

Maritime Security and Piracy

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The United Nations Convention on the Law of the Sea (UNCLOS) define piracy as any illegal acts of violence or detention, or any act of deprivation, committed for private ends by the crew or the passengers of a private ship or a private aircraft.¹ While UNCLOS provides the foundational legal definition of piracy, its narrow wording and reliance on inconsistent domestic enforcement significantly undermine international anti-piracy efforts.²

The requirement that piracy occur on the ‘high seas’ creates a critical jurisdictional gap, excluding the majority of modern attacks that take place within territorial waters.³ Many modern attacks, therefore, fall outside the UNCLOS definition and are instead treated as domestic offences.⁴ The ‘private ends’ requirement further narrows the legal scope by excluding politically motivated maritime violence, despite the increasing overlap between criminal and ideological actors at sea.⁵ UNCLOS enforcement is heavily dependent on state cooperation, with no centralised enforcement mechanism to ensure consistent application across jurisdictions.⁶

In many coastal states, limited maritime policing capacity and underdeveloped legal infrastructure create enforcement gaps that pirate networks actively exploit.⁷ The impact piracy has on the globe is significant.⁸ Increased risk of maritime attack drives up insurance premiums and security costs, which are ultimately passed on through higher global shipping and consumer prices.⁹ It places more pressure on the need for international naval forces to compensate for legal shortcomings.¹⁰ Although UNCLOS protects security, it also contains many loopholes through which pirates continue to thrive worldwide.

Although UNCLOS authorises states to capture and prosecute pirates, it imposes no binding obligation to exercise that jurisdiction, resulting in inconsistent enforcement in practice, which means enforcement is often inconsistent and ineffective. Some countries, such as Indonesia and the Gulf of Guinea, are significantly underdeveloped in maritime security and are hotspots for pirates as they are rich in trade, making them attractive for pirate operations.¹¹ Despite being parties to UNCLOS, they are unable to capture pirates or often lack evidence to prosecute, and so are forced to release.¹² This reflects that there is a structural weakness outlining that international authority unlocks an ability to act, yet the ability to do so is paramount to ensuring that states can pursue piracy effectively.

The prosecution of piracy suspects is hindered by evidential difficulties, high detention costs, and political reluctance among states to accept transferred detainees.¹³ These barriers prevent states from investing in security, as there is no guarantee that it will achieve that aim. This contributes to a perception of low enforcement risk, which in turn incentivises continued pirate activity.¹⁴ The burden of enforcement is disproportionately shadowed onto the coastal navy,¹⁵ leading to unequal responsibility due to differing levels of development. Failure of domestic systems brings down the global response to a rise in modern piracy and demonstrates the limitations of state co-operation alone.

To conclude, UNCLOS sets out comprehensive provisions and a legal framework to combat modern piracy. However, it is flawed and undermined by an overreliance on domestic enforcement. Pirate networks have adapted to exploit the definitional and jurisdictional limitations embedded within UNCLOS, allowing them to evade liability in practice. This combination significantly weakens the provision overall, and piracy continues to exploit global trade, human safety and international security.

¹ United Nations Convention on the Law of the Sea 1982 (UNCLOS), art 101.

² Mohamed Ahmad, ‘Maritime Piracy Operations: Some Legal Issues’ (2020) 4 *Journal of International Maritime Safety* 1.

³ UNCLOS (n 1) arts 100–101.

⁴ Douglas Guilfoyle, *Shipping Interdiction and the Law of the Sea* (Cambridge University Press 2009) 33.

⁵ Douglas Guilfoyle, ‘The Political Dimension of Piracy’ (2013) 25 *European Journal of International Law* 141.

⁶ UNCLOS (n 1) art 100.

⁷ Eugene Kontorovich, ‘International Legal Responses to Piracy off the Coast of Somalia’ (2010) 13 *ASIL Insights*.

⁸ United Nations, ‘Piracy and Armed Robbery at Sea’ <https://www.un.org/depts/los/piracy/piracy.htm>

⁹ Oceans Beyond Piracy, *The Economic Cost of Somali Piracy* (2014).

¹⁰ James Kraska and Brian Wilson, ‘Fighting Pirates: The Pen and the Sword’ (2009) 25 *World Policy Journal* 41.

¹¹ International Maritime Bureau, *Piracy and Armed Robbery Report* (latest annual report).

¹² Douglas Guilfoyle, *Prosecuting Piracy* (Cambridge University Press 2015).

¹³ United Nations Office on Drugs and Crime (UNODC), *Counter-Piracy Programme Report* (2019).

¹⁴ Oceans Beyond Piracy (n 7).

¹⁵ James Kraska, *Contemporary Maritime Piracy* (Praeger 2011).

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