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Piracy in International Law

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Abstract

Piracy is a big concern in today's world. Piracy is far from being a new phenomenon. This virtually timeless crime has existed as long as maritime trade and has threatened crews, passengers, property and ships, imperils important sea lines of communication and the free flow of commerce. It negatively impacts regional stability and can, in certain circumstances, together with some other factors, create a threat to international peace and security. Therefore, this paper will analyse the issue of piracy concerning international law and will dwell on how it emerged as a threat in ancient times and the efforts of States to prevent and prosecute activities related to piracy.

Introduction

Piracy is one of the most notorious international crimes recognised since the early conception of the regulation of the law of the sea. Under the system of international criminal law, it took a long period before States could prohibit piracy and stop supporting privateers for their political purposes. One of the most controversial conflicts concerning the subject of piracy was the question of creating the right to visit and search vessels.

Piracy has not only been characterized as an international crime under customary international criminal law but several international conventions recognize piracy as a prosecutable and punishable international crime. Some of these conventions have mutual and others multilateral characters. Two of the most important of these conventions are the 1958 and 1982 United

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Nations Conventions on the Law of the Sea. The latter convention modifies the former and is rather a modern comprehensive approach to the law of the sea compared with the former².

According to the Annual Report, 2020, IMB's Piracy Reporting Centre received a total of 195 incidents of piracy and armed robbery against ships worldwide, as compared to 162 incidents that were reported in 2019.³

The following is the analysis of the number of incidents that were reported –

Year	Hijacked vessels	Vessels fired upon	Attempted attacks	Vessels boarded	Total
2019	04	11	17	130	162
2020	03	11	20	161	195

In one article by Hague Centre for Strategic Studies, the data states that over 80% of global trade is conducted by sea, with over 46,000 large vessels and around 4,000 large ports making up today's maritime transport system. The maritime environment is nearly 2.5 times larger than our planet's terrestrial surface, composing a complex network of high seas, territorial waters, estuaries and river systems. The article highlights the fact that piracy usually occurs in largely ungoverned areas where there is lawlessness and poor monitoring. The security challenges arising from piracy are multifaceted and affect a wide space of actors. Piracy not only constitutes a direct threat to the physical security of the shipping crew but piracy also has a direct economic impact in terms of theft of goods, stores and even ships, fraud, delays, etc. which results in higher costs, increased insurance premiums or alterations of international

²FARHAD MALEKIAN, PRINCIPLES OF ISLAMIC INTERNATIONAL CRIMINAL LAW: A COMPARATIVE SEARCH, 299–302 (2011).

³ *Annual Piracy Report*, INTERNATIONAL MARITIME BUREAU (2020)

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shipping routes. The article also informs about the type of attacks by the pirates as the bulk of attacks take place in bays, estuaries and archipelagos, where favourable geographic circumstances offer the best opportunities for pirates⁴. In the past, the majority of piracy attacks can be described as moderate or low level, but over the years, now it has shifted towards more advanced, sophisticated and professionalized forms of piracy. Although most piracy attacks are conducted for purposes of economic gain, politically motivated piracy should not be overlooked⁵.

The nature of the act of piracy indeed, as prescribed under international law are criminal *per se*. At any rate, no private individuals, belligerents, insurgents or even governments should be exempted from the liability of committing such acts. Even at war, it is reasonable to accept that the governments, belligerents or insurgents attack the enemy ships but not the civilians or other ships. Since the act of piracy is an indiscriminate attack, whoever commits it should be held liable for the crime. It tries to answer the queries related to jurisdiction of the States as it states, “Whether pirates, pirate ships or aircraft are subjected to municipal law or the international law is determined based on the place of the commission of the acts of piracy.” If the piracy is committed within the internal waters, the territorial sea, the contiguous zone, the EEZ of a State, then such crime may be considered as piracy under the coastal State's domestic law. Under international law, acts of piracy must be committed on the high seas or in a place outside the jurisdiction of any State. Only when pirates, pirate ships or aircraft commit piracy under international law, every State has jurisdiction to seize the pirate ships or aircraft, arrest the pirates, dispose of their properties and bring them to trial before its Court regardless of the state of nationality. Accordingly, the following discussion focuses on the high seas regime alone among other maritime zones under the UNCLOS, 1982.⁶

⁴ M. MURPHY, *Contemporary Piracy and Maritime Terrorism*, INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES, (2007)

⁵ *Maritime Piracy*. HAGUE CENTRE FOR STRATEGIC STUDIES, (2008).

⁶ Ansari, Abdul Haseeb, et al. *Combating Piracy Under The United Nations Convention On The Law Of The Sea 1982*. 56 IND. LAW. INSTI. J, 320–347 (2014).

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Historical Background

Maritime piracy has been one of the oldest subjects of international law and today it has become a serious threat to commerce and security. The word pirate has its English roots in the 14th century when the Latin word *Pirata* was used to describe the Vikings. Popular culture during that period which includes movies, parks and comics, has tried to glorify the pirates during the 18th century, which was also known as the Golden Age of pirates. These pirates presented an asymmetric threat to the Spanish; although they were not numerous, the pirates used stealth and superior armaments to attack and plunder ships laden with spoils from the New World.

Pirates have plagued seafarers for millennia. Homer and Cicero noted incidents involving ancient Greek and Roman⁷ mariners, and Western Europeans weathered Viking onslaughts during the Middle Ages. In the 16th and 17th centuries, monarchs frustrated by Spain's dominance of the Caribbean commissioned privateers to harass the Spanish fleet—helping to usher in piracy's golden age, when swashbuckling marauders like Edward (Blackbeard) Teach roamed the sun-splashed islands, plundering gold and silver.

Tracing the timeline in the brief history, one needs to go way back to 1400-1200 BC: The earliest known pirates, the Lukkans, who were based in what is now southeastern Turkey, and who became a major thorn in the side of the Egyptian empire.⁸ Piracy continued in the Mediterranean region for the following reasons:-

- it was an easy way to make a great deal of money;
- it also provided the opportunity of upward mobility & travel for some, and excitement for others, and everything at the expense of someone else.

⁷ Alex Altman, *A Brief History of Pirates*, TIME (Oct. 02, 2008), <http://content.time.com/time/world/article/0,8599,1846422,00.html>.

⁸ Joshua J. Mark, *Pirates in the Ancient Mediterranean*, ANCIENT HISTORY ENCYCLOPEDIA (Aug. 19, 2019), <https://www.ancient.eu/Piracy/>

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Looking into the mental aspect of pirates, the reason behind committing this offence is the common criminal mindset that why should one struggle to make a living when one could more easily steal a living from others; which is also the similar *mens rea* for the people involved in the offence of theft or robbery⁹.

As far as the legal perspective is concerned, the first case was decided by the United States Supreme Court 200 years ago in which the question raised was whether the plunder and robbery committed by the defendant constituted piracy as defined by the law of nations, to be punishable under the Act of Congress. In this case, there was an indictment for piracy against the defendant on charges brought by the Government. The special verdict of the jury found that defendant was guilty of the plunder and robbery charged in the indictment. The jury also found additional facts which manifested that defendant and his associates were, at the time of committing the offence, freebooters upon the sea, not under the acknowledged authority, or deriving protection from the flag or commission of any Government. The Circuit Court was divided on the question of whether that was piracy as defined by the law of the nations and certified the question to the Court. The Court found that piracy, by the law of nations, was robbery upon the sea and that it was sufficiently and constitutionally defined by the fifth section of the Act of Congress of 3rd of March, 1819.

The Court further found that the special verdict contained sufficient facts upon which it could pronounce that defendant was guilty of piracy. The Court certified to the Circuit Court of Virginia, that upon the facts stated, the case was of piracy, as defined by the law of nations, to be punishable under the Act of Congress¹⁰ and further observed-

⁹ Joshua J. Mark, *Pirates in the Ancient Mediterranean*, ANCIENT HISTORY ENCYCLOPEDIA (Aug. 19, 2019), <https://www.ancient.eu/Piracy/>.

¹⁰ United States v. Smith, 18 U.S. 153 (1820)

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Whatever may be the diversity of the definitions in other respects, all writers concur in holding that robbery or forcible depredations upon the sea animo furandi, is piracy.

Role of the United Nations Convention on the Law of the Sea

Article 15 of Geneva Convention on High Seas¹¹, 1958 defines ‘piracy’ as any of the following acts -

- Any illegal act of violence, detention or any act of depredation for private ends by the crew or the passengers of a private ship or private aircraft, and directed (a) on the high seas, against persons or property on board such ship or aircraft; (b) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.
- Any act of voluntary participation in the operation of a ship or an aircraft with knowledge of facts making it a pirate ship or aircraft.
- Any act of inciting or of internationally facilitating an act described in subparagraph (1) or sub-paragraph (2) of this Article.

A ship or aircraft is considered a pirate ship or aircraft if it is intended by persons in dominant control to be used to commit one of the acts referred to in Article 15 and it remains so until under the control of that guilty person.

The United Nations played a crucial role in controlling the act of piracy in international waters. By legislating the United Nations Convention on the Law of the Sea in the year 1982, the act

¹¹ GENEVA CONV. ON HIGH SEAS. Art. 15

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of piracy was defined from the perspective of international law. Article 101 of the United Nations Convention on the Law of the Sea has defined piracy as follows-

Piracy consists of any of the following acts:

- 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:
 - on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- 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;
- any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)¹².

Just like any other International Court or Tribunal, the UNCLOS lacks an enforcement mechanism. However, the decisions made by such Courts are not ignored due to the lack of an enforcement mechanism.

As far as the jurisdiction of such institutions like International Court of Justice, the primary judicial organ of the United Nations, and the International Tribunal of Law of the Sea, which is a specialised court established under the UNCLOS is concerned, all can have the jurisdiction over matters which arise concerning the application and interpretation of these agreements.

UNCLOS also provides that all States must cooperate to the fullest possible extent in the repression of piracy (art. 100) and have universal jurisdiction on the high seas to seize pirate ships and aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and

¹² UNCLOS. Art. 101

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arrest the persons and seize the property on board (art. 105). Article 110, inter alia, also allows States to exercise a right of visit vis-à-vis ships suspected of being engaged in piracy.

These arrangements ought to be perused along with article 58(2) of UNCLOS, which clarifies that the previously mentioned articles and other relevant guidelines of international law apply to the EEZ to the extent that they are not contradictory with the arrangement of UNCLOS identifying with the EEZ. It is likewise critical to recognize the wrongdoing of theft from furnished burglary against ships, which can happen inside the inward waters and Regional Ocean of a seaside State. As per Part II of UNCLOS, in instances of outfitted burglary against ships, essential obligation regarding requirement typically falls on the Seaside State. Furnished burglary against ships likewise comprises an offence under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) and, sometimes, the 2000 United Nations Convention against Transnational Organized Crime¹³.

Lacunae in Maritime Laws in India

Unlike the United States of America, India does not have specific legal provisions as far as the issue of piracy is concerned. It was the case of MV Alondra Rainbow which was the first such case that came up before the Indian Courts. There was a standoff between the hijacked MV Alondra Rainbow which was a 7,000-ton Panama registered vessel, belonging to Japanese owners and Indian naval and coast guard ships in November 1999 whose final capture was celebrated by the maritime community as a great success to counter sea piracy. This vessel was on its way to Milke, Japan, leaving from Kuala Tanjung, Indonesia. International Maritime Bureau (IMB) had announced through its Piracy Reporting Centre that pirates had captured the

¹³ Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, *Legal Framework for the Repression of Piracy Under UNCLOS*, UNITED NATIONS (Sept. 09, 2010) https://www.un.org/Depts/los/piracy/piracy_legal_framework.htm

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vessel. Later on, the Piracy Reporting Centre declared that the crew of the vessel were found safe and sound in Thailand, while the vessel is expected to discharge cargo at any Indian port.¹⁴

The Sessions Court at Mumbai admitted the charges and the 15 pirates were awarded imprisonment of seven years and varying fines. As a result, the Indian authorities received a huge round of appreciation for capturing the pirates and the ship. But things turned when the case went into appeal at the Bombay High Court which overruled the Sessions Court ruling and acquitted all convicts in the piracy case. The Court held that there were some 'systemic/organisational failures', which ultimately led to the acquittal of the criminals. On the other hand, the witness Japanese Master and the Engineer of the vessel refused to identify the culprits fearing consequences.

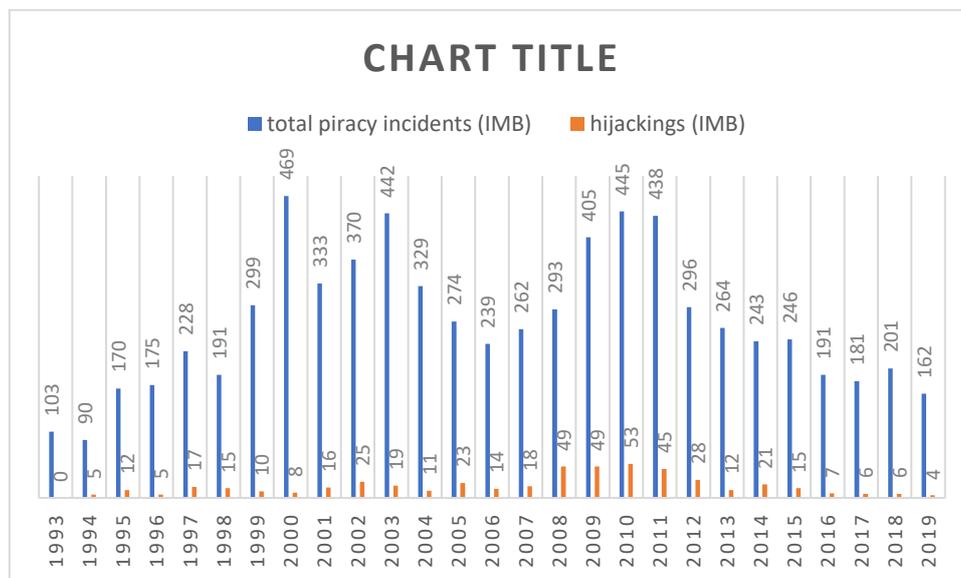
The problem of piracy continues to persist but particularly after the actions of the Indian Navy, it is seen as being worst in the western sector of the Indian Ocean than in the areas immediately close to India's EEZ. However, currently, India lacks dedicated domestic legislation to deal with offences related to piracy committed in the seas. Due to the absence of unambiguous legislation to the offence of maritime piracy in Indian law, the authorities have faced many obstacles and challenges to ensure effective prosecution of the pirates. Concerning the case of *Alondra Rainbow*, which was the first piracy case to be tried in an Indian Court in 1999, relevant provisions of the Indian Penal Code and Admiralty Act were invoked to prosecute the pirates because there was no definition of piracy in the penal law of India. However, the prosecution was somehow successful in the Trial Court, the appeal ultimately went in favour of the accused in the High Court on jurisdictional grounds¹⁵.

¹⁴ Admiral Sushil Kumar, *When Indian Navy helped catch Japan's stolen ship – and what Vajpayee did*, THE PRINT, (Sept. 21, 2019, 3:13 PM) <https://theprint.in/pageturner/excerpt/when-indian-navy-helped-catch-japans-stolen-ship-and-what-vajpayee-did/294520/>

¹⁵ Standing Committee Reports, *Piracy Bill*, RAJYA SABHA (2012)

The case of the MV Alondra Rainbow points to the fact that it is difficult to bring pirates to book, notwithstanding legal institutions and instruments to prosecute pirates. For instance, in Indonesia, which is one of the most adversely affected countries when it comes to maritime piracy, the Indonesian Navy has recommended to its government to establish maritime courts to try criminals operating in Indonesian waters. The Authorities go by the rationale that regular courts are seldom able to understand the context and intricacies of maritime crime and thus give inappropriate verdicts.

The Present Scenario



Source: International Maritime Bureau Piracy Reporting Center¹⁶

The above-shown data reveals the fact that nowadays, the trend of total piracy incidents as well as the number of hijackings has significantly reduced. The year 2019 witnessed the least number of total piracy incidents as well as the number of hijackings in the last two decades, which further increased in the year 2020.

¹⁶ IMB, *supra* note 2

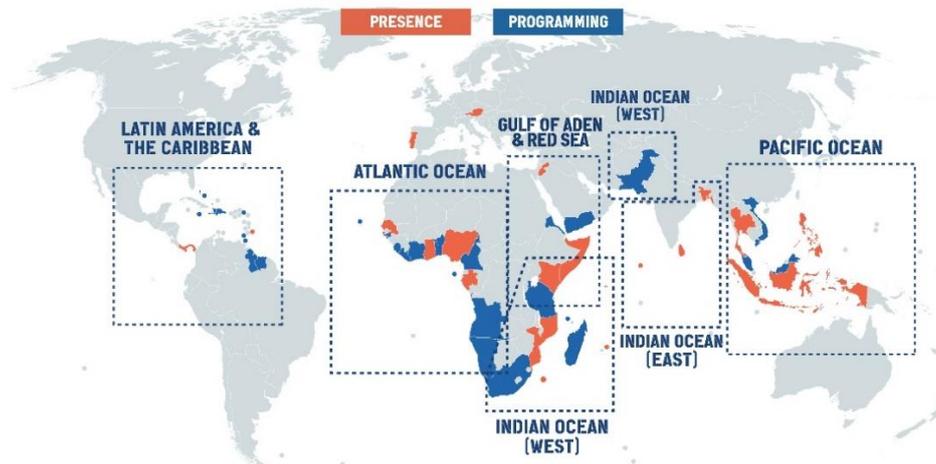
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Clusters of piracy across the world. Source- United Nations Office on Drugs & Crime¹⁷

Upon the evaluation of the above picture of the world map, it is evident that the incidents of piracy and hijackings have reduced across all the countries keeping in mind the IMB Annual Piracy Report. However, most of the crimes are recorded in two large continents of the world, Africa and Asia, which are still the hotspots for such activity.

Anti-Maritime Piracy Bill, 2019 – A Milestone

To address the existing lacunae as far as the need for legislation is concerned, the Anti-Maritime Piracy Bill¹⁸ was introduced in Lok Sabha in December 2019. The following are the key points of this Bill –

¹⁷ UNITED NATIONS, <https://www.unodc.org>

¹⁸The Anti- Maritime Piracy Bill, 2019, No. 369, Lok Sabha Bill, 2019 (India)

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Applicability of the Bill

The Bill will apply to all the parts of the sea adjacent to and beyond the limits of the Exclusive Economic Zone of India. Exclusive Economic Zone refers to the area of the sea upon which India has exclusive rights for economic activities.

Definition

This Bill defines piracy as any illegal act of violence, detention, or destruction committed against a ship, aircraft, person or property, for private purposes, by the crew or the passengers of a private ship or aircraft. Such acts may be carried out on the high seas or in any place outside the jurisdiction of India. Inciting or intentionally facilitating such acts would also qualify as piracy. It also includes any other activity that is considered piracy under international law.

In this Bill, piracy also includes voluntary participation in the operations of a pirate ship or aircraft. This includes a ship or aircraft which is either -

- intended to be used for committing any act of piracy, or
- has been used to commit an act of piracy, and is still under the control of the persons guilty of such actions.

Offences and Penalties

An act of piracy will be punishable with -

- imprisonment for life; or
- death, if the act of piracy includes attempted murder, or causes death. An attempt to commit, aid, abet, or procure for an act of piracy, or direct others to participate in an act of piracy will be punishable with up to 14 years of imprisonment, and a

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fine. Offences will be considered extraditable. This means that the accused can be transferred to any country for prosecution with which India has signed an extradition treaty. In the absence of such treaties, offences will be extraditable based on reciprocity between the countries.

Arrest and Seizure

A ship or aircraft under the control of pirates may be seized, persons aboard may be arrested, and the property on board may also be seized. The seizure may be carried out only by:

- a warship or military aircraft of the Indian Navy;
- a ship or aircraft of the Indian Coast Guard; or
- ships or aircraft on government service, and authorized for such purpose.

This Bill empowers the Central Government, in consultation with the Chief Justice of the concerned High Court, to notify the Sessions Courts to be the Designated Courts under this Bill. It may also notify the territorial jurisdiction of each Designated Court. As far as the jurisdiction of the Court to try offences is concerned, it can try the offences committed by -

- a person in the custody of the Indian Navy or Coast Guard, regardless of his nationality;
- a citizen of India, a resident foreign national in India, or a stateless person.

Further, the Court may try a person even if the person is not physically present in the Court.

However, the Court will not have jurisdiction over offences committed on a foreign ship, unless an intervention is requested by -

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- the country of origin of the ship;
- the ship owner; or
- any other person on the ship.

Warships and government ships employed for non-commercial purposes will not be under the jurisdiction of the Court. Another important feature of this Bill is that it imposes a presumption of guilt on the accused if -

- the accused owns arms, explosives and other equipment which were used or intended for use in committing the offence;
- there is evidence of use of force against the ship's crew or passengers; and
- there is evidence of the intended use of bombs and arms against the crew, passengers or cargo of a ship.

Recommendations

Given that there has been a mixed bag of successes and failures in prosecuting pirates, what is perhaps needed is a more robust legal system to prosecute acts of terror and crime in territorial waters. What is also needed is a community of trained legal maritime experts who can understand the nuances of maritime crime. If the Indian Government plans to establish a separate Marine Police Wing, it must take into consideration the fact that the new infrastructure must include legal support systems. It should not be the case that 'it is easy to capture a pirate but difficult to prosecute'.

The system should also keep in mind the reason why it has been legislated, i.e. to eradicate the existing vacuum of anti-maritime piracy laws in India. This will not only ensure confidence to those who are involved in trading through the sea but also act as a deterrent to those committing the offence of piracy in the Exclusive Economic Zone of India or high seas.

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Conclusion

Piracy has always been a threat to those who were engaged in trading through the high seas. With time, technologies have evolved and so does the method of hijacking. Earlier, such robbery and extortion were committed for gaining the financial benefit of small groups involved in such activities, which later on developed as a tool to gain power in the region. What worked in the favour of pirates, was the lack of any legal framework available to try the accused who has committed the offence in international waters.

However, as the organisations across the world became more structured, there was more awareness regarding maritime piracy. As a result, there were more laws imposing sanctions upon the act of piracy in the form of punishment and fines. This is the reason why the frequency of piracy gradually decreased year after year according to the Annual Piracy Report by the International Maritime Bureau. However, the sudden rise in the number of incidents could also be seen due to the COVID - 19 pandemic which adversely affected people earnings and forced them to involve in such activities to sustain their livelihood.