

## CRITICAL ANALYSIS OF INTERNATIONAL LAW'S FRAMEWORK FOR PIRACY

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### ABSTRACT:

*Piracy remains a formidable challenge to maritime security and global trade, thriving on jurisdictional ambiguities and exposing vulnerabilities in international governance. Despite its recognition under the United Nations Convention on the Law of the Sea (LOSC) as a crime of hostis humani generis subject to universal jurisdiction, significant gaps persist in its enforcement. The LOSC's limitations, such as its strict criteria for defining piracy, often hinder effective prosecution. Supplementing this framework, the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) Convention addresses critical shortcomings, including the jurisdictional constraints of the LOSC, by enabling broader prosecutorial scope and facilitating extradition agreements. However, its limited ratification by key maritime states undermines its potential impact. This study critically analyses these legal frameworks, highlighting their contributions and deficiencies in combating piracy. The analysis further emphasizes the urgent need for cohesive international collaboration, harmonized enforcement protocols, and the adoption of innovative legal mechanisms to counter the evolving nature of maritime piracy.*

**Keywords;** International Maritime Law; LOSC; Piracy; SUA Convention; Universal Jurisdiction

## A. Introduction

Ocean transportation accounts for 50% of global goods movement and is expected to expand further. However, with this growth comes increased vulnerability in ocean transportation, particularly concerning piracy. This criminal activity poses a significant international economic and security challenge, threatening the stability of the global economy.<sup>1</sup> The International Maritime Bureau (IMB), a part of the International Chamber of Commerce, reported 120 incidents of maritime piracy and armed robbery against ships in 2023, up from 115 cases in 2022.<sup>2</sup> Although these numbers appear to have declined compared to the alarming 445 incidents recorded in 2010, the persistence of such activities underscores the enduring vulnerability of maritime transport.<sup>3</sup>

Piracy, as a transnational crime thriving in the jurisdictional void of international waters, represents a complex global issue that requires more than legal formalities; it demands the establishment of robust international legal frameworks and effective enforcement mechanisms.<sup>4</sup> Modern piracy is predominantly driven by economic motives, with perpetrators targeting valuable cargo, hijacking vessels, and, in extreme cases, holding crew members hostage for ransom. This criminal activity frequently occurs in international waters, where jurisdictional ambiguities compound the difficulty of addressing such crimes.<sup>5</sup> The persistence of piracy and exposes significant vulnerabilities within existing governance structures. Moreover, its adaptability to evolving geopolitical and economic conditions underscores the insufficiency of fragmented state responses. To counteract the fluid and dynamic nature of contemporary piracy, there is an urgent need for cohesive multilateral strategies, innovative legal instruments, and coordinated enforcement actions that transcend jurisdictional boundaries and align with the realities of modern maritime threats.<sup>6</sup>

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<sup>1</sup> Ilan Fuchs, "Piracy in the 21st Century: A Proposed Model of International Governance," *Journal of Maritime Law and Commerce* 51, no. 1 (2020):3.

<sup>2</sup> Josh Lamorena, March 30, 2024, "New IMB Report Reveals Concerning Rise in Maritime Piracy Incidents in 2023," available at: <https://www.icc-ccs.org/index.php/1342-new-imb-report-reveals-concerning-rise-in-maritime-piracy-incidents-in-2023>, accessed on March 30, 2024.

<sup>3</sup> Fuchs, "Piracy in the 21st Century: A Proposed Model of International Governance," 3.

<sup>4</sup> Putri Rizka Nurwijedah Kadir, Darwis Darwis, and Imam Fadhil Nugraha, "Tinjauan Hukum Internasional dalam Menangani Kasus Piracy Jure Gentium Berdasarkan Yurisdiksi Universal," *Konsensus: Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 1, no. 6 (December 2, 2024): 104, <https://doi.org/10.62383/konsensus.v1i6.462>.

<sup>5</sup> Putri Rizka Nurwijedah Kadir, Darwis Darwis, and Imam Fadhil Nugraha, 105.

<sup>6</sup> S. D. Tirtawati and J. Setiyono, "Menilik Penerapan Prinsip Yurisdiksi Universal Negara terhadap Kejahatan Perompakan di Laut Lepas Menurut Hukum Internasional," *Al-Daulah* 10, no. 2 (2021): 121.

Under international law, piracy on the high seas is designated as a crime of *hostis humani generis*, or “enemy of all humankind.” This categorization grants universal jurisdiction to all states, enabling them to apprehend and prosecute perpetrators regardless of the *locus delicti* or any direct connection to the victims or the prosecuting state. As one of the earliest offenses recognized under universal jurisdiction, piracy underscores the commitment of states to combat this threat collectively.<sup>7</sup> Book by Starke (1986) asserts that this principle emerged as a response to the global imperative of curtailing piracy, with states exercising jurisdictional authority without direct ties to the crime. Moreover, piracy, though predominantly economically motivated, can also stem from revenge or other ideological drivers, rendering it an affront to the international legal order and a *delict jure gentium*—an offense against the law of nations.<sup>8</sup>

The enduring prevalence of piracy and its significant ramifications has cemented its status as one of the most egregious maritime crimes. Despite the universal jurisdiction framework that empowers all states to prosecute acts of piracy, its persistent occurrence reveals critical gaps in the international community's efforts to address this issue comprehensively. It underscores the urgent need for a more effective, coordinated response to eradicate this longstanding maritime menace and ensure the security and stability of global sea lanes. Therefore, this essay aims to critically analyze how and to what extent international law addresses piracy. It will provide (1) a comprehensive overview of piracy in the law of the sea regime and (2) the role of international law in combating it. Specifically, the essay will discuss the evolving challenges in dealing with piracy, highlighting the gaps in the existing framework of the law of the sea regime.

## B. Research Method

This study utilizes a qualitative research methodology based on a normative legal approach to analyze international legal frameworks governing piracy.<sup>9</sup> The research focuses on primary legal instruments,<sup>10</sup> including treaties and conventions, and secondary sources,

<sup>7</sup> Muhammet Ebuzer Ersoy, “International Law of Sea Piracy,” *International Journal of Law Reconstruction* 3, no. 2 (September 22, 2019): 106, <https://doi.org/10.26532/ijlr.v3i2.7791>.

<sup>8</sup> J. Starke, *Pengantar Hukum Internasional* (Bandung: Justitia Study Group, 1986), 162.

<sup>9</sup> Jaya, B.P.M. et al. , “Criticising the Implementation of the ACTIP in Southeast Asia”, *Sriwijaya Law Review* 7 no. 2 (2023): 355-373, <http://journal.fh.unsri.ac.id/index.php/sriwijayalawreview/article/view/2542>

<sup>10</sup> Jaya, B.P.M. et al. “Republic of Indonesia Sovereign Right in North Natuna Sea according to United Nations Convention on the Law of the Sea 1982.” *Australian Journal of Maritime & Ocean Affairs* 16 no. 1 (2024): 127–140, <https://doi.org/10.1080/18366503.2023.2206261>.

such as academic literature and reports from relevant organizations. This method comprehensively examines the normative structures addressing piracy, including definitions, jurisdictional frameworks, and enforcement mechanisms. The study employs comparative legal analysis to evaluate the efficacy of existing international and regional legal frameworks,<sup>11</sup> identifying inconsistencies and gaps in their implementation. Additionally, interpretative legal techniques are applied to critically analyze the provisions of international law, assess their practical application, and determine their compatibility with the evolving challenges of maritime security. Through this methodology, the research aims to provide an in-depth understanding of the adequacy of existing legal instruments in combating piracy and to propose recommendations for improving the coherence and effectiveness of these frameworks.

## C. Discussion

### 1. *Piracy in the Law of the Sea Regime*

Piracy has been a persistent challenge if ships have sailed the oceans and states have practiced maritime commerce.<sup>12</sup> Despite the clear agenda against piracy, defining piracy itself has sparked controversy. It is argued that the term 'piracy' lacks a universally accepted definition, leading to debates about its scope and *loci*. According to Thomas Joseph, piracy must occur outside any civilized state's territorial authority; otherwise, the criminals would be subject to domestic rather than international law.<sup>13</sup> As the law of the sea regime evolved, states endeavored to codify this customary international law into a formal framework. The regime of piracy was initially introduced in the High Seas Convention of 1958, specifically in Article 14, which mandated state parties to fully collaborate in addressing piracy. This definition of piracy was further elaborated upon in Article 15 of the same convention and eventually incorporated into the United Nations Convention on the Law of the Sea of 1982, known as LOSC, under Article 101, which states:<sup>14</sup>

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<sup>11</sup> Irawan, B. et al., "State Responsibility and Strategy in Preventing and Protecting Indonesian Fisheries Crews Working on Foreign Fishing Vessels from Modern Slavery." *Australian Journal of Maritime and Ocean Affairs* (2024): 1-21, <https://doi.org/10.1080/18366503.2024.2333107>.

<sup>12</sup> Ersoy, "International Law of Sea Piracy," 106.

<sup>13</sup> Dr Lawrence, "International Law Regime against Piracy," *Annual Survey of International & Comparative Law* 15 (2009): 46.

<sup>14</sup> United Nations, *United Nations Convention on the Law of the Sea*, opened for signature December 10, 1982, entered into force November 16, 1994, 1833 U.N.T.S. 3; Rytis Satkauskas, "Piracy at Sea and

*“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 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 a vessel 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).”*

In general, the LOSC governs piracy from Article 101 to Article 107. Article 100 addresses the government's duty to cooperate in combating piracy. Article 102 concerns piracy committed by a mutinous crew aboard a warship, government ship, or government aircraft. Article 103 defines a pirate ship or aircraft. Article 104 addresses the retention or loss of nationality of a pirate ship or aircraft. Article 105 addresses the seizure of a pirate ship or aircraft. Article 106 covers the responsibility for seizure without justification. Finally, Article 107 defines ships and planes allowed to take based on piracy.

Generally, based on the definition outlined in Article 101 of the LOSC, an act must fulfill three criteria to be considered piracy. **First**, the act must occur on the high seas, which comprise the Exclusive Economic Zone (EEZ) as defined in Article 58(2). This prerequisite provides a constraint, as any conduct that fits the second or third requirements but does not take place on the high seas cannot be classed as piracy. This limitation stems from the notion of universal jurisdiction connected with piracy under customary law, as stated in Article 105 of the LOSC. Universal jurisdiction enables all nations to arrest and punish pirates. However, following international law principles, any piratical activity taking place within a state's sovereign zone shall be tried under that state's domestic law rather than international law, respecting the sovereignty of that state.<sup>15</sup>

**Secondly**, the crime must be done for private ends, which means that any act of violence performed for religious, ethnic, or political causes is not inherently defined as piracy. This provision distinguishes between state-sponsored acts, which will be dealt

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the Limits of International Law,” *Aegean Review of the Law of the Sea and Maritime Law* 1, no. 2 (October 2011): 218, <https://doi.org/10.1007/s12180-010-0013-3>.

<sup>15</sup> Lawrence, “International Law Regime against Piracy,” 55.

with under war rules (such as the 1949 Geneva Conventions and their protocols), and piracy, which is not subject to such jurisdiction. **Third**, a two-ship requirement requires that the act be rigorously executed by one ship against another.<sup>16</sup>

However, these three requirements are considered limitations when dealing with piracy. First, universal jurisdiction under Article 105 leads to competing judicial proceedings in multiple jurisdictions.<sup>17</sup> It is argued that combating fundamental rights issues (such as piracy) is difficult since different approaches from states can cause instability and system interference in obtaining equal sovereignty.<sup>18</sup> Furthermore, not all states have the resources to pursue pirates, and many transfer pirates to other countries. Second, the 'private end' element is difficult to distinguish, especially given the current geopolitical situation. For example, the hijackers in the Achille Lauro case could not be classified or tried as pirates since they were motivated by political reasons.<sup>19</sup> Thirdly, drawing from the same case, where the hijackers were onboard the same ship (thus not fulfilling the two-ship requirement), they could not be classified and prosecuted as piracy, proving the massive loopholes in the LOSC in dealing with piracy.<sup>20</sup>

In reaction to the Achille Lauro case, members of the International Maritime Organization (IMO) created the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention)-to solve the previously noted constraints. This convention aims to ensure safe navigation by allowing prosecution of individuals for acts of violence on ships, regardless of the motive, which answers the two-ship requirement loophole regulated in LOSC. Additionally, Article 4 of the SUA Convention enables states to pursue pirates on the high seas and during international transit of vessels. However, unlike the LOSC, which established customary law, the SUA Convention is obligatory solely on its state parties.<sup>21</sup> Unfortunately, some significant pirate-affiliated states, such as Somalia, Indonesia, and Malaysia, are not party to this convention. This limitation diminishes the effectiveness of the SUA Convention, as it does not apply to non-parties.

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<sup>16</sup> Fuchs, "Piracy in the 21st Century: A Proposed Model of International Governance," 5.

<sup>17</sup> Fuchs, 7.

<sup>18</sup> Musili Wambua, "A Critical Review of the Global Legal Framework on Piracy: 40 Years after UNCLOS," *Maritime Affairs: Journal of the National Maritime Foundation of India* 18, no. 1 (January 2, 2022): 142, <https://doi.org/10.1080/09733159.2022.2091020>.

<sup>19</sup> This case occurred in the 1985 involving Italian cruise ship; the Archille Lauro which was hijacked by Palestine Liberation Front (PLF) which killed one passenger

<sup>20</sup> Lawrence, "International Law Regime against Piracy," 47.

<sup>21</sup> Lawrence, 56.

## 2. *International law in combating piracy*

The gap in the law of the sea regime in dealing with piracy is the absence of a mechanism for prosecuting pirates—rather than the upholding of universal jurisdiction. The issue is that international courts do not handle piracy cases, leaving it to capturing states to prosecute pirates under their respective domestic laws.<sup>22</sup> Apart from jurisdictional challenges, issues related to evidence and procedural complexities also contribute to states' reluctance to pursue piracy prosecutions, primarily due to financial constraints.<sup>23</sup> For example, specific Western naval forces operating in the waters off the coast of Somalia and the Gulf of Aden use a 'capture and release' strategy, in which pirates are apprehended, their weapons taken, and then freed. This strategy aims to intimidate them but has proven highly ineffective in deterring piracy in notorious pirate zones like the Gulf of Aden.<sup>24</sup>

Enforcement concerns also emerge with hot pursuit as defined in the LOSC, which is halted once the pursued vessel reaches the territorial seas of another state.<sup>25</sup> However, the SUA Convention addresses this loophole specifically in Article 4(2), allowing coastal states to capture the suspected pirates when they enter that state's territorial waters. Additionally, the SUA Convention offers a broader cooperation framework compared to LOSC by granting more flexibility in prosecuting suspected maritime criminals. It also facilitates extradition arrangements with third-party states.<sup>26</sup> This collaborative approach enables states whose legal systems are insufficient to prosecute pirates for engaging in agreements with third states under Article 11(1), as piracy "*shall be deemed to be included as extraditable offenses between state parties.*"<sup>27</sup>

In practice, implementing these conventions is further facilitated by international bodies like the United Nations Security Council (UNSC) and the International Maritime

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<sup>22</sup> Lawrence, 55.

<sup>23</sup> Fuchs, "Piracy in the 21st Century: A Proposed Model of International Governance," 8.

<sup>24</sup> Wambua, "A Critical Review of the Global Legal Framework on Piracy: 40 Years after UNCLOS," 141.

<sup>25</sup> Robert McCabe, "Contemporary Maritime Piracy and Counter-Piracy," in *Routledge Handbook of Maritime Security*, ed. Ruxandra-Laura Bosilca, Susana Ferreira, and Barry J Ryan, 1st ed. (London: Routledge, 2022), 177, <https://doi.org/10.4324/9781003001324-18>.

<sup>26</sup> Wambua, "A Critical Review of the Global Legal Framework on Piracy: 40 Years after UNCLOS," 141.

<sup>27</sup> Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention), opened for signature March 10, 1988, entered into force March 1, 1992, 1678 U.N.T.S., Art. 11(1).

Organization (IMO). One example is the UN Security Council Resolution 1816 (2008), which calls for governments to help combat piracy with the Transitional Federal Government of Somalia (TFG).<sup>28</sup> The resolution authorizes the pursuit of pirates into Somalia's territorial seas after notice to the Secretary-General, allowing patrols to catch Somali pirates in these waters. However, it is vital to remember that this decision establishes a time limit of twelve months, as indicated in Article 10 of UNSC decision 1846 (2008).<sup>29</sup> Although this resolution exclusively targets the issue in Somalia and does not establish customary international law, it represents a substantial effort to address piracy concerns in particular states.<sup>30</sup>

Furthermore, the International Maritime Organization (IMO) has actively participated in establishing effective anti-piracy measures to meet global pirate risks.<sup>31</sup> One such action is IMO Resolution A.922(22), which creates the Code of Practice for investigating Piracy and Armed Robbery on Ships. This resolution establishes mechanisms for governments to combat piracy, including recommendations for adjusting national laws to punish pirates (Point 3.1). In addition, the IMO enabled the Djibouti Code of Conduct in 2009, which intended to assist state parties in combating piracy off the coast of Somalia. This code of practice established the idea of 'reverse hot pursuit,' reflecting a deviation from Article 111 of the LOSC, and authorizes state parties to pursue suspected pirate ships into the territorial seas of another signatory state with that state's concurrence.<sup>32</sup>

In 2004, neighboring nations such as Singapore, Malaysia, and Indonesia worked together to form the MALSINDO Agreement, a regional framework for combating Malacca piracy. This agreement allows state parties to pursue pirates into the territorial seas of other signatory states with the permission of the respective state. The agreement also includes co-patrol provisions, which allow aircraft from one signatory state to enter the airspace of another signatory state.<sup>33</sup> These collective efforts by the UNSC, the IMO,

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<sup>28</sup> Lawrence, "International Law Regime against Piracy," 57.

<sup>29</sup> Gerald Aldytia Bunga, "The Regulation of Piracy and Armed Robbery At Sea In International Law," *Jurnal Hukum Dan Peradilan* 9, no. 3 (January 4, 2021): 436, <https://doi.org/10.25216/jhp.9.3.2020.425-448>.

<sup>30</sup> Lawrence, "International Law Regime against Piracy," 57.

<sup>31</sup> Wambua, "A Critical Review of the Global Legal Framework on Piracy: 40 Years after UNCLOS," 142.

<sup>32</sup> Wambua, 143.

<sup>33</sup> Wambua, 143.



and bilateral agreements among states significantly complement the implementation of the LOSC and SUA Convention in addressing piracy.

#### **D. Conclusion**

The Law of the Sea Convention (LOSC) and the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) Convention require all governments to suppress piracy, as it comes under universal jurisdiction. The LOSC establishes the legal foundation for combatting piracy, and the SUA Convention strengthens this framework by filling the gaps found in the LOSC. The former convention also facilitated broader international cooperation by establishing legal grounds for the extradition of pirates when caught by states without the proper means for prosecution. However, the SUA Convention has not achieved the adoption of LOSC – with notable maritime nations like Malaysia, Indonesia, and Somalia abstaining, hindering its practical implementation – despite efforts by prominent UN bodies. However, regional agreements such as the MALSINDO Agreement complement the efforts put forward by the SUA Convention. In conclusion, the available international legal frameworks appear adequate. However, there is a continuous need for broader adoption of these to mitigate and identify further gaps in the regime.

#### **E. Suggestion**

To effectively combat piracy, this study highlights several key reforms. First, critical revisions to the LOSC and SUA conventions are necessary. Specifically, the “two-ship” requirement and high seas jurisdiction should be amended to address modern piracy tactics, ensuring enforcement extends to territorial waters. Clear prosecution protocols must also be established to eliminate jurisdictional ambiguities and streamline legal processes. In addition, enhanced regional cooperation is vital to strengthening enforcement. Binding agreements between coastal, flag, and port states should facilitate coordinated patrols, cross-border pursuits, and resource-sharing initiatives. To further improve legal responses, joint tribunals should be established to handle piracy cases efficiently and equitably.

Equally important is capacity building in resource-limited states. Efforts should focus on creating specialized anti-piracy units, upgrading maritime surveillance technologies, and reinforcing judicial frameworks to address piracy effectively. Finally, a global compliance mechanism must be introduced to monitor state adherence to international conventions, ensuring transparency and accountability. By implementing these targeted reforms, the

international community can strengthen its collective response to piracy and secure the safety of global maritime trade routes.

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