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MARITIME PIRACY AND SECURITY

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Abstract

International peace and security on the oceans are currently faced with variety of threats. Maritime Piracy being one of them is a global challenge and a serious problem endangering the welfare of seafarers and the security of sea communication. Maritime piracy is a crime under municipal laws of the States as well as under international law. Traditionally pirates have been considered 'enemies of mankind'. The suppression of piracy can therefore be considered as a common interest of the international community.

The Article provides an introduction to Maritime piracy and discusses customary international law and law-making conventions relating to piracy. It also emphasizes that; all States are required to cooperate and take effective measures to prevent and suppress piracy. India's response to the security challenges posed by maritime piracy in the Indian Ocean region, through the introduction of the Maritime Anti-Piracy Act, 2022 has also been discoursed under this Article.

The subject matter of Maritime piracy and security is so vast and changing from sporadic smash-and-grab crime to highly developed organised crime. However, a humble attempt is made in this Article to analyze the threat of Maritime piracy and the security measure undertaken on an international level as well as on the national level.

Keywords : Maritime Piracy, pirates, maritime security, high seas, UNCLOS, Indian Ocean, piracy jurisdiction.

Introduction

Maritime Piracy has been a persistent problem for centuries and has caused significant economic loss, endangered the lives of seafarers, and damaged the maritime environment. It involves acts of robbery, theft, and kidnapping that occur at sea. Ninety percent of world's international trade is sea-borne. Apart from the natural perils, for the maritime community there has always been risk of piratical attack on merchant ships. Pirates usually target ships that are transporting valuable goods or have a significant number of crew members.⁷⁸

Poverty, political instability, and weak governance are among the primary drivers of piracy. In regions such as the Gulf of Aden and the Gulf of Guinea, where piracy is prevalent, poverty is high, and government institutions are weak. In these regions, piracy is often seen as a lucrative means of livelihood for young men who lack economic opportunities.

In addition to poverty and weak governance, the proliferation of small arms and light weapons has also contributed to the rise of piracy. The availability of weapons has made it easier for pirates to carry out their attacks, making the seas even more dangerous for seafarers.

I. Concept of Piracy

Piracy is committed on high seas. It is a crime under municipal laws of the States as well as under the international law. Pirates are enemies of mankind and have placed themselves

⁷⁸ Sergei Oudman, "Piracy Jure Gentium & International Law", *E-International Relations*, 2011.



outside the protection of their national State. According to Article 100,⁷⁹ All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Piracy consists of any of the following acts:⁸⁰

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an aforesaid act.

In Enrica Lexie Case,⁸¹ the Arbitral Tribunal made important observation with respect to Article 100 of UNCLOS. It stated that for the suppression of piracy, Article 100, “does not stipulate the forms or modalities of cooperation” which the States are obliged to undertake. Hence, the duty to cooperate, does not necessarily imply to capture and prosecute pirates. It is sufficient to include certain mechanism in their national legislations which may provide for mutual assistance in criminal matters, extradition of pirates or conclude bilateral agreements in order to facilitate such cooperation.⁸²

Lastly, it is a common notion that in order to commit piracy, pirates should have committed actual robbery. However, this issue came before the Privy Council in *Re piracy jure gentium*. The Privy Council concluded that actual robbery is not an essential element for the crime of piracy

under international law. Thus, a frustrated attempt to commit piracy is equally *piracy jure gentium*.⁸³

II. Customary International Law

The States exercise universal jurisdiction on pirates under customary law as well as conventional law, i.e., United Nations Convention on Law of the Sea, 1982 and Geneva Convention on High Sea, 1958.

In *The Le Louis*,⁸⁴ Lord Stowell stated that “with professed pirates there is no state of peace. They are the enemies of every country and at all times, and therefore are universally subject to the extreme rights of war.”

Further, in the *Lotus Case*, Moore J stated that “piracy by law of nations, in its jurisdiction aspect is *sui generis*. It is an offence against the law of nations; and as the scene of pirate’s operations in the high seas, which it is not the right or duty of any nation to police, he is denied the protection of the flag which he may carry, and is treated as an outlaw, as the enemy of mankind – *hostis humani generis* – whom any nation may in the interest of all capture and punish.”⁸⁵

The same was observed in 1999, the Alondra Rainbow ship was attacked and seized off the coast of Indonesia. The Indian Navy chased the pirates and arrested them. Though India did not have any interest in the ship, it still prosecuted the pirates and punished them according to its national laws.

Similarly, in *Republic of Korea v. Araye*,⁸⁶ the Apex Court of Republic of Korea, upheld the exercise of universal criminal jurisdiction over Somali pirates convicted of hijacking a Korean vessel in the Indian Ocean.

III. Law-Making Conventions relating to Piracy

⁷⁹ Article 100 - Duty to cooperate in the repression of piracy, UN Convention on the Law of the Sea

⁸⁰ Article 101, (Definition of Piracy), UN Convention on the Law of the Sea.

⁸¹ *The Italian Republic v. The Republic of India*, PCA Award of 21 May 2020, PCA Case No. 2015-28.

⁸² *Enrica Lexie Case*, paras 722-23.

⁸³ *Re piracy jure gentium*, (1934) AC 586.

⁸⁴ *The Le Louis* (1817) 2 Dods 210.

⁸⁵ *Lotus Case*, PCIJ, Ser A No.10 (1927), p70.

⁸⁶ *Republic of Korea v Araye*, (S. Ct.) No. 2011 Do 12927.



A. Geneva Convention on High Seas, 1958-

The Geneva Convention on the High Seas⁸⁷ provides for the conduct of ships and other vessels on the high seas. Amongst, various provisions of the convention, some of the important Articles addressing the issue of piracy, are as follows:

1. Piracy is considered a crime under international law and all states are required to cooperate and take effective measures to prevent and suppress piracy.⁸⁸
2. Under Article 15, piracy is defined as any illegal acts of violence or detention committed on the high seas for private ends by the crew or passengers of a private ship or aircraft.
3. Article 19 of the convention, provides that all states have the right to seize a pirate ship or any vessel taken by piracy, and allows them to arrest and punish pirates under National Statutes or under the laws of the state to which they are extradited.
4. Under the Convention, when the seizure of a ship on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to pay for any loss or damage caused by such seizure to the State who possessed the ship.⁸⁹
5. Furthermore, it requires States to surrender any property seized in connection with piracy and obliges them to cooperate in the prosecution of pirates.

In summary, the Geneva Convention on the High Seas establishes a comprehensive legal framework for the suppression of piracy on the high seas. It requires all states to cooperate in the prevention, suppression, and prosecution of piracy and provides for the seizure of pirate ships and the arrest of pirates.⁹⁰

⁸⁷ Done at Geneva on April 29, 1958, Entered into force on 30th September 1962, United Nations, Treaty Series, vol. 450, p.11-82.

⁸⁸ Article 14 of the Geneva Convention on High Seas, 1958.

⁸⁹ Under Article 20 of the 1958 Convention.

⁹⁰ Article 14-22; Geneva Convention in High Seas (1958)

B. United Nations Convention on Law of the Sea, 1982-

1. UNCLOS is an international treaty, adopted to govern the use of the world's oceans and seas. One of the key provisions of UNCLOS is the recognition of piracy as a serious crime that must be dealt with by the international community.
2. Article 101 of UNCLOS defines piracy as "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, and directed on the high seas, against another ship, or against persons or property on board such ship in a place outside the jurisdiction of any state." It further clarifies that piracy can occur not only on the high seas but also in exclusive economic zones (EEZs) and on the continental shelf.
3. UNCLOS also mandates that all states take action to suppress piracy and punish those who commit piracy. This includes the obligation to cooperate with other states and international organizations to prevent and combat piracy. States are also required to apprehend and prosecute pirates and to take measures to ensure the safety and security of ships and their crews.
4. Additionally, UNCLOS recognizes the right of all states to take measures necessary to protect their ships and citizens from piracy, including the use of force if necessary. However, any such measures must be taken in accordance with international law and respect the rights of other states.

Overall, UNCLOS provides a comprehensive framework for dealing with piracy on the high seas, emphasizing the importance of international cooperation and the need to take strong measures to prevent and punish this serious crime.

C. The 2005 SUA Convention-



1. Piracy in international law is narrowly defined and it does not cover all threats to seafarer's life and security of commerce at sea. In regard to fill this legal vacuum, Convention for suppression of Unlawful Acts against the Safety of Maritime Navigation (the SUA Convention),⁹¹ was concluded under the auspices of the IMO.⁹²
2. The Convention, was a direct response to the *Achille Lauro* incident.⁹³ The 1988 Convention was subsequently revised by the Protocol of 2005.
3. One of the most significant provisions of the SUA Convention of 2005 is the requirement for States to exercise jurisdiction over piracy offenses committed outside of their territorial waters. Thus, allowing states to prosecute pirates even if the crime was committed in international waters.

Overall, the SUA Convention of 2005 is an essential tool in the fight against piracy and other maritime crimes. By strengthening international laws and promoting cooperation between states, the convention helps to ensure the safety of shipping and the protection of seafarers.

IV. India's response to Maritime Piracy and Security Challenges

In the Maritime domain India's geographical location makes it an important player. It has an extensive coastline of over 7,500 km surrounded by the Indian Ocean. The Indian Ocean is one of the regions most affected by piracy, with incidents of piracy occurring in its waters for several years. Therefore, India has always given priority to maritime security. The country's maritime security strategy is based on three

pillars: coastal security, maritime safety, and national security.

The waters in the coast of Somalia region have been particularly notorious for piracy, with several incidents of piracy reported. According to the International Maritime Bureau (IMB), 47 piracy incidents were reported in the Indian Ocean region in 2020, with most of the incidents reported from the coast of Somalia and the Gulf of Guinea. Hence, IMB has classified the waters off the coast of Somalia as a "high-risk area" for piracy.⁹⁴

In order to tackle this problem, India has signed several agreements with other countries to enhance maritime security in the Indian Ocean. However, a notable step was taken in recent times by the Indian Parliament by passing the Maritime Anti-Piracy Bill, 2022.⁹⁵

A. **The Maritime Anti-Piracy Act, 2022**

Piracy has been a significant security threat to the maritime industry in the Indian Ocean region. The Indian government recognized the need to tackle the issue and introduced the Maritime Anti-Piracy Act.⁹⁶

India's Maritime Anti-Piracy Act, is a comprehensive piece of legislation that aims to address the issue of piracy in Indian waters. The bill has been designed to provide a legal framework for investigation, prosecution of piracy-related offenses and provide for the punishment of offenders.⁹⁷

B. **Some of key provisions of the Act are as follows:**

1. **Criminalization of Piracy:**

The Maritime Anti-Piracy Act, defines and criminalizes acts of piracy in Indian waters. The

⁹¹ The 1988 Convention, Later on known as the Protocol of 2005. Entered into force on 1st March 1992. At the same time, the Protocol for Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf was adopted.

⁹² International Maritime Organization.

⁹³ In 1985, the Palestine Liberation Front hijacked the Italian cruise ship *Achille Lauro*, taking over 400 hostages and demanding the release of Palestinian prisoners. They killed an American passenger, Leon Klinghoffer, and threw him overboard. The incident caused global outrage and led to the capture and trial of the hijackers, highlighting the cost of terrorism and the importance of peaceful solutions to conflicts.

⁹⁴ International Maritime Bureau, "Piracy and Armed Robbery Against Ships: 2020 Annual Report," 2021.

⁹⁵ Moving the Maritime Anti-Piracy Bill, External Affairs Minister, S. Jaishankar stated, "Ensuring maritime security is key to safeguarding India's security and economic well-being."

⁹⁶ On 31st January 2023, the President of India gave assent to the Maritime Anti-Piracy Act, 2022.

⁹⁷ "Maritime Anti-Piracy Act, 2022 receives President's assent," Bhumika Indulia, SCC Blog, <https://www.sconline.com>.



Act, covers all types of piracy, including piracy on the high seas,⁹⁸ piracy in territorial waters, and piracy on the Exclusive Economic Zone (EEZ). It also criminalizes the financing, aiding, or abetting of piracy.

2. Punishment for Piracy:

Punishment under the Act, includes Imprisonment for life and/or fine or death penalty.⁹⁹ For attempting to commit or aid piracy, imprisonment is imposed up to 10 years, or fine, or both. For participating, organizing or directing others to commit piracy, imprisonment up to 14 years may be awarded, or fine, or both.

3. Designated Courts:

The Act, provides for the establishment of Designated Courts¹⁰⁰ to handle piracy-related offenses. The Courts will have jurisdiction over: a citizen of India, a resident foreign national in India or a stateless person. Delegated Courts would also have jurisdiction to try offences committed by a person in the custody of the Coastal Guard or the Indian Navy regardless of his nationality. However, the Court will not have jurisdiction over warships, government owned ships for non-commercial purposes and over offences committed on a foreign ship.¹⁰¹

4. Power of arrest and seizure:

The Central Government may, by notification, confer the powers of arrest, investigation and prosecution of any person exercisable by police on any of its officer or such officer of a State Government.¹⁰² Authorised persons may also carry out search and seizure on the grounds of suspicion, as per the official amendments.

5. Juridical Assistance:

⁹⁸ Which is 200 nautical miles from country's coastline i.e., beyond the Exclusive Economic Zone (EEZ).

⁹⁹ "Capital punishment is awarded only if the act or attempt of piracy causes death or includes attempted murder."

¹⁰⁰ The Central Government, in consultation with the chief justice of the concerned High Court, may notify Sessions Court as the Designated Court under the said Act.

¹⁰¹ "Maritime Anti-Maritime Piracy Bill passed by Indian Parliament," International Chamber of Shipping (Feb 2, 2023), <https://www.ics-shipping.org>.

¹⁰² The Maritime Anti-Piracy Bill, 2022 (Bill No. 369-C of 2019).

The act provides for mutual legal assistance to be extended by India to any foreign government for the purpose of investigation, prosecution or prevention of piracy-related offences. It also provides for the extradition of persons accused of piracy.

C. Implications of the Act-

The Act is expected to have several implications, including:¹⁰³

1. Enhanced security: The act provides a legal framework to tackle piracy and provides a deterrent to potential offenders. This will enhance the security of the Indian maritime industry and protect its maritime assets, making it a safer place for trade and transportation.
2. Improved international cooperation: The act provides for mutual legal assistance and extradition of piracy suspects, which will enhance cooperation with other countries in the region and beyond.
3. Increased investment in the maritime industry: The Act will provide confidence to investors and stakeholders in the Indian maritime industry, resulting in positive impact on the investment and growth of the industry.¹⁰⁴

Conclusion

Maritime piracy is a complex and multi-faceted problem that requires a coordinated and sustained international response. While progress has been made in recent years, piracy continues to threaten the safety and security of seafarers and the global economy. Efforts to combat piracy must be focused on addressing the root causes of piracy, such as poverty and political instability, as well as improving the capacity of affected countries to address piracy within their borders.

¹⁰³ The Indian Maritime Anti-Piracy Act, 2022, available at: <https://prsindia.org/billtrack/the-indian-maritime-anti-piracy-bill-2022>.

¹⁰⁴ "India enacts Maritime Anti-Piracy Act to combat piracy in Indian Ocean", The Economic Times, March 23, 2022, available at: <https://economictimes.indiatimes.com>.



Piracy is a crime under municipal and international law, and all states are required to cooperate to prevent and suppress it. India's introduction of the Maritime Anti-Piracy Act, 2022 is an example of national measures to combat piracy. Through increased cooperation and coordination, the international community can work to create a safer and more secure maritime environment.

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