

# “PIRATES OF THE ARABIAN SEA”: SOMALI PIRACY IN THE HIGH SEAS AND ITS CHALLENGES UPON INTERNATIONAL MARITIME SECURITY

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**Abstract-** This paper elucidates the contemporary challenge from Somali piracy for international maritime security. It traces the history of piracy in modern period and why piracy has become a difficult issue in terms of international law of the sea as a result of some ambiguities in defining scope of high sea and pirates. In this paper, we argue that the practical difficulties arising from UNCLOS regarding activities in the high seas have created a loophole for the expansion of piracy. Nevertheless, this paper will provide insights on how piracy can be addressed through combined efforts of international law of the sea and maritime security mechanisms.

**Keywords-** High Sea, Piracy, International Law

## I. INTRODUCTION

International law scholar Prof. Barry H. Dubner has pictured the term piracy as “acts of murder, robbery, plunder, rape and other villainous deeds which have transpired over centuries of mankind’s history”. (Dubner1980) In an old U.S judgment delivered by the Supreme Court called *United States Vs Smith* states piracy as a crime against the peace and order, in fact it was very first court case that has dealt with the issues on piracy in the proceedings. Indeed, the acts relating to pirates and their acts usually conjure up in one’s mind. The macabre scene where villains holding swords with the symbols of a skull and, strike ships in the sea, and slaughter the passengers or may be it would romanticize an image of a hero like “Captain Jack Sparrow” who explore the unknown sea into infinity for the sake of adventure as it

depicted in Hollywood movie series. In any case, today Piracy has become a severe issue in International Law of the Sea and international security, because the activities of Somali pirates which are heavily prevalent in Arabian sea which also has shuddered most of the commercial ships and shipping companies. In the early part of 90’s Somalia was in a middle of a civil war and this chaotic internal instability allowed Somali fishermen to adopt alternative approaches as their way of living. (Petrig 2011) Those hapless fishermen organized themselves to be goons in the sea with their small boats and initially their targets happened to fellow wealthy fishermen who were fishing in the Arabian Sea belt. Gradually the piracy turned into an industry of blood money earning in Somalia and the pirate activities began to spread from Somali coast to the Arabian Peninsula. Somali pirates were also audacious to extend their piracy activities to Indian Ocean in some instances. This situation had agitated Security Council concern as a threat to international peace and security and which passed a UN SC resolution 733/1992 with regard to the situation in Somalia.

## II. LEGAL DEFINITION OF PIRACY

Piracy gives different meanings for different people and as the introductory statement, it could be stated that piracy is an act of violence. The modern legal understanding of piracy was begun in 1932 Harvard Research Draft. Even this draft became foundational cornerstone for later development relating to piracy. However, in a more legal manner, a relevant definitions on piracy is seen in the Article 39 of the International Law Commission Draft, according to it acts of piracy should consists of following.

- I. Any illegal act of violence, detention or any act or depredation committed for private ends by the crew or the passenger of a private ship or a private aircraft, and directed.
- II. 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
- III. Any act of incitement or international facilitation of an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

Apart from the definition given by International Law Commission draft, both the 1958 Geneva Convention on High Seas and ILOSC have aptly defined the term Piracy and pirate activities properly in the black letter law. According to the Article 15 of 1958 Geneva Convention on High Seas Piracy is defined as follows

- i. Any illegal acts of violence, 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:
- ii. On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
- iii. Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- iv. 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.
- v. Any act of inciting or of intentionally facilitating an act described in sub-paragraph 1 or sub- paragraph 2 of this article.

The piracy in International Law of the Sea has been mostly mixed up with the International Maritime Law. Especially the bodies that are working against the piracy have emerged under International Maritime Legal mechanism. For instance, International Maritime Bureau is a non-profit of organization, which was started in 1981 to collect data on all kind of maritime crimes. This particular association had paid serious attention towards the international piracy and according to their definition piracy means unlawful acts as defined in Article 101of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The infamous “*AchilleLauro*” incident caused

to concern to much about the protection of the vassals. In “*AchilleLauro*” case some of Palestinians hijackers attack the Italian cruise “*AchilleLauro* in international waters, Thirty miles from Port Said, Egypt.(Kraska 2010) The cruise was caring near about 90 passengers and twelve among them were the American. Ultimately this situation led the path to draft the 1988 “SUA convention, and came into force in 1992. This SUA convention which does not apply to warships or other military or police ships, where Article (1) specifies as offences of certain acts against shipping, including the seizure of ships and the endangering of safe navigation by the use of violence against persons on board or by damage to the ship, its cargo or equipment, and attempt to commit those acts. Under the Article 5 of the SUA convention, state parties make those convention offences punishable according to their laws. This SUA convention is an instance which proves the fact International Maritime Law has intervene the scope of Law of the Sea in terms of upholding the law and order in navigation against piracy (Churchill 1990). In fact IMO has considered this issue as a grave problem and it maintains a centre in Kuala Lumpur to monitor the incidents relating to piracy. Now it is important to look at the regulations laid down by the UNCLOS 1982 on piracy. In the convention piracy is defined in Article 101 as follows. Piracy consists of the following acts:

- i. 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:
- ii. On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
- iii. Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State
- iv. 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;
- v. Any act of inciting or of intentionally facilitating an act described in sub paragraph (a) or (b)

The interesting point relating the piracy is that International Law of the Sea has enabled the states to seize a pirate at any place beyond the territorial sea, according to Article 105 on the high sea or any other place outside the jurisdiction of the coastal state that pirates can be

arrested by any of the state. But Article 106 verifies such a seizure only can be taken place on the basis of adequate grounds of suspicion.

### III. SOMALI PIRACY IN ARABIAN SEA AND ITS THREAT TO INTERNATIONAL MARRITIME SECURITY

Generally, piracy has been considered as a common feature in high seas, due to the fact that high seas opens to all the states and there is no specific jurisdiction in high seas. However, the Somali piracy seems to be a hybrid case and its strange nature has made the international security mechanism quite complicated. There have been incidents reported that in most of the cases Somali pirates have attacked the foreign vassals in the high seas and after the seizing the vassals those attackers have sailed them to the territorial waters of Somalia and it had complicated the international security mechanism. The rigor of the piracy has alerted many of the states and UN Security Council resolution 1816/ 2008 gave foreign warships the right to enter Somali territorial sea for the purpose of repressing the acts of piracy and armed robbery at sea by all necessary means. However, entry into Somali water is permitted with the consent of the Somali Transitional Federal Government based on a bilateral agreement. As we stated above the complex nature of Somali pirates in Arabian Sea has jeopardized the international maritime activities and the cohabitation between International Law of the Sea and International Maritime Law is heavily visible in this context. As an example, several countries have deployed their navies on independent patrols for safety of their merchant ships. These include Japan, China, Iran, Russia, India and South Korea. Since Article 87 of Convention on High Seas states that “High Seas are open to all the states” the given states have come forward to maintain the navigational security in Arabian Sea. As a matter of fact the international concern over Somali piracy was doubled in the increase of pirate activities that took place in 2008. As a protective tool the Djibouti code of conduct for the repression of piracy and armed robbery against ships in the Western Indian Ocean and Arabian Sea came into force from January 29 of 2009, it was signed by nine countries of the region.

By looking at the Law of the Sea rules on piracy and its inadequacy to cope with the issue that one can understand the fact that the piracy definition given by UNCLOS is rather narrow. It's 105 only discusses about

the action on the high seas and only action undertaken by one ship against another ship. Also it has only included the necessity of involving two ships in the act, but the question arises how those law adopted by the Article 105 of UNCLOS become possible in a moment where the ship crew or passengers have turned into be violent. Correctly, the taking of control by hijackers embarked as passengers on the Portuguese ship Santa Maria in 1961 and on the Italian cruise ship *AchilleLauroin* 1985, which had extensive press coverage, were not considered to be piracy. Especially with regard to the Somali piracy issue in Arabian Sea, in some of the cases Somali pirate activities have taken place in territorial seas and the Article 105 of UNCLOS does not cover such situations. On the other hand it is in some rare circumstances that Somali pirates come to strike the ships from their own ships and in most of the cases the pirates use their own skiffs or some little boats for their onslaughts, indeed such creates a reasonable doubt to which extend those acts can be categorized under piracy by the very conventional Article given by the UNCLOS. It may be underlined that acts preparatory to piracy and other acts of violence not directly linked to piracy are not included in the definition.

### IV. STATUS OF CAPTURED SOMALI PIRATES

As it mentioned, international law accords universal jurisdiction to the courts of the seizing state. This jurisdiction, applicable under Article 105 of UNCLOS for the seizure and arrest of pirates on the high seas, applies also to seizures and arrests in the territorial sea of Somalia under the Security Council resolutions referred to above. Seizing powers in other words those states those who are fighting against pirates have greater powers over the captured pirates, especially under the UNCLOS they have been given a universal jurisdiction. However, in most of the cases those states that captured pirates seem too reluctant in taking any legal actions relating to those pirates. As an example Denmark once captured so many pirates in one of their operations, but Danish authorities were not willing to prosecute them according to Danish legal system and finally they were released (Ritzau,2014).

The reluctance of seizing states to prosecute and try pirates is implicitly taken into account in the resolutions of the Security Council. Resolutions 1816 and 1846 contain the following provision...

*calls upon all states, and in particular flag, port and coastal states, states of the nationality of victims and perpetrates or piracy and armed robbery, and other states with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such victims and witnesses and persons detained as a result of operations conducted under this resolution.*

### V. CONCLUSION

The challenges arose from Somali pirates activities in the Arabian Sea have become detrimental to the international peace and order, not only that it is connected to the international terrorism as well. In such cases, the Piracy should not be neglected as an insignificant matter. Perhaps the new trends in international law can arise with the piracy issue such as use of force by other states in the high sea (where the states should only engage in peaceful activities) but the UNCLOS provision which grants power to all the states to seize a pirate ship enables states to apply use of force in their actions. In Saiga No 2, which was decided by International Tribunal for the Law of the

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Sea, has stated international law requires that the use of force must be avoided as far as possible and, where force is inevitable, it must not go beyond what is reasonable and necessary in the circumstances. Considerations of humanity must apply in the law of the sea, as they do in other areas of international law.

Indeed piracy has created new paths in International Law of the Sea and as I stated above the pirates related issues in Law the Sea has been interwoven into the mechanisms of International Maritime Organization. However, the piracy in Somalia has started to reduce by now and the applicability of SUA convention and Interstate cooperation has made a significant influence in the area of Law of the Sea.

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