

# **REGULATING THE HIGH SEAS: INTERNATIONAL MARITIME PIRACY LAW**

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## **Abstract**

For many, laws and regulations are inescapable with their apparent global reach, whereby, governments across the world establish laws and regulations governing their respective countries and states. With such an extensive reach, the common person may never raise the question of what rules and regulations they must follow. However, with over 60% of the world's oceans being considered international waterways, the question of law and order on the high seas is a pertinent one. This article narrows the scope of international maritime law to that of piracy, exposing the reader to insight into international maritime piracy law, its application, and framework, as well as its shortcomings and faults. The successful application of international maritime piracy law is dependent on demand from the international community, as such, this article hopes to provide the reader with an increased sense of awareness and an introductory basis on international maritime piracy and security.

## **Introduction**

Codified laws and statutes are an essential component of a well-structured society. For many, laws and regulations are inescapable with their apparent global reach, whereby, governments across the world establish laws and regulations governing their respective countries and states. With such an extensive reach, the common person may never raise the question of what

rules and regulations they must follow. However, the world is much more than a collection of different nations with approximately 71% of the planet being water-covered and the Earth's oceans comprising 96.5% of these water-covered areas.<sup>1</sup> The overwhelming majority of the world's waterways are considered international waters, creating a unique and complex legal situation. However, the waterways are a vital component to the subsistence of humans since more than 90% of the world's trade is transported by the sea.<sup>2</sup>

The issue of maintaining trade lanes and international waterways as open and regulated has consistently been challenged over time, facing a wide array of legal discrepancies, loopholes, and questions. International waters pose the unique challenge of having to collaborate across borders to maintain "law and order" on the high seas.<sup>3</sup> Examples of the dramatic need for law and order may be found in the story of Edward "Blackbeard" Teach, commandeering ships and at one point having control of over 300 pirates<sup>4</sup> in the 18<sup>th</sup> century, to more modern times such as in 2009 with the hijacking of the shipping vessel Maersk Alabama,<sup>5</sup> when both the vessel and the crew were held hostage. The need for a proper legal system and the compilation of international maritime law has been clearly demonstrated to be essential.

A robust system of collaboration and regulatory agreements among multiple countries have come about. But due to the international, broad, and ever-changing nature of the situation, oftentimes, legal recourse,

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<sup>1</sup> *How Much Water is There on Earth?*, USGS.gov (2021), [https://www.usgs.gov/special-topic/water-science-school/science/how-much-water-there-earth?qt-science\\_center\\_objects=0#qt-science\\_center\\_objects](https://www.usgs.gov/special-topic/water-science-school/science/how-much-water-there-earth?qt-science_center_objects=0#qt-science_center_objects) (last visited Jan 30, 2021).

<sup>2</sup> *OECD Ocean*, Oecd.org (2021), <https://www.oecd.org/ocean/topics/ocean-shipping/#:~:text=The%20main%20transport%20mode%20for,transport%20arteries%20for%20global%20trade>. (last visited Jan 30, 2021).

<sup>3</sup> "high seas" refers to any non-territorial waters, i.e., international waterways.

<sup>4</sup> *Blackbeard's Story and Facts, Queen Anne's Revenge Project*, Qaronline.org (2021), <https://www.qaronline.org/history/blackbeard> (last visited Jan 30, 2021).

<sup>5</sup> *Maersk Alabama hijacking | Summary, Rescue, Movie, & Facts*, Encyclopedia Britannica (2021), <https://www.britannica.com/event/Maersk-Alabama-hijacking> (last visited Jan 30, 2021).

detention/correction, and regulatory agreements are unable to be carried out and many suspects and instances of crimes that occur out in international waters will never stand before a court. With a continuous increase in demand for products and materials, maritime trade and transport will continue to be an essential component of life. As such, “freedom of the seas”<sup>6</sup> must be maintained and international maritime law must be ensured to protect free trade and travel across the world.

### **Primary Analysis of Maritime Piracy Law**

Piracy is generally defined as “an act of robbery on the high seas,”<sup>7</sup> with the earliest evidence of piracy found in correspondence dating to the 14<sup>th</sup> century BCE in the Mediterranean Sea<sup>8</sup>. Essentially, for as long as there have been ships, there has been piracy. However, due to the inconsistencies of enforcement, legal action, and discrepancies in codified regulations, problems continue to exist. The origin of international maritime piracy law is vague but is more clearly recorded in the 19<sup>th</sup> and 20<sup>th</sup> centuries. The recorded history of modern maritime piracy laws emerges with the United Nations Convention on the Law of the Sea (UNCLOS) taking place between 1973 and 1982<sup>9</sup> and served as a foundational benchmark for international maritime piracy law. Article 87 of UNCLOS elaborates on the concept of defining and maintaining freedom of the high seas, stating, “The high seas are open to all states, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law,” and that all states are entitled to “freedom of navigation” (ability to

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<sup>6</sup> *Freedom of the seas*, International Law, Encyclopedia Britannica (2021), <https://www.britannica.com/topic/freedom-of-the-seas> (last visited Jan 30, 2021).

<sup>7</sup> *Definition of PIRACY*, Merriam-webster.com (2021), <https://www.merriam-webster.com/dictionary/piracy> (last visited Jan 30, 2021).

<sup>8</sup> Joshua Mark, *Pirates in the Ancient Mediterranean* Ancient History Encyclopedia (2021), <https://www.ancient.eu/Piracy/> (last visited Jan 30, 2021).

<sup>9</sup> *Oceans and the Law of the Sea*, UN.org (2021), <https://www.un.org/en/sections/issues-depth/oceans-and-law-sea/index.html> (last visited Jan 30, 2021).

freely navigate in the high seas).<sup>10</sup> The United Nations Convention on the Law of the Sea recognized how piracy may inhibit states from freely navigating and can act as a deterrent to essential maritime transport & trade, thus including Articles 101 through 108 specifically pertaining to piracy.<sup>11</sup>

Within Article 101, UNCLOS provides the United Nations' (UN) legal framework for the repression of piracy 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 private aircraft, and directed: on the high seas, against another ship or aircraft; against a ship, aircraft, persons or property in place outside the jurisdiction of any state; any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship".<sup>12,13</sup>

The United States takes a similar approach in statutes relating to piracy via the 1994 U.S. Code Title 18, section 2280, Violence Against Maritime Navigation, (18 U.S.C. § 2280) providing a comparable, yet more specific definition as to the essential factors of a pirate as, "A person who unlawfully and intentionally, seizes or exercises control over a ship by force or threat thereof or any form of intimidation; performs an act of violence against a person onboard a ship if that act is likely to endanger the safe navigation of that ship; places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if such act is likely to endanger the safe navigation of a ship". Further, the Act includes the act of

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<sup>10</sup> *United Nations, United Nations Convention on the Law of the Sea* (2008), [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Legal Framework for the Repression of Piracy Under UNCLOS*, UN.org (2021), [https://www.un.org/depts/los/piracy/piracy\\_legal\\_framework.htm](https://www.un.org/depts/los/piracy/piracy_legal_framework.htm) (last visited Jan 30, 2021).



injuring, killing, attempting, or conspiring to commit the aforementioned in the definition of offenses for piracy.<sup>14</sup>

However, due to the broad nature of piracy, the high seas could be subject to a wide array of maritime law exploitation, finding numerous loopholes and technical legality of otherwise illegal circumstances. The United States of America in collaboration with its allies,<sup>15</sup> the UN, and the North Atlantic Treaty Organization (NATO) was able to utilize UNCLOS to better ensure mariners the freedom to fairly navigate the seas. The known “golden age” for piracy occurred between 1650 and 1720,<sup>16</sup> with UNCLOS and nations’ maritime regulations thereafter serving as a sufficient force for insurance to mariners from its inception. However, international maritime law soon faced a new array of challenges as modern piracy evolved.

### **International Maritime Piracy Law in an Evolving World**

With the rise of the 19<sup>th</sup>, 20<sup>th</sup>, and 21<sup>st</sup> centuries, piracy took a drastic turn as the world was introduced to global terrorism, hijackings, and attacks. With differentiating definitions for piracy and how it has evolved, a new need for legal counsel, protection, and enforcement of international maritime law is needed. Traditionally, crimes (including piracy) in international waterways would be prosecuted by the country of origin<sup>17</sup> or by the country in which the

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<sup>14</sup> 18 U.S. Code § 2280 - *Violence Against Maritime Navigation*, LII / Legal Information Institute of Cornell Law School (2021), <https://www.law.cornell.edu/uscode/text/18/2280> (last visited Jan 30, 2021).

<sup>15</sup> *United States Counter Piracy and Maritime Security Action PLAN*, Homeland Security Digital Library at the Naval Postgraduate School, (2014).

<sup>16</sup> *The Golden Age of Piracy*, Royal Museums Greenwich (2021), <https://www.rmg.co.uk/discover/explore/golden-age-piracy> (last visited Jan 30, 2021).

<sup>17</sup> *Are There Laws on the High Seas?* Encyclopedia Britannica (2021), <https://www.britannica.com/story/are-there-laws-on-the-high-seas> (last visited Feb 6, 2021).

ship was registered.<sup>18</sup> Nevertheless, due to the changing nature of how acts of piracy are conducted, pirates have exploited the loopholes and technicalities of maritime law, endangering mariners, and maritime trade alike.

Through these loopholes, the United States of America has relied on a minute number of pertinent legal cases including but not limited to *United States v. Holmes* (18 U.S. 412)<sup>19</sup> and *United States v. Palmer* (16 U.S. 610),<sup>20</sup> where discrepancies in jurisdiction and the U.S.' ability to prosecute were addressed, all in an attempt to set a precedent in maritime law enforcement. Despite this, there was no clear set precedent in maritime law specifically concerning piracy and thus, pirates continue to utilize loopholes and technicalities for their gain.

A prime example of the exploitation of international maritime law occurs off the coast of Somalia in the Gulf of Aden.<sup>21</sup> The Gulf of Aden is an extension of the Indian ocean and is centered between the countries of Somalia and Yemen,<sup>22</sup> and is a major shipping lane, seeing over 20,000 ships sail through the Gulf of Aden per year, according to the U.S. Department of Transportation testifying before the Senate Armed Forces Committee.<sup>23</sup> Because of the socioeconomic and governmental instability of the neighboring countries,

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<sup>18</sup> 670. *Maritime Jurisdiction*, Justice.gov (2021), <https://www.justice.gov/archives/jm/criminal-resource-manual-670-maritime-jurisdiction> (last visited Feb 6, 2021).

<sup>19</sup> *United States v. Holmes*, 18 U.S. 412 (1820), Justia Law (2021), <https://supreme.justia.com/cases/federal/us/18/412/> (last visited Jan 30, 2021).

<sup>20</sup> *United States v. Palmer*, 16 U.S. 610 (1818), Justia Law (2021), <https://supreme.justia.com/cases/federal/us/16/610/> (last visited Jan 30, 2021).

<sup>21</sup> *Somalia - the World Factbook*, CIA.gov (2021), <https://www.cia.gov/the-world-factbook/countries/somalia/> (last visited Feb 6, 2021).

<sup>22</sup> *Gulf of Aden* | *gulf, Arabian Sea*, Encyclopedia Britannica (2021), <https://www.britannica.com/place/Gulf-of-Aden> (last visited Jan 30, 2021).

<sup>23</sup> *The Ongoing Piracy Problem in the Waters off of Somalia*, U.S. Department of Transportation (2021), <https://www.transportation.gov/testimony/ongoing-piracy-problem-waters-somalia> (last visited Jan 30, 2021).

many Somali nationals see maritime piracy as a source of income.<sup>24</sup> Due to such socioeconomic devastation in Somalia, the Somali government is largely unable to prosecute piracy cases, thus enabling the pirates to take full advantage of this maritime law weak spot. Seeing this major flaw in maritime regulations, the United Nations introduced the principle of “Universal Jurisdiction”, which essentially enables all countries to prosecute piracy under UNCLOS.<sup>25</sup>

The UN Universal Jurisdiction principle, however, remains under constant scrutiny as many countries choose not to prosecute and/or are unwilling to prosecute. And because there is no clear codified definition of the Universal Jurisdiction principle, UN delegates remain under constant pressure concerning these issues.

There are numerous press headlines regarding these issues, “Universal Jurisdiction Principle Must Be Defined to Avoid Abuse, Endangerment of International Law, Sixth Committee Hears as Debate Begins”,<sup>26</sup> “Without Clear Definition, Universal Jurisdiction Principle Risks Misuse, Abuse, Sixth Committee Speakers Warn”,<sup>27</sup> and as recently as 2019, an article headline read

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<sup>24</sup> *Transnational Organized Crime Threat Assessment*, Unodc.org (2010), [https://www.unodc.org/documents/data-and-analysis/tocta/9.Maritime\\_piracy.pdf](https://www.unodc.org/documents/data-and-analysis/tocta/9.Maritime_piracy.pdf) (last visited Feb 6, 2021).

<sup>25</sup> *Legal Framework for the Repression of Piracy Under UNCLOS*, Un.org (2021), [https://www.un.org/depts/los/piracy/piracy\\_legal\\_framework.htm](https://www.un.org/depts/los/piracy/piracy_legal_framework.htm) (last visited Feb 6, 2021).

<sup>26</sup> *Universal Jurisdiction Principle Must Be Defined to Avoid Abuse, Endangerment of International Law, Sixth Committee Hears as Debate Begins | Meetings Coverage and Press Releases*, Un.org (2021), <https://www.un.org/press/en/2014/gal3481.doc.htm> (last visited Jan 30, 2021).

<sup>27</sup> *Without Clear Definition, Universal Jurisdiction Principle Risks Misuse, Abuse, Sixth Committee Speakers Warn, Meetings Coverage and Press Releases*, Un.org (2021), <https://www.un.org/press/en/2018/gal3571.doc.htm> (last visited Jan 30, 2021).

“Delegates Remain Divided on Best Forum to Discuss Universal Jurisdiction, as Sixth Committee Continues Debate on Principle”.<sup>28</sup>

This lack of legal prosecution only further places military and naval efforts in the Gulf of Aden under constant constraint with what oftentimes may appear as a “detain and release”<sup>29</sup> system when intercepting piracy. Nevertheless, a constant military presence, acting as a deterrent has had an effect on the decline of piracy in the Gulf of Aden. Without an overwhelming mounting pressure in the international community and a lack of collaboration, a naval military presence continues to decrease in the region. Unfortunately, regardless of the international community’s actions to try to enforce “Universal Jurisdiction”, maritime piracy laws continue to exist with ineffective regulations and enforcement. An additional burden that is faced is the problem of countries that are unwilling to prosecute and utilize their own court system for enforcing international maritime piracy laws. Without a strong demand for action from the international community, efforts to correct current codified maritime regulations remain stagnant. With maritime piracy continuing to evolve and expand, new piracy cases are increasing in the Singapore Strait,<sup>30</sup> demonstrating both a clear expansion in piracy operations, as well as an everchanging piracy style which is evolving to more complex and “difficult to catch” acts, which only further complicates international maritime law and its associated legal/court systems.

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<sup>28</sup> *Delegates Remain Divided on Best Forum to Discuss Universal Jurisdiction, as Sixth Committee Continues Debate on Principle, Meetings Coverage and Press Releases*, Un.org (2021), <https://www.un.org/press/en/2019/gal3599.doc.htm> (last visited Jan 30, 2021).

<sup>29</sup> “detain and release” refers to holding/detaining prisoners and not holding them for prosecution, but rather returning/releasing the prisoner shortly after the encounter.

<sup>30</sup> Roslan Khasawneh & Aradhana Aravindan, *Piracy spike in Singapore Strait prompts calls for tighter security* U.S. (2021), <https://www.reuters.com/article/us-singapore-piracy/piracy-spike-in-singapore-strait-prompts-calls-for-tighter-security-idUSKBN1ZE0Y7> (last visited Jan 30, 2021).



### Conclusion

Inevitably, maintaining a robust and complex legal system that protects the high seas is accompanied by a high demand for consistent collaboration and constant refinement of codified regulations and agreements. It is clearly necessary to find a way to maintain “law and order” on the high seas, especially in reference to how regulations need to be consistent and evenly applied and that there must be thorough processes in place to enforce the law.

Although a considerable undertaking, the United States and the international community have prevailed in similar situations. Most notably, worldwide efforts demanded a clear and stringent set of regulations and enforcement policies for intellectual property (IP). IP refers to “creations of the mind such as inventions; literary and artistic works; designs; and symbols, names and imaged used in commerce”.<sup>31</sup> With mounting demand from the global community, sound international agreements, law, and organizations, such as the World Intellectual Property Organization (WIPO) of the UN<sup>32</sup> were founded<sup>33</sup> – demonstrating that it is possible to construct legal systems that not only have a strong regulatory framework but are also equally applicable abroad.<sup>34</sup> Through constant international demand, refinement, and collaboration, IP law remains an emerging area that is consistently enforced, a parallel not found with maritime piracy.

<sup>31</sup> *What is Intellectual Property (IP)?*, Wipo.int (2021), <https://www.wipo.int/about-ip/en/> (last visited Feb 11, 2021).

<sup>32</sup> *Inside WIPO*, Wipo.int (2021), <https://www.wipo.int/about-wipo/en/> (last visited Feb 11, 2021).

<sup>33</sup> *Summary of the Convention Establishing the World Intellectual Property Organization (WIPO Convention)* (1967), Wipo.int (2021), [https://www.wipo.int/treaties/en/convention/summary\\_wipo\\_convention.html#:~:text=WIPO%20is%20an%20intergovernmental%20organization,United%20Nations%20system%20of%20organizations.&text=The%20two%20bureaus%20were%20united,virtue%20of%20the%20WIPO%20Convention](https://www.wipo.int/treaties/en/convention/summary_wipo_convention.html#:~:text=WIPO%20is%20an%20intergovernmental%20organization,United%20Nations%20system%20of%20organizations.&text=The%20two%20bureaus%20were%20united,virtue%20of%20the%20WIPO%20Convention.). (last visited Feb 11, 2021).

<sup>34</sup> *Berne Convention for the Protection of Literary and Artistic Works*, Wipo.int (2021), <https://www.wipo.int/treaties/en/ip/berne/> (last visited Feb 11, 2021).

As long as debate and discrepancies continue to be negotiated under UNCLOS and the United States Code, piracy will continue to be unchecked. In the status quo, an essential and fundamental component of a structurally sound maritime piracy law framework necessitates the premise of international collaboration and cooperation.

With rising governmental tensions throughout regions of major maritime lanes and an expanding system of complex piracy networks, the United Nations, NATO, and numerous other international organizations, in addition to the efforts of the international community at-large, will be forced to continue to play a vital role in the further development of international maritime piracy law; especially in providing specific details as to the prosecution and repression framework – with the ultimate expectation of establishing a set and explicit structure to successfully control, mitigate, and enforce maritime piracy law. Albeit, without strong international maritime agreements, regulations, collaboration, and an overall unified legal system for the prosecution and deterrence of piracy, the high seas will continue to bear witness to the dangers of maritime piracy and the shortcomings of a proper legal system regulating the high seas.

### **Acknowledgments**

The author expresses his sincerest gratitude to Advisor Cheryl Arflin, J.D. on the faculty of the College of Business at Florida Atlantic University, for her continuous guidance, technical insight, and mentorship throughout the authorship and publication process.