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A critical review of the global legal framework on piracy: 40 years after UNCLOS

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ABSTRACT

The Third United Nations Conference on the Law of the Sea (UNCLOS III) marked the last stage in developing a comprehensive and codified legal regime for ocean governance. The resultant United Nations Convention on the Law of the Sea (UNCLOS) was a compromise instrument that accommodated the interests of diverse groups at UNCLOS III. As a compromise instrument, the Convention did not address all pertinent issues on ocean governance. Some of the fundamental shortcomings of UNCLOS include a restricted definition of piracy under Article 101 and lack of a definitive enforcement mechanism under Article 105. The article highlights these shortfalls and outlines the efforts by the global community to address the shortcomings in order to combat maritime security threats, both at regional and global levels.

KEYWORDS

UNCLOS; cooperation; maritime security; SUA Convention; piracy; Article 101

Introduction

The history of contemporary law of the sea can be traced back to the League of Nations Codification Conference, which was a culmination of effort by states to codify and develop international law.[1] However, these efforts failed and United Nations (UN), the successor of the League of Nations, later convened the First United Nations Conference on the Law of the Sea (UNCLOS I) between 1956–1958, resulting in the states adopting four conventions.[2] Considered mildly successful, UNCLOS I failed to address certain pertinent issues, like the breadth of the territorial sea. The UNCLOS II, convened by the UN in 1960, collapsed after only six weeks and did not yield any convention.[3] This was followed by UNCLOS III, which was convened in 1973.

The UNCLOS III has been celebrated as the most successful model in the history of multilateral treaty negotiation.[4] However, the negotiations leading to the adoption of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) were protracted and complex, involving numerous compromises to the Convention's text to delicately balance political, economic, social, and security interests.[5] The compromises became necessary due to the fact that various regional groups had diverse interests with regard to the governance of the ocean space. As a result, the comprise Convention, adopted in 1982 at the end of the UNCLOS III, has some inherent ambiguities which pose a

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challenge to its interpretation and application. Moreover, some states have either failed to ratify the Convention or have ratified it but largely failed to implement its various provisions. Interestingly, some of the countries that actively took part in the UNCLOS III negotiations have not ratified the Convention. The United States (US), in particular, which originally did not ratify UNCLOS because of the intense lobbying by national mining companies, has not acceded to UNCLOS as such a move would impede its maritime operations.[6] In fact, the US remains the only major world power that has not ratified UNCLOS.[7]

Forty years after the adoption of UNCLOS, some of the challenges that it sought to address, especially the issue of maritime security, still persist. With technological advances, maritime security threats have continued to evolve. Indeed, the variety of threats to maritime security have increased. One explanation offered for the increase in threats is that during the Cold War, most states depleted or nearly depleted their natural resources, leading to the desire to seek greater control of the adjoining seas.[8] This increased interest in ocean-based resources led to greater claims for sovereignty over the seas, so as to maintain control and exclude other states. The competition for maritime resources and space thus led to claims and counterclaims, which, in turn, escalated conflicts between the states. While the initial potent threat to global maritime security was presented by conflict between states as they scrambled for ocean space and resources, with time, the threats to maritime security have increased and metamorphosed. The current global maritime security challenges are exacerbated due to the fact that most of the emerging threats were either not adequately addressed during UNLCOS III or were not envisioned altogether. Due to the shifting nature of maritime security threats, states have to re-engineer their responses to such threats, which calls for increased cooperation between states through regional and global mechanisms.

To effectively deal with both traditional and emerging maritime security threats, the states must increase cooperation within the framework of UNCLOS. The Preamble of the Convention states that in adopting and ratifying UNCLOS, state parties are:

> *Prompted* by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world.[9]

The core foundation of UNCLOS, derived from its Preamble, is the cooperation between states. This cooperation can be initiated both at regional and international levels. As discussed later, various reasons necessitate cooperation between states for preserving good order at sea and maintaining the balance between sovereignty claims over various ocean spaces and the freedom of the seas. Such cooperation between states in addressing good order at sea has traditionally enhanced international commerce, in addition to facilitating peaceful exploitation of marine resources by both coastal and landlocked states.

The evolution and definitional complexity of maritime security

Any discussion on the challenges of global maritime security is incomplete without addressing the definitional complexity in the use of various terms involved. Such a discussion must begin with a thorough understanding of the concept of security itself.

Traditionally, in military terms, security has been viewed as the absence of threats, but this view has since changed to encompass human security over and above state security.[10] There is also no consensus on the definition of maritime security. Some scholars maintain that maritime security is a "large and sometimes nebulous concept", which involves: (i) preservation of the freedom of the seas; (ii) facilitation of commerce, including the defence of international commerce; and (iii) maintenance of good order at sea.[11] From this definition, maritime security can be conceptualised as an amalgamation of preventive and responsive measures aimed at protecting vessels, ports, crew, and maritime environment against "threats and intentional unlawful acts".[12] In addition, the aspect of human security and enforcement of laws relating to maritime resources have been included in the concept in maritime security.[13]

Modern-day scholars have noted that the state-centric definition of security is limiting[14] as there are emerging security threats that are not encompassed in the above-mentioned narrow definition. The notion of security has thus metamorphosed and expanded from just the absence of danger or threat to human existence to the existence of an environment safe for human habitation. With this new understanding of the concept of security, it is undeniable that most states are ill prepared to combat and contain most of the present-day maritime threats. These threats, commonly referred to as non-traditional threats, cannot be combated by the use of military responses, such as those used for traditional maritime threats.[15] The non-traditional threats have the following unique characteristics:

1. most of these threats are non-military;[16]
2. the threats transcend national borders, thus requiring states to cooperate to combat them;
3. some of the threats are instigated by non-state actors, such as organised crime syndicates and militia groups; and
4. other threats emanate from human actions, such as marine pollution, and natural catastrophes,[17] such as climate change leading to rise in sea levels and the inundation of coastal areas.

The present-day non-traditional maritime security threats illustrate the evolution of maritime security concerns and challenges in the 40 years since the states adopted UNCLOS. These emerging maritime threats include maritime terrorism, climate change, and the illegal exploitation of marine living and non-living resources. However, a comprehensive discussion of these non-traditional threats is outside the scope of this article.

Inadequate definition of piracy

There is no agreed upon definition of piracy under international law.[18] According to scholars, the definition in Article 15 of the 1958 Convention on the High Seas (hereafter the High Seas Convention), which was replicated in Article 101 of UNCLOS, does not embody the customary international law understanding of piracy.[19] However, in spite of this scholarly opinion, the definition of piracy in Article 101 of UNCLOS is the one that is most widely accepted. Article 101 provides that piracy includes:

(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).[20]

Article 100 of UNCLOS imposes a duty on state parties to "cooperate to the fullest extent possible" to repress piracy on the high seas.[21] However, a critical analysis of Article 101 demonstrates that its provisions undermine the objective of cooperation between states provided for in Article 100. Interestingly, apart from Article 101 provisions, there are very few corresponding articles in UNCLOS that call on the states to cooperate in order to ensure good order at sea and the maintenance of maritime security. Some of the UNCLOS provisions that expressly call for cooperation between states include: exploitation of marine living resources;[22] conservation of marine environment and controlling marine pollution;[23] safety at sea;[24] maritime transport;[25] and marine scientific research.[26]

A critical examination of the wording of the provisions of UNCLOS that explicitly call on states to cooperate reflects that states are likely to downplay the other provisions as the Convention does not emphasise cooperation with regard to the matters covered. In short, it is possible for states to interpret that the relevant provisions place no obligation on them to cooperate in those matters that are not expressly covered by UNCLOS. This kind of interpretation is not only short-sighted but also risky to good order at sea, given the emergent threats that were not envisioned by UNCLOS.

The need for cooperation between states is further necessitated by the changing nature of piracy. Earlier, piracy was conceived as sea banditry, with offenders only being interested in nothing more than stealing cargo, the personal effects of the crew and passengers, and the items from the ship's safe.[27] However, present-day piracy is a high-stakes "business venture", that is well planned and executed, involving the use of sophisticated weapons and physical violence, the hijacking of ships, and taking of hostages.[28]

Three definitional challenges can be noted in Article 101 of UNCLOS that have hindered cooperation between states in combating piracy. These definitional challenges originated from the fact that as international law developed, the states continued to view piracy as acts of banditry as originally understood. In an attempt to codify the law on piracy, researchers from Harvard University came up with a draft convention, popularly known as the 1932 Harvard Draft Convention. The Harvard Draft Convention viewed piracy from its traditional understanding as interfering with shipping in the high seas, leaving states to deal with illegal acts within their territorial waters.[29] The work of the Harvard researchers influenced the International Law Commission (ILC) when drafting piracy provisions of the High Seas Convention of 1958, thereby importing the

definitional shortcomings into it. These definitional challenges were further transplanted into UNCLOS.

The three limitations identified in Article 101 definition are discussed next.

Two-ship rule

Article 101 provides that for an unlawful act to be considered piracy, there must be two ships involved, that is, the pirate ship and the victim ship. The vessels involved can either be private ships or private aircrafts. Whereas UNCLOS does not define the term "ship", the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the SUA Convention) defines a ship as "a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft."[30] This definition of "ship" appears to suggest that offenders who use skiffs dropped off mother vessels to attack other ships, like in the case of the piracy off the coast of Somalia, would be considered pirates. However, there is need for a globally acceptable definition of the term "ship" to ensure certainty and harmony in the definition of piracy since purists insist that crude vessels, such as skiffs and rubber boats, cannot be considered as ships.[31]

The two-ship requirement presents an unnecessary controversy based on the nature of attack, which may in turn complicate prosecution of offenders, thereby limiting cooperation between states and delaying concerted global response to piracy attacks. Indeed, cases have been recorded of piratic attacks on some ships by the members of the crew or passengers on board the victim vessel. Undoubtedly, UNCLOS did not envision such kind of unlawful attacks on vessels. These kinds of attack became a reality a few years after UNCLOS was adopted when the *Achille Lauro* was hijacked in 1985.[32] The *Achille Lauro* incident fell outside the scope of Article 101 definition as it was an internal seizure not involving two ships.[33] A similar situation arose in the incident involving the capture of a Portuguese ship, *Santa Maria*.[34] Some scholars in favour of the two-ship requirement point out that the requirement was included in the definition of piracy in Article 101 as a ship and all those aboard it are subject to the flag state jurisdiction. They hold the view that whatever happens in such a victim ship is not the concern of the international law of the sea, which seeks to maintain good order in areas of the sea outside national jurisdiction.[35]

The two-ship requirement has created considerable loopholes in the fight against piracy. Prior to the adoption of the SUA Convention, international law did not expressly provide for sanctions against such unlawful acts.[36] Further, purists have argued that the Somali bandits who used crude vessels like skiffs were not pirates as their actions, though unlawful, did not meet the requirements of the piracy definition given in Article 101.[37] Based on such an argument, it is possible for such offenders to evade prosecution under the piracy provisions.

"Private ends" requirement

Another limitation in the definition of piracy, as provided under UNCLOS, is the prerequisite that the illegal acts must be "for private ends". The precise meaning of "for private ends", or acts that fall within those ends, is, however, not clear.[38] It has been suggested

that the requirement was included in the definition to distinguish between state-sponsored actions and acts of privateering, with the latter amounting to piracy.[39] Two schools of thought have emerged to explain the inclusion of this limitation in Article 101 definition. The first school of thought argues that "the private ends requirement" was intended to eliminate conduct committed on behalf of states or by state actors, while the second school of thought postulates that the limitation disqualifies acts committed for political and ideological reasons.[40] Some commentators have attacked the limitation by arguing that "pirates are criminals not because of their subjective motives but because their acts impinge upon States' monopoly on legitimate violence and their interests in the freedom of navigation."[41] Thus, central to the definition of piracy is not the intention of the offenders but whether a state can be held responsible for the acts of the offenders.[42]

Just like the two-ship rule, the private ends requirement in the definition of piracy in Article 101 has presented a challenge in the fight against piracy. The hijackers in the *Achille Lauro* incident could not be considered and prosecuted as pirates as they were motivated by political considerations.[43] Similarly, some of perpetrators of piracy off the coast of Somalia have put up defences to their illegal actions by maintaining that they only seise/arrest ships that violate the territorial integrity of Somalia by entering her territorial waters and those that illegally dump toxic waste in Somalia's territorial waters or conduct illegal fishing in such waters. It has been proposed that in order to seal the loophole arising from the private ends requirement, the scope of the requirement should be defined, and if need be, amended, to read as "the intention of the offenders is subjective in the determination of whether the event is occasioned for private ends".[44] It has also been suggested that the definition should be amended to include politically motivated piratic attacks or terrorist activities.[45]

"On the high seas" requirement

Under Article 101, piracy can occur on the high seas or outside the national jurisdiction of any state. This is a logical limitation,[46] aimed at protecting the sovereignty and territorial integrity of coastal states. This flows from an international law standpoint, particularly Article 2(4) of the UN Charter. Article 86 of UNCLOS defines high seas as "all areas of the sea that are not part of the internal or archipelagic waters of a State, the territorial sea or the Exclusive Economic Zone (EEZ) of any State."[47] However, Article 58(2) includes the EEZ as part of the high seas when dealing with the piracy provisions only. Indeed, the article seems to expand the area considered as high seas when dealing with the offence of piracy, thereby expanding the geographical space within which it can occur.[48] Scholars have observed that the high seas requirement disqualifies most armed attacks from the definition of piracy, making universal jurisdiction inapplicable in the circumstances.[49]

This definitional limitation in Article 101 has presented a challenge to the prosecution of offenders who carry out attacks on ships within the territorial seas and contiguous zones of coastal states. The territorial waters of states have been and continue to act as safe havens for pirates who attack ships on the high seas and when pursued, enter the territorial waters of coastal states.[50] The best illustration of this challenge was the seizure by the Somali pirates of *MV Rozen*, a ship chartered by the World Food

Programme, on the high seas, followed by its anchorage off the coast of Puntland.[51] This act by the pirates made it impossible for the global counter-piracy forces to pursue and arrest the pirates as such an act would violate the territorial integrity and sovereignty of Somalia. Such an intervention by the global community would face challenge as the enforcement jurisdiction granted to states to arrest, try, and convict pirates is only restricted to the high seas.[52] Essentially, the provision prohibits states from pursuing and arresting pirates in the territorial waters of third states. Besides, any attempt to justify such an action would be tantamount to inventing a new concept of "reversal hot pursuit", a concept not envisioned in Article 111 of UNCLOS.[53]

Complementary offences to piracy

In the wake of the *Achille Lauro* hijacking, the international community realised that there were major deficiencies in the piracy provisions in Article 101. As mentioned earlier, incidents like the hijacking of the *Achille Lauro* were not conceived at the time the states adopted UNCLOS, leading to deficiencies in counter-piracy measures. Consequently, following consultations and lobbying, the International Maritime Organisation (IMO) member states convened to adopt the 1988 SUA Convention.[54] It is generally agreed that the provisions of the SUA Convention[55] on maritime offences ameliorate the definitional challenges in Article 101 of UNCLOS in the following three ways:[56]

1. Article 3 definition does not include the motive of attacks on ships.
2. Article 4 permits states to pursue aggressors at any time the vessel is in international transit, and not just on the high seas alone.
3. The offences under the SUA Convention do not have the two-ship requirement.

It is important to note that the offences under Article 3 of the SUA Convention are the same illegal acts as those of piracy, only that they are not restricted to the high seas and do not enquire on the motive of the illegal acts. Without the adoption of the SUA Convention, these illegal acts would otherwise go unpunished, further complicating efforts to prosecute pirates.

Adjudicative and enforcement jurisdiction under Article 105 of UNCLOS

Article 105 of UNCLOS confers enforcement jurisdiction to pursue, arrest, and try pirates in the domestic courts of the capturing state.[57] However, scholarly opinion is divided on the enforcement and adjudicative jurisdictions as contained in the article. There is general agreement that Article 105 provides for a universal enforcement jurisdiction in respect of piracy, empowering any state to seise a pirate ship and arrest the suspected pirates.[58] This universal enforcement jurisdiction is one of the few exceptions when a ship can be arrested by another state other than the flag state.[59] Indeed, the wording of Article 105 supports this interpretation. Sharp divisions occur, however, regarding the adjudicative jurisdiction.[60] Some scholars argue that only the capturing state can prosecute suspected pirates in the national courts, whereas another group argues that nothing in Article 105 bars the capturing state from transferring or extraditing the suspected pirates to another state for prosecution.[61]

There are no extradition arrangements under UNCLOS that permit the transfer of suspected pirates for prosecution in states other than the capturing state. These jurisdictional challenges and the unwillingness by some states to put on trial suspected pirates led some Western naval forces patrolling the waters off the coast of Somalia and the Gulf of Aden to employ a "catch and release" policy, where suspected pirates were arrested, their weapons confiscated, and then they were released.[62] Sandeep Gopalan aptly noted that the "navies were reduced to ferrying captured pirates to the beach".[63] Another maritime law expert, Douglas Burnett, reportedly described this method as a "method reserved for trout".[64] These measures proved to be very ineffective as they did not deter piracy in the Gulf of Aden.

The failure of the "catch and release" practice to combat piracy in the Gulf of Aden forced the Western naval powers to change tack. Some states and regional bodies (such as the European Union [EU]) negotiated and signed memorandums of understanding (MoUs) with countries such as Kenya to prosecute suspected pirates captured off the coast of Somalia.[65] The Exchange of Letters between the EU and Kenya is an example of how such MoUs were negotiated between the respective states.[66] However, these MoUs were largely politicised, with Kenya at one point refusing to prosecute suspected pirates in the national courts. Though the Government of Kenya did not expressly state the reasons for such a refusal, it is believed that Kenya's partners in the bilateral agreements failed to honour their commitments, particularly on funding.[67]

The SUA Convention seems to offer a wider cooperation mechanism than UNCLOS by allowing for more liberty to prosecute suspected maritime offenders; in other words, it provides for extradition arrangements to third states.[68] This enhances the cooperation between states in combating such maritime offences. Thus, states whose domestic laws do not adequately provide for the prosecution of suspected maritime offenders may capture them and enter into arrangements with third states to prosecute them. However, the SUA Convention is largely unratified and cannot, therefore, be considered to embody customary international law.[69] Its provisions are utilitarian in approach insofar as they were specifically designed to address the challenge presented by the *Achille Lauro* incident. While trying to address the challenge posed by the deficiencies in the definition of piracy in Article 101, the SUA Convention provisions created a new challenge of universality and acceptability, within the framework of international law, of the new offences it creates.

Cooperative frameworks under UNCLOS

The foregoing discussion demonstrates the necessity for states to work together to ensure there is good order at sea. This cooperation has, however, not been achieved because of numerous reasons. Maritime cooperation is greatly hindered by the staunchly defended doctrine of "State Sovereignty", which advocates for focus on ensuring the security and safety of the sea areas under national jurisdiction to guarantee national security. This limited and short-sighted approach by states presents a major challenge in addressing issues of maritime security and good order at sea which transcend national, geographic, and political boundaries. Indeed, the living marine resources, particularly the highly migratory species, do not recognise or respect national boundaries.[70] Further, the maritime domain is very large and most states lack the naval capability to patrol, control, and protect even the maritime zones that fall within their national jurisdiction.

The basis of cooperation between states under UNCLOS is found in Article 100, which provides that: "All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State."[71] Article 105 also embodies the notion of cooperation by granting enforcement jurisdiction to all states on the high seas, allowing any state to seise a pirate vessel and arrest and prosecute the suspected pirates in the national courts.

Due to the development and enhancement of technology and shifts in the geopolitical environment, currently, maritime security is being tested by the evolving interests of global players in the maritime sector.[72] Similarly, the volume of international trade has increased exponentially in the 40 years since the adoption of UNCLOS, thus posing new threats due to increased volumes and varieties of ships and their cargo. Non-traditional threats, such as terrorism, increase in the use and smuggling of weapons of mass destruction, and trafficking in persons and illicit drugs and psychotropic substances, have also emerged post-9/11 attack on the World Trade Centre.[73] In response, states have developed regional and global cooperative mechanisms to ameliorate the impacts of emergent maritime security threats. Some of the regional organisations formed to address these threats are voluntary organisations and do not impose strict and binding rules on the member states.[74] However, most of the organisations have recorded a measure of success through their cooperation. Some of the global and regional cooperation mechanisms are discussed next.

IMO

The IMO, as a specialised agency of the UN responsible for the "safety and security of shipping and the prevention of marine and atmospheric pollution by ships",[75] has recorded great success in addressing maritime security threats since its inception in 1948. Having 175 states as members, the IMO is organised into an Assembly, a Council, and five committees (including the Legal Committee), supported by various sub-committees.[76] With the support of the shipping industry, the IMO has developed various anti-piracy measures to mitigate the threats presented by piracy globally.[77] It has also engaged in capacity building for its member states to improve safety and security at sea in several ways, such as coming up with model legislations aimed at ensuring better implementation of the IMO conventions.

In the wake of the 9/11 attacks, states, under the auspices of the IMO, developed global security arrangements, such as the International Ship and Port Facility Security (ISPS) Code.[78] The code is the "basis for a comprehensive mandatory security regime for international shipping".[79] One of the main objectives of the ISPS is to foster cooperation between "Contracting Governments, Government agencies, local administrations and the shipping and port industries".[80] Further, the IMO assists states to cooperate in maritime security initiatives through the Integrated Technical Cooperation Programme (ITCP).[81]

Code of conduct concerning the repression of piracy and armed robbery against ships in the Western Indian ocean and the Gulf of Aden (Djibouti Code)

The Djibouti Code came about as a practical solution to a regional problem. Sponsored and facilitated by the IMO, it was concluded between nine states on January 29, 2009.[82] It

provides for cooperation among the signatory states in a bid to combat piracy and armed robbery against ships off the coast of Somalia and in the Gulf of Aden, calling for these states to coordinate the sharing and exchange of information.[83] Article 8 of the Djibouti Code establishes information centres in Mombasa, Sanaa, and Dar es Salaam to ensure there are concerted approaches to combat piracy in the region.

One of the challenges that has been noted in the fight against piracy is the limitation in the definition of the concept of "hot pursuit" in the provisions of UNCLOS. Under Article 111, hot pursuit ceases when the pursued ship enters the territorial waters of another state. As noted earlier, some Somali pirates managed to evade capture by entering Somalia's territorial waters when being pursued. To counter such a loophole in the counter-piracy measures, the Djibouti Code allows signatory states to pursue suspected pirate ships into the territorial waters of another signatory state subject to that state's approval.[84] This extended and redefined concept of hot pursuit is aided by Article 7 of the Djibouti Code, which introduces the novel idea of "embarked officers", where a signatory state provides law enforcement officers to board the naval ships of another state patrolling the waters off the coast of Somalia and the Gulf of Aden. It is these law enforcement officers who give authorisation to the naval vessels to continue hot pursuit into the territorial waters of the coastal state and apprehend the suspected pirates. The presence of the "embarked officers" on board the foreign arresting vessel technically circumvents the requirement of seeking consent from the relevant coastal state, hence sanitising an act which would otherwise amount to a violation of the territorial integrity of the coastal state.

The new notion of pursuing suspected pirates into the territorial waters of third states has been referred to as "reverse hot pursuit".[85] Reverse hot pursuit helps states to circumvent the strict provisions of UNCLOS on hot pursuit. In the *MV Saiga* case, the International Tribunal for the Law of the Sea (ITLOS) was emphatic that all the conditions laid out in Article 111 of UNCLOS had to be fulfilled for the hot pursuit to be considered legitimate.[86] This restrictive understanding of hot pursuit explains the strict reliance of UNCLOS on the "traditional understanding of piracy – one that assumes that State System works effectively and that a State can enforce its own laws in its territorial sea."[87] Reverse hot pursuit, therefore, enhances the cooperation between states in combating piracy if adequate guidelines are developed on how it can be exercised without undermining other established principles of international law which guarantee sovereignty and territorial integrity of states.

The MALSINDO agreement

The 1990s and early 2000s saw a dramatic increase in the incidents of armed robbery at sea in the Malacca Strait. As a result, three states, Malaysia, Singapore, and Indonesia, came together to establish a regional framework to curb this maritime security threat, making efforts to cooperate in patrolling the Malacca Strait and arresting the offenders.[88] The cooperation was on the basis of various bipartite agreements among the three states, which were converted into a tripartite agreement called the MALSINDO Agreement in 2004.[89] Just like the Djibouti Code, the MALSINDO Agreement allows any state party to the agreement to pursue pirates and other maritime offenders into the territorial waters of any other signatory state with the permission of that state. Further, the

three states have included an aerial co-patrol provision in the agreement to allow foreign aircrafts from a signatory state to enter into the airspace of another signatory state.[90]

Conclusion

Maritime security threats continue to evolve because of certain factors, such as increase in international trade and advancement in technology. The concept of maritime security, as it was traditionally understood at the adoption of UNCLOS, is rapidly changing. The emerging maritime security threats are unique and require the concerted efforts of states to combat them. Additionally, the transnational nature of the maritime security threats and the sheer vastness of the maritime space mean that no single state can secure the maritime space within its national jurisdiction without cooperating with other states. Thus, states have to come together regionally to form cooperative structures in accordance with Article 100 of UNCLOS so as to address regional maritime security threats.

Noting that UNCLOS was a compromise convention with shortcomings, states should adopt "corrective complimentary" conventions, such as the SUA Convention, to ameliorate the inadequacies of UNCLOS. In adopting these conventions, states should also endeavour to enact domestic legislations for implementing such conventions so that they have uniform domestic legislative frameworks to combat global maritime security threats.

Lastly, as demonstrated here, states should cooperate at the regional level to address maritime security threats and ensure there is good order at sea by developing unique models of cooperation agreements, which, though limited by geographical scope, form the basis of future reform in addressing existing legal principles and concepts relevant to maritime security. Such regional efforts need to be supported and replicated in all regions so that global maritime security is guaranteed.

Notes

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