

Palacký University Olomouc

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**Current Challenges in International Law with Regard to
Maritime Piracy**

Master Thesis

OLOMOUC 2024

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ABSTRACT

Piracy is an ancient phenomenon or practice which has been going on for a long time. Piracy was then described as *hostes humani generis* by Cicero. *Hostes humani generis*, therefore, means that a pirate under the law of nations is an enemy of humanity and, being an enemy of humanity or all, is consequently liable to punishment by all. Before, the crime of piracy was of little importance to discuss at the international level. However, it was first brought up at the League of Nations in 1924, even though it was not discussed because it was not considered necessary. Thus, this paper will give a brief history of piracy and how it became recognized internationally (UNCLOS 1982). While explaining this, the historical evolution of the legal rules relating to international maritime piracy has been discussed. While examining the main topic of this paper, which is the current challenges in international law regarding piracy, it is essential to note that the definition of piracy by the UNCLOS in 1982 proposes restricting piracy as a primary challenge. Therefore, the central aspect of the definition is critically analyzed. The challenges related to the definition of piracy are as follows: (a) the problem of piracy being committed for “private ends, and Lack of trust between the shipping industries and the government authorities. Thus, this”, (b) the problem of the “High-Seas requirements”, and (c) the “Two-ship criterion”. Other legal challenges include Difficulties in prosecuting pirates, Human rights Concerns, and the Rights to hot pursuit. This paper discusses the international legal challenges to combat piracy at the international, regional, national, or domestic level.

Keywords: United Nations Convention on the law of the sea, challenges, maritime piracy, private ends, two-ship criterion, the High-Seas of piracy, legal challenges, regional and domestic challenges.

ABSTRAKTNÍ

Piráctví je prastarý fenomén nebo praxe, která se vyskytuje již dlouhou dobu. Cicero pak piráctví označil za *hostes humani generis*. *Hostes humani generis* tedy znamená, že pirát je podle práva národů nepřitelem lidstva, a protože je nepřitelem lidstva nebo všech, podléhá tudíž trestu všech. Dříve se o trestném činu piráctví na mezinárodní úrovni příliš nediskutovalo. Poprvé se však o něm začalo hovořit na zasedání Společnosti národů v roce 1924, i když se o něm nediskutovalo, protože se to nepovažovalo za nutné. V tomto článku tedy uvedeme stručnou historii piráctví a způsob, jakým bylo uznáno na mezinárodní úrovni (UNCLOS 1982). Při vysvětlování tohoto tématu byl diskutován historický vývoj právních pravidel týkajících se mezinárodního námořního piráctví. Při zkoumání hlavního tématu tohoto článku, kterým jsou současné výzvy v mezinárodním právu týkající se piráctví, je nezbytné poznamenat, že definice piráctví v UNCLOS z roku 1982 navrhuje jako hlavní výzvu omezení piráctví. Proto je ústřední aspekt definice kriticky analyzován. Problémy spojené s definicí piráctví jsou následující: (a) problém piráctví páchaného pro "soukromé účely a nedostatek důvěry mezi lodním průmyslem a vládními orgány. Tedy toto", (b) problém "kritéria volného moře" a (c) "kritéria dvou lodí". Mezi další právní problémy patří Obtíže při stíhání pirátů, Obavy o lidská práva, právo na horké pronásledování Dokument pojednává o mezinárodních právních problémech v boji proti piráctví na regionální, národní nebo vnitrostátní úrovni

Klíčová slova: Úmluva Organizace spojených národů o mořském právu, výzvy a námořní piráctví, soukromé cíle, dvě kritéria pro lodě, zeměpisný rozsah piráctví, právní výzvy.

DECLARATION OF AUTENTICITY

I hereby declare that this master Thesis on the topic of Current Challenges in International Law with regards to Maritime Piracy is my original work and I have acknowledge all sources used.

In Olomouc, on 25 Febuary 2024

Jingwa Anastasia Fohba

ACKNOWLEDGMENT

I am grateful to my supervisor, JU Dr. Bures Pavel Ph.D., for his massive support, guidance, and dedication throughout this thesis. Writing this thesis was not easy for me, but I thank my supervisor who encouraged me till the end. I would also like to thank all the other lecturers at the Faculty of Law for the positive knowledge they passed on to me. Studying at Palacky University was a wonderful experience, mainly because of the high-quality education and excellent lecturers who were always willing to help with academic issues. Analyzing this support will have no end, but all I can say is that this support paved a smooth path for my educational career at Palacky University. Finally, I thank my family and friends for their psychological support and their belief that I can do it. Writing this thesis would have been impossible without this support.

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LIST OF ABBRIVATIONS AND ACRONYYS

| | |
|----------------|--|
| UNCLOS | United Nation Convention of the Law of the Sea |
| LON | League of Nations |
| ILC | International Law Commission |
| EEZ | Exclusive Economic Zone |
| PLF | Palestine Liberation Front |
| IMO | International Maritime Organization |
| SUA Convention | The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation |
| ReCAAP | Regional Co-operation Agreement on Combating Piracy and Armed Robbery against Ships in Asia |
| UNSCR | United Nations Security Council Resolution |
| PLO | Palestine Liberation Organization |
| ICC | International Criminal Court |
| ICCPR | International Covenant on Civil and Political Rights |
| UDHR | Universal Declaration of Human Right |
| VCLT | Vienna Convention on the Law of Treaties. |
| ECtHR | European Court of Human Right |
| MLC | Maritime labor Convention |
| ILO | International Labor Organization |
| ACHPR | African Commission on Human and Peoples' Rights |
| MOU | Memorandum of Understanding |

| | |
|----------|--|
| TFG | Transitional Federal Government |
| INTERPOL | The International Criminal Police Organization |
| GPS | Global Positioning System |
| IMB | International Maritime Bureau |
| IL | International Law |
| PCIJ | Permanent Court of International Justice |
| HS | High Seas |
| UNODC | United Nations Office on Drugs and Crimes |

Introduction

Maritime piracy existed long ago in ancient times, but in the 20th century, the process of determining laws related to customary maritime piracy law and practice was initiated¹. The frequent piratical attacks have led to a rapid development of this law as time goes on. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) provided the laws relating to the repression of piracy in international law². Since piracy also has an impact on the international community, art. 100 of the UNCLOS states that "all States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or any other place outside the jurisdiction of any State³".

A famous legal case that occurred in 1839 was based on the "La Amistad" ship, which could be considered an enslaved person, and this further raised questions about piracy and international jurisdiction⁴. After the revolt of the African captives aboard La Amistad who had been illegally enslaved led to success, this ship arrived in U.S waters. The U.S navy apprehended the boat to be followed by a legal procedure⁵. This case finally ended up in the U.S. Supreme Court, with some questions that stated what offenses were committed and accused them of piracy⁶.

The major problem of the legal arguments before the court was whether Africans who rebelled were pirates. It was argued that the defendants were not pirating but rather people fighting to free themselves from unlawful slavery⁷. If they were considered pirates, a universal jurisdiction would have applied by which any state could arrest and punish them. According to the Supreme Court

¹ ROBIN, Geiß, ANNA Petrig, Part 2 Historic Evolution of Legal Rules Relating to Piracy, Armed Robbery at Sea and Other Forms of Maritime Violence, February 2011, Pages 37–54., <https://doi.org/10.1093/acprof:oso/9780199609529.003.0003>.

²OCEANS AND LAW OF THE SEA UNITED NATIONS, DIVISION FOR OCEAN AFFAIRS AND LAW OF THE SEA. Updated 24 May 2012.

<https://www.un.org/depts/los/piracy/piracy.htm>.

³ Ibidem.

⁴ VASUKI, Nesiah, journal article, London Review of International Law, Volume 7, Issue 2, July 2019, Pages 149–179. <https://academic.oup.com/lril/article-abstract/7/2/149/5673592?redirectedFrom=fulltext>.

⁵ National Archives, Educator Resources, commentaries on, The Amistad Case. <https://www.archives.gov/education/lessons/amistad>.

⁶ Bruce A. Ragsdale "Incited by the Love of Liberty" Spring 2003, Vol. 35, No. 1. <https://www.archives.gov/publications/prologue/2003/spring/amistad-1.html>.

⁷Ibidem

ruling, what Africans did was not a piratical act because they just wanted freedom from illegal slavery⁸. While closely relating the case of La Amistad with actual piracy, this decision includes a different understanding of how to interpret and approach acts against illegal enslavement⁹. Thus, the general principle of universal jurisdiction for acts originally defined as piracy should include individual motives and circumstances; the “La Amistad” case did not validate this fact as their motive was rather politically and fighting for their freedom¹⁰.

The rate of piratical attacks in some countries had been at its peak¹¹. The reasons for the frequent piratical attacks was because piracy was considered a lucrative form of business in some countries. For example, in Somali villages, piracy not only enriched individuals or pirate groups but also brought wealth to the entire villages¹². Coastal villages made money by providing food to pirates and hostages waiting for negotiations to end favorably¹³. Local negotiators made money by bringing ship owners to pay the ransom through cash on sea or land. Some people also encouraged piracy financially, and they were known as pirate financiers. These pirate financiers and pirates invested in pirate crews that went to capture vessels on the high seas. The pirates' wives were compensated with money before their husbands left for the mission. Pirates also purchased tools that they used for their piratical activities. Such tools included: satellite phones, global positioning systems (GPS) and, weapons like guns¹⁴. It is estimated that pirate financiers spent about US\$30,000 on a pirate group, thahuntsunt" in the Indian Ocean and, about US\$10,000 on pirates operating in the Gulf of Aden. To themselves and their operations, Pirates militias (gun for hire) as much as US\$10,000 per month to protect them from sub-clan rivals or external threats. Ransom payments were also a significant source of wealth. For example, the coastal villages around Haradheere received around 5% of a total ransom payment for allowing pirated ships to anchor there. All ransoms were paid in cash and distributed between pirates, financiers, negotiators and local village elders¹⁵. According to the private sector research, it was discovered that , the ransom

⁸ Ibidem

⁹ Ibidem

¹⁰ Ibidem

¹¹ Ibrahim A. El-Hussari. Metropolitan University Prague. Central European Journal of Internal and Security Studies. 2009, Volume 3. Page 49. <https://www.cejiss.org/images/issues/cejiss-vol3-issue1-full-version.pdf#page=42>.

¹² Ibidem page 48.

¹³ Ibidem.

¹⁴ Deena Kamel Yousef, Staff Reporter, the spoils of piracy, Published: May 08, 2011, 00:00. <https://gulfnews.com/business/the-spoils-of-piracy-1.804626#>.

¹⁵ Raneer Kooshie Lal Panjabi, The Pirates of Somalia: Opportunistic Predators or Environmental

payment was distributed as follows: (I) financiers (and sponsors) receive 50%; (ii) the pirates, pirate commander, mother ship crew and, attack squads split 30%; (iii) village elders receive 10%; and, (iv) the security squad (guns for hire to protect hostages and vessels) receives 10%. Interestingly, while the individuals who risk their lives on a piracy operation split 30% of the ransom money, the bankrollers ended up with 50% of their share. However, most pirate "soldiers" are illiterate and happy to receive large amounts of cash without knowing the actual value of their services¹⁶.

The development of innovations has also led to increased piracy, especially with the modernization of boats and weapons. Thus, measures to combat maritime piracy, participation, and coordination at different levels, such as regional, domestic and international levels, have been set up by International conventions¹⁷. For example, following the 1982 UNCLOS, each state had the power to control piracy within their national laws¹⁸. Thus, states could capture and prosecute pirates using their domestic laws, especially if the piratical act was committed within their maritime jurisdiction¹⁹. To fight piracy, several states came together at the regional level. For example, Malaysia, India, and Japan formed a combined patrol²⁰. With insufficient funding, complexities, and challenges in extraditing pirates, regional efforts might, nevertheless, be more successful.

There has been an increase in maritime piracy for several years, according to the International Maritime Bureau's (IMB) Piracy Reporting Centre²¹. In 2008, pirates off the coast of Somalia

Prey? 34 Wm. & Mary Env'tl. L. & Polly Rev. 377 (2010), page 446,
<https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1011&context=wmelpr&sei-redir=1>

¹⁶This rough estimate is based on current reports, but it is subject to changes given the frequent changes in ransom payments.

¹⁷ Mazyar Ahmad, Maritime piracy operations: Some legal issues, *Journal of International Maritime Safety, Environmental Affairs*, Published online: 05 Jul 2020, Pages 62-69.
<https://www.tandfonline.com/doi/full/10.1080/25725084.2020.1788200>.

¹⁸ Annex to the letter dated 24 January 2011 from the Secretary-General to the President of the Security Council. Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia Summary: A plan in 25 proposals. S/2011/30. The enhancement of existing measures also covers the jurisdictional and correctional component.

<https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S%202011%2030.pdf>.

¹⁹Ibidem.

²⁰ Siti Zubaidah Ismail. Core, College of Law, Government and International Studies, University Utara Malaysia. 31 December 2009. Pages 1-23.

https://core.ac.uk/display/19914529?utm_source=pdf&utm_medium=banner&utm_campaign=pdf-decoration-v1.

²¹ United Nations Security Council S/2011/30. Assessment of the threat reveals a serious situation. Letter dated 24 January 2011 from the Secretary-General to the

attacked and took control of an oil tanker ship²². Unfortunately, this incident draws very little attention from the international community. However, by 2009, more than twelve countries had sent navies to the Gulf of Aden to fight against piracy, “Most vessels captured in the busy shipping lanes of the Gulf of Aden fetch on average a ransom of \$2m²³.” Hence, measures were taken to combat piracy, including the on-board defiance system or the refusal to comply, naval deployments and, pre-emptive strikes. Thus, even when these pirates were being caught, the complexity of international laws made it complicated to prosecute them. Hence, despite the naval cooperation in the Gulf of Aden, many people still anticipate increased piratical attacks²⁴. It is also important to note that, pirate attacks are concentrated in four central regions: the Red Sea's southern entrance and the Gulf of Aden, which are close to Somalia; the Niger River delta and the Gulf of Guinea, which are close to Nigeria; The Indian subcontinent, primarily between India and Sri Lanka; the Malacca Strait separating Indonesia and Malaysia²⁵.

Thus, fighting piracy is of general interest to all these states. In line with the current challenges in IL (International Law) about maritime piracy, this paper aims to analyze: The Evolution of Legal Rules Relating to Piracy (1). This has been illustrated in four sub-headings, which are: The League of Nations(1.1), The Harvard Draft Convention of 1932(1.2), The International Law Commission (ILC) Draft Articles and, the 1958 Geneva Convention on the High Seas(I.3), 1.4The United Nation Convention on the Law of the Seas of 1982(1.4).

The second part of this paper will discuss International Legal Challenges in Combating Piracy (2). This section is concerned with the challenges which arise due to the definition of piracy by the UNCLOS of 1982, and is explain in three sections: The High -Seas Criterion(2.1), the Private Ends Requirement(2.2), The Two-Ship Criterion(2.3) and the third part of this paper is on Current Challenges in Combating Piracy at the Regional and Domestic Level(3), which is explained in four parts: Difficulties in prosecuting pirates (3.1), Human Rights concerns (3.2), Right to Hot Pursuit (3.3), and Lack of trust between the shipping industry and the government authorities (3.4).

President of the Security Council. <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S%202011%2030.pdf>.

²² Roger Middleton, Piracy in Somalia, threatening global trade, feeding local wars, October 2008 | page 8. <https://www.chathamhouse.org/sites/default/files/public/Research/Africa/1008piracysomalia.pdf>.

²³ BBC News. Somali pirates are living high life. News.bbc.co.uk.2008, October 28. <http://news.bbc.co.uk/2/mobile/africa/7650415.stm>.

²⁴ Ibidem.

²⁵ Christopher Alessi, Stephanie Hanson, Combating Maritime Piracy Last updated March 23, 2012 8:00 am (EST). <https://www.cfr.org/backgrounder/combating-maritime-piracy>.

The following chapter will provide a comprehensive understanding of how the definition of piracy came into the limelight and the current challenges in combating maritime piracy. Through this topic, we will gain a better understanding of the legal challenges currently faced in the fight against maritime piracy, and how we can address these challenges to make maritime routes safer and secure.

Objectives

The main objective of this thesis is a comprehensive exploration of the legal hindrance and challenges, that prevent effective combat against maritime piracy. These challenges arise from what constitutes the definition of the high seas by UNCLOS in 1982, and legal rules such as jurisdictional claims regarding other maritime zones like the internal waters, territorial sea and, others. The research focuses on understanding how this definition started and developed through a critical analysis of several fundamental legal principles. The study of maritime piracy plays a crucial role in addressing the challenges arising from this definition, and this is cross-examined in three parts: The high seas-seas requirements, the private-ends requirements, and the two-ship requirements. To investigating these challenges, the main research question that leads this investigation, is concerned with how piracy definition proves challenging to the successful fight against it. Such a crucial question is an essential announcement for the research into the complex legal environment surrounding piracy.

Along with the research question, many other legal barriers prevent a successful fight against piracy aside from the definition as an obstacle. These other legal barriers include: Difficulties in prosecuting pirates, challenges that arise from human rights concerns, hot pursuit and, the need for more trust between shipping industry officials and government authorities. These challenges are also very interwoven, so they present a wide view of the various legal issues brought about by anti-piracy activities. This investigation extends beyond the limits of the definitions, extending to other factors that hinder the suppression of maritime piracy. The goal of the study is to offer thorough insights that go beyond the limitations of the definition, directing and advising strategies and approaches toward a far better global response to combat piracy successfully. The goal of this research is to contribute significantly to the fight against legal barriers to piracy by examining the definition of piracy and its various implications.

Methodology

The methodology, which is proposed to investigate the complexity of piracy, is a multiple- level one that involves historical analysis, along with legal determinations and many factors adding delays in fighting against or combating it. The comprehensive approach is aimed at providing a full view of the issue through an analysis of its historical, legal and, current aspects. The

methodology encompasses three stages aimed at providing a broad understanding of maritime piracy. The level of the short term in the study for historical literature, archives and scholarly texts that are aimed at mapping out the evolutionary history of marine piracy rules. This historical background becomes a very viable platform for further discussions. It is divided into three parts that cover the historical background of maritime piracy rules in the different eras or periods. This insight is very crucial to understanding why the rules at sea have shifted and how these jurisdictional systems evolved.

This critical analysis seeks to demonstrate the reasons why, UNCLOS is regarded as a very fundamental legal tool and examine its important role in the elimination of piracy. This section presents a complex analysis of the adopted legal frameworks for piracy, revealing many problems and consequences that are characteristic only to this individual UNCLOS settlement. The third level elaborates on the other problematic legal issues for the anti-piracy campaign. This requires a highly reflective and detailed discussion of each aspect. This section, in turn, deals with the broader legal matters and provides a fascinating view into the structural complexity of anti-piracy laws. It seeks unique insights and interpretations at every level of the analysis. The goal is to offer a thoughtful take on the discussion around maritime piracy and, the variety of legal issues it raises. The methodology attempts to advance the understanding of maritime piracy by applying historical, legal and contemporary views.

1. The Evolution of Legal Rules Relating to Piracy.

For maritime nations, maritime piracy has long been an issue, with incidences occurring as far back as ancient times. Many laws and agreements have been created over the ages to prevent piracy and safeguard the rights of individuals who are affected by it. With the conclusion of World War, I, the League of Nations (LON) was founded in 1919, marking one of the first attempts at international cooperation in the fight against piracy²⁶. The Permanent Court of International Justice (PCIJ), established by the Convention of the League of Nations, rendered a decision about the legal standing of pirates and the appropriate penalties under international law. The Harvard Draft Convention on Piracy, which was drafted in the 1930s, aimed to further define the legal rules that surrounded piracy²⁷. This Harvard Draft Convention set the framework for upcoming global agreements on the subject, even if it was not binding.

The United Nations Convention on the Law of the Sea (UNCLOS) set forth the rules governing the use of the world's oceans and their resources, including anti-piracy measures²⁸. It described the rights and responsibilities of states in preventing piracy and classified piracy as a crime under international law²⁹. However, the development of laws on maritime piracy has been a lengthy and complicated process. The International Law Commission, the League of Nations, the Harvard Draft Convention, and the UNCLOS Geneva Convention have all made significant contributions to the development of the legal structure related to piracy and guaranteeing the protection of individuals impacted by it. The primary subject of this chapter is the evolution of the UNCLOS's definition of maritime piracy in 1982. The League of Nations' attempts are covered first, followed by the non-

²⁶ Lawrence Azubuike, *International Law Regime Against Piracy*, 2009, volume 15/ISSUE 1, Article 4, page 48-49. <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1127&context=annlsurvey>.

²⁷ Article 3 of the Harvard Draft provides: Piracy is any one of the following acts, committed in a place not within the territorial jurisdiction of any state: 1. Any act of violence or of depredation committed with intent to rob, rape, tywound, enslave, imprison or kill a person or with intent to steal or destroy property, for private ends without bona fide purpose of asserting a claim or right, provided that the act is connected with an attack on or from the sea or in or from the air. If the act relates to an attack which starts from on board ship, either that ship or another ship which is involved must be a pirate ship or a ship without national character. 2. Any act of voluntary participation in the operation of a ship with knowledge of facts which make it a pirate ship. 3. Any act of instigation or of intentional facilitation of an act described in paragraph 1 or paragraph 2 of this Article.

²⁸ OCEANS AND LAW OF THE SEA UNITED NATIONS, DIVION FOR OCEAN AFFAIRS AND THE LAW OF THE SEAS. https://www.un.org/depts/los/convention_agreements/convention_20years/oceansthelifeline.htm.

²⁹ *Ibidem*.

binding Harvard draft convention, the ILC's codification efforts, and the 1958 Geneva Convention on High Seas. Lastly, it illustrates the key features that make up the 1982 United Nations Convention on the Law of the Sea.

1.1 The League of Nation.

The League of Nations, founded in 1920 after the First World War to maintain peace and security, took up the problem of maritime piracy in the early 1930s³⁰. At that time, piracy in international waters was becoming an increasing concern, as reports of attacks on merchant ships and illegal activities became more frequent.

In response to this threat, the League of Nations established a Committee of Experts to investigate and address the problem of maritime piracy³¹. The committee made up of representatives from various member states, worked to identify the areas where piracy was most prevalent and to develop strategies to combat it. One of the most important initiatives of the League of Nations in the fight against maritime piracy was the creation of international laws and regulations for maritime activities³². These laws aimed to define piracy and establish the rights and obligations of states in dealing with pirates and their activities. One of the most important initiatives of the League of Nations in the fight against maritime piracy was the creation of international laws and regulations for maritime activities³³. These laws aimed to define piracy and establish the rights and obligations of states in dealing with pirates and their activities. This initiative was unsuccessful, due to the perception that, piracy at that juncture, did not qualify as an urgent global concern. The complexities of collecting unanimous agreement on the matter also contributed to the failure of these initiatives³⁴. Notably, responses to piracy were diverse and reflected a need for more consensus among nations. While affirming their stance on piracy, nine members of the Committee of Experts did so with reservations. In contrast, three members of the Committee of

³⁰Bhargava, Akshat, *Defining Piracy Under International Law: The Process and the Problems* (April 2, 2018). Available at SSRN: <https://ssrn.com/abstract=3362181>.

³¹McCabe, R.C. (2017). *Modern Maritime Piracy: Genesis, Evolution and Responses* (1st ed.). Routledge. <https://doi.org/10.4324/9781315163550>.

³² *Ibidem*

³³ *Ibidem*

³⁴ *Ibidem*

Experts acknowledged the issue but deemed it neither urgent nor of significant interest, while six members of the Committee of Experts refrained from expressing a clear opinion, and two questioned the feasibility and desirability of concluding a universal agreement on piracy.

The point of view raised by the Polish delegate, Zaleski, who commented on the questionable relevance of piracy in the current international setting, showed the complexity of the situation³⁵. Zaleski asked if piracy should have been on the agenda of this conference when only some states viewed it with limited interest and urgency. He pointed out that, piracy emerged as a highly sensitive issue for some countries, and the responses received from various governments implied problems in attaining an international agreement. As a result, piracy should not have been represented on the agenda in this League of Nations initiative³⁶. But this did not mean an end but a continuation of the discourse on piracy. The situation appeared again most prominently in the Harvard Draft, pointing to a persistent and developing discussion of what piracy meant for international legal order³⁷. The historical background of these discussions sheds light on the complicated storyline and perceptions that underpin early international initiatives to address piracy in an expansive global setting, which can help explain crucial information about issues that continue to influence policies aimed at managing contemporary maritime threats.

1.2 The Harvard Draft Convention of 1932.

The 1932 Harvard Draft Convention was an important turning point in the formation of the laws relating to maritime piracy. With the definition of piracy and the establishment of universal jurisdiction for its prosecution, this convention aimed to provide an extensive structure for dealing with piracy on the high seas. Along with measures for state-level piracy control, the proposed convention included measures for the arrest and conviction of pirates. The Harvard draft convention's emphasis on state-to-state collaboration in the fight against piracy was another significant feature. To combat piracy, the agreement called for governments to work together and

³⁵ Ibidem

³⁶ Ibidem

³⁷ Ibidem

exchange information, as well as to provide technical aid to those who require it. The Harvard draft treaty recognized piracy as an international crime regardless of the nationality of the participating vessels or criminals, which was one of its main elements. This was a big step toward the unification of anti-piracy laws, guaranteeing that pirates may be prosecuted and punished in any state where they were apprehended.

An Expert Committee set up the League of Nations in 1924 as the first attempt by an expert panel to address more complex piracy issues. However, such early activities resulted in little or no result, and a piracy convention drafted by Harvard Law School was adopted³⁸. The main goals of the Harvard draft convention were to codify several topics related to international law and help with their classification³⁹. Despite the limited nature of such a conference's result, because solutions were impossible to find, the Harvard draft still contributed significantly to beginning these discussions on the definition of piracy⁴⁰. Though the conference did not yield any fruit, it serves as the beginning of further discussion of the definition of piracy at the International Law Commission, the UN and, its Member States⁴¹.

The drafters of the Harvard Convention propose a concise yet different definition of piracy: First, an additional clause is added to the piracy category that includes instigations and facilitation thereof. This clause engages, “By this in effect, instigation and facilitation to piratical issues as mentioned above, come under the description of piracy. The permissive advantage is served by such drafting device because the act of instigation/facilitating does not fall within common jurisdiction if it happens outside territorial jurisdiction”⁴².

This complex legal structure set up by the Harvard Draft 1932 initiated important discussions in the International Law Commission. Its significance was defining when this draft entered in articles relating to the Law of Sea Treaty, paving the way for four conventions in the 1958 Geneva Conventions⁴³. This historical analysis outlines sources of contemporary legal frameworks and new challenges, highlighting shared efforts to address global piracy issues.

³⁸ Ibidem

³⁹ Ibidem.

⁴⁰ Ibidem.

⁴¹ Ibidem.

⁴² Harvard Draft Convention supra notes 23 pages 243.

https://legal.un.org/ilc/documentation/english/a_cn4_23.pdf.

⁴³Tullio Treves, The Audiovisual Library of International Law <https://legal.un.org/avl/intro/introduction.html?tab=2>.

1.3 The International Law Commission (ILC) Draft Articles and the 1958 Geneva Convention on the High Seas.

The draft articles of the International Law Commission (ILC) adopted in 1956 and the 1958 Geneva Convention on the High Seas have shaped the legal framework for piracy at sea⁴⁴. The United Nations International Law Commission created the ILC Draft Articles to codify customary international law and offer recommendations for state policy on piracy⁴⁵. The definition of piracy, state rights and responsibilities in the fight against piracy, and jurisdictional concerns regarding piracy offenses are all covered in these articles. On the other hand, a multilateral agreement that particularly addresses the legal guidelines controlling the usage of the high seas is the 1958 Geneva Convention on the High Seas. In addition to offering a framework for state collaboration in the fight against piracy, the Convention upholds humankind's support for freedom of navigation on the high seas⁴⁶.

The legal structures of the territorial sea and the high seas were among the subjects the International Law Commission (ILC) included in the preliminary list of subjects whose codification it deemed necessary and practicable during its first session in 1949. A Special Reporter was appointed (Mr. Francois)⁴⁷. The Special Reporter then explained the definition of piracy *jure gentium* based on three essential principles:

The principle that, *animus furandi*⁴⁸ did not have to be present; the principle that, only acts committed on the high seas could be described as piracy; and the principle that acts of piracy were necessarily acts committed by one ship against another ship, which did not include acts committed on board a single vessel⁴⁹. After introducing and describing the three main principles from the

⁴⁴ Ibidem.

⁴⁵ Ibidem

⁴⁶ REVIEW OF LEGAL AND INSTITUTIONAL INSTRUMENTS TO FACILITATE INTRA-REGIONAL TRANSPORT AND TRADE WITHIN SUB-SAHARAN AFRICA, ANNEX II-3, GENEVA CONVENTION ON THE HIGH SEAS () (EXTRACTS). https://www.ssatp.org/sites/ssatp/files/publications/HTML/legal_review/Annexes/Annexes%20II/Annex%20II-03.pdf.

⁴⁷ 'Yearbook of the International Law Commission' 1956, Vol. II, p. 253–301. https://legal.un.org/ilc/publications/yearbooks/english/ilc_1956_v2.pdf.

⁴⁸ Article 105 of the UNCLOS.

⁴⁹ Tullio Treves, The Audiovisual Library of International 1958 Law <https://legal.un.org/avl/intro/introduction.html?tab=2>.

Harvard Draft Convention, the Special Reporter invited the ILC members to vote on each of the three principles individually⁵⁰. Of the ten ILC members surveyed, two accepted the Special Reporter's contention that, universal jurisdiction over piracy was limited to acts on the high seas, seven were silent as to a high seas' requirement, and only one specifically rejected the high seas requirement⁵¹.

The person who left was a French jurist named Georges Scelle, who argued against a formalistic definition of piracy *jure gentium* and favored the one based only on "the nature of the act."⁵² However, the Special Rapporteur rejected Scelle's opinion, stating that accepting his plan would only complicate the issue and that Scelle's position stemmed from his strong desire to establish an international police force⁵³. At a subsequent ILC session in 1955, the Commission considered a proposal by Sandström of Sweden to include in the definition of piracy acts committed along the coast and within the territorial jurisdiction of a State⁵⁴. The renewed debate allowed Scelle to clarify his position. In doing so, he agreed that acts committed within the territorial jurisdiction of a state of a state would fall under the jurisdiction of local courts⁵⁵. However, to Scelle, the question of jurisdiction had no connection with the definition of piracy under international law. The 1958 Geneva Convention on the High Seas included the ILC debates and stressed the importance of the Harvard Draft Convention. Article 39 of the 1956 ILC Draft Articles appeared in the 1958 Geneva Convention on the High Seas, though not in exact words, and only a change was made: an aircraft can be the victim of piracy on the high seas. The definition in the 1958 Geneva Convention was copied word verbatim into UNCLOS in its article 101, where it has remained untouched.

This Convention, signed on April 29, 1958, sought to codify the rules of international law applicable over the high seas with the intent that such free use and safety for navigation should create cooperation between sovereign states. The key feature of the 1958 Geneva Convention was

⁵⁰Bellish, Jonathan, A High Seas Requirement for Inciters and Intentional Facilitators of Piracy *Jure Gentium* and Its (Lack of) Implications for Impunity (September 27, 2013). Available at SSRN: <https://ssrn.com/abstract=2226030> or <http://dx.doi.org/10.2139/ssrn.2226030>.

⁵¹ Summary Records of the 290th Meeting, *supra* note 69, paragraphs 56–84, at 42–44. https://legal.un.org/ilc/documentation/english/summary_records/a_cn4_sr290.pdf.

⁵² *Ibidem* paragraph 70 at 43.

⁵³ *Ibidem* paragraph 79 at 43.

⁵⁴ Summary Records of the 292nd Meeting, *supra* note 73, para. 9, at 52. https://legal.un.org/ilc/documentation/english/reports/a_58_10.pdf.

⁵⁵ *Ibidem* paragraph 11 at 52.

its reliance on debates and discussions organized by the ILC around defining piracy⁵⁶. The work of the ILC - including the Harvard draft Convention and contributions by Special Rapporteur Clapham, was essential to developing understanding the contemporary of piracy as a crime under international law⁵⁷. The Convention supported the three fundamental principles proposed by ILC: no animus furandi, the high seas principle, and the act of one ship against another⁵⁸.

The 1956 ILC Draft Articles, Article 39, describing piracy based on these principles, left a space in the Geneva Convention on High Seas from that year. The Convention preserved the core of ILC discussions, emphasizing that the universal jurisdiction over piracy should only apply to acts on the high seas. Piracy includes acts undertaken at sea or beyond the territorial jurisdiction of any nation-state, particularly those carried out by one ship against another. A notable progress of the 1958 Geneva Convention was that aircraft could become the victims of piracy on the high seas⁵⁹.

The 1958 Geneva Convention on the High Seas served as an instrument that was subsequently formed to develop the regulation of sea law. Its provisions, among others, on piracy, created an all-embracing and universally applicable code of conduct for the sea⁶⁰. The Convention reflected the desire to create a balance between the freedom of the high seas and the practical need for regulation so that society could be regulated to ensure safe navigation on these crucial international shipping lanes⁶¹. Collectively, these legal tools have been essential in shaping the development of anti-piracy laws. They have aided in clarifying the responsibilities of governments about the prevention and prosecution of acts of piracy, in addition to encouraging international collaboration in the fight against this transnational offense. Additionally, these tools have aided in the creation of an extensive legal framework that aims to deter piracy and safeguard the security and safety of marine bodies.

⁵⁶ JONATHAN BELLISH, A High Seas Requirement for Inciters and Intentional Facilitators of Piracy Jure Gentium and Its (Lack of) Implications for Impunity, 2013, pages 17-20.

<https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1046&context=ilj>

⁵⁷ Ibidem

⁵⁸ Ibidem

⁵⁹ Ibidem

⁶⁰ Kristina Johansson Changes in the Views on Jurisdiction over Piracy under International Law. Page 15-18.

<https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=1558803&fileId=1564776>.

⁶¹ Ibidem.

1.4 The United Nations Convention on the Law of the Seas of 1982.

An international agreement known as the United Nations Convention on the Law of the Sea (UNCLOS) was signed in 1982 and provided an extensive legal structure for the control of all activities involving the ocean⁶². The UNCLOS's anti-piracy provisions, which offer a legal framework for preventing and punishing high seas piracy, are among its most important features. UNCLOS defines piracy as any illegal acts of violence or detention committed for private ends by the crew or passengers of a private ship or aircraft against another ship or aircraft on the high seas. The Convention also specifies actions that States may take to prevent piracy, such as the ability of any State to apprehend or confiscate pirates' property, ships, and other assets and prosecute them⁶³. The laws related to piracy have changed throughout time, and UNCLOS is an important step in the international community's attempts to successfully fight piracy. The UNCLOS, in contrast, ensures that States have the legal capacity to act against pirates and prosecute them under international law by establishing explicit guidelines and processes for fighting piracy⁶⁴. For example, it is the responsibility of the state to implement the provisions of the UNCLOS. States are obligated to ensure that their military and law officials are empowered under national law to apprehend and prosecute those suspected of piracy. States also, must ensure that exercising universal jurisdiction is not a duty but a right.

Hence, the definition of piracy is limited to acts committed on the high seas and contains the "two - ship criterion". It was decided that for an action to be considered piracy, the piratical act must have been committed by one ship against another ship. This, therefore, implies that, if an act is achieved by the crew on board the same boat, such an act will not be considered piracy.

Another rule of the UNCLOS states that "all States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or any other place outside the jurisdiction of any State ⁶⁵". It was again stated by the UNCLOS that: "every State may seize a pirate ship or aircraft, or a ship or aircraft were taken by piracy and under control of pirates and arrest the persons and

⁶² Ibidem pages 18-23.

⁶³ Akshat Bhargava, Defining piracy under international law: The process and the problem, 2018, page 1. Available at SSRN: <https://ssrn.com/abstract=3362181>.

⁶⁴ Ibidem page 4-5.

⁶⁵ Rear Admiral Rolf Hauter, journal, Insight: What is piracy? <https://www.defenceweb.co.za/sea/sea-sea/insight-what-is-piracy/>.

seize the property on board". Hence, the seizing state has the right to impose the sanctions to be taken and can decide what actions to take on the vessel, aircraft or property once the state or third-party acts in good faith ⁶⁶. The right to visit was also discussed in this convention (UNCLOS), which states that warships must board a foreign ship when this alien ship is suspected of being involved in piracy.

Also, the UNCLOS provision clearly explains that only a warship or, military aircraft or other ships or aircraft marked and identified as performing the government's services with the government's authorization can seize a ship or aircraft on the grounds of suspicion of piracy.⁶⁷ Also, where a vessel or aircraft has been taken on the claim of piracy, and it is later proven that the ship and aircraft were not guilty; the seizing state would be liable to the nationality of the vessel or aircraft in case of any damages caused from the seizing. "It deals specifically with the freedoms of the high seas; the right of a State to have ships flying its flag under conditions fixed by it. The 1982 UNCLOS states that, "Every 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". However, UNCLOS has been instrumental in forming the laws related to piracy and offering solid basis for global collaboration in the combat of this illegal activity. Because of its provisions, the legal framework for stopping piracy and making sure people who commit piracy are held accountable for their activities has been strengthened.

However, piracy has been a significant problem in many states, and the efforts made by states and the International Communities at the domestic, regional, and International levels to discourage, prevent and, punish pirates have reduced piratical activities in some states but have not completely eradicated it. This is because of the difficulties or challenges the International communities face in fighting against piracy ⁶⁸. The factors limiting the fight against piracy range from broad areas such as legal, financial, economic and, cultural factors. However, in this paper, only the legal challenges shall be analyzed.

⁶⁶ Ibidem.

⁶⁷ Article 105 of the UNCLOS 1982.

⁶⁸ Ibidem.

2. International Legal Challenges in Combating Piracy

It is important to keep in mind that, in addition to other legal issues, the concept of piracy itself presents a significant legal barrier when talking about the legal obstacles to fighting piracy. This definition will be discussed in three sections to show how it makes the fight against piracy more difficult⁶⁹. Also, attention must be drawn to Article 58(2) as an additional article that complements the International Law implemented within the EEZ. This implies, piracy within the EEZ is on the same level as those acts on high seas⁷⁰. As for the adaptability of legal systems, an incident such as the "Ocean Voyager" in one state's EEZ shows that insurance companies are cooperating with the states to arrest the pirates responsible.

The second part of the definition of the law of the sea is the "private end requirements." Under UNCLOS Article 101 (a), the commission must include "private ends" requirements as a condition for the acceptance of the act of piracy. *Castle John v. NV Mabeco* is seen as an illustrative case, in which the distinction between individual acts driven by private-ends requirement is made very clear from those motivated by politics or public interest. The third issue is the process of defining the two-ship requirements. As far as UNCLOS is concerned, an action must involve two-ships to constitute piracy. According to this specification, an illegal action must be aimed at another vessel. The *Achille Lauro* incident's case shall serve as an example to demonstrate that act. Overall, the accurate description of piracy includes the private ends requirements, the high-seas requirements, and the two-ship criterion, which are obstacles in the fight against piracy. This threat requires constant evaluation and adjustment of some legal structures to today's challenges in the combat against piracy.

2.1 The High- Seas Requirements.

The second component of the definition of piracy by the UNCLOS in its article 101 is concern with acts occurring "on the high seas" or "in a place outside the jurisdiction of any state." This,

⁶⁹ Bjørn Møller, PIRACY, MARITIME TERRORISM AND NAVAL STRATEGY, 2009. Page 15 -19.

https://www.files.ethz.ch/isn/96541/2009-02_%20Piracy_maritime_terrorism_and_naval_strategy.pdf.

⁷⁰ *Ibidem*.

therefore, excludes acts of piracy within a state's territorial seas or internal waters from the view or interpretation of Article 101. The 1982 UNCLOS seeks to explain that, the act of piracy must occur on the HS or outside of any state territorial jurisdiction. This implies that, acts of piracy that take place within the state territorial seas, do not fall within the UNCLOS definition and are however not subject to the same international legal rules, as this criterion poses a legal obstacle in the fight against piracy. Since different states might have various definitions and rules for dealing with activities that resemble piracy within their territorial waters, this limitation hinders international cooperation and coordination. As a result, there is a legal vacuum when it comes to piracy that occurs in the territorial sea, the EEZ, and the archipelagic waterways. This could result in challenges with jurisdiction and make it more difficult to successfully prosecute and reduce piracy⁷¹.

Policing these bodies of waters becomes more difficult in failed states like Somalia since the recognized government has no jurisdiction over its maritime zones⁷². Off the coast of Somalia maritime issue have grown to be a global issue. Due to pirate's attacks on foreign ships, the popular routes through the Gulf of Aden has become risky and costly. After Somalia's civil war in 1991, the region has become dangerous. However, around 2000 and particularly in 2006 pirate activities skyrocketed⁷³. The 1990s, armed groups have operated in the territorial water capturing ships and holding their crew members for ransom⁷⁴. However, the absence of a national government has allowed pirates to flourish and increase the range of their attacks, allowing them to target ships considerable farther away⁷⁵. Navigating across the Gulf of Suez Canal has made it a world issue⁷⁶. International efforts through UNCLOS are unenforceable within the territorial waters of such states, providing a haven for pirates⁷⁷.

The MV Seabourn Spirit case is used as an example of how the HS criterion applies to maritime piracy. Pirates attacked the luxurious cruise vessel Seabourn Spirit on November 5, 2005, off the

⁷¹ Keyuan Zou, New Developments in the International Law of Piracy, Chinese Journal of International Law, Volume 8, Issue 2, July 2009, Pages 323–345, <https://doi.org/10.1093/chinesejil/jmp006>

⁷² TULLIO Treves, The European Journal of International Law Vol. 20 no. 2 2009, 399 – 414 <https://academic.oup.com/ejil/article/20/2/399/500835>

⁷³ Ibidem

⁷⁴ Ibidem

⁷⁵ BERG J.H. Van Den, The consequences of a collapsed Somalia for the suppression of piracy August 2010 <https://edepot.wur.nl/167688>.

⁷⁶ Ibidem

⁷⁷ ROBERT, Haywood, ROBERTA, Spivak. Global Institution Maritime Piracy, Routledge, Mar 1, 2013 - Political Science - 184 pages https://books.google.cz/books/download/Maritime_Piracy.bibtex?id=41vFBQAAQBAJ&

coast of Somalia. Rocket-propelled grenades and machine guns were used by the attackers, but the ship was able to escape captivity and the attack was resisted⁷⁸. The UNCLOS defines the act of piracy as occurring in the international waters, that is, more than 12 nautical miles from the baseline or the coast, and outside of any state jurisdiction⁷⁹. This case exactly matches this definition.

The *Seabourn Spirit* case shows how the international community can interfere in the UNCLOS jurisdiction in acts of piracy and shows how the HS criterion is implemented in real-world situations. Since this incident took place in the HS, that is it falls under the authority of the UNCLOS anti-piracy laws⁸⁰. Contrary, if the same attack had taken place inside the state territorial waters, it may have been considered by IL law, as arm robbery against ships, as opposed to piracy or instead of piracy requiring coastal states to exercise jurisdiction and authority to enforce⁸¹.

To fully understand the different applications of this definition, it is essential to complement Article 101 with Article 58(2), which stipulates that, rules of international law applicable on the high seas extend to the exclusive economic zone (EEZ), provided they align with the relevant UNCLOS provisions governing the EEZ. This indicates that Article 101(a) covers an area as wide as any state's Exclusive Economic Zone (EEZ).

It is particularly important to 101(a) since all the acts of piracy within EEZ are equal to actions on high seas. This Article gives the notion that every nation can be a guard in piracy incidents within its EEZ, interfering with criminal actions beyond all states' territorial waters. This demonstrates how flexible and interconnected legal systems are, and how international law changes in response to evolving maritime circumstances⁸². As an activity on the high seas, piracy within the EEZ is regulated by Article 101(a), which follows an established procedure within the jurisdiction⁸³.

States and insurance companies can work together to apprehend and prosecute this type of crime across customary borders. The insurers might encourage measures that deter piracy or assist in the

⁷⁸ Professional Mariner Journal of the Maritime Industry Cruise ship escapes attack by pirates 100 miles off Somalia, February 28, 2007, <https://professionalmariner.com/cruise-ship-escapes-attack-by-pirates-100-miles-off-somalia/>

⁷⁹ Rubin Churchill, Article, Law of the Sea and International Law. 2024. <https://www.britannica.com/topic/Law-of-the-Sea>.

⁸⁰ Ibidem.

⁸¹ Anne Bardin, Articles, coastal state's jurisdiction over foreign vessel, 33-37.

<https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1188&context=pilr>.

⁸² Ibidem

⁸³ Ibidem.

capture of pirates by making ship owners comply with best management practices to be eligible for insurance coverage or reduced rates. Such measures may include, keeping records and evidence that might be relevant for legal proceedings.

2.2 Private- Ends Requirements.

A second main aspect of the definition of piracy is that of the private-ends requirements. it is defined by the UNCLOS in Article 101 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 or a private aircraft". The phrase "private ends" basically indicates that, the act's main motive must be personal- for example, financial gain rather than political, ideological, or state- sponsored⁸⁴. The inclusion of "private - ends" component helps to separate acts of piracy from similar actions that could be committed by people or state entities pursuing political objectives, such as maritime terrorism⁸⁵. The emphasis on "private ends" aids in distinguishing between acts of piracy and other state - approved activity, such as naval warfare.

Different norms or rules under IL apply to naval warfare, and those related to combatant status and the laws of armed conflict, particularly maritime piracy⁸⁶. This distinction is necessary because it sets the rule for UNCLOS's jurisdictional reach and the legal responses to the crime committed at sea. UNCLOS clarifies the type of situation that falls under its laws of international jurisdiction by stating piracy must be for private purposes⁸⁷. the actions that can have conflicting goals, like mobilizing for political causes or financial gain. However, interpreting "private ends" might be challenging, particularly when the motives behind the actions can have conflicting goals, like mobilizing for political causes or financial gain⁸⁸. It is important to note that the UNCLOS definition of piracy does not include activities like politically motivated hijackings, terrorism

⁸⁴ Helene Viksås, Article What is the correct interpretation of the criterion "for private ends" in LOSC Art. 101? 2020, Page 13. <https://munin.uit.no/bitstream/handle/10037/20091/thesis.pdf?sequence=2&isAllowed=y>.

⁸⁵ Ibidem page 13-15.

⁸⁶ David T. Lee. THE PRINCIPLE OF PROPORTIONALITY IN MARITIME ARMED CONFLICT: A COMPARATIVE ANALYSIS OF THE LAW OF NAVAL WARFARE AND MODERN INTERNATIONAL HUMANITARIAN LAW. <https://www.swlaw.edu/sites/default/files/2021-03/4.%20Lee%20Macro%20%5B119-145%5D.pdf>.

⁸⁷ Ibidem

⁸⁸ Helene Viksås, Article, what is the correct interpretation of the criterion "for private ends" in LOSC Art. 101? 2020. Page 13. <https://munin.uit.no/bitstream/handle/10037/20091/thesis.pdf?sequence=2&isAllowed=y>.

financed by piracy⁸⁹. As a result, proposals have been made for legislative change to address the evolving challenges to maritime security that do not all within the category of piracy, change to address the evolving challenges to maritime security that do not cleanly fit within the scope of piracy.

As the International Law Commission (ILC) noted, *animus furandi* does not have to be part of any piratical act⁹⁰. Acts of piracy may be prompted by feelings of hatred or revenge and not merely by the desire for gain the following examples serve as an excellent way of illustrating the “private ends” criterion.

Castle John v. NV Mabeco is an example of the first perspective, where the perpetrator's intentions are secret - analyzing this case. In this instance, Greenpeace started to fight against NL Chemicals and Bayer because of the environmental damage. Greenpeace activists boarded the NL Chemicals toss ship *Falco* to further their campaign and obstructed Bayer's dump vessel *Sirius* using *Wadsy Tanker*. Bayer, seeking damages, argued that Greenpeace's actions represented piracy. In 1986, the Court of Cassation in Belgium decided that a non-state entity called Greenpeace had pirated a Dutch vessel. Significantly, the court considered Greenpeace's actions private and whimsical rather than political⁹¹. This decision underlines the difference between acts for selfish reasons that amount to piracy and those motivated by political or public concerns, which do not fulfill this definition⁹².

In contrast, the *Santa Maria* hijacking in 1961 illustrates a situation where political considerations saved it from being labeled piracy. The hijacking of the Portuguese ship *Santa Maria* was a plan by Captain Galvdo, a Portuguese political rebel, and passengers with an express intention to oust dictator Salazar in Portugal. Even though the act was considered a part of political controversy, it did not have *animus furandi*. This case illustrates the difference between acts motivated by political considerations, not under the norms of piracy definition, and those based on personal intentions that could lead to prosecution as charges for piracy. There is a need to analyze

⁸⁹ *Ibidem*.

⁹⁰ ILC's Commentary on article 39, United Nations (1956). Report of the International Law Commission Covering the Work of Its Eighth Session, 23 April to 4 July 1956. Commentary to the Articles Concerning the Law of the Sea. A/3159, page 18. https://legal.un.org/ilc/texts/instruments/english/commentaries/8_1_8_2_1956.pdf.

⁹¹ Judgment of the Court of 2 April 1998. - Stichting Greenpeace Council (Greenpeace International) and Others v Commission of the European Communities. - Appeal - Natural or legal persons - Measures of direct and individual concern to them. - Case C-321/95 P. European Court reports 1998 Page I-01651.

⁹² Institute of Cetacean Research v Sea Shepherd, Article, THE “PIRATISATION” OF ENVIRONMENTAL ACTIVISM page 1-7. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2585834.

acts done for private ends by addressing their underlying motives, personal or political, and whether they match the *animus furandi* requirement⁹³.

Activities carried out for motives other than personal gain, such as political, intellectual, or societal goals, are referred to as not for “private ends” activities⁹⁴. These are some obvious situations when the “private end” requirements are not met, indicating that the acts in question would not be considered piracy according to the UNCLOS. Firstly, maritime terrorism: The Palestine Liberation Front’s (PLF) 1985 hijacking of the cruise ship *Achille Lauro* was a politically motivated act, with the aim of liberating Palestinian captives⁹⁵. It was done for the sake of a political rather than for personal benefit.

Another example is the Civil War and Rebellion. Rebel’s forces action during a civil war, like the Tamil Tigers’ naval operation in Sri Lanka, was not motivated by personal gain but rather by an ongoing political struggle⁹⁶. Third, political activist. It is evident that the Greenpeace ship *Rainbow Warrior* did not engage in piracy when it interfered with nuclear tests or whaling ships because their actions were motivated by environmental conservation rather than personal gain⁹⁷. Fourth: Government Enforcement Actions⁹⁸. Even if the boarding may be challenging, a government ship that intercepts a foreign vessel for violating environmental or fisheries laws is acting by the law, not for personal gain⁹⁹. These circumstances fail to meet the UNCLOS’ 1982 definition of piracy because they have objectives that are linked with political, social, or state objectives rather than only the personal or private gain of the individual or groups.

⁹³ ILC’s Commentary on article 39, United Nations (1956). Report of the International Law Commission Covering the Work of Its Eighth Session, 23 April to 4 July 1956. Commentary to the Articles Concerning the Law of the Sea. A/3159, vol. II. Page 18. https://legal.un.org/ilc/texts/instruments/english/commentaries/8_1_8_2_1956.pdf.

⁹⁴ *Ibidem*.

⁹⁵ Richard Pallardy, History Article *Achille Lauro* hijacking, 2008. <https://www.britannica.com/topic/hijacking>.

⁹⁶ Paul A. Povlock, Journal, *A Guerilla War at Sea: The Sri Lankan Civil War*. 2011. Pages 1-52. <https://apps.dtic.mil/sti/tr/pdf/ADA549049.pdf>.

⁹⁷ Article, *The bombing of the Rainbow Warrior*, <https://www.greenpeace.org/aotearoa/about/our-history/bombing-of-the-rainbow-warrior/>.

⁹⁸ International tribunal of the law of the sea. ambridge.org/core/books/abs/prosecuting-maritime-piracy/governing-international-law-on-maritime-piracy/03D438A3792579B7D3783F0C21304BFB

⁹⁹ Resolution, Legislation 3.1 Code of for the investigation of the crimes of piracy and armed robbery against ship. [https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.922\(22\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.922(22).pdf).

2.3 The Two-Ship Criterion.

The third part in the definition of UNCLOS prescribes that two ships must be engaged as defined under Article 101. This condition means that the illegal act must be aimed at another vessel, or aircraft, specifically, people/property on board such a vessel¹⁰⁰. The first characteristic is that it must be a “private ship” conducting an illegal act against another vessel¹⁰¹. As a result, capturing an entire crew or snatching passengers on the same ship do not resolve to the “two-ship” provision as stated in UNCLOS.

A lack of solid agreement becomes evident after examining these three fundamental aspects of the definition of piracy in UNCLOS Article 101. This ambiguity arises due to the emergence of new forms of piracy, particularly with the modernization of weapons, which was not anticipated when the definitions were formulated. In situations where an act of piracy occurs, and there is disagreement over which jurisdiction should apply, states may exercise discretionary power, leading to varying interpretations¹⁰². The existence of a universally accepted interpretation of the definition of piracy would help resolve such disputes and provide clarity in determining jurisdiction¹⁰³.

However, there are measures available to prosecute offenders engaged in the seizure of ships both nationally and internationally. Among these essential instruments are firstly, the UNCLOS. A comprehensive international treaty called UNCLOS lays out the rules for using and safeguarding the oceans and seas around the world¹⁰⁴. It contains anti-piracy provisions and offers a foundation for legal action against and repression of piracy¹⁰⁵. According to UNCLOS, nations have the authority to apprehend and detain pirates, as well as to prosecute any who is discovered within their

¹⁰⁰ ILC's Commentary on article 39, United Nations (1956). Report of the International Law Commission Covering the Work of Its Eighth Session, 23 April to 4 July 1956. Commentary to the Articles Concerning the Law of the Sea. A/3159, page 18. https://unctad.org/system/files/official-document/dtlitlb2013d3_en.pdf.

¹⁰¹ Ibidem.

¹⁰² Alexandre Skander Galand, Chapter 2 Article 13(b) VS State sovereignty <https://brill.com/display/book/9789004342217/BP000003.xml?language=en&body=fullhtml-60832>.

¹⁰³ Ibidem.

¹⁰⁴ Emily Haves, Article, House of Lords International Relations and Defence Committee: UN Convention on the Law of the Sea report, 2022. <https://lordslibrary.parliament.uk/house-of-lords-international-relations-and-defence-committee-un-convention-on-the-law-of-the-sea-report/>.

¹⁰⁵ Ibidem.

territorial waters or aboard their flagged ships¹⁰⁶. Secondly, Conventions of the International Maritime Organization (IMO): A specialized UN organization, the International Maritime Organization (IMO), has created treaties and guidelines aimed at eliminating piracy and maintaining maritime security¹⁰⁷. The most important ones are: (i)The SUA Convention(The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation) is an international agreement that aims to suppress acts of piracy and armed robbery against ships.¹⁰⁸ This convention covers armed robberies and piracy against ships and offers a foundation for international collaboration in the fight against piracy¹⁰⁹. It motivates states to declare crimes related to piracy to fall under their jurisdiction and impose criminal penalties. (ii). Regional Treaties: To combat piracy in specific areas, many regional organizations have created treaties and initiatives or projects. The Code of Conduct for Djibouti, the Gulf of Guinea Code of Conduct, and the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)¹¹⁰ are a few examples. (III) Resolutions of the UN Security Council (UNSCR): The UN Security Council has passed many resolutions condemning piracy and calling on member nations to take necessary measures against it. For instance, Resolution 1851 authorized states and regional organizations to take the appropriate action against pirates both on land and at sea, therefore establishing a legal structure for dealing with piracy¹¹¹.

At the national level, every nation is responsible for passing its legislation to stop piracy and bring criminals to justice.

International laws, including the IMO and UNCLOS treaties, should be complied with by national legislation¹¹². Governments ought to designate piracy as a distinct criminal offense and impose suitable sanctions on anyone involved in piracy-related actions¹¹³. National laws may also include

¹⁰⁶ Ibidem.

¹⁰⁷ Introduction to IMO <https://www.imo.org/en/About/Pages/Default.aspx>

¹⁰⁸Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.2005. <https://www.imo.org/en/About/Conventions/Pages/SUA-Treaties.aspx>.

¹⁰⁹ Ibidem.

¹¹⁰About ReCAAP Information Sharing Centre, https://www.recaap.org/about_ReCAAP-ISC.

¹¹¹United Nation Security Council Resolution, 2008. <https://ofac.treasury.gov/media/5166/download?Online>.

¹¹² Satkauskas, Rytis. "Piracy at sea and the limits of international law." *Aegean Review of the Law of the Sea and Maritime Law* 1 (2011): 217-235. <https://doi.org/10.1007/s12180-010-0013-3>.

¹¹³ Ibidem.

provisions that facilitate international collaboration in the fight against piracy and permit the arrest, seizure, and conviction of pirates¹¹⁴.

Together, these national and international legislations offer a legal foundation for the prosecution of criminals who capture ships in maritime piracy situations. They seek to protect marine trade, discourage piracy, and hold pirates legally responsible internationally.

¹¹⁴ Ibidem.

3 Current Challenges in Combating Maritime Piracy at the Regional and Domestic Level.

The effective functioning of international trade routes and global security are seriously threatened by maritime piracy. Governments are confronted with many legal obstacles in their attempts to effectively combat marine piracy, both at the regional and national levels¹¹⁵. Piracy has been a significant threat to maritime security for centuries. In recent years, there have been efforts to curb piracy, but it still poses a significant challenge to the global shipping industry¹¹⁶. While there have been some successes in combating piracy, there are still many legal challenges that need to be addressed. Combating marine piracy has been a complicated and evolving issue for decades, necessitating collaboration at all levels, international, regional, and domestic¹¹⁷. Some of the major legal challenges to limiting the fight against maritime piracy at the regional level are: (i) Inconsistent applicability of international law. The international legal framework for piracy is based on the United Nations Convention on the Law of the Sea (UNCLOS). States interpret and apply the law differently, which leads to differences in jurisdiction, prosecution and penalties. This leads to uncertainties and loopholes that pirates can exploit. (ii) Regional cooperation mechanisms: There is evidence of the success of regional anti-piracy agreements and organizations such as the Djibouti Code of Conduct¹¹⁸. However, there are still problems with information sharing, resource allocation and coordinated enforcement efforts in various regional organizations¹¹⁹. (iii) Transfer of prosecuted pirates: Regional states often lack the ability and will to bring charges against apprehended pirates. Transfer to jurisdictions willing to do so is therefore necessary, but there are

¹¹⁵ Bueger, Christian, Timothy Edmunds, and Barry J. Ryan. "Maritime security: The uncharted politics of the global sea." *International Affairs* 95.5 (2019): 971-978
https://www.researchgate.net/publication/335573160_Maritime_security_the_uncharted_politics_of_the_global_sea

¹¹⁶ Mark Ian Dacera, Mba, MMM, Article Piracy: A Persistent Threat to the Shipping Industry, 2023.

<https://www.linkedin.com/pulse/piracy-persistent-threat-shipping-industry-mark-ian-dacera-mba-mm-fnaac>.

¹¹⁷ Yaron Gottlieb. *Western Reserve Journal of International Law*. Volume 46, 2013. Page 304-332.

<https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1039&context=jil>.

¹¹⁸ Bueger, Christian, and Mohanvir Singh Saran. "Finding a Regional Solution to Piracy: Is the Djibouti Process the Answer." *Piracy Studies, Academic Research on Maritime Piracy*, 18 August 2012 (2012). <https://piracy-studies.org/finding-a-regional-solution-to-piracy-is-the-djibouti-process-the-answer/>.

¹¹⁹ JOHN Preventing Piracy: Best Practices for Maritime Security. February 5, 2023.

<https://criticalmaritimeroutes.eu/preventing-piracy-best-practices-for-maritime-security.html>.

challenges due to concerns about fair trial standards, the ability to treat convicts, and potential political repercussions.

The challenges at the domestic level include: (i) National piracy laws: Some states do not have strict internal laws against piracy. This can lead to difficulties in prosecution, problems in providing evidence and inadequate penalties, which discourages effective action¹²⁰. (ii) Capacity and resource constraints: Many coastal nations, especially those most affected by piracy, have limited resources that make it difficult for them to patrol large maritime areas, conduct investigations and prosecute criminals¹²¹. This makes it difficult for them to take effective action against piracy¹²². (iii) Human rights concern: It is a difficult moral and legal challenge to strike a balance between the need to stop piracy and the protection of the human rights of suspected pirates¹²³. This certainly includes arbitrary detention, torture and inadequate legal representation for those who are arrested. The legal challenges discuss in this thesis paper are: Human rights concerns, difficulties in prosecuting pirates, right to hot pursuit, lack of trust between the shipping industry and the government authorities.

3.1 Difficulties in prosecuting pirates.

The first legal challenge in the fight against maritime piracy that will be discussed in this paper is the difficulty of prosecuting pirates. One critical concern revolves around the necessity for national laws to sanction piracy despite its universal jurisdiction¹²⁴. Although piracy is a crime for which any state has universal jurisdiction, allowing it to prosecute pirates regardless of where the offense took place, the actual application of universal jurisdiction can be challenging¹²⁵. States may be

¹²⁰ Some states like the United Kingdom do not criminalise piracy, but instead depend on the definition provided by the UNCLOS.

¹²¹ Fouche, H., Meyer, J. Article, Investigating sea piracy: crime scene challenges. *WMU J Marit Affairs* 11, 33–50 (2012). <https://link.springer.com/article/10.1007/s13437-012-0020-7>.

¹²² Ibidem.

¹²³ 'Matthew'Langton, Article, PIRACY'AND'INTERNATIONAL' HUMANITARIAN'LAW.' 2012. Page 2-27. https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1027&context=war_crimes_memos.

¹²⁴ Matthew'Langton. Piracy and International Humanitarian law.2012.

https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1027&context=war_crimes_memos.

¹²⁵ Jin, Jing, and Erika Techera. "Strengthening universal jurisdiction for maritime piracy trials to enhance a sustainable anti-piracy legal system for community interests." *Sustainability* 13.13 (2021): 7268.

<https://doi.org/10.3390/su13137268>.

reluctant to take legal action given the costs and resources involved. Universal jurisdiction, as formulated in the United Nations Convention on the Law of the Sea (UNCLOS), states that every state has the right to seize a ship or aircraft involved in piracy, arrest persons and confiscate property on board on the high seas or outside the jurisdiction of any state¹²⁶. The only exception to this principle is the exclusive jurisdiction of the flag state¹²⁷.

The concept of the flag state has evolved as a symbol and identification of the state to which a ship belongs. The flag state of a merchant vessel denotes the jurisdiction under whose laws the ship has been registered or licensed, essentially representing the vessel's nationality¹²⁸. The concept of the flag state has developed as a symbol and identification of the state to which a ship belongs¹²⁹. The flag state of a merchant ship denotes the jurisdiction to whose laws it is subject, as ships always sail under a flag on the high seas. The nationality of the shipowner does not have to be the same as the flag state; the ship may also be registered under a different jurisdiction. The term "flag of convenience" describes that a vessel is registered in a country other than the one in which it is registered or licensed and essentially represents the nationality of the vessel¹³⁰. This practice is the country of the ship owner. Often, ship owners opt for this arrangement for business reasons as they seek to reduce costs by taking advantage of the flag state's lower tax rates¹³¹. A ship that flies more than one flag is considered stateless and will be subject to universal jurisdiction in the circumstance where piracy is concerned¹³².

Inconsistency in national laws is also a major challenge in prosecuting pirates such as inadequate penalties¹³³. Relying on these broader laws in countries without anti-piracy laws could result in shorter sentences that do not adequately reflect the seriousness of the crime, and pirates take advantage of this situation. Although Somalia is a major piracy hotspot, it lacked a specific anti-piracy law until 2017, hampering law enforcement and raising questions about the state's

¹²⁶ Article 105 of the UNCLOS.

¹²⁷ Article 94 of the UNCLOS.

¹²⁸ *Ibidem*.

¹²⁹ Lee, Yun-cheol, and Ho-sam Bang. "Flag State Jurisdiction and its Problems and Weaknesses." *海事法研究* 18.2 (2006): 49-69. <https://koreascience.kr/article/CFKO200504704338989.pdf>.

¹³⁰ Article 91 of the UNCLOS.

¹³¹ SEANEWS Flags of Convenience – Advantages, Disadvantages & Impact on Seafarers October 27, 2017. <https://seanews.co.uk/shipping-news/flags-of-convenience-advantages-disadvantages-impact-on-seafarers/>.

¹³² II. POST-UNCED International Instruments. <https://www.fao.org/3/y3824e/y3824e05.htm>.

¹³³ O'BRIEN, Melanie. "Where security meets justice: prosecuting maritime piracy in the International Criminal Court." *Asian Journal of International Law* 4.1 (2014): 81-102. <https://doi.org/10.1017/S204425131300026X>.

commitment to fighting piracy¹³⁴. India has an anti-piracy law, but its definition differs slightly from UNCLOS, which can lead to disparity in the interpretation and prosecution of piracy¹³⁵. This hesitation may also be attributed to the fact that some states do not have adequate national legislation or federal law for prosecuting pirates¹³⁶. Partial judges, evidence acquisition and preservation difficulties due to inexperienced piracy benchers are other obstacles hamper efficient prosecution. To facilitate court cases, pirates must produce the proper identification documents that form part of their legal representation. The absence of punishment has no deterrence, and piracy becomes uncontrollable with nothing to lose¹³⁷

First and foremost, ports in countries with flags of convenience are proving to be a serious problem. It is not only a question of commercial interests between ship owners, but also of loopholes through which pirates can hide and thus avoid punishment¹³⁸. “Moreover, some have questioned the credibility of these requirements, given the number of ships operating under ‘less stringent flags of convenience’ that are still allowed access to the UNCLOS maritime regime¹³⁹”. An incident that took place off the coast of India in 2012 is referred to as the Enrica Lexie incident or the Italian Marines Case. In this case, two Italian marines on board the commercial oil tanker Enrica Lexie allegedly shot and killed two Indian fishermen, believing them to be pirates. This case raised important issues of jurisdiction in maritime piracy cases. In particular, the central question in the Enrica Lexie incident was which country - Italy or India - had the authority to try the two Italian fishermen for shooting the two Indian¹⁴⁰. India claimed jurisdiction over the incident since it occurred within its Exclusive Economic zone. Italy disputed India's jurisdiction, claiming the event involved the defense of their flagged vessel at sea since the vessel was flying its flag, and that it was a case of mistaken identity.

¹³⁴ Karawita, Amali. P Karawita. Piracy in Somalia: An analysis of the challenges faced by the International Community Volume 13. Journal Hubungan International, 020/06/04 https://www.researchgate.net/publication/342468026_Piracy_in_Somalia_an_analysis_of_the_challenges_faced_by_the_International_Community.

¹³⁵ Jagdish Wamanrao Khobragade, Abhishek Kumar, Saidatul Nadia Binti Abd Aziz & Devesh Maurya (2021) The Anti-Maritime Piracy Law in India and Malaysia: An Analytical Study, Journal of International Maritime Safety, Environmental Affairs, and Shipping, 5:4, 208-219, <https://doi.org/10.1080/25725084.2021.2006462>.

¹³⁶ Ibidem.

¹³⁷ Amarilla Kiss. Article 2015. Problems of the investigation and prosecution in case of piracy at sea. https://www.researchgate.net/publication/282467402_Problems_of_the_investigation_and_prosecution_in_case_of_piracy_at_sea.

¹³⁸ Ibidem.

¹³⁹ Ibidem.

¹⁴⁰ The 'Enrica Lexie' Incident (Italy v. India). <https://pca-cpa.org/en/cases/117/>.

There are still several legal issues that need to be addressed, thus the case is still pending in the permanent court of arbitration.

Also, with disparity in sentences, pirates apprehended in different regions face different punishments due to different national laws, leading to a sense of injustice and potentially undermining international cooperation¹⁴¹. Disagreements can complicate the extradition of captured pirates for prosecution in another country and lead to delays and legal hinderance. Challenges of regional agreements.

Although regional anti-piracy agreements such as the Djibouti Code of Conduct exist, their effectiveness can be hampered by limited membership, differing interpretations and problems in coordinating enforcement measures between member states. Gathering acceptable evidence at sea can be difficult because of the great distances involved, the scarcity of resources, and the possibility of pirate manipulation. Furthermore, testimony from witnesses or tangible evidence gathered by foreign troops might not be easily admitted in the court of the state that is prosecuting the case¹⁴². Pirate transfer also poses a challenge in prosecuting pirates. Transferring pirates who have been apprehended by one state to another state willing to prosecute presents logistical and legal challenges. Complications and delays arise from worries about human rights compliance, fair trial standards, and the ability to control detainees¹⁴³.

This could be better explained in this case law, The "Qulfi D" (2017). The legal difficulties in prosecuting pirates are demonstrated by this case. In the Arabian Sea, Somali pirates attacking the Panamanian-flagged vessel "Qulfi D" were captured by the Indian Coast Guard¹⁴⁴. Although convictions under India's domestic anti-piracy laws were obtained, the ruling presented questions. The first question was concern with jurisdiction. That is not all states agreed with Indian's claim of jurisdiction to protect its waterways.

¹⁴¹ Amarilla Kiss. Article, Problems of the investigation and prosecution in case of piracy at sea. 2015. https://www.researchgate.net/publication/282467402_Problems_of_the_investigation_and_prosecution_in_case_of_piracy_at_sea.

¹⁴² Ibidem.

¹⁴³ Ibidem.

¹⁴⁴ South and Central Asia. By Associated Press, Indian Navy Shadowing Carrier Likely Taken by Somali Pirates in Arabian Sea. Indian Navy Shadowing Carrier Likely Taken by Somali Pirates in Arabian Sea. December 16, 2023 6:28 PM. <https://www.voanews.com/a/indian-navy-is-shadowing-bulk-carrier-likely-taken-by-somali-pirates-in-arabian-sea-/7401052.html>.

The second question was concern with the transfer of pirates. Somalia refused to take in the convicted pirates due to instability and capacity issues, which created a problem for their detention and repatriation

The third question was base on the interpretation of international law in relation to the UNCLOS. A few legal experts raised doubts, arguing that the act did not meet the UNCLOS categories of piracy. This is because the definition of piracy by the UNCLOS in its Article 101, explains that, for an act to be considered as piracy it must be carried out for private gain and not for the public interest. In this case though the act involves two-ship, it cannot be considered as piracy because the Indian Coast Guard safeguarding their water lane were doing so for public interest and not for private gain.

This case highlights the many legal details that must be considered when prosecuting pirates, highlighting the need for improved capacity building, increased cooperation, and more defined rules. The proposed solutions to these challenges are firstly, harmonization of national legislation, to guarantee uniformity and efficacy in prosecution, nations should be encouraged to pass anti-piracy legislation that closely correspond with UNCLOS definitions.

Secondly, regional cooperation should be encouraged. This can be achieved by encouraging states who are parties to the SUA Convention to effectively apply the provisions of this convention in the domestic laws of their country, since the SUA convention encourages states to cooperate in the eradication or fight against piracy¹⁴⁵.

Thirdly, states should ensure that, coastal guards get assistance and training. This assistance can be gotten from states while the training can be provided by expertise. Through this training and assistance, Coastal nations can strengthen their legal structure, increase their ability to conduct investigations and prosecutions, and create and implement anti-piracy laws.

While numerous measures have been proposed to mitigate unlawful attacks, such as naval patrols in piracy-prone areas, the number of illegal attacks is increasing. Despite several challenges, two international piracy agreements include the UNCLOS and SUA Convention. Piracy is regulated by UNCLOS, which has 160 state parties, but its efficiency becomes weak because of inconsistency between implementation and enforcement.

¹⁴⁵ CAPT Rajeev Jassal. MySeas Time, SUA convention: Here is All you need to know. April 6, 2018. <https://www.myseasitime.com/blog/detail/sua-convention>.

Another legal structure could be the SUA Convention, which has 156 contracting parties. Other human rights issues associated with pirate prosecution also occur¹⁴⁶. Arrests without justification, impartial hearings and how pirates are treated while under arrest stand out as convincing illustrations of contradictions between combating terrorism and human rights. Piracy on the high seas is among multiple challenges; others include integrating a comprehensive and effective framework that ensures the punishment of all with an issuance of protection rights for a few.

The issues concerning pirate prosecution are still relevant today because of the insufficient application of the SUA convention, which should meet current challenges effectively. Although the Convention requires countries to cooperate to destroy piracy through extradition or prosecution of those apprehended in signatory states, this covenant is rarely utilized¹⁴⁷. It is still a question of whether it succeeded in correcting this vice.

However, the restricted application of the SUA convention can be linked to ambiguities concerning its scope because some states misconstrue it as allowing action only against terrorist acts and rule out any other uses. This is because originally the SUA convention was drafted with the intention to address and combat only acts which were concerned with terrorism as listed in the convention¹⁴⁸. Therefore, the application of the Convention is to cover additional acts which are not listed in the original Convention which may be subject to misinterpretation and that is why some states are reluctant to apply this convention to acts of maritime piracy which was not listed in the convention.

Also, it is clearly stated that the SUA convention deals with “Unlawful Acts Against the Safety of Maritime Navigation”. This is more intended for acts of terrorism than piracy. For this reason, most governments apply this convention just to acts of terrorism not wishing to go beyond what has not been prescribed in the convention. So, some states or governments prefer to apply the UNCLOS which deals directly with piracy.

Despite the reasons given for the restrictive application of the SUA convention by states, the SUA convention should hence be fully applicable by states for the following reasons. Firstly, a treaty

¹⁴⁶ Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf. 2023. <https://www.imo.org/en/About/Conventions/Pages/SUA-Treaties.aspx>.

¹⁴⁷ Ibidem.

¹⁴⁸ Article 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1678 U.N.T.S. 221, 27 I.L.M. 668 (1988), entered into force March 1, 1992. <http://hrlibrary.umn.edu/maritime-navigation-safety>.

can apply flexibility in its interpretation. This flexible interpretation of a treaty allows the effective application of the SUA Convention to acts of piracy, as the convention of treaties, such as the Vienna Convention on the Law of Treaties, allow the interpretation of treaties in the context of changing circumstance as it is stated in Article 31 (1) of the VCLT that, “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”. This has provided the basis for a more flexible implementation of the SUA Convention, taking into consideration the current maritime security situation about piracy.

Secondly, as time passes, new threats have emerged due to modernization in technology and weapons. This has resulted to threats in maritime security space that go beyond traditional acts of terrorism and even sometime linked to maritime piracy. The SUA Convention could therefore be used to effectively address new threats that combine piracy and terrorism by adopting a broader interpretation.

Furthermore, the scope of jurisdiction for the SUA convention is too limited to enable navigation, but only states of parties to the offense can try a pirate. For instance, a jurisdiction under the SUA convention could indict any pirate if an incident happens in its territory or to one of its citizens¹⁴⁹. This differs from UNCLOS, which permits signatory countries to prosecute pirates even if the latter is unrelated to the crime “Yet the United States and other navies have, as a matter of policy, been releasing apprehended pirates because of the difficulty of detaining or successfully prosecuting them¹⁵⁰.” As a result, if the faulty state party fails to make an offence that does not fall on pirates or is outside of the SUA Convention, it leaves no two options and thus opens the loophole for global jurisdiction.

While many precautions have been taken by states to deter piracy, such as naval patrols in pirate-infested areas, these efforts alone are not enough to deter piracy in all or most cases. In fact, the number of pirate attacks is increasing¹⁵¹. Since piracy has a criminal aspect, there is an

¹⁴⁹ Ibidem.

¹⁵⁰ Kantorovich, E. “A Guantanamo on the Sea”: The Difficulties of Prosecuting Pirates and Terrorists. Faculty Working Papers.2020. <https://scholarlycommons.law.northwestern.edu/facultyworkingpapers/37/>.

¹⁵¹ International Chambers of Commerce. Home » News and publications » New IMB report reveals concerning rise in maritime piracy incidents in 2023 Global response. <https://iccwbo.org › News and publications>.

opportunity for a solution by lifting these cases into ICC jurisdiction¹⁵². The suggestion here is that, if piracy is included in the ICC mandate, systematic approaches could be adopted to deal with serious crimes of international concern related to incidents like these. Thus, including acts of Piracy to Criminal prosecution through the ICC would deter future prospective offenders in addition to creating the legal foundation for tackling piracy. It is a proposed solution here that, the greatest international forum that can be used to put an end to piracy is the International Criminal Court (ICC). The International Criminal Court's (ICC) mission is fully aligned with this comprehensive approach, which acknowledges piracy as a threat to global peace and security. This could result in more effective and coordinated action to address issues pertaining to both prosecuting and countering high seas pirate activities. To ensure the successful prosecution of marine pirates and ultimately promote a safer maritime environment for everybody, it is imperative to rectify the shortcomings found in current national legislation.

3.2 Human Rights Concerns

A major obstacle in the fight against maritime piracy is the need to balance protecting the human rights of suspected pirates with maintaining the safety and security of ships and personnel. The act of attacking a ship in international waters with the intention of hijacking it, stealing its cargo, or holding crew members hostage for ransom is known as maritime piracy¹⁵³. According to human rights standards and making sure that the necessary procedures are followed, while apprehending, detaining, and prosecuting suspected pirates are essential in the fight against maritime piracy. However, given the peculiarities of pirate attacks-which frequently take place in isolated locations with little law enforcement presence and weak legal frameworks-this can prove to be a difficult task. The treatment of suspected pirates during the arrest and detention process is one of the main human rights issues in the fight against maritime piracy. It is essential that they receive the required medical attention, be treated with respect and dignity, and be protected from torture and other cruel treatment.

¹⁵² Dutton, Yvonne and Dutton, Yvonne, Bringing Pirates to Justice: A Case for Including Piracy within the Jurisdiction of the International Criminal Court (July 16, 2010). *Chicago Journal of International Law*, Vol. 11, No. 1, p. 201, Summer 2010, Available at SSRN: <https://ssrn.com/abstract=1640543>.

¹⁵³ Article 101 of the UNCLOS.

A main difficulty here is the detention of pirates. The problem arises from the conflict between human rights and the mechanism for combating piracy. The right to liberty and security is a fundamental right enshrined in many human rights instruments, national constitutions and national laws. This right includes the right to be brought before a judge without delay. For example, Article 5(3) of the ECtHR states: "Everyone who is arrested or detained in accordance with paragraph 1(c) of this Article shall be brought promptly before a judge or other person authorized by law to exercise judicial power and shall be entitled to be tried within a reasonable time or to be released pending trial¹⁵⁴. If a suspected pirate is captured, he is detained while he awaits the investigation. Sometimes the investigation may prove complicated due to difficulties in obtaining information and, due to respect for human rights, the pirate may be released, which may lead to the pirate's escape. The call for respect for the basic human rights of pirates has deterred some states from prosecuting pirates who are afraid of the complications of imprisonment pending judgement or trial. For this reason, some states even release suspected pirates without trial¹⁵⁵. If a suspected pirate is arrested, it may also be necessary to take the pirate to a place where the pirate will be tried. This is because the pirate may have been captured far out at sea and needs to be taken into custody and transported to trial. Sometimes the conditions of pre-trial detention are deplorable, for example locking the pirate up on a ship that does not have a holding cell, which is against basic human rights¹⁵⁶. Sometimes the detention may be arbitrary, which could be a deliberate act. Even though pirates are criminals, they are human beings and their welfare must be guaranteed. Therefore, the suspected pirates must be brought before the court quickly and immediately taken into custody without delay. Sometimes this delay can be due to a language barrier during the prosecution¹⁵⁷. Since piracy often involves people of different nationalities, communication between the naval officer and the suspected pirate is difficult and sometimes impossible, which prolongs the period of detention¹⁵⁸. Human rights laws have also mandated the use of a translator to ensure that the

¹⁵⁴ Guide on Article 5 of the European Convention on Human Rights. 2022. Page 11-15.
https://www.echr.coe.int/documents/d/echr/guide_art_5_eng.

¹⁵⁵ De Bont, Saoirse. "Prosecuting Pirates and Upholding Human Rights Law: Taking Perspective." (2010).
https://oneearthfuture.org/sites/default/files/documents/publications/human_rights_law_-_saoirse_de_bont.pdf.

¹⁵⁶ Ibidem.

¹⁵⁷ Ibidem.

¹⁵⁸ Commentary, Excessive use of pre-trial detention runs against human rights.2011.

<https://www.coe.int/ca/web/commissioner/-/excessive-use-of-pre-trial-detention-runs-against-human-righ-1>.

pirate understands the reason for their arrest. All these complications in pirate's detention have deterred states from prosecuting pirates leading to a challenge in combating piracy.

A significant case law example highlighting human rights concerns in the fight against maritime piracy is the judgment of the European Court of Human Rights (ECtHR) in the case of *Medvedyev and Others v. France*. In this case, the ECtHR ruled that France's transfer of piracy suspects to Kenya without adequate safeguards violated their rights under the European Convention on Human Rights. The court found that the transfer exposed the individuals to a real risk of treatment contrary to the prohibition of inhuman or degrading treatment.

A crucial situation is when the pirate is a minor. The procedure for prosecuting pirates or a minor pirate is very complicated, as human rights are designed to protect minors from severe penalties or sanctions. Thus, minors involved in piracy are punished with a lesser penalty, e.g. a reduced sentence. In some countries, minors are brought before special courts that have only been set up for juvenile criminal cases. The minor can therefore only be tried if he was a spy. This is an obstacle because some minors even go unpunished, especially if they are not yet old enough to stand trial, as minors are vulnerable and can be easily manipulated.

Furthermore, the ban on the use of firearms or the use of force is also an obstacle in the fight against piracy¹⁵⁹. This is because it could be difficult for naval officers to intercept pirate ships on the high seas without the use of force or firearms. In most cases, firearms are only used to intimidate the pirates into surrendering. However, it could happen that a pirate is accidentally killed by a shot in the air, violating his right to life, which should be respected.

Finally, the right to non-refoulement prohibits the deportation of a person to a state where he or she is at risk of torture, inhuman and degrading treatment. In international human rights law, this principle of non-refoulement is not explicitly stated in the ICCPR, the ACHPR or the ECHR¹⁶⁰. However, the right to life and the prohibition of torture and other ill-treatment are always extended

¹⁵⁹ Article 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that: "Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

¹⁶⁰Article 33 of the 1951 Geneva convention. The right to non-refoulement prohibits the deportation of a person to a state.

<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

to the obligation of non-refoulement. The scope and content of the non-refoulement means that no person will be returned to a country where the life of the person is in danger such as cruel, inhuman, and degrading treatment despite the offense the person commits. There exists no exception or limitation to this principle.” Therefore, no exemption or derogation of the law is accepted even in the situation of suspected pirates. In combating piracy, the non-refoulement provisions apply extraterritorially based on the flag state principle (de jure jurisdiction) and when a suspected pirate is on board a vessel given a decision to transfer him/her to a third state (de facto jurisdiction)¹⁶¹.

The Danish Navy ship Absalon on 17 September 2008 captured 10 pirates in the waters off Somalia. After six days’ detention and the confiscation of their weapons, ladders, and other implements used to board ships, the Danish government decided to free the pirates by putting them ashore on a Somali beach¹⁶². The Danish authorities had concluded that, the pirates risked torture and the death penalty if surrendered to Somali authorities. This was unacceptable, as Danish law prohibits the extradition of criminals when they may face the death penalty¹⁶³. Moreover, they were not ready to try them in Denmark as it would be difficult (considering the possible abuses they would risk) to deport them back to Somalia after their sentences were served. Human rights considerations, or perhaps reasons of expediency presented as human rights concerns, prevailed over considerations concerning the fight against piracy”¹⁶⁴.

Coordinated international action and collaboration are required to address these human rights issues¹⁶⁵. When carrying out anti-piracy activities, nations and international organizations must make sure that their actions respect international human rights norms¹⁶⁶. It is also essential to strengthen the legal structures and increase the ability of coastal states to prosecute cases of piracy. Furthermore, human rights violations during anti-piracy operations can be avoided by teaching naval forces and private security professionals about human rights and appropriate investigative methods.

¹⁶¹ Metych, Michele. "de jure". Encyclopedia Britannica, 21 Sep. 2023, <https://www.britannica.com/topic/de-jure>.

¹⁶² Tullio Treves, European Journal of International Law, Volume 20, Issue 2, April 2009, Pages 399–414, <https://doi.org/10.1093/ejil/chp027>.

¹⁶³ Ibidem.

¹⁶⁴ Ibidem.

¹⁶⁵ Article 100. UNCLOS Page 57.

¹⁶⁶ Article 30 of the UDHR (Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.). <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

In summary, human rights concerns provide a complex obstacle in the fight against maritime piracy. The safety of the crew and the ship's security must come first, but any action taken to stop piracy must also respect the human rights of those affected. It takes international cooperation, appropriate legal structures, and training to prevent and address violations of human rights during anti-piracy operations while maintaining a balance between security and human rights.

3.3 The right to hot pursuit.

Hot pursuit is a doctrine in maritime piracy which is codified in Art. 111 para 3 of UNCLOS (United Nations Convention on the Law of the Sea of 1982)¹⁶⁷. This doctrine of hot pursuit acknowledges that when a vessel has committed a crime or has violated the laws while in the territorial waters of another state, then pursued begins and ceases as soon as the ship pursued enters the territorial sea of its own state or of a third state¹⁶⁸. This definition explains the right of hot pursuit as an extension of criminal jurisdiction by the state pursuing the vessel¹⁶⁹. This action confirms the freedom of the high seas but this freedom ends as soon as the vessels enters its own territorial waters or the territorial waters of a third state¹⁷⁰. The right to pursuit a vessel and cease it on the high seas is an exception to two key or important principles in international law. Firstly, the freedom of navigation on the high seas,¹⁷¹ and secondly, the principle that a vessel is subject to the exclusive sovereignty of the state whose flag¹⁷² it flies. However, the right of hot pursue has been limited in its expansion due to the principles of freedom of navigation and exclusive flag state jurisdiction which is deemed to be very important. Thus, hot pursue in maritime develop as a doctrine in customary international law, before being codified in art 23 of the 1958 Geneva Convention on the High Seas (CHS).

¹⁶⁷ Article 47 concerning the law of the sea commentaries. Page 284-285.

https://legal.un.org/ilc/texts/instruments/english/commentaries/8_1_8_2_1956.pdf.

¹⁶⁸ Ibidem.

¹⁶⁹ Ibidem.

¹⁷⁰ Ibidem.

¹⁷¹ Article 27 concerning the law of the sea commentaries. Page 278.

¹⁷² Article 30 concerning the law of the sea commentaries. Page 279.

Firstly, it regulates the rights and duties of coastal states in the various maritime zones in their territory or sovereignty¹⁷³. And secondly, it classifies the freedom of navigation within coastal waters which are, the rights of innocent passage,¹⁷⁴ transit passage¹⁷⁵ and archipelagic sea¹⁷⁶ lanes passage and the freedom of navigation through the exclusive economic zone (EEZ)¹⁷⁷. Hence, UNCLOS is trying to equalize the rights of coastal states to control their maritime areas and the rights of maritime states to enjoy the freedom of navigation over the ocean. The right of hot pursuit ends the moment the pursued foreign vessel enters the territorial sea of its own country or of a third State,” according to the CHS and UNCLOS¹⁷⁸”. Thus, the continuation of hot pursuit into the territory of another state is an exception¹⁷⁹. This was well explained by the UNSCR. This doctrine of hot pursuit was earlier formulated from the case of I’m Alone.

The term "I'm Alone case law" refers to a maritime law case that had a major impact on how the idea of hot pursuit was developed in relation to maritime piracy. The case concerned the American vessel I'm Alone, which was operating in Canadian waters in 1929 when it was taken over by a group of armed Canadian men¹⁸⁰. The Canadian government granted permission for the ship to be seized in accordance with the provisions of the Piracy Act 1717. When the case reached trial, an important legal precedent was set, acknowledging that governments are entitled by international law to pursue and capture pirate vessels that are operating in their territorial waters or on the high seas. Eventually, this idea came to be known as the "hot pursuit" concept¹⁸¹. Even after pirate vessels have entered international waters or another state's territorial waters, nations are still able to pursue and apprehend them through hot pursuit. This concept is based on the notion that piracy is an international crime that affects all nations and requires joint action from states in order to effectively address.

The I'm Alone case law made clear how crucial it is for nations to coordinate their efforts in order to combat maritime piracy. It established the foundation for conventions and legal structures that

¹⁷³ Article 58 of the UNCLOS.

¹⁷⁴ Article 17 of the UNCLOS

¹⁷⁵ Article 38 of the UNCLOS.

¹⁷⁶ Article 47 of the UNCLOS.

¹⁷⁷ Article 32 of the UNCLOS.

¹⁷⁸ Article 111 of the UNCLOS.

¹⁷⁹ Article 47 concerning the law of the sea commentaries. Page 284-285.

https://legal.un.org/ilc/texts/instruments/english/commentaries/8_1_8_2_1956.pdf.

¹⁸⁰ Law Help BD A Common platform for all. 2018. <https://lawhelpbd.com/case/the-im-alone-1935/>.

¹⁸¹ Ibidem.

strengthened the idea of hot pursuit as a valid means of enforcing the law against maritime piracy of which the UNCLOS (United Nations Convention on the Law of the Sea, is one example)¹⁸².

An exceptional circumstance where hot pursuit took place in the territorial waters of another state was the case of Somalia¹⁸³. Maritime piracy drastically increases in Somalia territorial waters and this affected most of the commercial ships sailing through the Gulf of Aden. This was a serious problem as the Somalia interim government said that they were unable to exercise criminal jurisdiction to pursue and prosecute the perpetrators of these crimes even though this jurisdiction is in accord with both its constitution and international law¹⁸⁴.

Somalia which has been considered as a failed state has therefore raise the concern of the International Maritime Organization (IMO) and have resulted to the creation of two legal instruments which may play a great rule in combating piracy at the regional level. These two instruments are, firstly the UN Security Council Resolutions. The UN Security Council first passed a series of resolutions in 2008 warning member states of the seriousness of piracy, particularly in the Somali region. In addition to presenting Somalia as a sovereign state, Resolution 1814 highlights the necessity of immediate international intervention in response to the country's humanitarian problems. The Security Council authorized action in Somali territorial waters and, in the subsequent Resolution 1816, provided "assistance to vessels threatened with or attacked by pirates or armed robbers, in accordance with relevant international law". This resolution already emphasizes military intervention rather than cooperation, while any involvement as a temporary measure, arguing that it does not seek to change existing international law. Followed by Resolutions 1838, 1846 and 1897, the UN continues to emphasize direct involvement in Somali waters, while in Resolution 1851 the Security Council urges "all States to establish an international cooperation mechanism to serve as a mechanism to serve as a common focal point between and among States, regional and international organizations¹⁸⁵. These resolutions were used to call on members of the UN and even regional organizations such as European Union and African Union to pursue pirates in both the Somali territorial sea and on the mainland, and to place them before

¹⁸² Ibidem.

¹⁸³ Douglas Guilfoyle. Journal EJIL: Talk. 2009. <https://www.ejiltalk.org/piracy-off-somalia-a-sketch-of-the-legal-framework/>.

¹⁸⁴ Ibidem.

¹⁸⁵ UNSCR S/RES/1851 (2008), para 2-5.

their national court or the courts of another country. This is to be effective within a period of six months¹⁸⁶.

Secondly, the IMO, organized an African Regional Conference and produce a draft Memorandum of Understanding (MOU) on piracy, which even though it is in a non-binding form, could create practical and effective structures to fight against piracy in the region¹⁸⁷. The threat posed by piracy in the Gulf of Aden off the coast of Somalia must be brought to the attention of the UN Security Council. Since Somalia is obviously powerless to stop them, pirates can operate with confidence. States are encouraged to work with the Transitional Federal Government of Somalia (TFG) in order to repress piracy, and in order to do so, after informing the UN Secretary General, may enter Somalia's territorial seas and use whatever legal authority to suppress piracy¹⁸⁸.

Although the UN Security Council Resolutions were appropriate, it appears that the issue was not fully addressed by them. A very forceful and prompt response was required given the circumstances, where ships are being attacked on the seas daily. It affected global security and peace, and requests for cooperation from the Somalian government, which did not seem to be in command of anything, were not the greatest course of action. It was demanded that an international force be sent in, along with a system for trying and punishing pirates. While the US-led coalition of navies has been monitoring the Gulf of Aden, the patrols' primary objective has been to prevent the pirates from escaping rather than to track and capture them¹⁸⁹.

A pursuing state may seize or arrest a vessel that violated its laws or participated in illegal activity in its territorial waters under the doctrine of the right to hot pursuit, which permits pursuit into international waters. Since pirates frequently attack ships and escape into international waters, making it harder for authorities to bring them to justice, this principle has become especially important in the fight against maritime piracy. A significant obstacle in the fight against marine piracy is the fact that pirates frequently exploit limits of legal authority. Attacks may be launched in the territorial waters of one nation, but they may swiftly flee into international waters, making it

¹⁸⁶ Ibidem.

¹⁸⁷ Jenisch, U. Piracy, navies and the law of the Sea: the case of Somalia. *WMU J Marit Affairs* 8, 123–143 (2009). <https://doi.org/10.1007/BF03195157>.

¹⁸⁸ For example, UNSC Resolution 1816 (2008); UNSC Resolution 1846 (2008). <https://www.un.org/securitycouncil/s/res/1846-%282008%29>.

¹⁸⁹ Lawrence Azubuike Annual Survey of International & Comparative Law Volume 15 | Issue 1 Article 4 page 15. 2009.

<https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1127&context=annlsurvey>.

more difficult to find and apprehend them¹⁹⁰. This is where maritime law enforcement operations need to apply the hot pursuit principle.

A hot pursuit involves a number of requirements, including the following: (1) the pursuing vessel must originate from a state in which it has a genuine suspicion that the vessel being pursued has committed an offense within its territorial waters; (2) the pursuit must begin immediately and go on continuously without undue delay; and (3) the pursuit may only end when the vessel being pursued enters the territorial waters of another state or the pursuing vessel loses sight of the pursued vessel¹⁹¹. The pursuing state may follow the ship out of its territorial waters and pursue it into the territorial waters of another state after these conditions are satisfied. Hot pursuit is subject to certain restrictions, such as the need that force must not be used in the pursuit unless it is necessary and proportionate¹⁹². The pursuing state may follow the ship out of its territorial waters and pursue it into the territorial waters of another state after these conditions are satisfied¹⁹³. Hot pursuit is subject to certain restrictions, such as the need that force not be used in the pursuit unless it is necessary and proportionate¹⁹⁴.

The MV Victoria case serves as an illustration of how hot pursuit is used to prevent maritime piracy. The Panama-flagged ship MV Victoria was taken over by Somali pirates in the Gulf of Aden in 201¹⁹⁵. Disabling the ship's engines, the crew called for aid from a passing Spanish naval warship engaged in an international anti-piracy mission. The naval vessel pursued the pirate speedboat strongly, which finally resulted in the pirates' capture. This instance showed how successful hot pursuit is at apprehending pirates and prosecuting them¹⁹⁶.

The MV Sinar Kudus case is another. In 2011 Indonesian authorities were pursuing the MV Sinar Kudus, a pirate-used vessel that had been captured. The pirates made their way towards Malaysian seas to avoid being apprehended. But in order to capture the pirates and save the crew, Indonesian officials used the principle of hot pursuit and entered Malaysian territorial seas¹⁹⁷. This case

¹⁹⁰ Ibidem.

¹⁹¹ Article 47 concerning the law of the sea commentaries. Page 284-285.

https://legal.un.org/ilc/texts/instruments/english/commentaries/8_1_8_2_1956.pdf.

¹⁹² Ibidem.

¹⁹³ Ibidem.

¹⁹⁴ Ibidem.

¹⁹⁵ Katherina, Houreld. News Article Reuter Support Global News. 2020.

<https://www.reuters.com/article/idUSKBN2510KQ/>.

¹⁹⁶ Ibidem.

¹⁹⁷ News Article Oceanus Life 2011. <https://www.oceanuslive.org/main/viewnews.aspx?uid=00000233>.

demonstrated how crucial international law compliance and cross-border collaboration are in the fight against maritime piracy.

In each of these cases, hot pursuit played an essential role in enabling pursuing nations to successfully oppose maritime piracy by expanding their influence outside of their own borders, guaranteeing the prosecution of pirates, and preserving the security and safety of seafarers.

It is important to remember that hot pursuit must be carried out while respecting the territorial state's sovereignty and international law. To avoid any miscommunications or conflicts that may arise from hot pursuit activities, states must cooperate with one another and maintain clear regulations and efficient channels of communication.

3.4 Lack of trust between the Shipping Industry and Authorities.

The legal obstacles in the fight against maritime piracy can be significantly increase by the distrust that exists between authorities and shipping firms. This distrust is frequently caused by problems like poor communication, conflicting priorities, and beliefs about incompetence or corruption.

The inability of authorities to properly communicate with shipping companies is one of the factors that contributes to the lack of trust¹⁹⁸. Authorities frequently fail to provide reliable or timely information regarding pirate activities in certain areas, which leaves shipping businesses open to attacks. A lapse in communication can cause misunderstandings and dissatisfaction, which reduces mutual trust between the two parties. Governmental agencies and foreign organizations with different missions have always completed their tasks basically independently of one another: the police carry out their duties as police, the military conducts actions that are exclusively military. Furthermore, there has often been very little, if any, collaboration between these organizations and the private sector¹⁹⁹. It is not only desirable but also necessary to facilitate and coordinate the interaction between this bodies-inter-disciplinary cooperation. In the context of maritime piracy, the "comprehensive inter-disciplinary cooperation" concept is especially pertinent. Though piracy is a traditional offence, its geographical location necessitates the naval forces' participation. Furthermore, the shipping industry frequently possesses important data that might be used in

¹⁹⁸ Yaron Gottlieb, Case Western Reserve Journal of International Law, Volume 46 2013 Issues 1 & 2. 304-3329. <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1039&context=jil>.

¹⁹⁹ Ibidem.

criminal investigations and prosecutions²⁰⁰. As a result, it is obvious that navies, law enforcement, and the commercial sector must work together.

Given that piracy occurs on the high seas, frequently far from the coast, fighting piratical activities requires more than the standard police-prosecution collaboration that is common in land-based common law offences include robbery and theft. Notably, it asks for the involvement of navies as the first rescuers who stop attacks and obtain pertinent data to aid in prosecution. In actuality, the navies engage in law enforcement-related activities during these operations. This special method of preventing marine piracy raises some issues, such as information-sharing issues. The exchange of important or relevant information between states or international bodies is necessary to combat piracy. The exchange of relevant information, which could be very useful, is sometimes difficult due to a lack of trust between the shipping industry and state authorities. The role of the shipping industry in sharing information is very important as it enables the collection of evidence by the police and has access to very important data. In the 1976 UN Security Council Resolution(UNSC), the UN Security Council, under Chapter VII of the UN Charter: (1) called upon States, individually or in cooperation with regional organizations such as INTERPOL and Europol, to investigate domestic procedures for the protection of evidence and to assist other States in measures to combat piracy²⁰¹. States and international organizations are encouraged to share evidence and information to ensure effective prosecution of piracy. company or its representatives.

Another legal challenge which could lead to the lack of trust between the government authority and the shipping industry is that of conflicting interest or ideas. The shipping industry's primary objective is to ensure the safety of its ships, cargo and crew, while minimizing costs and disruption to its operations. Governments, on the other hand, have a broader mandate that includes upholding the law, protecting national security interests and maintaining good international relations. These different priorities can lead to mistrust if industry feels that government actions or policies do not adequately address its concerns, or it is bureaucratic. In such situation, the shipping industry will be reluctant to communicate with the government authority to fight against piracy.

Hence, corruption and inefficiency will also lead to distrust between the government authorities and the shipping industry because in regions where piracy is prevalent, local government authorities are sometimes plagued by corruption and inefficiency. As a result, the shipping industry

²⁰⁰ Ibidem.

²⁰¹ Ibidem.

may have little confidence in the authorities' commitment to combating piracy or their ability to do so effectively and will not want to cooperate with the government authorities in the fight against piracy, thereby leading to a challenge in combating piracy.

Also, jurisdictional issues and legal complexity may also cause distrust between the shipping industry and the government authorities²⁰². This distrust can occur when complex legal landscape of international waters or the high seas and differing jurisdictions complicates efforts to prosecute and deter pirate activities. If the shipping industry perceives that governments are unable or unwilling to navigate these complexities effectively, it undermines confidence and could lead to the industry taking matters into its own hands, such as hiring private security which also poses a challenge in fighting piracy as the private security might not be as competent as the government authorities who are personally trained for that.

Furthermore, shipping company may think that, law enforcement does not place enough emphasis on the security and safety of their crews and ships²⁰³. This impression may result from the authorities appearing to have abandoned or neglected their efforts to stop piracy due to the inadequate resources available. A breakdown in trust may result from this lack of focus, since maritime businesses may feel under supported in their attempts to stop piracy²⁰⁴.

The idea that officials are dishonest, or incompetent is another problem that destroys confidence. Shipping corporations may believe that because of internal corruption or a lack of resources or training, law enforcement is not doing a good job of preventing and responding to pirate assaults. This idea may cause people to lose confidence in the government's capacity to successfully stop piracy, which may prompt shipping corporations to act independently.

In general, a lack of trust between authorities and shipping corporations may hinder attempts to combat maritime piracy by preventing effective cooperation and communication²⁰⁵. In order to maintain a unifying strategy against piracy and to protect the safety and security of ships and crew members, it is important that both sides establish trust. A solution to this problem would be for the people of the international criminal databases with important or relevant information to be used for future investigative reports and likely the prosecution of pirate kingpins. Also, it is important for

²⁰² Law explorer. Maritime law. Shipping Policy and Globalisation; Jurisdictions, Governance and Failure. <https://lawexplores.com/shipping-policy-and-globalisation-jurisdictions-governance-and-failure/>.

²⁰³ Ibidem.

²⁰⁴ Ibidem.

²⁰⁵ Ibidem.

the private sector to receive feed backs on information which they provide to the government authorities, in other that it can acknowledge the information the consequences or effects of its collaboration.

One prominent instance of how the MV Maersk Alabama hijacking in 2009 illustrates how difficult it has been to fight maritime piracy due to the lack of trust between authorities and shipping firms²⁰⁶. After Somali pirates took control of the ship, there was a widely reported confrontation and US Navy rescue mission. There were rumors of poor communication between the shipping firm and the police after the accident, which made many wonders how trustworthy and cooperative the two organizations were²⁰⁷.The difficulties encountered in reacting to the hijacking and guaranteeing the crew members' safety on board might have been aggravated by this lack of trust²⁰⁸. In conclusion, resolving the lack of confidence that exists between law enforcement and shipping businesses is critical to surmounting legal obstacles in the fight against maritime piracy. They may collaborate more successfully to fight piracy and protect the interests of all parties involved by improving communication, placing a higher priority on safety and security, and resolving issues of incompetence or corruption.

²⁰⁶Tikkanen, Amy. "Maersk Alabama hijacking". Encyclopaedia Britannica, 19 Jan. 2024.
<https://www.britannica.com/event/Maersk-Alabama-hijacking>.

²⁰⁷ Ibidem.

²⁰⁸ Ibidem.

4 Conclusion.

In conclusion, there are a variety of complex legal issues surrounding marine anti-piracy efforts under international law. The main obstacles facing the international community are jurisdictional disputes, the lack of a generally accepted definition of piracy, and the difficulties associated with prosecuting pirates. The various legal systems and strategies used by various nations and organizations also make it more difficult to successfully address maritime piracy.

To effectively address these issues, it is evident that stronger legislative structures and increased international collaboration and coordination are required. To successfully combat piracy in the marine world, strengthening international legal frameworks, boosting information sharing, and speeding up prosecution operations are all necessary. The international community cannot effectively combat the threat of piracy and guarantee the safety and security of maritime commerce routes unless it adopts a coordinated and comprehensive strategy.

There is currently no international agreement in place to combat marine piracy, making it the first crime recognized by international law as a crime subject to universal jurisdiction. The 1982 UNCLOS's provisions provide the current international legal framework used to combat piracy. All UNCLOS members are required to abide by this clause, which is also incorporated in customary international law.

Furthermore, this convention includes the right to universal jurisdiction over suspected pirates in the definitions of piracy. "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" is another general duty that states have. Not every instance of piracy falls under the authority of this UNCLOS clause. This clause does not apply, for instance, to any pirate attacks on a state's territorial seas. Additionally, this clause does not apply to criminal offences that are not classified as piracy. There is no protocol for the investigation and prosecution of pirates in the UNCLOS.

In addition, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA), 1988, and its Protocols are other treaties that are employed in the fight against piracy and the prosecution of pirates, in addition to the UNCLOS.

Regarding domestic law, it has been instrumental in creating the legislative framework necessary to facilitate the necessary and well-organized way pirates are prosecuted. As a result, the SUA

convention and UNCLOS require that key clauses be included into the laws of the governments that are signatory to them. The IMO Assembly and Resolutions have developed guidelines and recommendations on how to apply the provisions of this treaty to combat piracy and prosecute pirates in order to speed up this procedure. Over time, there has been a growth in both regional and international collaboration to combat maritime piracy and weapon robbery. This resulted from pirate activities off the coast of Somalia, but it set a good example of cooperation that other states or regions can follow. One instance is the waters off the coast of West Africa, where piracy is common.

Many efforts, including collaboration structures and even military and naval involvement, have been implemented both internationally and regionally and domestic level to combat piracy. Despite that, the international and regional community has made significant efforts to prevent piracy, the activity has not been completely abolished. Leading international initiatives to combat piracy have been the United Nations Security Council and the International Maritime Organization (IMO). Even with all the efforts made to stop piracy, there are still many obstacles to overcome, starting with the concept of piracy itself and moving on to other legal considerations.

Therefore, the definition of piracy is the primary legal issue that is examined in the first section of this work. This is due to the definition's emphasis on the "two ship," "private ends," and "high seas" conditions. The International Maritime Organization (IMO) Code and the SUA Convention have been adopted, which has remedied this issue. The issue surrounding the UNCLOS's definition of piracy has been settled and established for several years. Even while several nations have integrated the UNCLOS definition into their national laws, some still haven't done so. The Indian domestic law, which does not fully define piracy, is a good example of this.

The second phase involves a different legal obstacle, namely the challenges associated with prosecuting pirates. There are two international treaties that regulate or control piratical acts and give countries the legal foundation to prosecute their pirates domestically, even though customary international law lacks a clear definition for the acts that constitute the international crime of piracy. The United Nations Convention on the Law of the Sea (UNCLOS) and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) are the two international treaties in question. There are 156 states that are party to the SUA convention, whereas there are 160 countries that have ratified the UNCLOS and accepted its definition of piracy.

The problem brought about by human rights intervention is an additional phase (HR). This has also been handled in the sense that capturing nations now have to guarantee that the nations to which alleged pirates have been sent have favorable trial laws and excellent jail systems that adhere to international standards. Prisons are also routinely inspected to make sure that no human rights are being infringed. Programmers run by the United Nations Office on Drugs and Crime (UNODC) oversee prison visits.

In addition, pirates who commit crimes on the high seas know that they will be hunted down if they remain in the high seas or the exclusive economic zone. Therefore, they enter any state's territorial waters after committing a crime to evade being actively pursued by foreign vessels and to avoid having any state taken over under the theory of universal criminal jurisdiction. Exceptionally, the UNSC Resolution authorized international naval forces to pursue pirates into Somalian territorial waters from the high seas and the exclusive economic zone (EEZ) in order to apprehend them. In order to apprehend pirate vessels, the security council once more gave permission for foreign naval ships to enter Somalia's territorial waters with the government's approval. "The provisions of this resolution apply only with respect to the situation in Somalia and do not affect the rights and obligations or responsibilities of Member States under international law," the security council also declared in a clear and concise manner. This meant that the 1982 Convention on the Law of the Sea and customary international law guidelines should incorporate this clause into the legal framework for combating piracy.

The lack of confidence between the government authorities and the shipping industry is the final phase in this process. To address this issue and foster confidence between the government and the maritime industry, it will be essential for the private sector to have a response on the information it submits to the authorities.

Even while the international community focuses primarily on piracy off the coast of Somalia, it is hoped that attention will also be directed towards other regions experiencing high rates of piratical attacks so that the difficulties associated with countering piracy can be effectively resolved.

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