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Investigating Strategies for Preventing Piracy Phenomenon from the Perspective of International Law in Somalia, Gulf of Aden, and Sea of Oman

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Abstract

Considering the importance of sea routes and their increasing use as world transportation and trade routes, this paper addresses the security of sea routes. Focusing of piracy, the study investigates the most important factor threatening the security of these routes. Besides, special attention is paid to the world reaction, particularly the decisions made by the UN Security Council, regarding the piracy phenomenon. Given the geographic location of the Sea of Oman, special attention is also paid to the factors threatening the security and the impact of insecurity in the Sea on world economy. (Increase in insecurity in sea transportation leads to increase in insurance rates and sometimes disrupts this industry.) This research attempted to offer strategies to increase security in this sea so as to more clearly determine the vision of sea economy of this region. By increasing security and safety in the region, disasters such as those which occurred in the Gulf of Aden and Somali Coasts can be prevented.

Keywords: Piracy; Somalia and the Gulf of Aden; Sea of Oman; International law.

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1. Introduction

Sea routes have long been the best means of transportation and world trade since man gained access to the sea. The importance of this issue is revealed to us when we consider the fact that the World Maritime Organization refers to seamanship as a giant world industry [6]. Notwithstanding, one of the main concerns of the maritime industry is the problem of piracy. Piracy has a long history. Piracy with swords and sailboats which had been abandoned has once again become a significant issue in the international law.

The image of the patch-on-an-eye pirate with a sword in his hand no longer exists, and in this age pirates use the most modern weapons and methods with a different appearance. Piracy in western Africa and particularly in Nigeria, Malay Strait, China Sea and Latin America presaged a new age in this area [10]. However, what made piracy known and brought it to the top of the news was piracy in Somali coasts and Gulf of Aden. These robberies took place in a place which was located between two vital world highways, i.e. Strait of Hormuz and Suez Canal. These robberies, along with the violence with which they were done, attracted the attention and reaction of the international community. According to the statistics offered by the International Maritime Bureau (IMB), which is the only center receiving reports on pirate attacks, the number of attacks on ships was 239 in 2006, 263 in 2007, 293 in 2008, 406 in 2009, and 489 in 2010. In 2011, this number gained an 11.3% growth over the year 2010 and reached 544 [3]. In 2012, and according to the statistics, in the first six months 54% of the pirate attacks were reduced. According to these statistics, from last January up until this June, 177 cases of pirate attacks have been recorded across the world. This is considerably lower than the 266 cases recorded in 2011 [10]. Although this number has had a descending trend compared to previous years, it is still a great number, and, this phenomenon is still a great danger for international and maritime trade. Of course it should be noted that the majority of these attacks since 2005 have taken place in Somali Coasts and Gulf of Aden.

2. Materials and Methods

The research method in this study is library research via studying books and legal articles and also studying of international laws approved in this regard.

3. Defining piracy

Many definitions have been offered for piracy. These definitions exist both in written laws and in among the public. However, considering the authority and specialty of those who offer the definitions, the most comprehensive definition must be sought in the UN Convention on Law of the Sea and (IMO). However, there are criticisms against the definitions of piracy in these documents, too.

3.1. Defining piracy based on the Convention on the Law of the Sea

In 1958, according to the Geneva Convention on the high seas, the common law on piracy became codified into written law. In 1982, then, the UN Convention on the rights of the seas passed the law. Being signed by the sixtieth country, the convention was put into practice in 1994. According to the article 101 of this convention, as well as the article 15 of the Geneva Convention, piracy is so defined:

(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).

The following outlines can be discerned from the above definitions:

- Piracy takes place when self-interest is the main ambition of the act.
- The act must be taken place by the crew or the passengers of a private ship or a private aircraft.
- The act's place to be outside the jurisdiction of any State.

The International Maritime Organization (IMO) defines piracy as:

The act of loading any ship with the intention depredation or any detention, or the use of force in s doing.

3.2. Different types of piracy

The (IMO) Safety Committee puts piracy under three categories based on the degree of danger and the type of robbery:

- Low level armed robbery taken place by unorganized pirates using light arms, like the Pirates in India
- Middle level armed robbery or detention taken place by fairly organized pirates, like the pirates in Bangladesh.

Armed robbery and kidnapping is the most common type of piracy in the past decade and includes unloading, renaming and selling the ships by the thoroughly organized pirates such as the robberies taken place in the Gulf of Aden and Somalia.

4. Piracy in the Gulf of Aden and Somalia

Somalia is a poor country in the East Africa. In 1990, by collapse of the central government and fragmentation of the country into certain autonomous governments, there became groups of pirates along the coastal areas of the country. Somalia is a melting pot of different cultures and ethnicities [17].

The Pirates in Somalia, due to the adjacent of their country to the seas and by having 3000 sea borders, are well familiar with the seas' ups and downs. As their intention was not clear, there were possibilities of spreading out other regions.

These pirates primarily had chosen their prey from their own country, but today they have broaden the zone of their robberies to certain other areas as well. They not only have entered the coasts of Somalia and the Gulf of Aden, they also have expanded their activities in the Indian Ocean and the Oman Sea, which means a potential threat for the whole countries in the region. These pirates, moreover, have continued their activities in the Arabian Sea. These pirates, as they have been blocking the trade ways and jeopardizing national and international security, have become a major problem in the recent years.

The Somali pirates are now a worldwide threat. They are expanding their activities over the neighboring regions. The case of these pirates has become a national and interracial issue, inasmuch as they have continued their threat for the neighboring countries. It should be noted that those pirates who use heavy weapons might become parts of terrorist networks. This can become a threat for the involving countries. They, furthermore, because of the conflicts they have with the oil tankers, might bring about environmental disasters [18].

The Somali pirates make a detriment of 10 billion dollars annually and the international measures in repressing them have been futile by then. The participating countries in the regional treaties are certain poor countries, which are themselves involved in their own domestic conflicts (for instance, Ethiopia and Kenya). On the other hand, poor conditions for the youth have led to the expansion of such robberies along the coastal areas of Somalia and the Gulf of Aden. These people focus their activities on latent places, where the ships are slow. The activities of these pirates are intensified due to certain reasons:

- Lack of seriousness in condemning these pirates in the held trials
- Rampant poverty in Somalia
- The pirates being equipped with military arms
- The involvement of the Somali central government with its domestic problems and thus failure to deal with the pirates [12].

The Somali pirates have made extra costs for the transport system. These pirates have been a serious threat for the seafarers, transport system, environment and international trades. This is because there have been extra costs for the seafarers in passing the tip of southern Africa, so as to escape the threat of these pirates. This rout change then brings about extra cost, demands much more fuel, longer trip, increase the global fuel prices, increase the insurance costs and, too, requires payment of ransom in release of the ships.

It is noteworthy that by the increase of military forces in the region, there would be less pirates, but to eradicate this grim phenomenon, the act must be taken place in the soil of Somalia and, in so doing, the poverty must be rooted out in this country. Although the Iranian ships, being escorted by the army, have been less targeted as prey for these Pirates, the menace is always a step away.

4.1. Piracy in Somalia

Piracy along Somali coasts is of certain properties:

- These robberies are already organized
- These robberies are associated with kidnapping, which dissociates it from traditional piracy.

4.2. Piracy in the Sea of Oman

The Persian Gulf and the Sea of Oman are two strategic regions that are parts of the Seven Seas. The attacks of the pirates have spread out along the Persian Gulf coasts and thus inflicted the sea transport companies with great costs. The pirates had already kidnapped certain Pakistani's ships and their crews close to its neighboring country, Iran.

In the following section, pirates' attacks on both Iranian and foreigners' ships in Sea of Oman and on Iranian ships in Bab-el-Mandeb strait and Gulf of Aden have been put:

- Release of an UAE tanker from pirates by Iranian army in 07/05/2011 [3].
- Rescue of a Chinese container-cargo ship from pirates in Sea of Oman by Iranian army in 22/07/2011 [3]
- Rescue of Abade Iranian tanker from pirates by Iranian army in 22/07/2011 [3].
- Rescue of an Iranian tanker from pirates in Bab-el-Mandeb strait by Iranian army in 22/10/2011 [3].
- Rescue of an Iranian tanker from pirates by Iranian army in 25/02/2012 [3].
- Release of Chinese General Cargo from pirates in a spot 45 miles away from Bandar-e-Jask by Iranian army in 07/04/2012 [3].
- Attack on a Greek tanker with 135000 tons of capacity in Sea of Oman [6].
- Attack on a Panamanian cargo ship in Sea of Oman [9].
- Release of an Iranian watercraft from pirates by American warship in Sea of Oman [9].

It is worth mentioning that Persian Gulf nations have thoroughly cooperated in eradicating piracy in Somalia and areas around it, because in case a danger occurs Persian Gulf nations would be vulnerable [15]. Gulf Cooperation Council (GCC) are responsible to prevent the occurrence of such aggressions [14]. Also, it must be noted that piracy has economic financial losses, which are:

- Paying tribute to pirates
- Increasing sea premium in shipping lanes with pirates
- Using security equipment and armed guards
- Shifting direction and having a longer route to sail
- Increasing of speed (which leads to an increase of fuel consumption) to run away from pirates
- Crew payment
- Expense of chasing and imprisoning pirates
- Military acts to escort ships and fight with pirates

- Establishment of anti-piracy organizations [16].

Piracy might have further corrupting phenomena, such as offshore turmoil and attacks (when having weapons can attack to a nation and be a danger to safety in coastal nations), sea terrorism (expansion of terrorist branches in the sea by pirates), ship robbery (unarmed robbery from the ship by the crew or passengers at the excuse of being kidnapped by pirates), rebellious actions in the sea (e.g. People's Mojahedin Organization of Iran, who attacked Iranian marine forces as pirates), and attack of commercial ships (they might attack other opponent commercial ships as pirates) [13].

5. Global measures taken against piracy

Increasing prevail of piracy has made the world to take more serious action toward this international crime. Here, UN and IMO have more salient roles [5]. In this regard, UN has had a more important influence by offering third conference of law of the sea which led to convention 1982. Article 100 in this convention states 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". Furthermore, article 105 denotes that "every State may seize a pirate ship or aircraft, but the courts of the State which carried out the seizure may decide upon the penalties to be imposed". According to the above mentioned articles, it can be concluded that this convention aims at repressing piracy globally and, to this aim, has let nations stand against it as they wish.

Another convention which is of importance in maintaining sailing safety is convention 1988 which involves repression of illegal actions against sailing safety. This convention was established at the request of International Maritime Organization. This contract was the first contract which was made by legal regime applicable to maritime terrorism and safety [8]. This contract has obliged nations to criminalize illegal actions stated in this convention, which is pioneer in this respect. However, this convention does not deal with piracy directly. Regarding the role of International Maritime Organization in repressing dangers imposed on commercial shipping by pirates, this organization has, for many years, had paid special attention to piracy and how to stand against it. Also, it has made several legal and executive statements and instructions to provide member nations with guidelines in preventing and repressing this dangerous phenomenon and its repercussions, so as to make a harmony between all nations. For instance; in statement No. A. Res. 923/22, in 29 Nov 2001, (IMO) has urged member nations, according to flag nations' responsibilities as stated in international maritime law, especially articles 91 and 92 of sea convention 1982, to take vital measures to define conditions of ship registration, prevent reregistration, vigilant control of annulment of registration before registration. In this way, pirates it would get impossible for pirates to use ships registered under the name of two nations. In addition, in statement No. A. Res. 923/22, in 29 Nov 2001, an almost comprehensive code of practice has been set and suggested to member nation, which denotes how they might carry out legal research and provide reasons for a crime [5].

Furthermore, a meeting of 19 nations from west of Indian Ocean, Gulf of Aden, and Red Sea was held by IMO in 29 Jan 2009 in Djibouti led to the acceptance of "Djibouti Code of Conduct" by the member nations.

According to this code, participant nations agreed on total cooperation in arresting, searching, prosecuting those who have committed piracy or are suspicious of piracy, ship or property seizing [5].

In addition to the above mentioned points, mentioned must be made of statements put by United Nations Security Council which have been defined for the status quo when piracy is at its utmost. UNSC statements have been formed on repression of piracy in Gulf of Aden, Coasts of Somalia, and Gulf of Guinea. These measures of UNSC which are a response to piracy have been represented in statements 1816 (year 2008), 1846 (year 2008), 1851 (year 2008), 1897 (year 2009), 1918 (year 2010), 1950 (year 2010), 1976 (year 2011), 2015 (year 2011), 2020 (year 2011) in coastal area of Somalia and statements 2018 (year 2011), 2039 (year 2012) regarding piracy in Gulf of Guinea [11].

6. Discussion

Generally, strategies of repressing piracy need to be taken into account in three different levels in these areas. First involves its prevention, second deals with repression and prevention of ship seizure and, finally, the third level includes pursue and prosecution of pirates.

(A) Prevention measures include:

- Coordination of global community
- Making use of security forces in deck of commercial ships
- Removal of subjects and factors of piracy, such as poverty, in a nation like Somalia [2] (B) Measures including repression and prevention of ship seizure
- Confiscation of stolen property [2].
- Sending armed forces
- Arresting pirates and delivering them to legal forces (C) Prosecution and punishment of pirates
- Criminalization of pirates
- Forcing nations to prosecute pirates
- To get a tangible hopeful result, three levels are needed to be taken into account constantly and simultaneously. In this way, this crime would be totally eradicated.

7. Conclusion

Legally speaking, convention 1982 has drawbacks. It does not exclusively provide nations with necessary legal measures to stand against this crime. However, it seems that, in case we put convention 1982 of marine rights and convention 1988 of repression of illegal measures against sea navigation next to convention 1979 of inhibition of hostage taking, legal means influential to piracy repression would be available [9].

The reason for the inclusion of convention 1979 of inhibition of hostage taking is that recently piracies include taking hostage. According to statistics presented by (IMB) Piracy Reporting Center, Somali pirates currently have taken 154 hostages [4]. As regards economic and human expenses followed by piracy, global community

must coordinate activities against Somali pirates. In this vein, (IMO) has named 2011, the year of coordination of activities against piracy [7].

As it was mentioned above, global community has not been able to eradicate piracy so far. Iran has been a victim of this ominous phenomenon. To prevent piracy and its prevalence in Iranian coastal areas, some suggestions can be made. In case these suggestions are taken into consideration, safety in Iranian waters can be guaranteed. These suggestions include:

- Using military helicopters to patrol the area and react quickly toward attacks.
- Using Iranian military ship in Sea of Oman (because patrolling of foreigner ships is a danger to national security).
- Prosecution of pirates for the prevention of letting this phenomenon to traffic and terror.
- Using armed forces in Iranian and foreigner ships on Iranian waters.
- Starting coastal guard.
- Making use of other nations' programs in opposing piracy.
- Making use of marine guards.
- Training armed forces in confronting with pirates.
- With coordination of other local nations and appropriate plans, they can eradicate poverty which is a prerequisite to piracy.

References

- [1] A. Nouramin, Kazemi, A .Asiabar, *An investigation into effects of piracy on maritime economy*, Payam-e-Darya monthly, 2011, vol 201, p. 99.
- [2] E. Beigzade, "Piracy: An old crime with a modern advent", conference of piracy with an international attitude, 2012, vol. 29, p. 34.
- [3] Events band, "Safety at the sea, with an eye on piracy", Payam-e-Darya monthly, 2011, vol. 205, p. 42.
- [4] European Union Committee, "Turning the Tide on Piracy", Building Somalia Future: Follow-up Report on the EU Operation Atlanta and Beyond. 2012.
- [5] Foreign Affairs Committee, "Piracy off the Coast of Somalia", 2012.
- [6] H. Yekdelepour, , *The phenomenon of piracy from an international attitude*, Bandar & Darya monthly, 2011,vol. 81, pp. 62-63.
- [7] J. Momtaz, "Final words to the conference", conference of piracy from an international attitude, SHBU,2009, pp. 116- 143.
- [8] L. Baison, et al, *International marine law*, translated by Mohamad Habibi Majandeh, 2011, p. 336.

- [9] M.M. Eslami, "A record of piracy and legal limitations in opposing it", *Bandar & Darya monthly*, 2012, vol. 192, p.70.
- [10] M. Hosseini, "A report of piracy conference from an international attitude", *Beh-Hengam seasonal*, 2009, p. 57.
- [11] M. Ghorbanpour, "Investigation of international community 's activity in response to pirates' measures in coast of Somalia", *journal of international laws, Presidential publication center of international laws*, 2009, vol. 26, pp. 215- 242.
- [12] M. Murphy, "Somali Piracy: not Just a Naval Problem", *Center for Strategic and Budgetary Assessment*, 2009.
- [13] Reporting band, "Piracy and coordination of activities", *Bandar & Darya monthly*, 2010, vol. 177, p. 106.
- [14] Report of the Atlantic Council Counter-Piracy Task Force, "Management the Global Response to Maritime Piracy", *Atlantic Council, Washington, DC*, 2012.
- [15] R. Mehr-ata, *Global community against an ominous phenomenon; piracy in international law*, SHBU, pp. 83- 96, 2011.
- [16] R.O. Nelson, S. Goossens, *Counter-Piracy in the Arabian Sea: Challenges and Opportunities for GCC Action*, 2011, *Gulf Analysis Paper*.
- [17] S. M. Jafari, "Pirates and a criticism of IRI army in news writing about it", *scientific specialized monthly of international relations, Iranian association of general relations*, 2012, vol. 82.
- [18] Working Paper, "the Economic Cost of Somali Piracy", 2012.