

---

# MARITIME PIRACY: A HUMAN RIGHT IMPLICATION UNDER INTERNATIONAL LAW

---

Sujitha L, School of Excellence in Law (TNDALU), Chennai

## INTRODUCTION:

Economic growth of the country mostly depends on trade. Trade through Seas is considered as the most effective way to boost the Country's economic growth. Navigation through the Seas, port facilities and tourism plays an important role in the economic growth of the country. Further, Seas are considered as an important source for oil, mobile telephone connectivity, and pipes for data cables. Although seas had developed these far, it also paved a way for piracy and other maritime crimes. Among maritime crimes, Piracy is considered as a serious threat to the maritime security, maritime trade and free navigation of the ship, vessel, yacht etc., This article aims to explain Maritime Piracy.

## DEFINITION, SCOPE, AND CAUSES OF MARITIME PIRACY

An act by which a ship is captured for stealing the cargo that is present in the ship, or capture the crew members for collecting ransoms or seize the ship which is done by an individual or by a group of people is considered as maritime piracy. Maritime piracy is a criminal act and is illegal. Maritime piracy may lead to the loss of life, serious injury to the crew members, destruction in the smooth flow of the trade, increase in insurance premiums, increase in security cost, losses to the owner of the ship, etc., There are two basic elements for a crime to be recognized as maritime piracy. They are ransom and other is promise to return.

Maritime piracy is explained under Article 100 – 107 and Article 111 of the United Nation Convention of Law of Sea (UNCLOS). Article 100 provides that “ every State should cooperate to their maximum extent to repress Piracy”. Piracy is defined under Article 101 of UNCLOS as:

*Piracy consists of any of the following acts:*

- (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 act described in subparagraph (a) or (b).<sup>1</sup>*

General Assembly of the UNCLOS plays a significant role in suppressing maritime piracy in its resolution on ocean and law of seas. One of the examples of the efforts taken by the General Assembly is that it states that, Global, Regional, and Bilateral Agreement is very essential to reduce maritime piracy in its Resolution<sup>2</sup>. The Secretariat of UNCLOS (The Division of Ocean Affairs and the Law of Sea) provides an annual report to the General Assembly. In this report, it provides information and advice relating to the uniform and consistent application of UNCLOS. In addition to the information, the also provide information relating to the maritime piracy and other maritime crimes that occurs throughout the world. The IMO was also mandated to produce a report to the General Assembly of UNCLOS. The reports contain all the details relating to maritime piracy which includes name of the ship, description of the ship, time and location of Pirates attack, the steps taken to save the ship etc. These reports will be submitted every month and a consolidated annual report is submitted at the beginning of the second quarter of every year. These reports help the ship to plan their voyage in such a way that they can escape piracy.

The main reason for piracy is lack of proper education and lack of employment. Most of the pirates are from countries which are weak in its economy and the countries which do not provide adequate employment opportunities. Piracy is considered as an easy way to earn

---

<sup>1</sup> United Nations Convention on the Law of the Sea art. 101, Dec. 10, 1982, 1833 U.N.T.S. 397.

<sup>2</sup> G.A. Res. 64/71, U.N. Doc. A/RES/64/71 (Dec. 4, 2009).

income. Piracy also takes place due to political conflicts and border disputes between the countries.

### **PIRACY HOTSPOT:**

The areas with less maritime security and high maritime traffic will be chosen by pirates to indulge in maritime piracy. The areas in which maritime piracy occurs at a larger rate will be considered as piracy hotspots. The other factors which make the area a piracy hotspot are lack of policies, poor law and order, lack of naval capability, anchoring of ships outside the ports, political instability, jurisdictional issues etc.

Major piracy hotspot:

1. Gulf of Aden and Somali Coast
2. Strait of Malacca
3. West Africa (Gulf of Guinea)
4. South China Sea
5. Caribbean Sea

### **LEGAL FRAMEWORK**

Maritime piracy has been governed by

1. United Nation Convention on Law of Sea (UNCLOS)
2. The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention)1988
3. SOLAS security amendments 2002
4. IMO anti-piracy programme
5. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships (ReCAAP)
6. The Djibouti Code of Conduct (2009)

## 7. The Yaoundé Code of Conduct (2013)

India has rectified both the convention. In addition to these India has enacted The Maritime Anti-Piracy Act of 2022, with the aim to prevent maritime piracy

### **HUMAN RIGHTS IMPLICATIONS OF COUNTER-PIRACY OPERATIONS UNDER INTERNATIONAL LAW**

Although counter-piracy operations are essential in terms of maritime security and the protection of international trade routes, they usually pose complicated human rights issues. These operations generally involve the interception, arrest, detention, and prosecution of suspected pirates, often in extraterritorial or multinational contexts. Such actions are to be performed within the bounds of prescribed standards under international law for the protection of fundamental human rights, including the right to life, liberty, fair trial, and humane treatment, as enshrined in instruments such as the UDHR, ICCPR, and relevant regional human rights conventions.

In this context, the European experience under the ECHR offers an important example of how international and regional mechanisms can provide judicial remedies for human rights violations arising out of counter-piracy operations. For instance, in its 2014 judgments<sup>3</sup> relating to piracy off the coast of Somalia, the European Court of Human Rights considered issues of arrest, detention, and transfer of suspects by French military forces acting under United Nations Security Council authorization. Even though these cases primarily concerned the right to liberty, they serve to illustrate the potential of international and regional human rights systems in holding states accountable for violations occurring during maritime enforcement actions.

The overall development in this direction underlines a more general legal principle in international law that efforts to suppress piracy must be placed in a balance with respect for fundamental human rights. The protection of maritime security cannot justify the erosion of due process, humane treatment, and accountability, which remain central to the global rule of law at sea.

The international legal framework governing piracy at sea is primarily established under the

---

<sup>3</sup> *Ali Samatar and Others v. France*, App. No. 17110/10, Eur. Ct. H.R. (June 4, 2014), *Hassan and Others v. France*, App. No. 46695/10, Eur. Ct. H.R. (Dec. 4, 2014).

United Nations Convention on the Law of the Sea (UNCLOS) 1982, which recognizes piracy as a universal crime and empowers all states to seize pirate vessels and to prosecute offenders under Articles 100–107. Nevertheless, while UNCLOS provides the legal foundation for enforcement at sea, it remains largely silent on the human rights obligations of states during such operations. In particular, this loophole becomes important when suspected pirates are captured, detained, or transferred across jurisdictions. Accordingly, it is expected that states will act consistently with broader international human rights law, particularly the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT), and the Geneva Conventions where applicable.

Moreover, the UNSC has, since 2008, issued a number of resolutions authorizing international naval forces to fight piracy off the coast of Somalia, frequently allowing operations within Somali territorial waters. These authorizations lend legitimacy to multinational enforcement activities but do not relieve the participating states of their human rights commitments. Indeed, the UN Charter<sup>4</sup>, makes the promotion of human rights one of the purposes of the United Nations, which implies that even Security Council–mandated operations should be in conformity with international human rights standards.

The suppression of piracy accordingly requires a careful balancing of the imperatives of collective security at sea with individual guarantees of human rights. For their part, international responses to piracy that involve arbitrary detention, long periods of custody without trial, or ill-treatment of suspects rob the effort of legitimacy. It is for this reason that the integration of human rights standards into maritime enforcement represents a necessary investment in ensuring that the campaign against piracy serves the more general interests of international justice and the rule of law.

### **SPECIFIC HUMAN RIGHTS VIOLATIONS IN COUNTER-PIRACY OPERATIONS UNDER INTERNATIONAL LAW**

Although the United Nations Convention on the Law of the Sea<sup>5</sup> offers the legal context of the suppression of the maritime piracy the convention structures are rather centered on the enforcement capacity including the seizure, arrest, and prosecution under Articles 100-107<sup>6</sup>. It

---

<sup>4</sup> U.N. Charter arts. 1(3), 55(c).

<sup>5</sup> United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

<sup>6</sup> Id. arts. 100–107.

however does not explicitly establish guidelines on how the human rights should be given protection in such operations. Consequently, the adoption of counter-piracy strategies recently tend to create substantial human rights issues, which should be resolved by utilizing more international programs on human rights, including the International Covenant on Civil and Political Rights and the Convention Against Torture.

### **Right to Life**

Article 6 of the International Covenant on Civil and Political Rights is a fundamental human right<sup>7</sup>, which grants the right to life. This right, especially in the enactment of enforcement measures in the framework of maritime piracy, is especially applicable to UNCLOS.

Even though UNCLOS allows States to engage in whatever is necessary to curb piracy, it lacks a clear regulation of the application of force when conducting the work. As a result, the naval forces might be compelled to use lethal force against suspected pirated ships. Whereas this force can be justified in instances of self defense, the international law states that it should be necessary and relevant.

Practically, though, the cases of excessive or excessive use of force have led to loss of life, which is a serious issue as far as arbitrary deprivation of life is concerned. The lack of clear provisions to the use of force in the UNCLOS creates legal loophole that permits the inconsistency of the practice and possible abuse of right to life.

### **Right to Liberty and Security to Person.**

Article 9 of the International Covenant on Civil and Political Rights provides the right to liberty that forbids arbitrary arrest and detention.<sup>8</sup>

Article 105 of UNCLOS<sup>9</sup> allows the States to intercept and capture pirate vessels and detain persons. Nevertheless, UNCLOS does not provide detention or protection against arbitrary deprivation of freedom.

As a result, suspected pirates are often:

---

<sup>7</sup> International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>8</sup> International Covenant on Civil and Political Rights art. 9, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>9</sup> United Nations Convention on the Law of the Sea art. 105, Dec. 10, 1982, 1833 U.N.T.S. 397.

1. Detained on naval vessels for prolonged periods
2. Held without formal charges
3. Denied prompt access to judicial authorities

These practices pose an issue of the legality of the detention, especially in cases when the jurisdiction is not clear or when States refuse to prosecute.

Although it grants the authority to make arrest, UNCLOS remains silent on detention procedures, which adds to the formation of a so-called legal vacuum in the sea, exposing the likelihood of arbitrary detention.

### **Right to a Fair Trial**

Article 14 of the International Covenant on Civil and Political Rights guarantees the right to fair trial as the right to access to justice and due process.<sup>10</sup>

Even though UNCLOS creates universal jurisdiction in relation to piracy that permits any State to prosecute perpetrators, it does not allow a unified channel of prosecution. This results in a number of practical problems:

1. Jurisdictional uncertainty
2. Reluctance of States to prosecute
3. Delays in trial proceedings
4. Limited access to legal representation

Also, evidence gathering on the sea is not usually good enough, and this fact could impact the impartiality and credibility of the judicial process. Procedural ambiguity in UNCLOS also translates to uneven prosecution policies thus compromising the right to a fair trial.

### **Freedom from Torture and Inhuman or Degrading Treatment**

In international law, the ban on torture is a rule, which has been included in the Convention

---

<sup>10</sup> International Covenant on Civil and Political Rights art. 14, Dec. 16, 1966, 999 U.N.T.S. 171.

against Torture<sup>11</sup>, and is regarded as a non-derogable right. UNCLOS is silent on how individuals should be treated after arrest and especially during detention or transfer. The issues with counter-piracy operations include:

1. Harsh interrogation techniques
2. Poor detention conditions on naval vessels
3. Transfer of suspects to third States where they may face torture

The principle of non-refoulement<sup>12</sup> denies the possibility of individuals being given to jurisdictions where they can face a high risk of torture or inhuman treatment. The lack of protection in the UNCLOS in terms of treatment and transfer of detainees shows the necessity to apply human rights law in order to receive protection against torture.

This analysis shows that even though UNCLOS offers the legal basis of the repression of maritime piracy, it lacks adequacy as far as human rights aspects of such repression action are concerned. As a result, a wide gap between the maritime security operation and the protection of human rights exists and needs to be bridged by the incorporation of the international human rights law. Therefore, UNCLOS regulates the authority to act whereas international human rights law regulates how such power should be practiced.

## **APPLICABILITY OF HUMAN RIGHTS TREATY TO COUNTER PIRACY OPERATION**

The use of human rights treaties in maritime and counter-piracy operations depends mainly on the concept of jurisdiction. Most fundamental treaties including the European Convention on

Human Rights (ECHR), International Covenant on Civil and Political Rights (ICCPR), and American Convention on Human Rights (ACHR) which grant protection to all persons “within a State’s jurisdiction.” While the language of each provision differs slightly, their interpretation also hinges on whether the person is within the jurisdiction of a State. In this regard, “jurisdiction” has become a specific term in international human rights law, as opposed to

---

<sup>11</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 2, Dec. 10, 1984, 1465 U.N.T.S. 85.

<sup>12</sup> *Id.* art. 3.

drawing on but not necessarily limited to general principles of international law.

Jurisdiction can be either territorial or extraterritorial. Whereas territorial jurisdiction is assumed when persons are within the territory of a State, extraterritorial jurisdiction is in the nature of an exception and calls for special justification in the facts of a given case. The limit to which States are able to exert such jurisdiction, particularly outside their own borders, has been a subject of great controversy in international jurisprudence development.

In the context of maritime law enforcement, jurisdictional ties have been acknowledged between a State and ships bearing its flag, at least in respect of some treaty obligations. More generally, jurisdiction may exist either on a spatial basis (by reason of a State's effective control over a place) or on a personal basis (by virtue of the authority and control which agents of a State exercise over persons). Where jurisdiction is based on domination over a person, the relevant human rights obligations may be confined to the rights that are pertinent to the specific case, although the entire spectrum of rights cannot be meaningfully applied.

Whilst these principles are generally accepted, their exact application is not certain, particularly as to what extent of control or authority is adequate to guarantee personal jurisdiction. Whilst detention obviously places a person within a State's jurisdiction, the employment of physical force or operational control as in anti-piracy or maritime interdiction missions still presents difficult issues as to the scope of human rights applicability offshore.

## **JUDICIAL APPROACH TO MARITIME PIRACY AND HUMAN RIGHTS**

Judicial bodies have been increasingly focusing on the suppression of maritime piracy in terms of human rights. Courts have highlighted that the enforcement measures undertaken by the United Nations Convention on the Law of the Sea should be in line with the international human rights.

### **Medvedyev and Others v. France<sup>13</sup>**

This was a case of the seizure of a ship by French navy on the high seas and the arrest of crewmen.

---

<sup>13</sup> *Medvedyev and Others v. France*, 51 Eur. Ct. H.R. 39 (2010).

The European Court of Human Rights was of the opinion that the applicants were effectively controlled by France, making them come under its jurisdiction. The Court had discovered a breach of right to liberty since there was no immediate judicial supervision.

#### **Hassan and Others v. France<sup>14</sup>**

The case was about the Somali pirates who were apprehended by the French naval ships with the authorization of the United Nations. The Court acknowledged the difficulties of operation on the sea but nonetheless, it was of the view that delays in judicial review contravened the right to liberty.

#### **Ali Samatar and Others v. France<sup>15</sup>**

The Court believed that Article 5 of ECHR was infringed where suspected pirates were held aboard naval vessels without immediate judicial control.

#### **United States v. Dire<sup>16</sup>**

This case extended the definition of piracy to encompass violent actions in the sea as well as robbery.

### **CHALLENGES IN PROSECUTION OF MARITIME PIRACY**

The enforcement of the maritime piracy is still subject to serious practical and legal difficulties even when the United Nations Convention on the Law of the Sea has developed a comprehensive legal framework. These issues do not only impair the effective enforcement, but also bring up issues about uniformity and fairness in the delivery of justice.

#### **Jurisdictional Issues**

The question of jurisdiction is one of the main issues in the prosecution of maritime piracy. Though, the UNCLOS acknowledges that piracy is a type of crime that is under universal jurisdiction, which means that any State can prosecute an offender without respect to nationality or other geographical location, in reality, States are not always willing to exercise

---

<sup>14</sup> *Hassan and Others v. France*, App. No. 46695/10, Eur. Ct. H.R. (Dec. 4, 2014).

<sup>15</sup> *Ali Samatar and Others v. France*, App. No. 17110/10, Eur. Ct. H.R. (June 4, 2014)

<sup>16</sup> *United States v. Dire*, 680 F.3d 446 (4th Cir. 2012)

such jurisdiction. Such hesitation comes as a result of political factors, absence of national interest and diplomatic connotations. This has caused several States to avoid prosecuting suspected pirates, which has given rise to the common practice of catch and release of the suspected criminals, whereby the suspects are disarmed, and set free without a trial. Such practice greatly takes away the deterrent impact of the anti-piracy measures and the enforcement regime as a whole.

### **Evidentiary Challenges**

There are significant challenges in the gathering and conservation of evidence in maritime piracy cases. The cases of piracy happen in the high seas, which are usually beyond the territory jurisdictions and their forensic facilities are not easily accessible. Counter-piracy forces deployed by the navy are not necessarily trained or appropriately equipped to collect and record evidence to meet the requirements of the judicial system. Moreover, other witnesses, including crew members, can be located in various countries, which means that they cannot be guaranteed their availability during the trial. The inadequacy of the trustworthy records and admissible documents has a negative impact on the prosecution proving the guilt beyond reasonable doubt, which weakens the proper and efficient course of justice.

### **Cost and Logistical Burden**

Piracy cases are costly to the States in terms of financial and logistical cost. These comprise the expenses of the transportation of the suspects off the high seas to domestic courts, legal counsel, translation facilities and long term detention facilities. Moreover, the process of trials and appeals is time-consuming and still adds to the financial pressure. These expenses are more than the perceived benefits of prosecution to many States, particularly the ones that are not directly related to the issue of piracy. As a result, the States can opt not to take legal action which adds to impunity of piracy related crimes.

### **Human Rights Concerns**

The aspect of human rights is also very important in influencing State reactions towards prosecuting piracy. States tend to be unwilling to hand suspected pirates over to other jurisdictions over the fear of possible infractions of basic rights e.g. the likelihood of torture, inhuman treatment or lack of guarantee of fair trials. These issues are directly connected with

the duties in the Convention against Torture, especially that of non-refuels, which does not allow transferring individuals to the States where they might encounter severe human rights infringements. Although they are necessary to safeguard individual rights, they can unintentionally hinder the desire of States to participate in prosecution or extradition, which makes the enforcement of the law difficult.

### **Absence of Coherent Legal Environment.**

The other major problem is that there is no common piece of the legal framework that controls piracy in various States. Although UNCLOS gives a broad definition of piracy, there is a disparity in how domestic laws define it, its scope, procedure, and punishment. There are those States with no particular laws that deal with piracy and those that have varied interpretation of some of the important aspects like the term; private ends or the high seas. The absence of harmonization causes unevenness in prosecution and sentencing wherein there may be ambiguity in the law and enforcement loopholes. Lack of international procedures also complicates the international collaboration force and it is hard to have a unified and efficient global response to maritime piracy.

### **INDIA'S ROLE IN MARITIME PIRACY**

The Indian Navy has played a significant role in suppressing maritime piracy. Indian Navy 's capability and its immediate action has gained the title 'first responder' and 'preferred security partner' in the Indian Ocean Region (IOR). Till date, nearly 18 maritime Piracy has been responded to by the Indian Navy.

One of its major achievements is the Indian Navy's response to the hijacking of commercial vessels by Somali pirates. December, 2023, the Somali pirates had hijacked Bulgarian commercial vessel MV RUEN with 17 crew members. Nearly 260 nautical miles east of Somalia and 1,400 nm (2,600 km) from the Indian coast, the Indian Navy's Anti-Piracy mission takes place. As a result of the mission the Indian Navy rescued the crew members and arrested 35 pirates.

India has actively engaged in increasing the capabilities and strategic plan of the Indian Navy with the aim of emerging India as a global maritime leader.

One of its major initiatives is Operation Sankalp. This mission was launched in the Arabian

sea aimed to take action against the piracy attack in the Indian Ocean. For this mission, nearly 5000 employees have been deployed at sea, 21 ships have been patrolling around the Arabian sea and maritime aircraft has been flying nearly 900 hours over the seas.

Indian Navy's immediate response and its strategic plan has made India 'first responder' and 'preferred security partner' in the Indian Ocean Region (IOR).

## CONCLUSION

Maritime piracy remains a major threat to the maritime security of the world, international trade, and the free navigation concept. Although the United Nations Convention on the Law of the Sea provides an extensive legal framework that sees piracy as an international crime and empowers States to respond to it, the Convention is not as expansive as it could be in the field of human rights impacts of such responses. This has created the emergence of increased reliance on the wider global human rights approaches like the International Covenant on Civil and Political Rights and the Convention against Torture, to ensure that counter-piracy operations are under the law and justice.

Courts development, especially the European Court of Human Rights in the cases like *Medvedyev and Others v. France*, *Hassan and Others v. Ali Samatar and others v France. France*, have strengthened the principle that actions of the State on the sea are not unreachable by the duty to human rights. These rulings point out that appropriate and efficient control of individuals, even beyond territorial jurisdiction, is enough to prompt jurisdiction and respective obligations in the international human rights legislation.

Meanwhile, the fight against piracy suffers from long-running challenges, such as lack of jurisdiction, issues of evidence, expensive nature, and a harmonized legal frameworks. These hindrances invalidate the international action against piracy and usually lead to impunity. Furthermore, the aspect of the possible violations of human rights, i.e., arbitrary arrest, the right to a fair trial, and a chance of torture, makes the international cooperation more complex.

The active position of India, especially the naval activities and the Maritime Anti-Piracy Act, 2022, is also an indication that India is keen on fighting piracy besides enhancing regional security in the Indian Ocean Region. The examples of such operations like Operation Sankalp indicate the significance of maritime security operations that are coordinated and sustained.

To sum up, the deterrence of maritime piracy should be done in an integrated and moderate manner- one that encompasses effective enforcement of the UNCLOS alongside the maintenance of the international human rights laws. Enhancing international collaboration, aligning domestic legal systems, enhancing the evidentiary processes, and imposing responsibility on the enforcement measures are some of the required measures to achieve an effective and fair anti-piracy regime. It is only in such a holistic direction that the international community can be guaranteed of the safety of the seas and also of basic human rights.

## **REFERENCE BIBLIOGRAPHY**

1. Malcolm N. Shaw, *International Law* (Cambridge University Press).
2. D.P. O'Connell, *The International Law of the Sea*.
3. Robin Churchill & Alan Lowe, *The Law of the Sea*.

## **WEBLIOGRAPHY**

1. United Nations Official Website – <https://www.un.org>
2. International Maritime Organization – <https://www.imo.org>
3. United Nations Division for Ocean Affairs and the Law of the Sea – <https://www.un.org/depts/los>
4. European Court of Human Rights – <https://www.echr.coe.int>
5. ReCAAP Information Sharing Centre – <https://www.recaap.org>
6. Indian Navy – <https://www.indiannavy.nic.in>

## **STATUTES REFERRED**

1. United Nations Convention on the Law of the Sea, 1982
2. International Covenant on Civil and Political Rights, 1966
3. Convention Against Torture, 1984.
4. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988.
5. Maritime Anti-Piracy Act, 2022.