

Study on the Rights of Jurisdiction over Piracy

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Abstract. Piracy has been a common enemy of mankind for a long time. While, with the plague of Somalia piracy in recent years, international community has paid more attention to anti-piracy actions as well as the prosecution of pirates. However, due to the insufficiency of the rules governing jurisdiction laid in international law and domestic law, piracy has not been fought effectively. Piracy occur in different regions while the legal consequences between international and municipal law are different, it is important for the international community to form unified regulations to resolve these differences and take unified actions against piracy. Particularly, a unified definition of piracy is needed as an effective measure to combat it. The rules of jurisdiction over piracy in international law should be refined. Some proposals are made in this paper through the analysis of jurisdictions over piracy.

Keywords: United Nations Convention on the Law of the Sea, Piracy, Jurisdiction

1. Introduction

As it known to all, oceans are considered as the most precious wealth on the earth for humans. They provide natural and incomparable worldwide shipping routes which other transportation mode can never be able to replace. Sea lanes are essential for global trade and commodity circulation, vast majority of international commodities are freighted by the sea. However, the existence of Somali pirates has seriously jeopardized the safety of maritime traffic. It is said that the water off Somalia is one of the busiest waters in the world with strategic shipping importance for it covers two major routes in the world. One is a trade route linking the Atlantic and Indian Oceans, and another is the Middle East oil shipped to Western and Asian energy lifeline. Nearly 20,000 ships from more than 100 countries and regions pass by Somalia per year, as well as 14% of the world seaborne trade and 30 percent of the oil transport. As a result, it is necessary to control the piracy in Somali area. The suppression of criminal behavior is based on the exercise of jurisdiction of the criminal acts. Piracy jurisdiction under international conventions and domestic law is not perfect, which can neither help exercise jurisdiction nor eliminate piracy. Improvement of rules about jurisdiction over pirates is also one of the ways to solve this problem.

In 1958, the term "Piracy" *jure gentium* was first defined in article 15 of the High Seas Convention, and reaffirmed in article 101 of United Nations Convention on the Law of the Sea (Convention refers specifically to the Convention in the following discourse). Article 101 of the Convention provides that "Piracy consists of 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)".

2. The Issues of Jurisdictions over Piracy

2.1. The Analysis of Territorial Jurisdiction over Piracy

Territorial jurisdiction refers to that the country which obtains jurisdiction right over persons and things within its territorial limits. With regard to coastal States, the exercise of territorial jurisdiction is bounded by

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its territorial sea. According to this convention, each state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from its determined baselines.

Firstly, as a matter regulated to the legislation and jurisdiction of coastal states, they enjoy territorial jurisdiction over piracy in its territorial water. Other countries or international organizations have no right to get involved in. The definition given by seas conventions merely refers to the piracy of high seas. Some ocean states have piracy laws, while others do not have; even for those countries with piracy laws, their definition of piracy law and regulations are quite different. In addition, the definition of piracy in international law is different from those in national laws. Situations vary from one country to another. All the reasons mentioned above will inevitably lead to confusion in terms of the definition of piracy.

Secondly, the status of the exclusive economic zone is special; it is neither national territory nor high sea. The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. However, there is still no corresponding provision in the jurisdiction of the convention for the exclusive economic zone. We may wonder whether coastal States have territorial jurisdiction over acts of piracy in the exclusive economic zone or not.

Thirdly, Right of innocent passage is established in the Convention, without accompanying with the country's obligation to mandatory criminal jurisdiction for acts of piracy in the territorial sea areas, which is unfavorable for the suppression and combating of piracy.

Fourthly, it is difficult to exercise territorial jurisdiction when part of the territory of the coastal State falls into anarchy. Piracy problem in Somalia is serious because there is no government in the Gulf of Aden.

2.2. The Analysis of Personal Jurisdiction over Piracy

The personal jurisdiction of the state has the right of jurisdiction over all people based on their nationality, regardless of their living at home or abroad.

According to the provisions of the Convention, piracy is engaged in private behavior. Piracy on the high seas may not cause damage to the pirate state of nationality, but do harm to the public safety at sea. The question is whether the pirate states exercise jurisdictions over piracy acts nothing to do with its own interests in accordance with national law. It is easy to move forward the jurisdiction vacancies. Piracy rule of national state jurisdictions should be improved.

2.3. The Analysis of Passive Personality Jurisdiction over Piracy

A state may claim jurisdiction to try an individual for offences committed abroad which have affected or will affect nationals of the state. State of nationality of the victim's exercise of jurisdiction may be in favor of ensuring the interests and compensate the loss of the victims. Victims of acts of piracy are kidnappers, ship owners, shippers. The victims may take nothing but self-defense in the case of piracy. If their states do not exercise jurisdiction over piracy, their interests can not be maintained. The rules about victims' national state jurisdictions of piracy are required to progress.

2.4. The Analysis of Universal Jurisdiction over Piracy

Universal jurisdiction is criminal jurisdiction based solely on the nature of the crime, regardless where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction. Universal jurisdiction originated from Grotius in 1925 "War and Peace" or extradite or punish " (*aut dedere aut punier*), which involves the crime that is against the interests of all mankind.

There is no doubt that the pirates are regarded as a public enemy of all mankind, therefore, universal jurisdiction of pirates has become an international custom. Article105 of the Convention claims that "on the high seas, or in any other places outside the jurisdiction of any states, every state may seize a pirate ship or 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. The courts of the states which has carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith." Article107 provides "A seizure on

account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect."

If the flag or aircraft registration country is the country without a loss, it is difficult for the country to exercise jurisdiction and try. As mentioned above, the jurisdiction provisions are imperfect, and have not defined. This can not make sure a country obtains the right to request the extradition of pirate.

The convention provides universal jurisdiction over acts of piracy on the high sea. The national judicial institutions are unable to establish their jurisdiction over the crime unless the rules in municipal law correspond with universal jurisdiction in the convention. At present, Princeton Principles on Universal Jurisdiction in 2001 is regarded as the guiding principle of universal jurisdiction. Serious crimes under international law of Principle 2 include piracy. Countries are proposed to apply international law to national legal systems by Princeton Principles. The Princeton Principles is, after all, recommended by scholars rather than international treaty.

3. The Measures Taken by International organizations to Combat Piracy

3.1. The Measures of IMO/ IMB/ CMI about Piracy

International Maritime Organization, IMO, is an intergovernmental international organization. The agency has issued a series of anti-piracy advice and guidance, and intelligence information to provide anti-piracy at sea. International Maritime Bureau, IMB, is the branch of the International Chamber of Commerce; the agency has set up the center of piracy report, and released the pirate's reports to help monitor and combat piracy. Comité Maritime International, CMI, an international non-governmental organization to promote maritime unified, recommended to other countries "Maritime Criminal Acts-Draft guidelines for national legislation" enacted in 2007. The draft refers to crimes at sea, the main pirates' behavior and violent robbery. Piracy definition of the draft is consistent with those of the Convention on the Law of the Sea and the Convention on the High Seas, including provisions for the jurisdiction of the crime at sea, which entitled countries with jurisdictions. These countries are the country where crime, the flag state, the perpetrator piracy country, the victim's personal country. Despite these international organizations' measures to combat piracy, these measures are not mandatory binding. These organizations do not have authority to exercise jurisdiction on the pirates.

3.2. The Measures of the United Nations about Piracy

Pirates in Somalia, not only are dangerous for the safety of international waterway, but also threaten the United Nations relief for Africa. The United Nations adopted a number of resolutions against Somali pirates. For example, UN Resolution No.1816 and Resolution No. 1846 on Somali pirates under the jurisdiction of specific provisions. UN resolutions are only interim measures for the Somali pirates. These resolutions may not cement legal mechanisms to combat piracy.

4. The Views of Pirate Jurisdictions in International Law

4.1. Pirate Jurisdictions in International Law Should be Improved

Currently, convention about maritime traffic security is the convention for the suppression of unlawful acts against the safety of maritime navigation, which entered into force in 1992. According to Article 6 of the SUA CONVENTION, states have the right to exercise the compulsory jurisdiction over acts of violence at sea. These countries are the state of nationality of the flag State crime, the countries in which the crime was committed and the country which criminals belong to. However, the convention originally aims at fighting against terrorism rather than piracy. Distinguished from terrorism, piracy behaviors are not conducted for political purpose. In fact, pirates robbed in pursuit of private interests, yet for politic or religion.

There is a lack of comprehensive provisions in the international conventions on the pirate jurisdictions. The rules of jurisdiction over piracy should be advanced and the definitions of piracy in both international law and national law needed be coordinated. International and domestic law in jurisdictions over piracy must complement with each other. Countries around the world should cooperate with each other to form a

consensus on the pirate jurisdictions. It is necessary to form a collaboration of all countries that can take actions in helping solve the problem.

4.2. The Jurisdiction of the Obligations of the State of Piracy Should be Enacted in the Form of a Convention

It is believed that exercise of jurisdiction of trial is the most effective approach to prevent piracy. Although above mentioned institutions contribute various means to combat piracy, there is still a lack of criminal jurisdiction. In fact, no international judicial bodies obtain jurisdiction over acts of piracy. International Court of Justice jurisdiction over a case is submitted to the court of international disputes between States. International Criminal Court Statute Article 5 “The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression.”. International Tribunal for the Law of the Sea is a dispute settlement body under United Nations Convention on the Law of the Sea. The Tribunal has jurisdiction over any dispute concerning the interpretation or application of the convention.

For the acts of piracy, the state should have the right to exercise criminal jurisdiction. Countries who control the pirates must exercise criminal jurisdiction, unless they are willing to extradite. The international community should obligate the states to conduct criminal jurisdiction of piracy in the form of treaties. Only in this case, the vacancies of criminal jurisdiction of piracy can be filled.

4.3. The Definition of Piracy Should be Unified

Firstly, piracy behaviors should be criminalized in national law; secondly, the identification of piracy should be unified. Consensus for piracy occurs in the range of high seas has already been reached, while there is still a lack of consensus with regard to the piracy occurs within the limits of national jurisdiction. Maritime countries such as the United Kingdom and the United States have piracy laws, however, many other countries such as China do not have complete piracy laws, as a result, definitions of piracy in these countries varies from each other. Normative definition of piracy can be concluded into two ways. One is to define piracy in the international conventions, and apply to territorial waters and exclusive economic zones. Another way is to develop a common Model Law, based on that countries legislations are regulated.

4.4. Criminal Jurisdiction over Piracy in the Exclusive Economic Zone Should be Clarified

The convention only indicates the difference from the perspective of exploitation powers of natural resources in the exclusive economic zone between the coastal States and other countries, however, criminal jurisdictions in the exclusive economic zone is not mentioned. Either criminal jurisdiction of piracy occurred in the exclusive economic zone vested the coastal State, or it is similar to the jurisdiction of the high seas. The international community should form a unified rule as soon as possible.

4.5. It is a Necessary to Specify Which Countries have Right to Exercise Jurisdiction over Piracy

Piracy is an international crime, however, it is not crime under the jurisdiction of the International Criminal Court. The exercise of criminal jurisdiction of piracy belongs to a sovereign state's domestic courts. The convention does not specify which countries have the right to exercise jurisdiction. As the jurisdictions of the theories mentioned above, special countries should be entitled to exercise criminal jurisdiction over piracy. These states should include the state piracy occur (including port States, coastal States), the flag state (including the pirate ship State and the injured vessel flag State), the state of nationality of pirates, and the state of nationality of the victims. These countries have the rights to try and have the rights to ask other countries to extradite pirates.

4.6. The "to extradite or prosecute" Principle Should be Introduced in the Sea Conventions

Countries with universal jurisdiction over the crime have the right to the exercise of jurisdiction by the pirates. The "to extradite or prosecute" principle should be reinforced with the law of the sea convention. The state in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the

case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

4.7. The Internationally and Municipally Co-existing Legal System for the Jurisdictions of Piracy Should be Established

For piracy occurs on the high seas, only the convention is provided for universal jurisdiction. It is generally to be complementary used when the other jurisdiction can not be implemented. The scope of applying universal jurisdiction is limited. While warships and military aircraft have the right to seize a pirate on the high seas, the convention only requires that these countries exercise jurisdiction to try pirates. The jurisdiction provisions of the convention are too simple to play a great role in international practice.

First, as mentioned above, the number of states with jurisdiction ability should be increased.

Secondly, once the pirates take place within a countries' territory, it is obligatory for this State to exercise its jurisdiction. The exercise of jurisdiction by acts of piracy should be regarded as mandatory international obligation. The criminal jurisdiction of the domestic law should correspond to the jurisdiction of international law, in order to avoid the jurisdiction omission. In light of “to extradite or prosecute” principle, co-existing system for the jurisdiction of piracy should be formed. In addition, the country should extradite pirates to the state having jurisdiction for trial in case he do not exercise jurisdiction.

Finally, since the piracy itself is an international crime, the fight against piracy calls for international cooperation. Although some countries pay a high price for the fight against piracy, especially for the Somali pirates, final solution to the problem relies on a comprehensive legal system based on international law and domestic law. To ensure the safety of maritime navigation and eliminate marine traffic risks depend upon the great effort made by all countries.

5. References

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