

INTERPRETATION OF PHRASE “FOR PRIVATE ENDS” IN THE INTERNATIONALLY CODIFIED DEFINITION OF MARITIME PIRACY

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ABSTRACT

Maritime piracy is an international crime both under customary and treaty law. Severity of this crime attracts universal jurisdiction, which means any state may arrest and prosecute the offenders involved in this crime. Maritime piracy disturbs tranquility and order at sea by threatening security and safety of maritime shipping. The Sea Line of Communication (SLOC) and international straits being choke points are specific targets to plunder the shipping for financial gain. Due to fearless and dangerous posture of the pirates, historically very stringent punishments have been enacted by the states through their national legislation to prevent this heinous crime. The power vested in states for arrest and prosecution of the pirates is not unfettered rather contingent on fulfilling all the conditions constituting piracy. Probably the most debatable element remains whether the commission of piracy, “for private ends” may include “other ends” too. The objectivity for the commission of crime steers the fate of the offenders to determine gravity of their acts or omissions. The article explores the definition of piracy to draw a bifurcation between ‘private ends’ and other purposes. The article examines definition of piracy with peculiar reference to the object of crime and unnecessary confusion of ‘political ends’ to mirror ‘private ends’. Various interpretation methods have been utilized to elicit real meaning of phrase “private ends” to reach at a just conclusion. The article analyses the commission of offence for private ends in the backdrop of state practice and judicial decisions of national courts. The article concludes that piracy pertains to private ends excluding other purposes in the furtherance of gains like political ends.

I. INTRODUCTION

Piracy is one of the oldest international crimes plaguing humankind and sea trade since time immemorial. Piracy may be more rampant in any particular ocean but its threat has never exterminated in the world. Where there was rise of civilization and maritime trade, there were epidemical pirate activities. The areas replete of piracy were actually the centres of civilization of its time. Piracy in the Aegean Sea is considered as the earliest documented phenomenon of exploits by “sea people”. The Egyptians and Minoans, between 3100 and 2890 B.C., reigned

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supreme in the Mediterranean with evident Egyptian prominence.¹ The disruption of Egyptian maritime trade by non-state warlords was a routine matter. Thucydides recorded the infestation of Eastern Mediterranean with piracy.² The piteous condition of mariners can be imagined from following excerpts:

The ship's crew from every house of commerce, they receive their loads. They depart Egypt for Syria, and each man's god is with him. But not one of them says: 'We shall see Egypt again!'³

The most influencing and daring pirates in the history were; and Barbary pirates in North Africa in 16th Century.⁴ Pirates from Japan threatened regional seas (China, Korean and Taiwan peninsula) between 13 to 16 A.D.⁵ Despite modernization in surveillance capabilities pirate attacks remain major concern of the international shipping community and equally the flag states. Busier the sea route, more prone is the area to piratical activities.

Various efforts at international level to sharpen domestic legislation and endeavours through UN resolutions seem to fizzle out. The crime goes unabated in general and off Somalia coast in particular. The modern piracy has taken new dimensions with modernisation of weapons, equipment and sophisticated fast means of communication. The coordination and nexus of various groups like smugglers, drug traffickers, human traffickers, even terrorists with the pirates as an organised crime cannot be ruled out. Any substantiating evidence in this regard, however, is not on record. Not every act of outlaws at sea can be brought into the fold of piracy, which needs the presence of specific constituent elements to form it. Today piracy is carefully planned, and executed in an organised manner.

Historically Piracy had been understood almost in the same sense as the present day definition. Piracy was for the first time codified in 1958 Geneva Convention on High Seas (hereinafter HSC) and sailed verbatim into UN Convention on the Law of the Sea, 1982 (hereinafter UNCLOS). Section 101 of UNCLOS defines piracy describing 'for private ends' as the key constituent component. Comprehensive provisions on piracy are contained in Articles 100

¹ Benedict, E. C., "Benedict on Admiralty", Jhirad, E.E., Sann, A. (ed), *Jurisdiction and principles*, New York (7th ed, Vol-I, Matthew Bender & Company), 1981, pp. 1-5.

² Gilbert, G.P., *Ancient Egyptian Sea Power and the Origin of Maritime Forces*, Australia (Sea Power Centre), 2008, at p.40.

³ Lichtheim, M., *Ancient Egyptian Literature, The New Kingdom* 2nd ed., (University of California Press), 1976, at p. 170.

⁴ Beare, M. E. and Brienza, P. A., *Encyclopedia of Transnational Crime & Justice*, SAGE Publications, 2012, at p. 302.

⁵ Chance, F.L., *Some Notes on "Japanese Pirates"*, 19 (2) (2014) *Education About Asia*, at p. 83.

through 107 and 110 of UNCLOS. These Articles are almost a repetition of Articles 14 to 22 of HSC. The states like the United States, Israel, Switzerland, Turkey and Venezuela⁶ on whom UNCLOS may not be binding are still bound by HSC whose most of the provisions have acquired customary international law status. Some states and scholars are ardently arguing ‘political acts’ being embedded in ‘private ends’ for a comprehensive piracy definition under UNCLOS.

The article scrutinizes the origin of piracy, its historic understanding, international codification of its definition, state practice and transformation into customary law. It endeavours to clarify the confusion crept into the meanings of piracy in modern times to cover political and other similar ends into private ends. It prefers views of the renowned publicists and jurists and dilates upon the differences between piracy and acts of terrorism under the Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1992 (hereinafter SUA Convention). The article applied various methods like ordinary meanings, object and purpose, additional meanings, supplementary meanings and *travaux préparatoire* provided in the 1969 Vienna Convention on the Law of Treaties (hereinafter VCLT) to bring clarity to the meanings of ‘private ends’ in piracy definition.

II. ORIGIN OF TERM ‘PIRACY’

The roots of word ‘pirate’ may have its origin in Greek words ληστεία (leisters) and πειρατές (*peirates*). The word *peirates* has, however, a track in the ancient Greek language sources till-to-day synonymous with *leistes*. *Peirates* having probable derivation from ‘*peira*’ (meaning trial or attempt) or ‘*peiraō*’ (attempt to do something). The term ‘Piracy’ has its etymological roots in Medieval Latin via Greek *pirateia*, from *peiratēs* in the modern English.⁷ The Roman Statesman Marcus Tullius Cicero (106-63 BC) for the first time coined the phrase ‘*hostis humani generis*’ (Enemy of all humankind) for pirate. The crime of piracy may be as old as the creation of the ships itself.

Piracy does not include perpetrator i.e. stealing by a fellow passenger onboard same ship. It also excluded non-state actors under the sovereign authority as “*Privateer*”, “*Corsair*” or “*Buccaneer*” a legitimate war-like activity.⁸ The Paris declaration signed in 1856 abolished this practice of privateering.⁹

⁶ Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs (UN), “Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements” (May 28, 2021), available at <https://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm> (Last visited on March 15, 2021).

⁷ de Souza, P., *Piracy in the Graeco-Roman World*, Cambridge University Press, 1999, at p. 3.

⁸ Sechrest, L. J., *Privateering and National Defense: Naval Warfare for Private Profit* (Independent Institute Working Paper No. 41, February 2000) 1; *Privateer, Corsair or Buccaneer is a private person(s) or a ship authorised by a belligerent government to attack foreign vessels particularly during wartime since 12th Century A.D.*

⁹ Piggott, F., *The Declaration of Paris 1856: A Study Documented*, University of London Press Ltd., 1919, at p. 423.