The International legal framework on maritime piracy and armed robbery against ships

Fight against piracy: What solutions for the eradication of acts of maritime piracy in the ATLAFCO zone?

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Harvesting today without compromising tomorrow ...
International legal framework for maritime security

- **UNCLOS 82** (United Nations)

- **IMO anti-piracy programme** (soft law)


- **SOLAS security amendments 2002** (Int’l Convention for the Safety of Life at Sea, 74)
UNCLOS PIRACY PROVISIONS

Article 100 - Duty to co-operate in the repression of piracy
Article 101 - Definition of piracy
Article 102 - Piracy by a warship, gov’t ship or gov’t aircraft whose crew has mutinied
Article 103 - Definition of a pirate ship or aircraft
Article 104 - Retention or loss of the nationality of a pirate ship or aircraft
Article 105 - Seizure of a pirate ship or aircraft
Article 106 - Liability for seizure without adequate grounds
Article 107 - Ships and aircraft which are entitled to seize on account of piracy
Article 110 - Right of visit
Article 111 - Right of hot pursuit
Maritime piracy: Legally, according to Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) maritime piracy is defined as any of the 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 international law, therefore, piracy at sea is an act of violence or detention perpetrated on the high seas against a ship outside of state's jurisdiction of 12 nautical miles off its coast.
Armed robbery at sea: Conversely, acts of violence against ships within territorial waters, are defined as armed robbery at sea.

According to Resolution A.1025(26) (Annex, paragraph 2.2) of the 'Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships' of the International Maritime Organization (IMO), armed robbery against ships covers any of the following acts:

- a. any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea;
- b. any act of inciting or of intentionally facilitating an act described above.
The relevance of differentiation

- The differentiation is particularly relevant for:
  - The applicability of national or international law
  - Consideration of counter measures stemming from this.
- It is therefore of primary importance for settling jurisdictional issues when a suspect is arrested, prosecuted and convicted.
- Because of their significance for global maritime security, both acts of violence – piracy and armed robbery – are treated on equal grounds for the purposes
Duties of Countries under UNCLOS

- UNCLOS provides that all States

- Have an obligation to cooperate to the fullest possible extent in the repression of piracy (art. 100 Duty to cooperate in the repression of piracy): All States shall 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

- Have universal jurisdiction on the high seas to seize pirate ships and aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board (art. 105 Seizure of a pirate ship or aircraft)
Duties of Countries under UNCLOS

- *(Article 110 right of visit)* inter alia, also allows States to exercise a right of visit vis-à-vis ships suspected of being engaged in piracy.

- It is also important to **distinguish the crime of piracy from armed robbery against ships**, which can occur within the internal waters and territorial sea of a coastal State.

- In accordance with Part II of UNCLOS, in cases of armed robbery against ships, primary responsibility for enforcement normally falls on the coastal State.
Other relevant instruments

- Armed robbery against ships also constitutes an offence under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention)

- And, in some cases, the 2000 United Nations Convention against Transnational Organized Crime
SUA as a tool to fight against piracy

- Petty theft (subsistence piracy)
- Clandestine boarding while ship underway
- Violent attack while ship underway
- Kidnap for ransom
- Hijacking (phantom ships)

**frequency**

**sophistication; level of violence; applicability of SUA Conv**

**COASTAL ZONE**

**HIGH SEAS**
SOLAS 2002 + ISPS CODE

CHAPTER V
Safety of Navigation

Accelerated deadline for carriage of AIS

CHAPTER XI
Special measures to enhance maritime safety

CHAPT XI-1
... enhance maritime safety

CHAPT XI-2
... enhance maritime security
SOLAS 2002 + ISPS Code as tools against piracy and armed robbery against ships?

- Exchange of information
- Risk based decision making
- Security culture
  - Seafarers
  - Shipping companies
  - Port facilities
  - Governments
- Ship security alert system
- Automatic identification system
Maritime security: common international legal framework

- CRIMINAL
  - UNCLOS
  - SUA

- REGULATORY
  - ISPS Code
Thanks for your attention

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