



The legal economic effects of maritime piracy

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Abstract. *Maritime piracy has long been a significant threat to global shipping, with profound economic and legal implications. This journal explores the economic effects and legal actions associated with maritime piracy. The economic impact of piracy is substantial, costing the international economy between \$7 billion and \$12 billion annually. The rise in piracy has led to higher ransom demands, with some payments reaching record amounts, and has significantly increased the cost of maritime insurance, particularly in high-risk zones. From a legal perspective, the journal examines the evolution of piracy laws, highlighting the United Nations Convention on the Law of the Sea (UNCLOS) and its definition of piracy. The legal framework under UNCLOS includes three main elements: acts committed for private ends, occurring on the high seas, and involving two ships. The journal also discusses the concept of universal jurisdiction, which allows any state to prosecute pirates, though prosecution must follow the domestic laws of the capturing state. The International Maritime Organization (IMO) has introduced several conventions and initiatives, such as the Djibouti Code of Conduct, to enhance maritime security. This journal will focus on the economical effect and the suitable legal actions to punish and prevent the acts of piracy.*

Keywords: Piracy, Maritime, UNCLOS, Economy

1. Background

In the past, the maritime industry was shaped by factors like access to navigational equipment, which played a big role in its success. But today, challenges have shifted. Now, piracy and the global financial crisis stand out as two major issues that heavily impact the industry. Piracy is a practice that dates back centuries, with a long and rich history. In earlier times, it was governed by customary laws and practices that developed organically. It wasn't until the 20th century that these unwritten rules started to be formally recognized and codified into law. As piracy has evolved over the years, so too have the laws surrounding it. However, the rise in maritime piracy has also brought new legal challenges and complications that need to be addressed.

By the end of 2010, approximately 600 seafarers from over 18 countries were being held hostage by pirates including Bangladesh, China, Ghana, Greece, India, Indonesia, Kenya, Korea, Myanmar, Pakistan, the Philippines, Sri Lanka, Sudan, Ukraine, United Kingdom, Turkey, Yemen, and Vietnam. Piracy undeniably impacts the global shipping industry, but what is its actual cost to the world? The *One Earth Future* (OEF) Foundation conducted an extensive study as part of its Oceans Beyond Piracy project to assess this cost. According to

their findings, maritime piracy is estimated to cost the international economy between \$7 billion and \$12 billion each year (Bowden, 2010, p. 2).

This illegal activity is happening due to various reasons, but the one main reason for piracy is poverty, where the pirates are actually coming from poor backgrounds and economical situations. However, they brought negative impact as they illegally invade vessels, demanding ransom and exploit the ship crew even going as far as killing their hostages, obviously breaking the law and crossing a line on human rights. This journal will further explain two different perspectives coming from legal and economical point of views, as it approaches on the economical counts of monetary loss of the vessel companies whether as an independent company or representing the country, and the legal issues regarding the origin country of the pirates, the coastal regulations, and the potential impact on the countries affected by piracy. This research will eventually draw a red lining between a variety of previous researches mainly focusing on either economic effects and legal actions on piracy, further talking about economic loss and gains as well as the suitable actions to either anticipate or punish the culprits.

2. Theoretical Study

The international framework within the topic of piracy is one of the most crucial factor working behind the legal processes as we know that to progress with an issue involving several countries and *Non-Governmental Organizations* (NGO's) that was part of a national economic aspect itself needs attention from all sides as to protect, prevent, and provide a better solutions knowing two things; firstly, any national country did not bargain with terrorists or any threatening armed civilians, and secondly, any vessel from any country that sailed the international seas shall not be held by the countries which the vessel sailed closest to.

Instead of blaming a certain country for the piracy happening on their coastline, finding a preventive solutions and making sure all the vessels sailing commercially and executively are safe should be the number one priority. This journal will reveal the reasoning behind piracy, economical loss occurring due to hijacking and ransoming of a vessel, and rational legal actions that are available for each countries involved also punishing actions towards the culprits.

3. Study Method

The method used in the preparation of this journal is a critical review, referencing several journal sources. A critical review involves evaluating the strengths and weaknesses of the ideas and content within a journal article. It provides description, analysis, and interpretation, enabling readers to assess the value of the article. Data collection was conducted

qualitatively where information and data were systematically and contextually gathered through online research, literature reviews, and case study research. This descriptive research is aimed to project a systematic picture to describe maritime piracy from the perspectives of law, foreign policies, regional and international teamwork, and economics. Qualitative approach has been developed to measure the quality and significance of the research's results of other different studies and comparisons.

Furthermore this journal will be a combinations of various journals released previously with the focus on economic and legal issues and solutions on piracy, combining insights on both economic and legal perspectives of the previous journals.

4. Piracy

Piracy is an act of which one or a group of individuals invades a large carrier or commercial vessel in open waters with an intention of taking over, thus hijacking and taking advantage of the hijacked vessel and everything inside. Piracy usually happened upon a voyaging ship or a courier vessel where the "pirates" took over the vessel threatening to commit slaughter towards the vessel crews or harming the entire vessel. Piracy occurs on the High Seas or in international waters beyond the Exclusive Economic Zones of nations. This common area is advantageous for pirates because it lacks specific national jurisdiction, apart from the authority of the flag states under which the vessels operate. These flag states may or may not implement adequate control measures to prevent, address, and reduce piracy incidents (Smith-Godfrey, 2018, pp. 1-2).

The definition of piracy in the United Nations Convention on the Law of the Sea (UNCLOS) draws from the 1932 Harvard Draft and the 1958 Convention on the High Seas. According to Article 101 of UNCLOS, piracy is characterized by three main elements: (i) committed for private ends, (ii) takes place on the high seas and (iii) done by one ship on another ship

To note on the three elements of the definition provided by UNCLOS, the first element states that private ends are a matter of debate. In other words, does it exclude actions carried out with state backing, or does it demand the presence of *animo furandi*, thereby excluding acts driven by political motives (Paige, 2013, pp. 134-144). The International Law Commission (ILC) has clarified that *animo furandi* is not a requirement, as piracy can also arise from motives such as hatred or revenge, rather than solely for personal gain (ILC, 1958). seeing that piracy had to be done for private ends clearly shows lack of state argument for sponsorship (Bahar et al., 2007, p 6; Guilfoyle, 2008, p 690 2010, p 141; Houghton, 2009, p 253). Some scholars argue that *animo furandi* (intent to steal), rather than political motives, is a key element of piracy

(“Morris, 2001, p 337; Kontorovich, 2004, p 183). According to this view, if *animo furandi* (intent to steal) is present, it indicates selfish motives. This means examining *mens rea* (the intent) can help determine whether the act was politically motivated (Kontorivich, 2004, p 183).

The second element of the UNCLOS definition requires piracy to occur on the high seas, as it is closely tied to the principle of universal jurisdiction (Kontorovich, Eugene & Art, 2010, p 447). What’s interesting to note is that both contiguous zone and exclusive economic zone are seen as high seas for the purpose of piracy under Articles 33 and 58 of UNCLOS (Paige, 2013). Some argue that this requirement excludes many cases of maritime violence from the definition, especially those within a state's jurisdiction. For example, piracy in Somalia's territorial waters. The international community could not carry out anti-piracy operations there without the consent of Somalia's Transitional Federal Government (TGF) (Treves, 2009). Some scholars argue that the high seas requirement for piracy limits enforcement because anti-piracy operations cannot take place in a state's territorial waters without permission (Bento, 2011). From an international law perspective, the high seas requirement is essential because it aligns with the principles of sovereign equality and territorial integrity of states, as outlined in the UN Charter. (Ahmad, 2020). The ILC's commentaries on the Articles related to the Law of the Sea (ILC, 1958) clearly shows that The ILC commentaries make it clear that piracy can only occur on the high seas, not within a state's territory. Somalia's TGF allowing the international community to conduct anti-piracy operations in its territorial waters aligns with this high seas requirement. Piracy within Somalia's territorial waters falls under its jurisdiction, so international operations can access these areas only with the Somali government's permission (Azubuiké, 2009).

The high seas requirement may limit the scope of the UNCLOS definition, but it aligns with fundamental principles of international law. However, issues with the UNCLOS definition arise when considering piracy in Nigeria's inland waters (Gulf of Guinea, West Africa), where pirates often target oil-carrying ships to steal oil rather than take the ship or crew hostage (Otto, 2014). These attacks are more like armed robbery than traditional piracy as defined by UNCLOS.

In the third element of UNCLOS’ definition of piracy, under Article 101, requires the involvement of two ships in any act of piracy. This means the illegal act must target another ship, aircraft, or persons or property onboard. Specifically, a "private ship" must carry out the attack against another ship. Therefore, incidents like crew mutiny, passenger takeover, or seizure of the same ship do not meet the "two-ship" requirement. For example, in the *Achille Lauro* case, members of the Palestine Liberation Front (PLF) hijacked the ship they boarded as passengers. Since no second ship was involved, it did not qualify as piracy under Article 101. To address such

gaps, the SUA Convention was adopted to expand the legal framework for maritime security (Petrig, 2013, Paige, 2013)

The shortcomings of the UNCLOS piracy definition have been addressed through the adoption of the SUA Convention and the IMO's Code. Over time, the UNCLOS definition has become more established. However, a current issue is that while some countries have included the UNCLOS definition in their domestic laws, many have not. For instance, India's domestic law does not define piracy, leading to delays in trials or difficulties in prosecuting captured pirates effectively (Ahmad, 2020). By understanding these circumstances we can picture piracy as an illegal activity with a more complex activity rather than armed heist. As we witnessed more how complicated and entangled piracy is with international law and political arguments that rather contradicts with the legal activity as well as the economic impact to the countries where it occurs and the countries or companies that got impacted with.

5. Economical Impact

From the late 17th to early 18th century, the act of piracy has terrorized the global maritime activities becoming a huge threat on the commercial and trade activities thus known as the 'Golden Age' of piracy. Famous names such as Blackbeard, Henry Morgan and William "Captain" Kidd had been notoriously known to roam the oceans hoarding massive amounts of precious metals, cargo, supplies and weaponry off of their victims. This showed how massive the impact was imprinted to the history of maritime activity. By far, piracy had significantly affect the global trade as 75-90% of global trade is transported by ship. The economic and security implications of maritime piracy are far-reaching.

Piracy is driven by the volume of cargo transported by ships. According to UN statistics, the global fleet consists of about 91,000 vessels, but only around 60,000 (65%) are cargo ships. These include approximately 32,000 general cargo vessels and 28,000 bulk carriers. Pirates mainly target bulk carriers, making them the preferred choice among nearly 60,000 potential targets (Smith-Godfrey, 2018).

a. Ransom

In recent years, the cost of piracy has risen significantly due to higher ransom payments for hijacked ships. Somali pirates typically demand ransoms, while pirates in other regions often steal the ship or its cargo instead of ransoming the crew and vessel. In November 2010, Somali pirates received a record-breaking ransom of \$9.5 million to release the *Samho Dream*, a South Korean oil tanker (BBC News). In 2010, ransom costs reached record highs, starting with a \$7 million payment in January to free the Greek supertanker *MV Maran Centaurus*, which was

carrying \$162 million worth of crude oil from Saudi Arabia to the United States (Kraska, 2010). The ransom highlighted the sharp rise in ransom prices in recent years. In 2005, the average ransom was about \$150,000 (Payne, 2010). Rising ransom payments are leading to longer negotiation times, which prolong the period seafarers are held hostage. In 2010, the average negotiation time increased significantly, with ships held for an average of 106 days between April and June, compared to 55 days in 2009. By November 2010, the last four ships released had been held for an average of 150 days (NPR 2010). Seafarers now face the prospect of being held captive for three to four months.

The total cost of a ransom is estimated to be about twice the amount paid to pirates. This includes expenses like negotiation costs, counseling for psychological trauma, ship repairs from damage during captivity, and delivering the ransom, often by helicopter or private plane (BBC News). Significant costs also arise from ships being out of service. For example, holding a cargo ship for two months at a charter hire rate of \$50,000 per day can cost around \$3 million (Kraska, 2010).

b. Insurance

To address the rising threat and cost of ransoms, the maritime insurance industry has raised shipping rates and premiums, particularly in high-risk piracy zones. Shipping insurance is categorized into four main types: war risk, kidnap and ransom, cargo, and hull insurance (Bowden, 2010).

- War Risk insurance is an additional charge for vessels traveling through designated "war risk areas." In May 2008, the Gulf of Aden was classified as such by the Lloyd's Market Association (LMA) Joint War Committee. Since then, war risk premiums have increased 300-fold (according to insurance broker). War Risk premiums rose dramatically from \$500 per ship per voyage to as much as \$150,000 per ship per voyage by 2010 (UNODC). Other areas impacted by piracy, like the Malacca Strait, were also designated as war risk zones between 2005 and 2006.
- Kidnap and Ransom insurance typically covers the crew against ransom demands but not the vessel or cargo. Recently, some marine insurance policies have started covering both crew and property. Insurance giant Munich Re estimates that Kidnap and Ransom premiums increased tenfold between 2008 and 2009 (Bowden, 2010).
- Cargo insurance protects goods transported by sea. In recent years, additional premiums for cargo traveling through piracy-prone areas have increased by \$25 to \$100 per container (Bowden, 2010).

- The insurance for Hull covers damage to the ship itself, including incidents like rough seas, collisions, sinking, capsizing, grounding, fire, or piracy. It is estimated that piracy has doubled the cost of hull insurance.

Certainly we can see how expensive it costs to ensure a ship's safety and even with all the insurance provided, we still can't be sure if the ship is not going to be hijacked or not. According to the One Earth Future (OEF) working paper, the calculation is done by estimating the largest piracy-related insurance premiums (War Risk and Kidnap & Ransom), then calculate these rates based on 90% of the total ship traffic passing through the high-risk Gulf of Aden (about 30,000 ships). After that exclude 10% of the traffic, assuming these ships reroute around the Cape of Good Hope and avoid incurring premiums for the war risk region. This calculation provides the total amount payable for War Risk and Kidnap & Ransom (K&R) insurance if all ships bought this coverage. Assuming not all ships purchase insurance, we estimate a lower bound with 10% of ships insured and an upper bound with 70% insured (Bowden, 2010).

	2009	2010
Kidnap & Ransom Surcharge	\$540 million	\$540 million
War Risk Premium Surcharge	\$4.05 billion	\$4.05 billion
TOTAL INSURANCE COSTS (if all ships purchased)	\$4.59 billion	\$459 billion
Lower Bound Estimate (10%)	\$459 million	\$459 million
Upper Bound Estimate (70%)	\$3.213 billion	\$3.213 billion

As piracy grows worldwide and insurance against piracy becomes a more profitable industry, premiums may actually decrease due to increased competition. A Marine Underwriter at Lloyd's of London remarked, "Traditional carriers have been undercutting each other so much to secure premiums that prices have dropped drastically" (Bandel & Crowley, 2010).

6. The Legal Actions, Protection and Prevention

Now as we know, the universal jurisdiction system over pirates is firmly established in international law (Kontorovich, Eugene & Art, 2010; Paige, 2013). As mentioned earlier, the Harvard Draft, which influenced the piracy laws in UNCLOS, did not treat piracy as an international crime. The drafters made it clear that their definition of piracy was meant only as a basis for universal jurisdiction over pirates, not to classify piracy as an international crime

(Harvard Research in International Law, 1932). They emphasized that the purpose of the code was "not to unify the various national laws on piracy, nor to establish uniform measures for punishing pirates, but to define this exceptional basis for state jurisdiction..." (Harvard Research in International Law, 1932). Thus, all states have jurisdiction over pirates, although they may choose not to use it for capturing and prosecuting them. Prosecution must follow the domestic law of the capturing state, as it is up to each state to create legislation criminalizing piracy. This universal jurisdiction is different from the customary universal jurisdiction for war crimes and crimes against humanity, which is based on the severity of the crimes (Paige, 2013).

Universal jurisdiction for piracy merely grants states authority to prosecute acts committed outside their usual jurisdiction. Unlike war crimes or crimes against humanity, the nature of the act itself is not the basis for exercising this jurisdiction (Paige, 2013). In other words, piracy is not classified as part of international criminal law because its jurisdiction and the basis for that jurisdiction are distinct (Paige, 2013); Boister, 2012). To address the rise in maritime piracy, the International Maritime Organization (IMO) has introduced several international conventions for member countries to implement. These include the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention), the International Convention for the Safety of Life at Sea (SOLAS), and the International Ship and Port Facility Security Code (ISPS Code). Additionally, the IMO supports governments lacking technical expertise or resources to manage a safe and efficient shipping industry through initiatives like the Integrated Technical Co-operation Programme (ITCP) and the Djibouti Code of Conduct (Maku et al., 2015). The IMO implements anti-piracy laws through various actions. Under the Djibouti Code of Conduct, the IMO and UNODC review national piracy laws, train lawmakers, maritime law enforcement, and prosecutors in handling piracy arrests, and offer direct assistance to states upon request (Maku et al., 2015).

Unlike conventions addressing war crimes or crimes against humanity, the UNCLOS definition of piracy does not describe the offense in detail. For example, the 1948 Genocide Convention explicitly refers to genocide as a crime under international law that must be prevented and punished (Article 1), defines the act (Article 2), and specifies that all individuals responsible for genocide will face punishment (Article 4)(Genocide convention, 1948). Thus, the genocide convention provides in clear terms the following: (i) the act of genocide is an international crime, (ii) the acts will constitute genocide, and (iii) that the act of genocide is punishable. In contrast, UNCLOS Article 101 only defines what constitutes an act of piracy. It does not specify that such acts are punishable or outline procedures for dealing with pirates once they are apprehended (Ahmad, 2020). What's interesting is that the article 105 empowered the capturing state of the courts to choose the punishment for the

culprits and determine the fate of the captured ship and its properties (Ahmad, 2020). As discussed earlier, the drafters of the Harvard Draft, which influenced the Convention on the High Seas and UNCLOS, did not view piracy as an international crime. Instead, they intended it to serve as a basis for extending state jurisdiction beyond national borders, enabling the apprehension and prosecution of pirates. The prosecution itself was meant to be carried out under the domestic laws of the states capturing the suspects (Petrig & Geiß, 2011). Following this, the United Nations General Assembly urged member states to take action “. . . appropriate steps under their national law to facilitate the apprehension and prosecution of those who are alleged to have committed acts of piracy . . .” (UNGA, 2010). The General Assembly also encouraged member states to adopt suitable national legislation to support enforcement personnel in preventing, reporting, and investigating incidents, and bringing alleged perpetrators to justice in accordance with international law.

The second measure is the Vessel of Self-Protection. The IMO has issued documents offering information, guidance, and recommendations to governments, ship owners, masters, and seafarers on preventing and addressing armed robbery against ships. Additionally, the Best Management Practices developed by the shipping industry have been shared by the IMO through the Maritime Safety Committee (MSC) Circular. In January 2010, a code of practice for investigating piracy and armed robbery against ships was released, and the IMO is collaborating with INTERPOL to incorporate crime scene investigation guidelines into its resources for seafarers (Maku et al., 2015).

The third measure is Regional Response. The IMO supports maritime security capacity building through initiatives like the ITCP and multi-donor trust funds, such as the IMO Djibouti Code of Conduct Trust Fund, the International Maritime Security Trust Fund, and the IMO Malacca and Singapore Straits Trust Fund. These funds encourage contributions from IMO member states, international and regional organizations, and the maritime industry. The Train-the-Trainer program focuses on enhancing the maritime security knowledge of instructors at national maritime training centers and candidates from the shipping industry. The goal is to equip them to train others, improving the implementation of IMO's maritime security measures, like the ISPS Code (Maku et al., 2015).

Lastly, there is Coordination. In January 2012, the IMO appointed Mr. Hartmut Hesse as Special Representative for Maritime Security and Anti-Piracy Programmes. He is responsible for implementing the Djibouti Code of Conduct and representing the IMO at piracy-related meetings. After a meeting between the UN and IMO Secretary-Generals in January 2012, IMO held a counter-piracy conference and formed partnerships with organizations like the FAO, UNPOS, UNODC, WFP, and the EU. These partnerships aim to improve coordination and strengthen anti-piracy efforts in the Western Indian Ocean and Gulf of Aden, as well as find long-term solutions to piracy in Somalia. IMO also publishes regular reports on piracy and armed robbery incidents (Maku et al., 2015).

7. Conclusion

Maritime piracy remains a significant challenge with profound economic and legal implications. Addressing this issue requires a multifaceted approach, including strengthening legal frameworks, enhancing preventive measures, promoting international cooperation, and addressing the root causes of piracy. By implementing these recommendations, the global community can mitigate the impact of piracy and ensure safer and more secure maritime activities. The legal and institutional efforts to fight maritime piracy face several challenges, particularly at the national level, which require legal solutions. Many countries encounter these issues. While the UN has raised awareness about these problems, it has struggled to achieve a global agreement among nations. To prevent pirate attacks, certain precautions can be taken, such as: Staying alert, Improving surveillance, Using lighting and detection equipment, Sounding alarms, Notifying other ships and coastal authorities, Illuminating suspicious vessels. International and regional organizations also play a crucial role in this process by providing platforms for discussion and helping to identify underlying issues.

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