

UNCLOS Definition of Piracy: Is it still Relevant for Modern Piracy?

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ABSTRACT

Nowadays, piracy as one of crimes at sea has formed in different ways compared to the historical counterparts. On the past, the act of piracy consisted of first approaching the ship, then fighting it, and finally seizing it before escaping in another vessel. Meanwhile, in recent times, more sophisticated kinds of piracy are launching their assaults with the help of cutting-edge technology. However, due to UNCLOS's restricted definition of piracy, it is challenging to combat such modern forms. According to experts, one of the greatest barriers to tackling piracy is its restricted and vague definition. This research aims to analyze the applicability of the UNCLOS definition of maritime piracy considering its new developments. This research method consists of doctrinal and library-based research. The previous and recent cases are contrasted to investigate definitional issues. The study revealed that UNCLOS's ambiguous and unclear definition of piracy has caused problems. Regarding contemporary piracy, the UNCLOS approach is insufficient to combat well-organized pirate attacks in the modern world.

Keywords: UNCLOS; Maritime Piracy; Present Time

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INTRODUCTION

Piracy is an ancient maritime crime that continues to exist in this modern world. Since piracy affects not only seafarers but also commerce, politics, and humanity, all nations condemn it. As classified by the Permanent Court of International Justice, Judge Moore in 1927, piracy is an "enemy of mankind".¹ In Latin, "*hostis humani generis*" refers to "enemies of humanity" and is used as a "rhetorical invective" to emphasise the heinousness of a crime.² The act of placing oneself in opposition to the laws of sovereigns and nations led to the portrayal of pirates as opponents of the very possibility of laws existing between sovereigns and nations, and as such, as a universal opponent of all of

¹United Nations Conference on Trade and Development. 2014. "Part II: An Overview of The International Legal Framework and of Multilateral Cooperation to Combat Piracy". New York and Geneva: *United Nations*, p. 2

² Kempe, Michael. "Publique Enemies to Mankind: International Pirates as a Product of International Politics." Chapter. In *Piracy in World History*, edited by Stefan Amirell, Hans Hägerdal, and Bruce Buchan, 35–60. Bristol University Press, 2021. doi:10.1017/9789048544950.002.

humanity.³ However, despite the fact that all nations are committed to combating maritime piracy, such crimes have escalated to the modern day.

The International Maritime Bureau (IMB) reported that between 1994 and 2003, there was a significant rise in the number of cases of maritime piracy, which went from 90 to 445 cases, respectively.⁴ Such an increase also appeared in 2020, where there were more piracy and armed robbery incidents than in 2019, which accounted for 195 cases.⁵ Such datum comprised three hijacked vessels, twenty attempted attacks, and 161 pirate boarding.⁶ These figures demonstrate that maritime piracy is a serious maritime issue. In 2021, in comparison to the older era, piracy takes on a very different appearance in today's world. In the past, the act of piracy involved "approaching the ship, attacking it, and then seizing it before sailing away".⁷ Meanwhile, as pointed out by Jonathan Bellish, "modern maritime piracy does not just involve the robbery of a ship".⁸ As it pertains to Somali piracy, piracy is most closely associated with criminal organizations.⁹ Nowadays, contemporary piracy occurs in three primary regions: East Africa, West Africa, and Southeast Asia, where advanced technology is employed to launch attacks.¹⁰

In East Africa, the operation frequently employs advanced weapons. The primary objective is to demand ransom money in exchange for the hostages, not to hurt the personnel.¹¹ In Nigeria, the attacks may be influenced by political factors, including oil robberies.¹² In Southeast Asia, in addition to oil and ship theft, experts suggest that many cases of alleged piracy are inside operations designed to commit insurance fraud.¹³ Moreover, illegal attacks were also perpetrated in Singaporean territorial waters.¹⁴ However, such acts are difficult to address, and some would argue that this is due to UNCLOS's limited definition of piracy. As stated by experts, one of the most significant obstacles to combating piracy is its limited and ambiguous definition.¹⁵

Therefore, this paper will evaluate the UNCLOS definition of piracy and examine whether it is still relevant considering the recent development of piracy forms. This essay begins by describing that the concept of piracy under the UNCLOS is problematic,

³ *Ibid*

⁴ Dillon, Dana. "Maritime Piracy: Defining the Problem." *The SAIS Review of International Affairs* 25, no. 1 (2005): 155–65. <https://www.jstor.org/stable/26999257>.

⁵ IMB. 2021. "Piracy and Armed Against Ships". Available from: https://www.iccccs.org/reports/2020_Annual_Piracy_Report.pdf. [Accessed May 12, 2022]

⁶ *Ibid*

⁷ Wallner, Michał, Artur Kokoszkiewicz. 2019. „Maritime Piracy and Limitations of the International Law of the Sea”. *Historia i Polityka*, nr 28 (35) (wrzesień):25-35. <https://doi.org/10.12775/HiP.2019.012>.

⁸ *Ibid*

⁹ *Ibid*

¹⁰ Kao, M. Bob, Against a Uniform Definition of Maritime Piracy (December 1, 2016). *Maritime Safety and Security Law Journal*, 3: 1-20, 2016, Available at SSRN: <https://ssrn.com/abstract=3344053>

¹¹ *Ibid*

¹² *Ibid.*, p.4

¹³ Edward, Jonathan. 2015. "Insider" Piracy on the Rise. Available from: www.themalaymailonline.com/ma-laysia/article/insider-piracy-on-the-rise. [Accessed May 12, 2022]

¹⁴ *Ibid*

¹⁵ Nyman, Elizabeth. 2011. "Modern Piracy and International Law: Definitional Issues with the Law of the Sea". *Geography Compass* 5 (11): 863-874. <https://doi.org/10.1111/j.1749-8198.2011.00455.x>

citing various piracy cases. Furthermore, this paper will demonstrate how the UNCLOS definition of piracy is unsuitable to account for current pirate cases.

METHOD

This research employed library-based and doctrinal methodologies. The research questions are examined by reading relevant books, journals, and case studies. Legal issues are elaborated using doctrinal legal research methodology, which is based on prior legal doctrines or opinions pertinent to the research topic. In order to evaluate the new cases and their relevance to the piracy definition, several older cases are also supplied for comparison.

DISCUSSION

Piracy under the UNCLOS: A Problematic Definition?

Before being governed under the UNCLOS, piracy was defined in various conventions. In 1926, the League of Nations Committee of Experts for the Progressive Codification of International Law first defined piracy as a robbery at sea and a crime against the security of maritime trade.¹⁶ Later treaties, such as the London Treaty of 1930 and the Nyon Treaty of 1937, expanded piracy to encompass acts committed by warships and submarines. In 1956, the International Law Commission of the United Nations (ILC) determined that for an act to be considered maritime piracy, it must be motivated by a private purpose and involve private vessels.¹⁷ Two years later, in 1958, under Article 15 of the Convention on the High Seas, the first definition of piracy was adopted, incorporating numerous crucial features that became the foundation of the piracy provision in the 1982 the United Nation Convention on the Law of the Sea (UNCLOS).¹⁸

Piracy is specified under Article 101 of the UNCLOS, which states that piracy consists of any following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

- (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
- (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

According to the UNCLOS definition of piracy above, there are several essential components, including: (1) illegal acts or detention, or depredation; (2) private ends

¹⁶Pászka, Imre Agoston. 2018. "Maritime piracy as an international crime in the 21st century". Available from <https://doi.org/10.14232/belv.2018.4.6> accessed [May 10, 2022]

¹⁷ *Ibid*

¹⁸ *Ibid*

requirement; (3) private ship or aircraft; (4) high seas; (5) two ships. All these elements will be thoroughly discussed.

Illegal Acts of Violence or Detention, or Any Act of Depredation

For some people, the phrase “violence” appears clear. However, violence in the context of piracy presents several questions. Firstly, what is the consequence of a violent act. Some argue that merely the intent to hurt people constitutes violence, while others contend that the intent to hurt and damage people or property is also included.¹⁹ However, it would be confusing when addressing cases of white-collar piracy in which pirates do not perform physical attacks on the vessels. In Southeast Asia, it is common for pirates to take cargo or equipment without having any contact with the seafarers.²⁰

Moreover, some question as to whether such violence encompasses simply physics or also psychology.²¹ According to World Health Organization (WHO), violence includes “*intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in, or has a high likelihood of, resulting in injury, death, psychological harm, maldevelopment or deprivation*”.²² This indicates that violence encompasses both physical and psychological harm.

While the definition of detention is clear, as the act of detaining people or property under control, the definition of depredation appears to be confusing because it has similar terms such as “ravage,” “pillaging,” “plundering,” “looting,” and so on.²³ However, depredation can be characterised as destructive conduct that includes plundering, destroying, and devastating.²⁴

It would appear that there is not an issue with using the terms violence, detention, and depredation. The word “illegal”, however, is problematic. The word ‘illegal’ preceding the terms violence, detention, and depredation seems to imply that some of these actions are legal,²⁵ whereas, such phrases cannot refer to positive entities. A further question emerges as to what law is used to determine such illegality. Is it domestic or international law? Which national law will be implemented if it is national law? In terms of piracy, this could be challenging since what is illegal in one state is not necessarily illegal in another.

¹⁹Logina, Anete. 2009. “The international law related to maritime security: an analysis of its effectiveness in combating piracy and armed robbery against ships”. *Master Thesis, World Maritime University*, p. 6

²⁰Gottlieb, Yaron. 2017. “International cooperation in combating modern forms of maritime piracy: Legal and policy dimensions” available from https://pure.uva.nl/ws/files/12163280/02_CHAPTER_ONE.pdf Accessed [May 12, 2022]

²¹Logina, Anete. 2009. *Loc. Cit.*

²² WHO, “Violence. injuries and disability”. Available from: <http://www.emro.who.int/violence-injuries-disabilities/violence/>. Accessed [May 13, 2022]

²³Logina, Anete. 2009. *Op. Cit.*, p. 11-12

²⁴ *Ibid*

²⁵Gottlieb, Yaron. 2017. *Loc. Cit.*

However, one might argue that this phrase is employed to emphasise that such acts are prohibited. Nonetheless, this argument seems unconvincing. Therefore, in order to minimise ambiguity and redundancy, the word "illegal" must be removed from this section.

Private Ends Requirement Private Ends

According to Article 101 (a), any illegal acts or acts of violence conducted for private gain are deemed acts of piracy. Since there is no further clarification of this provision in the UNCLOS, its significance is difficult to comprehend. Some contend that the phrase "private" can be defined by contrasting it with the term "public." Consequently, if the act included state authority, it does not qualify as private.²⁶ *Gerald Fitzmaurice* pointed out that submarine operations without government authority are considered private ends.²⁷ This implies that piracy does not apply to activities motivated by politics or governmental authorization. Others claim that it is possible to determine whether illegal acts constitute piracy by investigating the state's sanction. If such actions are exempt from state sanction, they are considered piracy.²⁸

According to *Kontorovich*, who refers to Article 102 of the UNCLOS to define the term "private," government-owned vessels and aircraft qualify as private if the government has no control over them. This indicates that the term private refers to non-governmental entities in this convention.²⁹

On the other hand, opponents would claim that the word "private ship" as a synonym for "non-governmental ship" is insufficient to describe "private ends."³⁰ In addition, it was stated that if a private phrase is used to refer to non-governmental contexts, then that term must be established in one of the other provisions of this convention.³¹ In fact, its definition is found in this treaty's Articles 101 and 102 exclusively. The International Law Commission (ILC) clarified that *animo furandi* is not essential, as piracy may be perpetrated out of anger or vengeance.³²

Private ends are distinguished from political motives. However, in practice, it is difficult to distinguish between private and politically motivated objectives. There were several distinctions of judgement relating to this term. In 1985, the Palestinian Liberation Front's seizure of the *Achille Lauro* was not considered piracy as such an act was motivated by

²⁶ *Ibid*

²⁷ Jin, Jing, and Erika Techera. 2021. "Strengthening Universal Jurisdiction for Maritime Piracy Trials to Enhance a Sustainable Anti-Piracy Legal System for Community Interests" *Sustainability* 13, no. 13: 7268. <https://doi.org/10.3390/su13137268>. Accessed [May 11, 2022]

²⁸ Honniball, Arron, 2015. "Private Political Activists and the International Law Definition of Piracy: Acting for Private Ends". *Adelaide Law Review*, Vol. 36, No. 2, 279-328, Available at SSRN: <https://ssrn.com/abstract=3533785>

²⁹ *Ibid.*, p. 289

³⁰ *Ibid*

³¹ *Ibid*

³² Ahmad, Mayer. 2020. "Maritime piracy operations: Some legal issues". *Journal of International Maritime Safety*. Available from: <https://doi.org/10.1080/25725084.2020.1788200>. Accessed [May 12, 2022]

political rather than personal objectives.³³ However, in *Castle John v. NV Mabeco* (1986), the Belgian Court of Cassation determined that an act committed by a Greenpeace vessel against a supposedly polluted Dutch vessel constituted piracy.³⁴ Despite the fact that Greenpeace's mission was connected to a political movement, this instance was considered to have "private ends" because it was in favour of a personal point of view.³⁵ In *Sea Shepherd*, a case involving marine conservation initiatives, the Ninth Circuit sentenced the accused of piracy notwithstanding the fact that their actions were motivated by political rather than private objectives.³⁶ Therefore, the question arises as to whether environmental movements also satisfy the concept of private ends. As private ends encompass personal, moral, and philosophical considerations, the Court of Appeals decided that environmental goals do not qualify as public ends.³⁷ As a result, it fell under the category of private ends.

There are two possible interpretations of the term "private ends." First, it is possible to examine it from the point of view of the attackers' subjective motive, trying to determine whether their intention is founded on the private or public/political nature.³⁸ The second step involves determining whether such acts are being taken for the private or public advantage.³⁹ However, proving an offender's "real" motive would be challenging due to the potential of a "mixed" intention in which the attackers act with political motives while also plundering a ship for personal benefit.⁴⁰

Several attempts have been made to address the definitional concerns relating to the term "private ends," since many academics and socialists criticised it. S.B. Krylov and Malta (1971) staged initiations to remove the word "private ends," but they were both denied.⁴¹

The private ends requirement should consider several crucial factors, including the "real purpose, refer to methods of offenders, the correlation between perpetrators and victims, and the correlation between perpetrators and ship, as well as the authority of the state and the response of third states".⁴² Even if it is hard to know the true motives of pirates, understanding these factors is a viable approach.

³³Nyman, Elizabeth. 2011. *Op. Cit.*, p. 865

³⁴Marciniak, Konrad. 2012. "International Law on Piracy and Some Current Challenges Related to its Definition". *Polish Review of International and European Law*, Vol. I, Issue 3-4, pp. 97-140, Available at SSRN: <https://ssrn.com/abstract=2412268>

³⁵ *Ibid*

³⁶Magnuson, Whitney. 2014. "Marine Conservation Campaigners as Pirates: The Consequences Of 'Sea Shepherd.'" *Environmental Law* 44, no. 3: 923–58. <http://www.jstor.org/stable/43267836>.

³⁷Tanaka, Yoshifumi. 2019. *International Law of The Sea*. Cambridge: Cambridge University Press, p. 454

³⁸Marciniak, Konrad. 2012. *Op. Cit.*, p. 114

³⁹ *Ibid*

⁴⁰ *Ibid.*, p. 117

⁴¹ *Ibid.*, p. 119

⁴²Tanaka, Yoshifumi. 2019. *Loc. Cit.*

By the Crews or the Passengers of a Private Ships or a Private Aircraft

The term private indicates that this definition does not cover illegal conduct committed aboard governmental ships or aircraft. However, according to the 1956 ILC Report's article 40 (equal to Article 102 of UNCLOS), attacks perpetrated on government-owned ships or aircraft are still deemed piracy if the government no longer controls the vessels.⁴³ The terms ship and vessel are frequently employed, but the UNCLOS does not define them. Consequently, it may be questioned if other types of marine vessels meet this definition. Like ships, it is uncertain whether word crews include simply aboard crews or remote crews. However, as they are not physically present, could this definition apply to personnel operating autonomous vessels or aircraft?

According to Article 101 (a), it appears that crews outside the vessel are not covered by this definition, even though they are protected by the subsequent subparagraph. However, the clear terms should be incorporated within the definition for legal clarity. Proponents might argue that if physical appearance is not a prerequisite for vessel crews, it seems challenging to distinguish them from facilitators under Article 101. (c).

However, the "common intention" idea can be used to distinguish between crews and those who engage voluntarily or become facilitators. As applied in the *U.S. v. Shibin* case, the U.S. Court of Appeals determined that in order to be considered pirate facilitators, the sole purpose of the offences must be to aid attacks on the high seas.⁴⁴ Referring to the situation in Somalia, one thing that is relevant is the legal standing of people who are engaged in piracy.

"High Sea" and "a place outside the jurisdiction of any State"

As it pertains to geographic scope, this requirement is controversial. Article 101 of the UNCLOS specifies that piracy occurs on the high seas, indicating that it is beyond the state's jurisdiction. As clarified by the International Law Commission, illegal actions committed on the territory of a state do not qualify as piracy because piracy only occurs at the high sea.⁴⁵

In accordance with Article 86 of the UNCLOS, piracy is excluded in territorial seas, internal water of a state, and archipelagic waters. As a result, the question of whether piratical attacks committed in the Exclusive Economic Zone (EEZ) qualify as piracy arises, given that the EEZ is excluded from high seas scopes. This seems compelling as Article 58 (2) of UNCLOS states that EEZ also applies under Art 88 to 115 which indicates that EEZ also includes under piracy definition.

As piracy is excluded in territorial water, it has limited the scope of piracy. Consequently, as a direct result of this approach, the amount of piracy that occurs within territorial water rose in nations like Indonesia and the Philippines, which have a poor central

⁴³Gottlieb, Yaron. 2017. *Loc. Cit.*

⁴⁴*Ibid*

⁴⁵Ahmad, Mayer. 2020. *Loc. Cit.*

power.⁴⁶ However, in response to an emergency situation in Somalia to combat piracy in territorial sea, the Security Council initiated a resolution in 2008 that broadened the definition of piracy.⁴⁷ The fundamental feature of resolution 1816 is found in paragraph 7, which allows offenses in territorial sea to be classified as piracy.⁴⁸ However, this resolution only applied in Somalia.

The criterion for piracy on the high seas should not be confined to traditional piracy but should also include technologically influenced modern pirate. Historically, the act of piracy entailed first approaching the ship, then engaging in combat with it, and finally capturing it before fleeing in another vessel. Meanwhile, more sophisticated forms of piracy are launching attacks using cutting-edge technology in recent years. As technology has advanced, various sophisticated technologies are being used to conduct attacks. Another concern would be whether both vessels should be located on the high seas to fall under the term "high sea". How if, in a hypothetical scenario, one of the attacking or attacked ships is within the state's territorial water.⁴⁹ For instance, pirates inside the sovereignty of a state employing advanced technology (radio communication) attack a ship on the high sea.⁵⁰

Term "*a place outside the jurisdiction of any State*" seems pointless in today's maritime regime since it apart from high sea, it is nearly impossible to discover unoccupied area in the present day, perhaps except Antarctica.

Two ships Requirement

The word "two ships" is not defined directly under UNCLOS Article 101. It only implies that piracy is carried out against another ship or aircraft. Therefore, this indicates that there is more than one vessel. Consequently, any attacks perpetrated by the crew or passengers of a single ship do not constitute piracy because only one ship is involved. As implemented by hijackers aboard as passengers on the Portuguese ship *Santa Maria* in 1961 and the Italian cruise liner *Achille Lauro* in 1985, their pirate actions were not deemed as piracy since they did not involve another ship.⁵¹

UNCLOS Definition of Piracy: Is It still Relevant for Modern Piracy?

After identifying the UNCLOS definition of piracy, it seems plausible that this definition has impeded efforts to combat piracy. Further discussion will focus on how the UNCLOS definition of piracy fails to account for modern piracy.

⁴⁶Fieducik, Bartosz. 2011. "The Definition of Piracy Under Article 101 of the 1982 United Nations Convention on The Law of The Sea – An Attempted Legal Analysis". *Białostockie Studia Prawnicze Journal* 10 (1): 67

⁴⁷Tullio Treves, Piracy, 2009. "Law of the Sea, and Use of Force: Developments off the Coast of Somalia", *European Journal of International Law*, 20 (2): 399–414. <https://doi.org/10.1093/ejil/chp027>

⁴⁸Gottlieb, Yaron. 2017. *Loc. Cit.*

⁴⁹*Ibid*

⁵⁰*Ibid*

⁵¹Treves, Tullio. 2009. *Op. Cit.*, p. 402

Excluding Territorial Seas: Challenges for Individual States?

Given that the vast majority of piratical crimes occur in territorial seas, it is irrelevant to exclude its area from the geographical scope of modern-day piracy. This exclusion will impact law enforcement, leading to an increase in cases of piracy as demonstrated by the Somalia case. One that must be acknowledged is that the time in which UNCLOS was drafted was vastly different from the present, particularly in terms of piratical conduct. When drafting UNCLOS, the drafters of the Convention made an obvious assumption that individual states are empowered to respond to acts of piracy within their own territorial sea.⁵² However, such an assumption is completely erroneous. This is due to the absence of provisions guaranteeing security in emerging or undeveloped nations' territorial seas.⁵³ When government authority is weak, there is a greater likelihood that there will be an increase in piracy.⁵⁴ This is because piracy is linked to ineffective and underfunded law enforcement agencies. Police forces and the coastal guard, which lack of sufficient equipment and personnel are unable to fulfil their duties to combat attacks.⁵⁵

Under UNCLOS, all governments are required to work together to combat piracy on the high seas. However, there is no international provision regarding compliance with obligations.⁵⁶ A significant gap in national law is one of the key challenges that states face when attempting to combat piracy. International law only encourages individual governments to fight against piracy, but it does not provide any means of enforcement. Therefore, when confronted with the danger posed by pirates, states continue to give their own national security concerns the highest priority and to adhere to their long-established privileges.⁵⁷ They are careful to maintain control over their sovereignty within their territorial waters, and they are hesitant to impose international security regimes.⁵⁸

In addition, national courts may lack the legal ability or knowledge required to prosecute significant international crimes.⁵⁹ In regions involving many coastal states, pirates can evade a patrol boat by entering the territorial waters of a state that is unwilling to respond to a pirate attack and would therefore oppose any enforcement measures by other states. Another barrier that various states have in combating piracy is the enormous cost of gathering evidence and witnesses, as well as the cost of housing pirates, translation, and legal assistance.

However, opponents might argue that allowing piracy to be included in territorial waters is a violation of international law. It will endanger national security because foreign

⁵²Fieducik, Bartosz. 2011. *Op. Cit.*, p. 78

⁵³ *Ibid*

⁵⁴ The Hague Centre for Strategic Studies. 2008. "Maritime Piracy". Available from: <http://www.jstor.com/stable/resrep12588>. Accessed [May 17, 2022]

⁵⁵ *Ibid*

⁵⁶Sukhawattanakun, Nutcha. 2017. "Re-assessment of Acts of Piracy Under Contemporary International Law with Particular Reference to Activities of Somali Pirates" *Doctoral Thesis, Golden Gate University*, p. 188

⁵⁷ The Hague Centre for Strategic Studies. 2008. *Loc. Cit.*

⁵⁸ *Ibid.*, p. 189

⁵⁹ *Ibid*

states may enter territorial waters under the pretext of capturing pirates. Such a measure threatens the sovereignty of the state.

However, the high case of piracy in territorial waters demonstrates the need for legal reform in this area. As described previously, individual countries have encountered numerous barriers; consequently, if such territories are excluded from the scope of piracy, pirates will target them in order to escape piracy under UNCLOS. In addition, the resolution proposed by the Security Council emphasises that it is worthwhile to consider including territorial seas in the scope of UNCLOS.

Piracy Under UNCLOS: Failing to Meet Advanced Technology?

Due to technological advancements, the adoption of Maritime Autonomous Vehicles (MAVs) in marine operations has increased. MAVs are also defined as unmanned vehicles, indicating that they are operated by remote crews. This breakthrough challenges the requirement for crews or passengers on board vessels.⁶⁰ Even though UNCLOS does not specify that crews or passengers must be physically present on the vessel, a number of cases indicated that such a requirement should be satisfied for this definition to apply. Another question pertaining to MAVs is whether such technologies qualify as ships or vessels according to the UNCLOS definition.

One might argue that the terms ships and crews should be interpreted broadly. Ships should include all marine vessels and crews not only include people on the ships or aircrafts but also individuals operating an autonomous vessel or aircraft.⁶¹ For example “a drone attacking another vessel or aircraft”.⁶²

It is also questionable if remote crews qualify as pirates, what roles they should play to account for piracy? Given that this type of technology will be widely employed in the future due to its benefits, it is necessary to adopt precise legal terminology to accommodate such developments.

Institution and Conventions Supplementing Limitation of UNCLOS: Evidence of Inapplicability

Several conventions were formed to supplement UNCLOS, including the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) and the International Ship and Port Facility Security Code (ISPS Code). Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) provides evidence of the UNCLOS’s inability to tackle piracy. This convention does not explicitly aim to combat piracy, but its connection to the *Achille Lauro* case demonstrates that it was developed in response to UNCLOS’s restricted regulatory framework. The SUA applies to state sanctioned acts that are excluded by the UNCLOS. In addition, acts of piracy that occur in territorial sea are also protected by this convention.

⁶⁰ International Relations and Defence Committee. 2021. “UNCLOS: the law of the sea in the 21st century”. *2nd Report of Session 2021–22*) p. 27

⁶¹Gottlieb, Yaron. 2017. *Loc. Cit.*

⁶² *Ibid*

In addition, the Regional Collaboration Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP) was developed to promote cooperation in the fight against piracy. Several regional institutions and authorities, such as the Committee of Maritime International (CMI), the Baltic and International Maritime Counsel (BIMCO), the International Chamber of shipping (ICS), Interpol, the International Group of P&I Clubs (IGP&I), the ICC International Maritime Bureau (IMB), the International Maritime Organization (IMO), and the United Nations (Office of Legal Affairs/Division for Oceans) have also drafted their own anti-piracy regulations.⁶³

The emergence of such conventions and authorities demonstrates that the UNCLOS definition is insufficient to confront the manifestations of contemporary piracy.

CONCLUSION

The UNCLOS definition of piracy appears problematic. This is owing to its vagueness and incomprehensibility. This provision will hinder the execution of anti-piracy laws because it generates legal uncertainty. Moreover, in relation to contemporary piracy, such a concept is unsuitable to combat well-organized pirate attacks. If territorial seas continue to be excluded from the definition of piracy, instances of piracy will increase as more pirates learn the fragility of individual states. Pirates will employ tactics involving territorial seas to evade capture.

Therefore, given that revising the UNCLOS is a complex and lengthy process and that the threat of piracy is on the rise, it is crucial to initiate negotiations to propose a protocol for the UNCLOS or to produce an interpretive guideline for defining piracy. Even if this interpretation is not legally enforceable, it would aid the court in managing cases of piracy. However, significant legal reform is required to address such issues.

REFERENCES

- Ahmad, Mayer. 2020. "Maritime piracy operations: Some legal issues". *Journal of International Maritime Safety*. Available from: <https://doi.org/10.1080/25725084.2020.1788200>. Accessed [May 12, 2022]
- Dillon, Dana. "Maritime Piracy: Defining the Problem." *The SAIS Review of International Affairs* 25, no. 1 (2005): 155–65. <https://www.jstor.org/stable/26999257>.
- Edward, Jonathan. 2015. "Insider" Piracy on the Rise. Available from: <https://www.themalaymailonline.com/malaysia/article/insider-piracy-on-the-rise>. [Accessed May 12, 2022]
- Fieducik, Bartosz. 2011. "The Definition of Piracy Under Article 101 of the 1982 United Nations Convention on The Law of The Sea – An Attempted Legal Analysis". *Białostockie Studia Prawnicze Journal* 10 (1): 67
- Gottlieb, Yaron. 2017. "International cooperation in combating modern forms of maritime piracy: Legal and policy dimensions" available from https://pure.uva.nl/ws/files/12163280/02_CHAPTER_ONE.pdf. Accessed [May 12, 2022]

⁶³Sukhawattanakun, Nutch. 2017. *Loc. Cit.*

- Honniball, Arron. 2015. "Private Political Activists and the International Law Definition of Piracy: Acting for Private Ends". *Adelaide Law Review*, Vol. 36, No. 2, 279-328, Available at SSRN: <https://ssrn.com/abstract=3533785>
- IMB. 2021. "Piracy and Armed Against Ships". Available from: https://www.iccccs.org/reports/2020_Annual_Piracy_Report.pdf. [Accessed May 12, 2022]
- International Relations and Defence Committee. 2021. "UNCLOS: the law of the sea in the 21st century". *2nd Report of Session 2021–22*.
- Jin, Jing, and Erika Techera. 2021. "Strengthening Universal Jurisdiction for Maritime Piracy Trials to Enhance a Sustainable Anti-Piracy Legal System for Community Interests" *Sustainability* 13, no. 13: 7268. <https://doi.org/10.3390/su13137268>. Accessed [May 11, 2022]
- Kao, M. Bob, Against a Uniform Definition of Maritime Piracy (December 1, 2016). *Maritime Safety and Security Law Journal*, 3: 1-20, 2016, Available at SSRN: <https://ssrn.com/abstract=3344053>
- Kempe, Michael. "'Publique Enemies to Mankind': International Pirates as a Product of International Politics." Chapter. In *Piracy in World History*, edited by Stefan Amirell, Hans Hägerdal, and Bruce Buchan, 35–60. Bristol University Press, 2021. <https://doi.org/10.1017/9789048544950.002>.
- Logina, Anete. 2009. "The international law related to maritime security: an analysis of its effectiveness in combating piracy and armed robbery against ships". *Master Thesis, World Maritime University*.
- Magnuson, Whitney. 2014. "Marine Conservation Campaigners as Pirates: The Consequences Of 'Sea Shepherd.'" *Environmental Law* 44, no. 3: 923–58. <http://www.jstor.org/stable/43267836>.
- Marciniak, Konrad. 2012. "International Law on Piracy and Some Current Challenges Related to its Definition". *Polish Review of International and European Law*, Vol. I, Issue 3-4, pp. 97-140, Available at SSRN: <https://ssrn.com/abstract=2412268>
- Nyman, Elizabeth. 2011. "Modern Piracy and International Law: Definitional Issues with the Law of the Sea". *Geography Compass* 5 (11): 863-874. <https://doi.org/10.1111/j.1749-8198.2011.00455.x>
- Pászka, Imre Agoston. 2018. "Maritime piracy as an international crime in the 21st century". Available from <https://doi.org/10.14232/belv.2018.4.6> accessed [May 10, 2022]
- Sukhawattanakun, Nutch. 2017. "Re-assessment of Acts of Piracy Under Contemporary International Law with Particular Reference to Activities of Somali Pirates" *Doctoral Thesis, Golden Gate University*.
- Tanaka, Yoshifumi. 2019. *International Law of The Sea*. Cambridge: Cambridge University Press.
- The Hague Centre for Strategic Studies. 2008. "Maritime Piracy". Available from: <http://www.jstor.com/stable/resrep12588>. Accessed [May 17, 2022]
- Tullio Treves, Piracy, 2009. "Law of the Sea, and Use of Force: Developments off the Coast of Somalia", *European Journal of International Law* 20 (2): 399–414. <https://doi.org/10.1093/ejil/chp027>.

- United Nations Conference on Trade and Development. 2014. "Part II: An Overview of The International Legal Framework and of Multilateral Cooperation to Combat Piracy". New York and Geneva: *United Nations*.
- Wallner, Michał, i Artur Kokoszkiewicz. 2019. "Maritime Piracy and Limitations of the International Law of the Sea". *Historia i Polityka*, nr 28 (35) (wrzesień): 25-35. <https://doi.org/10.12775/HiP.2019.012>.
- WHO, "Violence. injuries and disability". Available from: <http://www.emro.who.int/violence-injuries-disabilities/violence/>. Accessed [May 13, 2022]