain conditions that indicate the establishment of a link, or genuine connection, between that nation and an individual are not met. *See id.* at 21. Among the factors that the court used in *Nottebohm* were the habitual residence of the individual concerned, location of his interests, family connections, participation in public life, and the attachment shown to a particular country and impressed upon his children. *Id.* at 22; *see* Jones, *The Nottebohm Case*, 5 INT'L & COMP. L.Q. 230 (1956); Smith, *supra* note 37, at 786.

A problem arises when one tries to analogize the above factors to the "genuine link" required for valid vessel registration. *Id.* In the Constitution of the Maritime Safety Committee of Inter-Governmental Maritime Consultative Organization, 1960 I.C.J. 150 (Advisory Opinion of June 8), the International Court of Justice refused to apply a *Nottebohm* analysis to vessel registration. *Id.* at 171 n.49. The court refrained from inquiring into the sufficiency of the "genuine link" nexus. *See id.*

75. High Seas Convention, *supra* note 60, art. 6, 13 U.S.T. at 2315, T.I.A.S. No. 5200, at 4, 450 U.N.T.S. at 86. Article 6 provides, "[s]hips shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas." *Id.*

76. *Id.*

77. *See supra* note 18 and accompanying text.

C. *The ITC: Its Limitations in Terms of Applicability*

Articles 21 and 22 of the ITC are the relevant provisions in dealing with infringements of the other ITC articles. These provisions leave the enforcement against infringements up to either the nation having jurisdiction over the transmitting station or the International Frequency Registration Board (the "IFRB").

1. Introduction to the ITC and the Cited Cause of Action

The International Telecommunications Union (the "ITU")[78] was formed in 1865,[79] with the purpose of coordinating international cooperation in telecommunications.[80] The administrative and legal functions of the ITU are governed by the ITC.[81] The United States and Honduras are both parties to the ITC.[82]

One of the purposes of the ITC is to avoid harmful interference between radio stations of different countries.[83] The frequency range that is available for radio transmissions is a limited natural resource, and therefore requires some form of regulation.[84] The ITU established the IFRB to regulate international radio frequencies.[85] Without regulation, there could be indiscriminate use of frequencies resulting in harmful interference. Such interference might obstruct the broadcasts of

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78. *See* W. EMERY, NATIONAL AND INTERNATIONAL SYSTEMS OF BROADCASTING 513-14 (1969). The ITU's headquarters are in Geneva. The ITU consists of six separate organs: the Plenipotentiary Conference, the Administrative Conferences, the Administrative Counsel, the Consultative Committees, the International Frequency Registration Board, and the Secretary-General. *Id.*

79. *Id.*

80. *Id.* As expressed in the ITC, the purposes of the ITU are to

> 1. allocate frequencies and provide for the registration of their assignments to the various countries;
>
> 2. coordinate national efforts to eliminate objectionable interference among stations and achieve maximum utility of the radio spectrum; and
>
> 3. in the area of common carrier communications, to foster collaboration among Union members to maintain reasonably low rates consistent with efficient service.

Id. at 511.

81. ITC, *supra* note 3, preamble at 1.

82. Nairobi Convention, Dec. 11, 1985, S. EXEC. REP. No. 99-4, 99th Cong., 1st Sess. 6 (1985).

83. ITC, *supra* note 3, art. 4(18), at 3.

84. van Panhuys & van Emde Boas, *supra* note 32, at 305.

85. *See* ITC, *supra* note 3, art. 10, at 27.

radio stations that are acting pursuant to a nation's laws and licensing procedures.[86] Harmful interference could also endanger human life by interfering with the emergency distress signal of some other vessel.[87]

Under the ITC's provisions and its accompanying Radio Regulations, the FCC should have notified the IFRB of the *Sarah*'s situation prior to taking any direct action.[88] Article 30 of the Radio Regulations prohibits the establishment and use of broadcast stations on ships outside national territories.[89]

Although the ITC prohibits the establishment of such broadcasting stations, it fails to determine who has jurisdiction to enforce this prohibition. The ITC also lacks enforcement guidelines by which a nation would be able to proceed against those making the transmissions.

2. Analysis of the ITC's Provisions

Article 24 of the Radio Regulations prohibits the establishment of a transmitting station operated by a private person if that person has not obtained a license from the government to which the station is subject.[90] Article 30, on the other hand, does not specify its applicability to private individuals.[91] The need for the prohibitions set forth in article 24 would, to a great degree, be unnecessary if the prohibitions established by article 30 apply to private persons.[92] Thus, the FCC may have acted against private individuals under a regulation that applies only to signatory nations.[93]

Articles 21 and 22 are the enforcement provisions of the ITC.[94] Article 22 deals exclusively with infringements that

86. *See* Hunnings, *supra* note 34, at 414; Smith, *supra* note 37, at 798; van Panhuys & van Emde Boas, *supra* note 32, at 305.

87. *See* van Panhuys & van Emde Boas, *supra* note 32, at 305.

88. *See infra* notes 90-123 and accompanying text.

89. *See* Radio Regulations, *supra* note 18, art. 30, at RR30-1.

90. *Id.* art. 24, § 1(1), at RR24-1. Subsection 1 provides, in part "no transmitting station may be established or operated by a private person or by any enterprise without a licence issued in an appropriate form and in conformity with the provisions of these Regulations by the government of the country to which the station in question is subject." *Id.*

91. *See id.* art. 30, at RR30-1.

92. *Compare id.* art. 24, § 1(1), at RR24-1 *with id.* art. 30, at RR30-1.

93. *See infra* notes 90-92 and accompanying text.

94. *See* Radio Regulations, *supra* note 18, art. 21-22, at RR21-1 to RR22-1.

cause harmful interference,[95] while article 21 is less specific and governs a broad range of infringements.[96]

a. *Enforcement Under Article 21*

Article 21 provides that a nation detecting infringements of other ITC provisions, for example, a violation of article 30, report the infringement to a "respective administration."[97] A respective administration is "[a]ny governmental department or service responsible for discharging the obligations undertaken in the Convention of the International Telecommunication Union and the Regulations."[98] The report should include the name, call sign, nationality, frequency use, class of emission, class of station, nature of service, and location of the interfered-with station.[99]

In the case of a "serious infringement," section 2 provides that reports be filed by the administration detecting the infringement with the administration of the country having jurisdiction over the station.[100] Once informed, that administration is to assess the facts of the situation and take the "necessary action" against the station.[101]

If the *Sarah*'s broadcasts qualify as a serious infringement, then the FCC should have made some representation relating to that infringement to the nation of Honduras.[102] Honduras, as the nation of registration, had jurisdiction over the sta-

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95. *Id.* art. 22, at RR22-1. Article 22 is entitled "Procedure in a Case of Harmful Interference." *Id.*

96. *Id.* art. 21, at RR21-1. Article 21 is entitled "Reports of Infringements." *Id.*

97. *Id.*

98. *Id.* art. 1, at RR1-1.

99. *Id.* app. 22, at AP22-1. Appendix 22 is entitled "Report of an Irregularity or of an Infringement of the Convention or the Radio Regulations." *Id.*

100. *Id.* art. 21, § 2, at RR21-1. Article 21 provides that a "[r]epresentation relating to any serious infringement committed by a station shall be made to the administration of the country having jurisdiction over the station, by the administrations which detect it." *Id.*

101. *Id.* art. 21, § 3, at RR21-1. Article 21 provides that "[i]f an administration has information of an infringement of the Convention or Radio Regulations, committed by a station over which it may exercise authority, it shall ascertain the facts, fix the responsibility and take the necessary action." *Id.*

102. *But see* Miller, *supra* note 2. A story in the New York Times reported that the FCC does purport to have consulted the Honduran government before the seizure. *Id.* It is disputed by defense counsel as to whether this communication took place. *See* Interview with Margaret Mayo, *supra* note 20.

tion.[103] The provision that provides for "necessary action" to be taken assumes that the administration that takes "necessary action" has the authority to exercise such action; it does not confer any additional authority.[104] Thus, the FCC should have reported the *Sarah*'s "serious infringement" to Honduras, which, as the nation of registry, could take the necessary action to halt the broadcasts.[105]

b. *Enforcement Under Article 24*

A pirate transmission will almost always interfere with a licensed broadcast,[106] and this "harmful interference" subjects a transmission to the infringement procedures of article 22.[107] This article provides that, where practicable and subject to agreement by administrations concerned, harmful interference may be dealt with by a specially designated monitoring station or by a coordinated effort by operating organizations.[108]

This procedure stresses the necessity of communication between administrations that are in some way connected to the harmful interference.[109] In the case of the *Sarah*, the United

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103. *See* High Seas Convention, *supra* note 73 and accompanying text.

104. *See* Radio Regulations, *supra* note 118, art. 21, § 3, at RR21-1. The provision does not define what "authority" means in this context. Nor does it give any explanations or guidelines to the "necessary action" that an administration may take. *Id.*

105. *See supra* notes 97-104 and accompanying text.

106. Smith, *supra* note 37, at 772; *see* van Panhuys & van Emde Boas, *supra* note 32, at 311 n.36.

107. Radio Regulations, *supra* note 18, art. 1, § 7(3), at RR1-21; 2 International Communications Union Radio Regulations, res. 68, at RES68-1 (1982). "Harmful Interference" is defined in the Radio Regulations as "interference which endangers the functioning of a *radionavigation service* or of other *safety services* or seriously degrades, obstructs, or repeatedly interrupts a *radiocommunication service* operating in accordance with these Regulations." Radio Regulations, *supra* note 18, art. 1, § 7.3, at RR1-21 [emphasis in original]. This section carries with it a reference to resolution 68. *Id.* This resolution provides that the term "harmful interference" should be reviewed and made more precise with modern technology. 2 International Communications Union Radio Regulations, res. 68, at RES68-1.

108. Radio Regulations, *supra* note 18, art. 22, § 4, at RR22-1. This provision provides that "[w]here practicable, and subject to agreement by administrations concerned, the case of harmful interference may be dealt with directly by their specially designated monitoring stations or by direct coordination between their operating organizations." *Id.*

109. *See id.* art. 22, at RR22-1. The applicable provisions speak of mutual assistance between member states. The procedural provisions use phrases such as "shall inform," "will assist," and "giving all possible information." *Id.*

States, as the administration with jurisdiction over the interfered-with stations, should have informed Honduras, the administration with jurisdiction over the transmitting station, of the *Sarah*'s broadcasts.[110]

Article 22 also provides guidelines as to what the FCC should do once it identifies the source and characteristics of the harmful interference.[111] The administration that has jurisdiction over the interfered-with station should convey all possible information to the administration with jurisdiction over the interfering station.[112] The latter administration may then take the necessary steps needed to eliminate the interference.[113]

The administration with jurisdiction over the transmitting station must acknowledge receipt of a reported infringement by telegram.[114] If the harmful interference continues, then the administration receiving that interference should file a report of irregularity or infraction in accordance with the provisions of article 21.[115] Finally, if all else fails, the administration whose station is being interfered with should forward the details of the case to the IFRB.[116]

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110. *See id.* art. 22, § 6, at RR22-1. This provision provides that "[i]f a case of harmful interference so justifies, the administration having jurisdiction over the receiving station experiencing the interference shall inform the administration having jurisdiction over the transmitting stations whose service is being interfered with, giving all possible information." *Id.* There is no explanation as to what type of harmful interference "so justifies" this action. *See id.*

111. *Id.* art. 22, § 8, at RR22-2. This provision resembles § 6, the only difference between the two is that § 6 uses the words "[i]f a case of harmful interference so justifies"; § 8 uses the words "[h]aving determined the source and characteristics of the harmful interference." *See id.*

112. *Id.*

113. *Id.*

114. *Id.* art. 22, § 12, at RR22-2. This provision provides that "[o]n being informed that a station over which it has jurisdiction is believed to have been the cause of harmful interference, an administration shall, as soon as possible, aknowledge [sic] receipt of that information by telegram. Such acknowledgement shall not constitute an acceptance of responsibility." *Id.*

115. *Id.* art. 22, § 17, at RR22-3. The existence of this provision implies that it is the administration that has jurisdiction over the transmission that should first try to stop the transmissions. *See id.* If this administration does not put an end to the transmissions, then the administration that is being interfered with is to file a report of irregularity, pursuant to article 21. *See id.*

116. *Id.* art. 22, § 19(1), at RR22-3. Section 19(1) provides that "[i]f it is considered necessary, and particularly if the steps taken in accordance with the procedures described above have not produced satisfactory results, the administration concerned shall forward details of the case to the International Frequency Registration Board for its information." *Id.*

The administration that is being interfered with may request that the IFRB take action pursuant to article 12 and/or article 13.[117] This action requires that the IFRB include the particulars of the case in a weekly circular within forty days of receipt of "complete notice" of the incident.[118] The publication of details appears to be the extent of the IFRB's power to act on its own as an enforcement agency.[119]

c. *The Enforcement Powers of the IFRB*

The IFRB is mainly an administrative organization with little enforcement power.[120] The authority of the IFRB is limited for two reasons. First, not all nations have ratified the ITC and/or the Radio Regulations.[121] Thus, there is a question as to what type of authority, if any, the IFRB would have over non-signatory nations.[122] Second, and more importantly, there are no expressed means of enforcement against operating stations that do not come within the territorial jurisdiction of a member nation.[123]

The essential duties of the IFRB are listed in article 10 of the Radio Regulations.[124] One of these functions is to investigate, at the request of an interested administration, harmful interference.[125] Subsequently, the IFRB should formulate recommendations with respect to that interference.[126] Thus, it appears that the FCC should have at least asked for recommendations from the IFRB as to what type of action it should have

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117. *Id.* art. 22, § 19(2), at RR22-3. This provision provides that "[i]n such a case, the administration concerned may also request the Board to act in accordance with the provisions of Sections VII and VIII of Article 12 and Sections VII and VIII of Article 13; but it shall then supply the Board with the full facts of the case, including all the technical and operational details and copies of the correspondence." *Id.*

118. *Id.* art. 12, §§ 7-8, at RR12-5; *id.* art. 13, §§ 7-8, at RR13-3. Both articles speak of "complete notice" being filed with the IFRB and of prompt consideration by the IFRB upon receipt of such notice. *See id.* There is nothing to indicate what "complete notice" entails. *See id.*

119. *See id.*

120. van Panhuys & van Emde Boas, *supra* note 32, at 306.

121. *Id.*

122. *Id.* at n.17.

123. *Id.* at 306.

124. Radio Regulations, *supra* note 18, art. 10, at RR10-1. This article is entitled "International Frequency Registration Board." *Id.*

125. *Id.* art. 10, § 2(g), at RR10-2.

126. *Id.*

taken.[127]

III. *A COMPARATIVE LOOK AT BRITISH PIRACY STATUTES AND TREATIES*

Unlike the United States, the United Kingdom has had numerous encounters with so-called "radio pirates."[128] Rather than rely on the ITC,[129] the United Kingdom enacted legislation to combat off-shore radio broadcasts by its citizens and nationals from foreign-registered ships.[130] The United Kingdom has also entered into an inter-European treaty, the European Agreement for the Prevention of Broadcasts Transmitted from Stations Outside National Territories (the "Strasbourg Agreement" or the "Agreement"),[131] the sole purpose of which is to combat radio piracy.[132]

When both the Strasbourg Agreement and the MBOA were passed, the United Kingdom was a signatory to the ITC of 1959.[133] The ITC, as it existed in 1959, had a provision similar to article 30 of the Radio Regulations of the ITC as

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127. *See supra* notes 90-126 and accompanying text.

128. The first-ever sea pirate broadcasts made to British listeners occurred in 1961. The transmissions were made by the Commercial Neutral Broadcasting Company on-board a ship called *Radio Veronica*. Radio Caroline, perhaps the most famous of the British pirates, began its transmissions in 1964. J. HIND & S. MOSCO, *supra* note 21, at 11-18 (1985).

129. ITC, *supra* note 3, annex 1 at 145. The United Kingdom is a member state of the ITC and the ITU. *Id.*

130. The Marine, &c., Broadcasting (Offences) Act, 1967, ch. 41 [hereinafter MBOA]. The purpose of this Act is to "suppress unauthorised broadcasting from ships or aircraft and from certain marine structures or other objects other than ships or aircraft, i.e., from the so-called 'pirate radio stations.'" *Id.* at preliminary note. The Act makes it an offense to furnish ships or aircraft, supply and maintain wireless equipment, supply goods and materials, or to supply or make program material for the purpose of pirate broadcasting. *Id.* It also makes it an offense to participate in the pirate broadcasts, to advertise on such broadcasts, or to publish details of the broadcasts or advertisements relating to such. *Id.*

131. Jan. 22, 1965, Europ. T.S. No. 53 [hereinafter Strasbourg Agreement].

132. *Id.* art. 1. Article 1 of this Agreement provides:

> This Agreement is concerned with broadcasting stations which are installed or maintained on board ships, aircraft, or any other floating or airborne objects and which, outside national territories, transmit broadcasts intended for reception or capable of being received, wholly or in part, within the territory of any Contracting Party, or which cause harmful interference to any radio-communication service operating under the authority of a Contracting Party in accordance with the Radio Regulations.

Id.

133. *See* Strasbourg Agreement, *supra* note 131; MBOA, *supra* note 130. Note

amended in 1982.[134] The provision prohibited the establishment of broadcasting stations outside national territories, and yet, the United Kingdom did not attempt to use the ITC as a way of ending its radio piracy problem.[135]

A. *The Strasbourg Agreement*

The United Kingdom's first direct attempt to combat radio piracy occurred in 1965 when it entered into the Strasbourg Agreement.[136] The purpose of the Agreement was to halt the problems many European nations were having with radio pirates.[137] The Agreement states that each contracting nation is to apply the provisions of the Agreement in accordance with its own domestic laws.[138] Article 3 gives the signatory nations authority over their nationals who establish broadcasting stations outside national territories.[139] The Agreement also states that signatory nations have authority over non-nationals who make broadcasts from ships and aircrafts, including ships of foreign registry, while that ship or aircraft is under its jurisdiction.[140] Despite the Strasbourg Agreement, European governments were prohibited from boarding ships outside their territorial

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that all of these agreements were entered into after 1959, subsequent to the United Kingdom's membership to the ITC of 1959.

134. *Compare* International Telecommunications Convention, Dec. 21, 1959, art. 7, 12 U.S.T. 1761, 1773, T.I.A.S. No. 4892, at 7 *with* Radio Regulations, *supra* note 18, art. 30, at RR30-1 (1982). Both provisions prohibit the "establishment and use of broadcasting stations (sound broadcasting and television broadcasting stations) on board ships, aircraft, or any other floating or airborne objects outside national territories." *Id.*

135. *See* MBOA, *supra* note 130, ch. 41. The U.K. legislature made no expressed mention of the ITC or the Radio Regulations in the MBOA. *Id.* In 1984, the United Kingdom felt it necessary to pass further legislation in order to prohibit the "land based" broadcasts (not covered by the MBOA) that were taking place. Telecommunications Act, 1984, ch. 12.

136. FRIEDMANN, LISSITZYN, & PUGH, *supra* note 64, at 617.

137. Strasbourg Agreement, *supra* note 131, art. 1.

138. *Id.* art. 2, at 2-3. Article 2 provides, in part: "[e]ach Contracting Party undertakes to take appropriate steps to make punishable as offences, in accordance with its domestic law . . . ." *Id.*

139. *Id.* art. 3(a), at 3. Article 3(a) gives the contracting parties authority over "its nationals who have committed any act referred to in Article 2 on its territory, ships, or aircraft, or outside national territories on any ships, aircraft or any other floating or airborne object." *Id.*

140. *Id.* art. 3(b), at 3. Article 3 gives contracting parties authority over "non-nationals who, on its territory, ships or aircraft, or on board any floating or airborne object under its jurisdiction have committed any act referred to in Article 2." *Id.*

boundaries during peacetime without first obtaining permission from the ship's sovereign.[141]

B. *The MBOA*

In 1967, the United Kingdom enacted the MBOA.[142] The MBOA was a legislative response to pirate broadcasts that had been transmitting to British listeners since 1961.[143] Section 1 of the MBOA makes it unlawful to broadcast from a ship, aircraft, or marine structure while it is "in or over the United Kingdom or external waters . . . ."[144] It also prohibits British nationals from participating in pirate broadcasts that emanate from vessels outside the United Kingdom and its external waters.[145] This emphasis on the acts of its citizens and nationals, rather than a vessel's nation of registry, enables the United Kingdom to assert its jurisdiction no matter where the ship is in the seas or where it is registered.[146]

The MBOA differs from the Communications Act in several respects. First, unlike section 301 of the Communications Act, the MBOA was enacted specifically to halt the pirate broadcasts that were frustrating British authorities.[147] The primary purpose of the Communications Act was to control communications by establishing the FCC, a quasi-legislative communications commission.[148] Second, section 301 speaks only

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141. D. BOYD, PIRATE RADIO IN BRITAIN: UNLICENSED BROADCASTING AND THE QUEST FOR LOCALISM 5 (1985).

142. MBOA, *supra* note 130.

143. J. HIND & S. MOSCO, *supra* note 21, at 13.

144. MBOA, *supra* note 130, § 1(1).

145. *Id.* § 1(2).

146. *See id.* Note that this legislation focuses on the citizenship or nationality of the individual engaging in the transmissions. *Id.* It does not rely upon seeking jurisdiction over the vessel. *Id.*

147. *See* J. HIND & S. MOSCO, *supra* note 21, at 13. *Compare* 47 U.S.C. § 301 (1982) *with* MBOA, *supra* note 130, preliminary note.

148. *See* 47 U.S.C. § 151 (1982). The purpose of tit. 47 is to establish guidelines for the entire field of wire and radio communication. Section 151 expressly provides that the Communications Act has the

> purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all people of the United States a rapid, efficient, nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by central-

of situations where a federal broadcasting license is required,[149] while the MBOA speaks of the actual suppression of unauthorized broadcasts.[150] Third, and most importantly, the MBOA creates a cause of action against British citizens and subjects who actively participate in pirate broadcasts.[151] Section 301 makes no mention, nor does it place any demands upon, U.S. citizens or subjects who might participate in such broadcasting activities.[152]

The MBOA prohibits radio broadcasts originating outside British territory from vessels not registered with its authorities.[153] In particular, the MBOA prohibits various acts that are connected with broadcasting from ships, aircraft, and marine structures outside the United Kingdom.[154] Section 4 explicitly

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izing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the "Federal Communications Commission," which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Chapter.

Id.

149. *See* 47 U.S.C. § 301.

150. *See* MBOA, *supra* note 130, § 6. The MBOA lists the procedures that will be undertaken by British authorities as well as the fines and punishments that will accompany an offense. *See id.*

151. *See id.* § 3(3). Section 3(3) lists the following individuals as subject to the Act:

(a) a citizen of the United Kingdom and colonies;

(b) a British subject by virtue of section 2 of the British Nationality Act 1948 (continuance of certain citizens of the Republic of Ireland, therein referred to as Eire, as British subjects);

(c) a British subject without citizenship by virtue of section I3 or section I6 of that Act (which relate respectively to British subjects whose citizenship has not been ascertained at the commencement of that Act and to persons who had ceased to be British on loss of British nationality by a parent);

(d) a British subject by virtue of the British Nationality Act 1965; and

(e) a British protected person (within the meaning of the British Nationality Act 1948).

Id.

152. *See* 47 U.S.C. § 301.

153. *See* MBOA, *supra* note 130, §§ 3-4.

154. *Id.* § 4(3). These acts include furnishing the broadcasting mechanism; carrying or agreeing to carry wireless telegraphy devices; supplying or installing wireless telegraphy devices; repairing or maintaining wireless telegraphy devices; supplying goods, water, or persons to a vessel (in this context, vessels include those things that are not ships or aircraft, e.g., anchored platform stations) engaged in pirate broadcasts. *Id.* It must be shown that the actor either had knowledge of the pirate broadcasts or had a reasonable cause to believe that pirate broadcasts would occur. *Id.*

prohibits broadcasts that emanate from ships not registered with the United Kingdom while that ship is on the "high seas."[155] If such broadcasts are made, the MBOA provides that jurisdiction is valid as to those who "operate[], or participate[] in the operation of, the apparatus by means of which the broadcast is made," so long as the individual is either a British subject or a British citizen.[156]

If the Communications Act contained a similar provision pertaining to the extraterritorial broadcasts of U.S. citizens, then the crew of the *Sarah* would have been in violation of it.[157] Under such a provision, because the crew members are U.S. citizens, their participation in the operation of the *Sarah* would be sufficient to enable the FCC to shut down the broadcasts. This is similar to *United States v. McIntire*, where the FCC was allowed to stop broadcasts from a U.S.-registered vessel.[158]

Congress could enable the FCC to deal with cases such as the *Sarah* by passing legislation similar to that of section 3 of the MBOA as an amendment to the Communications Act.[159] Such a citizenship provision would have been applicable against the *Sarah*'s crew.[160]

CONCLUSION

Although the United States has not had an extensive history of radio piracy, it does place great importance on the orderly use of the radio airwaves. While the Communications Act allows the FCC to stop unlicensed broadcasts from U.S.-registered vessels, the United States currently has no way to stop broadcasts from foreign-registered vessels. In the case of the *Sarah*, the United States relied on the ITC because it did not have a statute to prevent these broadcasts. The ITC, however, does not authorize the United States to seize a foreign-registered vessel operated by U.S. citizens. Thus, in order to

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155. *Id.*

156. *Id.* § 3(1).

157. *Compare supra* notes 1-5 and accompanying text *with* MBOA, *supra* note 130, § 3. Had the crew members been citizens of the United Kingdom, then the crew would have been in violation of the MBOA. *Id.*

158. United States v. McIntire, 365 F. Supp. 618, *modified and aff'd*, 370 F. Supp. 1301 (D.N.J. 1974); *see supra* notes 10-14 and accompanying text.

159. *See* U.S. CONST. art. I, § 1. Article I of the Constitution gives Congress the authority to pass laws. *Id.*

160. *See supra* note 157.

maintain the orderly use of its radio airwaves and to prevent future radio piracy, the United States should enact legislation to enable it to act in this area. The MBOA, which enables the British government to take action against radio pirates regardless of a vessel's nation of registry, is a useful model for the United States when it comes to dealing with the modern-day pirates of the airwaves.

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