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**Piracy & Armed Robbery Against Ships:  
An International Law Perspective**

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# Part 1

## “Piracy” and “Armed Robbery against Ships”

# Importance of UNCLOS

- **1982 United Nations Convention on the Law of the Sea (UNCLOS) establishes the legal framework**
- **There are 162 Parties to UNCLOS, including all States in Southeast Asia except Cambodia & Timor Leste**
- **Most of States in the Gulf of Aden region are parties, including Somalia, Yemen and Kenya**
- **All States with warships in the Gulf of Aden are parties, except the US**

# Jurisdiction over acts aboard ships

- Jurisdiction is the power of a State to pass and enforce laws making certain acts criminal
- It includes the power to arrest and prosecute persons who break the laws
- Under the Law of the Sea, jurisdiction over foreign ships is determined by where the illegal acts took place

## **Ports, Territorial Sea & Archipelagic Waters**

- **Ports, territorial sea and archipelagic waters are under the sovereignty of the coastal State**
- **The criminal laws of the coastal State apply to illegal acts against ships in these areas**
- **The coastal State has the exclusive right to board foreign ships and arrest “pirates”**
- **Attacks on ships in areas under sovereignty are known as “armed robbery against ships”**

## High Seas & Exclusive Economic Zone

- The general principle governing ships on the high seas and in the EEZ is that they are subject to the exclusive jurisdiction of the flag State
- In the EEZ the jurisdiction of the coastal State is limited to governing economic activities like fishing
- Foreign ships cannot be boarded without the consent of the master or flag State
- The most important exception is PIRACY

# Piracy under UNCLOS

- Piracy provisions in UNCLOS apply on the high seas and in the 200 nm EEZ (anywhere outside of the territorial sea)
- UNCLOS provides that all States have a duty to cooperate in the repression of piracy
- Piracy provisions create an exception to the general principle that ships on high seas cannot be boarded without the consent of flag State
- Warships of all States have a right to seize pirate ships and arrest pirates

# Definition of Piracy

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or depredation
- committed for private ends
  - by the crew or the passengers of a private ship . . . ,
  - on the high seas [or EEZ],
  - and directed against another ship . . .



# Definition of a Pirate Ship

- A ship . . . is considered a pirate ship . . if it is intended by the persons in dominant control to be used for the purpose of committing piracy
- The same applies if the ship . . . has been used to commit any such act, so long as it remains under the control of the persons guilty of that act

# Seizure of a Pirate Ship

- On the high seas [or EEZ], every State may seize a pirate ship or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board
- The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships or property

# Problems with Piracy Provisions

- 1. Piracy rules do not apply to attacks on ships in ports, in the territorial sea or in archipelagic waters**
- 2. Laws of the coastal State apply in areas under its sovereignty, and it has exclusive power to enforce its laws in these areas**
- 3. Attacks in areas under sovereignty are classified as “armed robbery at sea”, not piracy**

# Piracy in Southeast Asia

- The vast majority of attacks on ships in Southeast Asia take place within the sovereignty of coastal States
- The area of the Straits of Malacca and Singapore from Port Klang to Horsburgh lighthouse is within the territorial sea of the littoral States
- Piracy rules do not apply to attacks in these areas – coastal State has exclusive right to enforce its laws in these areas
- Coastal States conduct coordinated patrols in which the patrol ships of each State remain within their own waters

# Attacks in SE Asia

- Several ships have been boarded in the EEZ of Indonesia, off the Anambas islands
- These attacks would be piracy under IL, and the warship of any State could arrest the pirates
- However, the national laws on piracy in many States in SE Asia are not consistent with 1982 UNCLOS so there may be problems prosecuting arrested pirates
- Also, reporting organizations like ReCAAP do not identify such attacks as “piracy”
- Reports also do not identify which State has jurisdiction over the offence – maps show no territorial boundaries

# Jurisdiction over Armed Guards

- Armed guards would generally be subject to the laws of the flag State
- The use of force by armed guards on the high seas or in the EEZ would be governed by the laws of the flag State
- The use of force by armed guards with the territorial sea or archipelagic waters would also be governed by the laws of the coastal State

## Part 2

# Somali Piracy

# Security Council & Somali Piracy

- Because of the unique circumstances in Somalia, the UN Security Council used its “Chapter VII” powers and created an exception to the rules on piracy
- SCR 1816 authorizes States cooperating with the Transitional National Government (TNG) of Somalia to enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea



## Limits of exception on Somalia

- Exception only applies if the Transitional National Government of Somalia has given notice to the UN Secretary-General that the State is one of those cooperating with it
- Indonesia and other developing countries insisted that the Security Council Resolution expressly provided that it as a “one-off” which could not be applied elsewhere

# Problems in Seizing Pirates

- Piracy off Somalia has demonstrated that there are many problems in seizing pirates and pirate ships
  1. Difficult to identify pirate skiffs and their “Mother Ships”
  2. May have no right to seize skiff unless it is attacking a merchant ship
  3. “Mother Ships” themselves may not take part in attacks so warships may be reluctant to seize them

# Problems Seizing Hijacked Ships

- Piracy rules allow the seizure of a ship taken by piracy and under the control of pirates
- However, warships seldom attempt to seize hijacked ships because of the risk it would pose to the crew members and to the hijacked ship
- Pressure from other stakeholders discourages seizure – flag state, ship owner, cargo owner, state of nationality of crew members, etc

# Problems Prosecuting Pirates

- UNCLOS provides that States may seize persons who commit piracy and prosecute them in their courts
- States have a right to do so, but not an obligation to do so
- Also, the legislation in many States only gives their courts jurisdiction if
  - (1) the perpetrators were its nationals; or
  - (2) if the victim ship was flying its flag

# Problems Prosecuting Pirates

- **Prosecution in seizing State is often difficult because of the lack of witnesses and evidence, human rights obligations, etc**
- **Some European States are also fearful that pirates will seek asylum in their country**
- **US, UK and other States have entered into Bilateral Transfer Agreements with other States in the region which provide that seized pirates can be handed over to those States for prosecution**

## Part 3

**Other international conventions  
that can help combat piracy and  
armed robbery against ships**

# Relevant UN Conventions

- The are more than 12 UN Conventions which establish a cooperative regime to combat specific offences by making them “international crimes” among the States Parties
- Two of the these conventions could be used to combat piracy and armed robbery against ships:
  1. 1988 SUA Convention
  2. 1979 Hostages Convention

# 1988 SUA and 1979 Hostages

- **1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (1988 SUA) has 156 States parties as of 31 Dec 2009**
- **1979 International Convention Against the Taking of Hostages (1979 Hostages) has 167 States parties as of 24 Jan 2010**
- **Both establish a similar cooperative scheme among States parties**



# Obligations of State Parties

- 1) Make offences in the Convention crimes under its national law
- 2) Establish jurisdiction over offender if offence within territory, if flag state, if offender is its national, or if offender is present in territory
- 3) If alleged offenders are present in territory, (a) take them into custody; and (b) either prosecute them or extradite them
- 4) Provide greatest measure of assistance in connection with criminal proceedings

# Offences under 1988 SUA

Offence under 1988 SUA to:

1. **Seize or exercise control over a ship by force or threat thereof or any form of intimidation**
2. **Perform an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship**

# Offences under 1979 Hostages

## Offence of hostage-taking:

- the seizure or detention of, and threat to kill, injure, or continue to detain a hostage,
- in order to compel a State, . . . a person, or a group of persons to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage

# How SUA & Hostages apply

- Hijacking of vessels off Somalia are offences under 1988 SUA because the seizure of a ship by force is an offence
- Hijackings off Somalia are offences under 1979 Hostages because they intend to hold the crew members hostage until ransom is paid
- They are offences under 1988 SUA and 1979 Hostage even if they took place in the territorial sea of another State

# Arrest & Prosecution

- No authority under 1988 SUA or 1979 Hostage to board ships & seize offenders
- The conventions apply only when the alleged offenders are present in the territory [or territorial sea] of a State Party
- Once alleged offenders are present in the territory of a State Party, it is under an obligation to take them into custody, and to either (1) prosecute them or (2) extradite them

# Arrest & Prosecution

- Under 1988 SUA the master of a ship may deliver to any other State Party “any persons who he believes have committed a SUA offence”
- Therefore, if Kenya is a party to 1988 SUA and 1979 Hostages, warships who seize pirates in the territorial sea or EEZ of Somalia can deliver them to Kenya for prosecution and trial

# Arrest & Prosecution

- 1988 SUA and 1979 Hostages also have provisions which make it possible to arrest and prosecute accomplices and leaders on land
- The conventions provide that a person commits an offence if they abet the commission of any offence or if they are an accomplice of a person who commits an offence

# Problems in SE Asia

- The international community has been reluctant to use these conventions to combat piracy
- They will not be effective in SE Asia or any region unless all the States in the region become parties and adopt the necessary national laws to implement them



# Conclusions

- 1. Most attacks on ships in SE Asia are armed robbery against ships, not piracy**
- 2. Armed robbery against ships in SE Asia is under the jurisdiction of the coastal State**
- 3. Some attacks on ships in SE Asia are “piracy” under 1982 UNCLOS and others are Offences under the 1988 SUA Convention**
- 4. However, many States in SE Asia are not ready to utilize the Piracy provisions in UNCLOS or the 1988 SUA Convention**

# The End

**Thanks for your attention**

**Any questions ?**

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