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PIRACY, NAVAL ENFORCEMENT, AND PROSECUTION: INDIA–US COMPARATIVE LEGAL FRAMEWORK UNDER UNCLOS

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Abstract

High seas piracy is among the most endemic problems to international maritime security, international trade and freedom of navigation. Although there has been improved technology and the use of coordinated naval patrols, the cases of piracy have been reported in strategic sea routes like the Gulf of Aden, Arabian Sea, and the Western Indian Ocean. This article discusses the piracy, naval enforcement and prosecution in the comparative legal approach of India and United States based on the United Nations Convention on the Law of the Sea. It assesses the interpretation and acts of international obligation of the two countries in regards to suppression of piracy, universal jurisdiction, apprehending of offenders and criminal prosecution. Whereas India depends on domestic laws like the Maritime Anti-Piracy Act, the United States employs old federal laws on piracy and has the military capability to back it up. The paper identifies the gaps in enforcement, lack of evidence, and conflict of jurisdiction, as well as the necessity to further enhance international collaboration to deal with changing threats of maritime piracy.

Introduction

Historically, piracy has been seen as *hostis humani generis*, or the enemy of all mankind, since it poses a threat to maritime trade, human safety, and international peace. Piracy has resurfaced in some areas in the modern times, specifically in the Horn of Africa, the gulf of Guinea, the Strait of Malacca and the Indian ocean. Merchant ships that transport energy resources, food products, and industrial products are still susceptible to hijacking, kidnapping, armed robbery, and ransom-based criminal activities. Such attacks not only put seafarers at risk but are also costing a lot of money in terms of insurance premiums, rerouting of ships as well as the cost of deploying naval forces.

The major international law that regulates piracy is the United Nations Convention on the Law of the Sea particularly Articles 100 to 107 and 110 that define the concept of piracy and empower all states to collaborate in the suppression of piracy. UNCLOS gives universal jurisdiction and any state can seize pirate vessels on the high seas and prosecute pirates. Nevertheless, its realisation is highly pegged on national law, maritime strength, and legal willingness of individual nations.

India and the United States hold significant roles in the international maritime governance. India strategically lies close to key sea lanes in the Indian Ocean and has been playing an increasing role in anti-piracy patrols and rescue operations. With its wide maritime jurisdiction and long-standing maritime legal traditions, the

United States has been a key participant in multinational anti-piracy operations. Both nations advocate freedom of shipping and of the seas, but their national laws on piracy also vary greatly.

This paper compares the Indian and the United States legal system with regard to piracy, the sea police, police powers (arrest authority), evidence requirements, prosecution, and adherence to the UNCLOS. It also assesses the legal issues and suggests steps towards greater international cooperation in the fight against maritime piracy.

Main Body

1. concept and legal meaning of piracy as stipulated by UNCLOS.

One of the most ancient crimes in international law that has still been retained in contemporary maritime law is piracy. The main legal definition of the concept of piracy is found in the convention of the law of the sea of the United Nations, especially in Article 101. Under this, the piracy is an unlawful use of violence, arrest or destruction of property in the personal interest by the crew or passengers of a private ship or aircraft and imposed on another ship, aircraft, persons, or property upon the high seas, or beyond the territorial waters of any single state. This definition is representative of the traditional international law and is used to underpin domestic anti-piracy laws across the world.

The term of private ends has raised much controversy in the law. Conventionally, it does not cover politically inspired violence, like terrorism, insurgency or state-sponsored attacks. Nevertheless, with new piracy, criminal networks of organized criminals often unite, making it difficult to distinguish between individual financial interests and politically-connected violence. The other restriction is the "two-ship requirement," i.e. piracy requires a ship attacking a ship. The hijacking of an individual ship or mutiny may not be exactly in the traditional definition. Through these interpretative issues, states have supplemented

UNCLOS with domestic legislation and regional agreements.

UNCLOS also makes a distinction between piracy and armed robbery at sea. Only high seas or beyond national jurisdiction can result in piracy but attacks in territorial waters can be prosecuted by criminal law of the coastal state. This difference matters since in most cases, incidents that are reported as piracy happen in the territorial waters, which restricts the actual application of universal jurisdiction. As a result, collaboration with littoral states is necessary to provide enforcement.

In the United States, UNCLOS offers the international benchmark, whereas in India, it is incorporated domestically. To bring domestic legislation into accord with the provisions of UNCLOS, India passed specific anti-piracy laws. The United States resorts to a mixture of treaty commitments, federal statutes, and centuries old court precedents. These differences notwithstanding, the two systems are aware of the fact that piracy is a serious menace to international shipping and trade.

The UNCLOS definition is still useful as it provides the states with a common language of law. However, modern dangers, including cyber-enabled hijacking, mother ships, use of networks of hostages, and militia-associated sea violence demonstrate that conventional definitions might need a wider understanding or additional tools. Comparative analysis of the United States and India shows how the national legal systems translate this international definition into enforceable and prosecutable actions.

2. Indian National Law on Piracy.

Historically, India was dependent on sporadic provisions of the Indian Penal Code, Code of Criminal Procedure, and maritime security practices as well as maritime administration of piracy. Over several years, a lack of an anti-piracy statute caused procedural confusion in the areas of jurisdiction, arrest, evidence collecting and punishment. This loophole was on display in the emergence of Somali piracy in the

Gulf of Aden and Arabian Sea where the Indian naval forces would apprehend suspected pirates, but the prosecution of these individuals was legally complicated.

In order to deal with such inadequacies, India passed the Maritime Anti-Piracy Act that made significant reforms in its domestic legal system. The definition of piracy provided by the Act is similar to that of UNCLOS and provides jurisdiction to Indian courts over piracy on the high seas irrespective of the nationality. It acknowledges international jurisdiction and permits prosecution of foreigners who are detained by the Indian authorities. It is a significant move since piracy, in its essence, often includes multinational participants, ships that do not belong to countries, and offenses that are perpetrated well beyond the territorial limits.

The law also stipulates penalties according to the magnitude of the crime committed. In the case of death or attempted murder as a result of piracy, tougher punishments are involved. It gives specific courts authority over the speedy trial and seizes pirate ships, weapons and other associated property. Notably, it also covers the military personnel and legitimate personnel who are conducting anti-piracy operations in good faith. It is the goal of such immunity provisions to provide the ability to respond decisively to operations without compromising legal accountability.

The strategic location of India in the sea renders the importance of anti-piracy law. The Indian Ocean Region is home to major trade routes that transport oil, manufactured goods and container traffic. Indian seafarers are working all over the world and have often become targets of hostage-taking. As such, the law of piracy is not just a formality but it is associated with national economic security and safeguarding of citizens.

But there are still real-world difficulties. Crimes committed offshore would necessitate the involvement of the naval force, computer records of navigational data, satellite information, and eyewitnesses aboard the

multinational vessels. Trials are complicated by language barriers and repatriation problems. Prolonged detention can also cause issues on human rights. Even in the face of these challenges, the fact that India has had its own statute is a great move towards responding to ad hoc situations with a consistent legal system. It shows the desire of India to be a responsible maritime power that would undertake to protect navigation in the rules of the international law.

3. Legal Environment and Prosecution of Piracy in the United States.

America has one of the oldest and still existing domestic piracy regimes. Piracy law in America dates back to the early federal laws that were enacted shortly after independence, which was informed by international customary law and the law of nations. The constitutional basis of piracy itself, as the U.S. Constitution empowers Congress to define and penalize piracies and felonies committed on the high seas, is rather straightforward. This is a difference between the United States and most nations which later depended on the incorporation of treaties.

Current prosecutions are typically based on federal laws that criminalize piracy as defined in the law of nations, assaults on maritime navigation, hostage-taking, weapons crimes as well as conspiracy. Courts in the U.S. have construed the issue of piracy dynamically, particularly when it comes to Somali piracy. In significant rulings, the courts found that narrow historical interpretations that demanded successful robbery were not applicable and instead believed that violent attacks or attempts to take vessels can be classified as piracy under modern international law. This expanded meaning enhanced deterrence and harmonized domestic law with changing maritime realities.

The US also enjoys vast naval and coast guard services. It patrols, escorts, interdicts, conducts intelligence activities, coordinates with other multinationals through the United States Navy and the United States Coast Guard. Arrested suspects can be handed over to be prosecuted

either in the U.S. or in the partner states depending on the state of operations.

The U.S. federal courts have been capable of conducting piracy cases of foreign nationals who are apprehended miles away on U.S. soil. This indicates a strong desire to assert the universal jurisdiction in situations with adequate nexus either in the form of attacked ships, harmed citizens, or international responsibilities. U.S. piracy cases have been widely prosecuted and sentences have been harsh, including imprisonment and/or death as a penalty.

Nevertheless, challenges exist. Trials are costly, have classified intelligence issues, require translation, and rely on relocating witnesses to remote areas. Long-term foreign prisoner incarceration is also a matter of policy of burden-sharing. Critics opine that prosecution in regional states might even be more effective.

On the whole, the U.S. system is a blend of legal continuity in the past, judicial discretion, and enhanced enforcement. Its experience provides other maritime states, such as India, with important lessons, especially in terms of evidentiary practices, inter-agency coordination, and effective prosecution of transnational maritime criminals.

4. Naval Response and Operations: India and the United States.

Piracy cannot be suppressed by law alone unless there is any credible enforcement in the sea. The most direct and obvious reaction to pirate attacks is naval deployment. Another distinction between the two is that both India and the United States have greatly participated in maritime security operations but with differences in their geographical focus and structure of operation.

The Navy of India is very active in the Arabian Sea, the Gulf of Aden and in broader Indian Ocean Region. Indian warships have escorted merchant ships, answered distress signals, taken hostages and seized suspicious ships. Close to the major sea routes, India has a natural strategic position. Also supported by anti-piracy patrols is the wider maritime doctrine of India,

which is focused on regional stability and the safe sea lines of communication. Indian naval operations frequently involve security tasks with humanitarian support and evacuation potentials.

By comparison, the United States functions on an international level and takes the lead in multinational coalitions. U.S. naval capabilities are used to perform surveillance, intelligence fusion, aerial reconnaissance, interdiction, and convoy protection through the use of Combined Maritime Forces and partnering with allies. The United States has significant operational advantages due to advanced technologies like drones, maritime patrol aircraft, satellite systems, and networked command centers.

Enforcement is focused on rules of engagement. The naval forces have to strike a balance between force and international humanitarianism, protection of hostages, and the use of force proportionately. Pirates tend to use civilian crews as scapegoats, small fast boats, and drop weapons before naval teams board. Thus, preserving evidence and lawful arrest become operational priorities.

Merchant shipping is also working together with both countries via advisories, reporting as well as best management practices like razor wire, citadels, speed manoeuvres, and private security teams when allowed. Often prevention can be successful without the firing of shots.

But naval victory may bring a catch and release dilemma when prosecution systems are ineffective. When a suspect is arrested at sea, it is just the initial step and it should be followed by evidence, chain of custody, witness testimonies and legal jurisdiction. In this case enforcement and law cannot be separated. India has been enhancing this connection with domestic legislation, whereas the United States is relying on the prosecutorial capacity.

Finally, piracy is prohibited through naval enforcement as this increases the risk of operation to the perpetrators. However, long-term coordination, intelligence sharing, and

credible prosecution are the only type of sustained suppression that can be achieved without patrol presence.

5. Jurisdictional and Evidentiary Problems in Trials over Piracy.

Prosecutions of piracy are legally complicated since the crime is often inter-national, in open waters, and mobile. A pirate attack can include a pirate crew of one nation, a ship under a different flag, cargo of a third nation, seamen of various nations, and capture by a foreign navy. This poses some challenging questions of jurisdiction, forum choice and choice of law.

UNCLOS also allows universal jurisdiction over high seas piracy where any given state is allowed to intercept pirate vessels and prosecute the perpetrators. This theoretically addresses jurisdictional gaps. Practically, states vary in their willingness, capability and legal preparedness to hold trials. Other states have no domestic law, jail facilities, translators or political will to prosecute foreign nationals who have no direct relationship to their state.

In the case of India, the problem of evidence has been the transportation of suspects on land, getting statements of multinational crews, having armed or communication gadgets retrieved in the sea, and creating naval witnesses in protracted legal cases. The members of the merchant crews usually scatter all over the world after rescue and therefore it becomes hard to get eyewitnesses. Prosecution cases can be undermined by delays.

The United States has the same problems but more institutional mechanisms. Digital evidence, GPS logs, ballistic analysis, and translated testimony can be handled more effectively by the federal prosecutors, forensic specialists, and maritime investigators. Nonetheless, even the trials in the U.S. are expensive and time-consuming. Inviting foreign witnesses and classified operational material can be a hassle.

There is also the human rights consideration. Guarantee of humane treatment to suspects who have been detained in Sea, medical care,

and fair trial. Unreasonable time lag between capture and judicial production can be a catalyst of legal issues. This is further complicated by the presence of juvenile suspects, asylum claims or any allegation of coercion in the interrogation process.

The other issue is whether it is a case of piracy or fisheries violation, smugglings, terrorism or self-defense. Weapons transported by small boats in high-risk areas might be a cause of suspicion but not necessarily indicative of piracy without any overt action or intent. Prosecutors, therefore, attach great importance to conduct evidence, ladders, grappling hooks, ransom notes, patterns of attack, and eyewitness testimonies.

An effective anti-piracy justice would involve aligned mechanisms to gather evidence at sea, protocols to be used in collecting evidence, and arrangements to get the cooperation of witnesses. The practice of India and the United States demonstrates that jurisdiction is on paper, but successful prosecution occurs when institutions are able to transform capture into admissible evidence.

6. Comparative Assessment and Reforms to come.

An Indian-US comparison shows two contrasting but complementary patterns of anti-piracy regulation. India is a rising maritime power that is reinforcing its national legal framework to its increasing operational burdens in the Indian Ocean. The United States is a developed maritime superpower that possesses a long statutory history, an advanced naval presence, and a diverse judicial background. Both regimes uphold the UNCLOS, but the institutional development is different.

The major strength of India is its geography and regional responsiveness. Being close to major trade routes, India is able to quickly send naval forces to pirate-prone areas that have an impact on Asian trade. Its passing of special anti-piracy laws seals previous loopholes in the legal system and indicates that it is willing to prosecute the culprits within the country. Further

investment in maritime courts, forensic capacity, interpreter pools and witnesses management could make India a more powerful prosecution hub in the region.

Strengths of the United States are its legal continuity, extensive maritime intelligence coverage and willingness to prosecute complicated international cases. The U.S. case law has updated the interpretation of piracy and helped to advance the international jurisprudence. Nevertheless, the dependency on remote prosecutions may be resource-consuming, indicating the worth of sharing the burden with competent regional partners.

The reforms that need to happen in the future in both countries should focus on five areas. First, there is a need to have more evidence standardization between prosecutors and navies. Common digital recording and chain-of-custody systems should be used by boarding teams. Second, regional prosecution agreements have the capacity to distribute cases efficiently in terms of location, victims and capacity. Third, safe havens can be reduced through capacity-building of the coastal states at risk of piracy. Fourth, investigations of money laundering, money flow and organizers on shore are as significant as the seizure of attackers at sea. Fifth, the legal frameworks will need to adjust to the new dangers like cyber disruption of navigation, drone-based assaults, and piracy-terror networks.

Weak governance, economic desperation and impunity are the ultimate sustaining factors of piracy. Treatment of symptoms is through naval patrols; legal responsibility is concerned with incentives. By working together, training, sharing of intelligence and coordinated prosecutions, India and the United States can develop a more efficient global response. The experience gained by them over time proves that UNCLOS is the base, and domestic enforcement is the one that defines the success in real life.

Conclusion

High seas piracy remains a significant threat to global maritime security, trade and seafarer safety. Despite the fact that in the past classical piracy was seen as a deteriorating crime, the recent cases of the Gulf of Aden, the Arabian Sea, and part of the African coastline proves that maritime insecurity is a universal issue that will not be resolved in the near future. Law that was formed under the United Nations Convention on the Law of the Sea offers the main platform that defines piracy, authorizes universal jurisdiction, and promotes cooperation among states. Nonetheless, the success of these principles is largely reliant on the domestic implementation and capacity to enforce the same.

Comparison of India and the United States has shown that there are two significant strategies to counter piracy. In an effort to modernize its legal system, India has introduced special anti-piracy laws and finer naval involvement in the Indian Ocean Region. Its strategic position and increasing influence of the sea make it an important player in the region security. The United States, and its well-established piracy laws, mighty naval force, and robust prosecution system, presents an example of the institutional preparedness and legal continuity. Both countries show that piracy has to be suppressed with the help of a set of naval deterrence, legal understanding, and successful court prosecution.

Meanwhile, the issues of evidentiary issues, jurisdictional fights, witness accessibility, and extended detention still remain a problem to prosecutions. Technology, lax governance of the coast, and the use of transnational financial networks also spawn piracy networks. Hence, the use of naval patrols is not enough.

The future effort to curb piracy should aim at increasing international cooperation, coordination of domestic laws, sharing of intelligence, regional prosecution systems, and breaking down of financial network that sustains maritime crime. India-United States cooperation would play a significant role in making seas

lanes safer, and the rule of law at sea. Finally, only when international legal norms are accompanied by practical implementation and the long-term political commitment, piracy can be successfully controlled.

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