



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

MARITIME LAW AND UNCLOS: EXPLORING MARITIME PIRACY IN INDIAN CONTEXT

-Shambhavi Pushkar Gokhale

INTRODUCTION:

During the 16th century, a bitter rivalry unfolded between Catholic Spain and Protestant England under Queen Elizabeth I. As Spain's empire flourished due to the vast treasure drawn from the Americas, it began to overshadow the might of the English empire. To counter Spain without declaring actual war, Queen Elizabeth I tactfully issued a Letter of Marque to Francis Drake, a private ship captain. This document authorized him to plunder and disrupt Spanish shipping under royal sanction. It served as an official license that legitimized state-sponsored piracy. The Letter of Marque was the sole legal instrument that distinguished a privateer from a pirate.¹ This practice was abolished by the Paris Declaration of 1856, but it had an influence on the The United Nations Convention on the Law of the Sea 1982 which explicitly defined "piracy" as any illegal act of violence or detention committed for "**private ends**" on the high seas against another vessel. This ultimately also had an impact on the Indian Maritime laws through Maritime Anti-Piracy Act 2022. This article attempts to explain the concept of piracy under the UNCLOS 1982 and its subsequent effect on Indian laws through the introduction of the Maritime Anti-Piracy Act 2022 (MAPA 2022).

THE UNITED NATIONS CONVENTION ON THE LAW OF SEA:

"The air belongs to this class of things for two reasons. First, it is not susceptible of occupation; and second its common use is destined for all men. For the same reasons the sea is common to

¹ Nicky Nielson, Francis Drake's raids on Spanish colonial ports netted tons of loot, History Net, 29th January 2007

all, because it is so limitless that it cannot become a possession of anyone, and because it is adapted for the use of all, whether we consider it from the point of view of navigation or of fisheries” The above quote comes from the book “Mare Liberum” by Hugo Grotius. Hugo Grotius was a Dutch scholar and jurist who Grotius argued that the open sea cannot be owned by any single sovereign nation because water cannot be physically possessed or mapped into bound territories like land. He developed the doctrine to challenge Portugal’s claimed monopoly over trade routes in the Indian Ocean and East Indies and emphasized that the high seas must remain open to all nations for peaceful navigation and maritime commerce². He was countered by English scholar John Selden in 1635 through his book “Mare Clausum who argued that sovereigns could indeed claim dominion over surrounding waters. ³For years after this debate, countries used the cannon rule for delimitation of maritime boundary where the range of the cannon deciding the border of the country in relation to the sea. However, in the later stages as the ammunition technology advanced the range of cannons increased causing issues with the implementation of the cannon rule, thus it led to the formulation of various treaties. The most prominent one out of these was UNCLOS. ⁴

The first conference of UNCLOS took place in 1958 where four major conventions were established and codified by 86 States. These conventions include:

- A. Convention on the Territorial Sea and the Contiguous Zone
- B. Convention on the High Seas (which established early international rules on piracy)
- C. Convention on Fishing and Conservation of the Living Resources of the High Seas
- D. Convention on the Continental Shelf

However, this conference failed to agree on the maximum limit of the Territorial Sea. Some countries-maintained cannon-shot" rule while others unilaterally claimed 6, 12, or even 200 nautical miles. In the subsequent conferences of UNCLOS between 1973 to 1982, a universal 12-nautical-mile limit for the Territorial Sea and 200-nautical-mile Exclusive Economic Zone (EEZ) were established.

² Doctrine of Mare Liberum, Wikipedia

³ Doctrine of Mare Clausum, Wikipedia

⁴ Christian Pogies, The Cannon- A Tool for Delimiting Maritime Space, Legal History Insight

The definition of piracy was introduced in Article 101 of the United Nations Convention on the Law of the Sea was signed on 10 December 1982 in Montego Bay by the Jamaican Convention. Piracy was defined as;

(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).⁵

High Seas described above are the international waters which lie beyond the Exclusive Economic Zone of a country and beyond the national coastline that is 200 nautical miles from the coast. Article 100 of the convention establishes a general legal duty on all states to cooperate in the suppression of piracy and Article 105 gives warships and military aircrafts the authority to exercise universal jurisdiction in the high seas. The article also provides the seizing state the authority to prosecute the criminals under their domestic law.

The definition was successful in establishing a clear concept of piracy and helped distinguish between state motivated military operations and piracy conducted by private individuals. However, on the other side, there also are some inherent problems with the same when it comes to addressing modern issues. They are as follows:

1. The private ends clause excludes any politically motivated acts of terrorism by non-state political actors like terrorist groups and organisations. There is also a possibility that private acts of piracy maybe linked to political insurgency and motives through proof of funding or support, raising questions on the jurisdiction under Article 101 of the UNCLOS.

⁵ *United Nations Convention on the Law of the Sea*, Dec. 10, 1982, 1833 U.N.T.S.

2. The definition specifies that an act of international piracy can only be constituted if it occurs in the high seas or a place outside jurisdiction of any State. However, if an act of piracy occurs in the territorial waters that is within 12 nautical miles of the coast of a State, the domestic criminal code of that State will apply, and such act would be called armed robbery at sea. The foreign warships will thus not have jurisdiction to seize or intervene in such an act which becomes a problem if the domestic laws are not stringent or have weak implementation authority.
3. There exist four prominent zones or boundaries when it comes to maritime law. This includes the territorial waters (0 to 12 nautical miles), contiguous zone (12 to 24 nautical miles), exclusive economic zone (up to 200 nautical miles) and high seas (beyond 200 nautical miles) from the coast. For island countries, an additional category of archipelago waters was added where even more part of the high seas was brought under the territorial jurisdiction of individual states. This expansion of territoriality through newly established zones causes shrinkage of the high seas. This makes it possible for piracy to occur in territorial waters or zones under the sovereignty of an individual country, especially in respect to smaller and weaker countries which may not have effective strong central authority or in countries who have relatively lax punitive measures for the act or in countries which lack effective naval infrastructure to counter such acts.
4. The Harvard Draft on Convention of Piracy made under the supervision of Professor Joseph Bingham as a private project allowed the concept of reverse pursuit under Article 7 where a State can follow a pirate vessel beyond their territorial waters in order to capture the same, provided that the third-party State does not object to the pursuit done in its territorial waters. Once the pirate vessel is seized and arrested, the pursuing State will relinquish them to the third-party state, unless an objection is made. However, the UNCLOS does not allow this to be executed. An exception to this was in 2008 when a provision was made about the sovereignty of Somalia and other countries were allowed to act in their territorial waters against piracy, but this exception was explicitly exclusive in nature.
5. The nature of the Exclusive Economic zone is unique and thus it does not fall under territorial waters, nor does it fall under the high seas. Thus, it is difficult to ascertain who has the authority to regulate piracy in that zone. Some scholars consider EEZ to be a part of the territorial sovereignty as its function is closer to territorial waters than high seas while some consider it a part of the high sea. Thus, this creates a conflict

between the sovereignty and authority of the State and the application and jurisdiction of UNCLOS when it comes to EEZ.⁶

MARITIME ANTI-PIRACY ACT 2022: ENFORCEMENT OF UNCLOS PROVISIONS

The Maritime Anti-Piracy Act, 2022 (MAPA) provides India with a comprehensive domestic legal framework to prosecute piracy in the sea and aims to directly fulfil India's international obligations under UNCLOS. The Act adopts the UNCLOS definition of piracy under Section 2(1)(h) and penalizes illegal acts of violence, detention, or depredation committed for private ends beyond national territorial waters. The key provisions of this act include;

- (a) Section 1 and Section 9 establish extraterritorial and universal jurisdiction to bridge the gap between naval captures on international waters and domestic court prosecution.
- (b) Furthermore, Section 3 and Section 4 prescribe stringent punishments which include life imprisonment and the death penalty if piracy causes or attempts to cause death, it also penalises the attempt, abetment, or conspiracy to commit piracy with up to 14 years of imprisonment.
- (c) Section 8 empowers the Central Government to notify Sessions Courts as Designated Courts and establishes "disembarkation jurisdiction" whenever suspects or captured vessels are brought into Indian territory.
- (d) Section 11 introduces an evidentiary shift by creating a statutory presumption of guilt if piratical weapons, explosives or equipment are seized from the accused. Section 6 excludes sovereign warships and government vessels from pirate classifications.⁷

There also exist some key issues or contentions in relation to the provisions of the Act. They are as follows:⁸

⁶ Fieuducik Bartosz, The Definition of Piracy under Article 101 of the 1982 United Nations Convention of the Sea – An Attempted Legal Analysis, Bialostockie Studia Praunicze, 2011

⁷ Maritime Anti-Piracy Act 2022, PRS India

⁸ Qazi Furooz Shamas, The Maritime Anti-Piracy Act, 2022, Impact and Policy Research Institute, December 7th, 2024

- i. Presumption of Innocence is a core legal principle when it comes to criminal law however the Act presumes guilt if certain conditions are satisfied and thus the burden of proof to prove innocence rests on the accused.
- ii. The imposition of death penalty as a punishment for all those guilty of piracy that results in death or attempted act that results in death is considered as controversial in nature.
- iii. The Act incorporates the private ends clause in the definition of piracy from the UNCLOS treaty. This excludes politically motivated terrorism done by non-state actors and organisations.
- iv. The definition of piracy and the act do not address cyberpiracy conducted from the internet based maritime cargo systems and other attacks on shipping industry.
- v. The two ship requirement of the UNCLOS is carried forward in this act which excludes hijacks, takeovers or mutiny carried out by the crew or people of the ship on the same ship⁹.

On December 14th, 2023, the Malta flagged MV Ruen was boarded by pirates in the Arabian Sea and later navigated into Somali territorial waters and subsequently 18 crew members were held hostage. INS Kolkata backed by INS Subhadra intercepted the vessel outside the Indian coast and the 35 Somalian pirates arrested were given life imprisonment by the Mumbai Sessions Court after all of them surrendered during their custody. The case became a landmark judgement as an application of the MAPA 2022 provisions and was appreciated for its speedy nature. To conclude we can say that with the changing world dynamics and geopolitics, issues like maritime security have become pertinent in nature making continuous development of laws to fit the modern scenario a necessity.

⁹ Satvik Pareek and Avadhesh Pareek, *A Limited Step Forward? Analysing the Maritime Anti-Piracy Act, 2022*, Centre for Maritime Law, National Law University Odisha, 24th August 2023