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Committee: Security Council (SC)

Topic: The problem of piracy

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Introduction

Piracy refers to the act of robbery or other violent action committed without authorization given by public authority, outside of the jurisdiction of any state, be that on the seas or in the air. Piracy is therefore categorized by its private ends and is not political in its definition.

Piracy poses a significant threat to maritime security, particularly by jeopardizing the safety of seafarers and the security of navigation and trade. These criminal activities can lead to loss of life, physical harm, or the hostage-taking of crew members, while also causing substantial disruptions to commerce and navigation. Pirate attacks can also disrupt the delivery of humanitarian aid and escalate the costs of future shipments to the affected regions, with potential damage to the marine environment.

The United Nations Convention on the Law of the Sea (hereby referred to as UNCLOS) is a comprehensive agreed upon framework for any legal questions concerning the oceans and seas. The Convention was opened for signature in 1982 and was entered into force in 1994. On the topic of piracy, it is important to note article 101 of UNCLOS:

"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)."

When committed in the jurisdiction of a state, the same act which is coined as 'piracy' in international waters would be described as for example an 'armed robbery at sea'.

Exclusive Economic Zones (EEZs), contiguous zones and the high seas are places where international law considers violent actions as piracy by virtue of Article 33 and Article 58 (UNCLOS)

The following 15 United Nations Member States and one United Nations Observer State have not signed or ratified UNCLOS: ²

- Andorra
- Eritrea
- Holy See (United Nations Observer State)
- Israel
- Kazakhstan
- Kyrgyzstan
- Peru
- San Marino
- South Sudan
- Syria
- Tajikistan
- Turkey
- Turkmenistan
- United States of America
- Uzbekistan
- Venezuela

An earlier attempt to codify international maritime law, which laid the groundwork upon which UNCLOS was built is the Harvard Draft Convention, originating some fifty years before it. The drafters of the convention did not approach piracy as a matter of international crime. In the case of UNCLOS, the aforementioned article only defines piracy, but does not depict it as a punishable act. That means that the prosecution of acts that fall under the definition of piracy is left to states which apprehend suspects and their own domestic laws. In practice, this means that not every state has the necessary and comprehensive legal framework to deal with cases of piracy, which can often have a broad range of legal difficulties and challenges.

The UN General Assembly has urged member states to take “... *appropriate steps under their national law to facilitate the apprehension and prosecution of those who are alleged to have committed acts of piracy ...*” (A/RES/64/71, 72.)

For instance, the Indian domestic criminal law regime does not define maritime piracy. Furthermore, due to nature and location of pirate attacks, the collection of evidence also becomes a major issue. The UNSC acknowledged the issue of insufficient

domestic legal frameworks which lead to difficulties in the prosecution of apprehended pirates in 2008 as:

Noting with concern that the lack of capacity, domestic legislation, and clarity about how to dispose of pirates after their capture, has hindered more robust international action against the pirates off the coast of Somalia and in some cases led to pirates being released without facing justice, and *reiterating* that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (“SUA Convention”) provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation (S/RES/1851)

If an incident does not reach the qualifications to be an act of piracy, it falls under the SUA Convention, which criminalises unlawful acts and is aimed at preventing and prosecuting them. The SUA Convention, unlike UNCLOS, specifies which state would have jurisdiction over the perpetrator as compared to universal jurisdiction under UNCLOS.

Legal questions

The question of PCASP

PAG (private armed guards) and PCASP (Privately contracted armed security personnel) are used as a security measure against pirates to protect merchant or other vessels. Since they operate in the high sea, there is no international law applicable to them when they result to using force and/or firearms.

On many occasions to fend off pirates and to protect merchant vessel, private security personnel onboard ships may use force, including the use of firearms, which has resulted in the killing of pirates or suspected pirates in the past. They must then follow international law, as well as the domestic law of the flagship state, the use of PCASP has caused a lot of concerns amongst the international community.

The MV *Enrica Lexie* incident, which occurred in February 2012, involved the shooting of two Indian fishermen by Italian marines onboard the Italian oil tanker *Enrica Lexie* off the coast of Kerala, India. The Italian marines, part of a military security team, mistook the fishermen for pirates and opened fire. This incident sparked a complex legal dispute between Italy and India, raising questions about jurisdiction, the immunity of state officials, and the application of international maritime law. India arrested the marines and charged them with murder under Indian law, asserting jurisdiction because the incident occurred within India's Exclusive Economic Zone (EEZ). Italy, on the other hand, argued that the marines were state officials acting in the course of their duties and, therefore, enjoyed immunity from foreign jurisdiction. Italy also claimed that the

incident took place in international waters, and thus, under the principle of flag state jurisdiction, only Italy had the authority to prosecute the marines. The case highlighted the complexities of state immunity in the context of military personnel acting under official duties. After years of legal battles, including arbitration proceedings at the Permanent Court of Arbitration in The Hague, the tribunal ruled in 2020 that Italy had jurisdiction to prosecute the marines but also found that Italy should compensate India for the loss of life.

The use of PCASP does discourage any attempts of hijacking a vessel and is an effective measure when crossing piracy hotspots. This alludes to the fact that naval vessels deployed at such regions cannot offer protection to all ships with the current size of allocated resources.

To adapt to the reality of private security companies and their presence onboard vessels, the ISO has developed a pilot certification program. The ISO/PAS 28007 isn't mandatory however, and it is up to states to approve and accept it as the groundwork for the operation of private maritime security companies.

The issue of extradition

Extradition of apprehended pirates is not covered by UNCLOS. There have been various bilateral agreements between states for the prosecution of apprehended pirates. The extradition process brings up the question of non-refoulement, a principle where a person cannot be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. In the case of Somali pirates, their deportation would send them to a country that many do not consider safe.

Enforcement

Anti-piracy efforts and maritime security in general suffer from lack of capacity and enforcement mechanisms. Security measures at sea must operate at the national, regional and international levels simultaneously.

The UNGA, in a draft resolution, has said the following:

Recognizes the crucial role of international cooperation at the global, regional, sub regional and bilateral levels in combating, in accordance with international law, threats to maritime security, including piracy, armed robbery against ships at sea ... the enhanced sharing of information among States relevant to the detection, prevention and suppression of such threats, ... and the need for sustained capacity-building to support such objectives ... (UNGA/72/L.18).

A factor which might hinder international cooperation is the fact that many states still have unsettled delimitation claims.

The inherent “soft law” nature of UNCLOS, the various Conventions put in place, UN resolution and IMO resolutions and codes are all not legally binding and require the member states to adopt them as such. This, however, is an asset when considering the nature of international law making when it comes to national security. It does not attempt to compromise sovereignty leaves the enforcement and implementation to states.

Somalia and the Gulf of Aden

In the case of Somalia, whose government collapsed in 1991 and has been without a functioning coast guard, the situation became so dire that various international agreements were reached. Unregulated fishing by foreign vessels led to protests by local fishermen, which eventually evolved into organized piracy.

The Gulf of Aden, which connects Europe to Asia is a very busy shipping route, which meant that any capturing of vessels for ransom led to issues in international trade. Higher shipping and insurance costs impacted the economy and global market to such a degree that the international community launched efforts to combat piracy, which also impacted various humanitarian aid deliveries. The UN Security Council, in its 2008 1816 resolution authorized foreign naval forces to combat piracy in Somali territorial waters. Somalia granted jurisdiction to foreign intervention, recognizing its inability to combat the issue. This allowed pirates to be prosecuted under international law, although they weren't in the high seas.

Cases of piracy began to decrease in the time between 2008-2016 when NATO and other safety operations were present, but began to rise again after the year 2016, when NATO operations were terminated.

This case goes to show that international cooperation can help enhance the capacity of states, which stems from lack of infrastructure, naval forces, trained personnel and the lack of appropriate law to deal with the issue.

Conclusion

A resolution to various legal issues can only be achieved if states are willing to engage in dialogue and reach a consensus on matters such as extradition and the use of private security guards on board ships. It is important to note that most solutions will likely require amendments to domestic laws, which may vary by country and involve a lengthy legislative process. For example, this could include revising the legal definition of piracy within national legal frameworks.

On the other hand, states must see to combatting piracy from the perspective of underlying socio-economic issues.

Sources

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Topic: The Situation in Myanmar

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Overview

On the morning of February 1, 2021, the Tatmadaw executed a successful coup, overthrowing the democratically elected government of Myanmar and establishing a State Administration Council (hereafter referred to as the SAC). During the early hours of that day, former President Win Myint, State Chancellor Aung San Suu Kyi, and several other officials from the National League for Democracy were apprehended. Min Aung Hlaing was subsequently appointed as the Commander-in-Chief of Defence Services and assumed the role of the nation's de facto leader. The underlying reasons for the coup remain ambiguous. Prior to the coup, the Tatmadaw alleged that the 2020 general elections were marred by 8.6 million instances of voter irregularities yet failed to provide any supporting evidence. This coup may have been an attempt to restore the military's longstanding dominance over the country, which had been relinquished a decade earlier.

The violent suppression of anti-coup protests resulted in the formation of armed factions aimed at opposing the State Administration Council (SAC). These groups, united under the banner of the People's Defence Force (PDF) and operating under the directives of the National Unity Government (NUG)—composed of lawmakers who were in office prior to the coup—officially proclaimed a "defensive war" against the SAC's governance in September 2021. According to the Armed Conflict Location & Event Data Project (ACLED), approximately 23,521 individuals had lost their lives due to the violence that erupted following the 2021 coup as of 29 July 2022.

In the aftermath of the coup, the opposition began to consolidate around the National Unity Government, which initiated a campaign against the State Administration Council (SAC). By 2022, the opposition had gained control over significant, albeit sparsely populated, regions. In numerous villages and towns, the SAC's military actions displaced tens of thousands of residents. On the second anniversary of the coup, in February 2023, SAC chairman Min Aung Hlaing acknowledged a loss of stable control over "more than a

third" of townships. Independent analysts suggest that the actual figure may be considerably higher, with only 72 out of 330 municipalities remaining under the authority of the Tatmadaw, the military aligned with the junta. Nevertheless, the townships still under SAC control encompassed all major urban centres.

Since the beginning of the civil war, both the Burmese military and resistance groups have utilized educational institutions as operational bases and detention centres. In 2021, there were more than 190 reported violent incidents targeting schools across 13 states and regions in Myanmar. By June 2022, approximately 7.8 million children remained out of school.

The public health system in Myanmar has largely disintegrated, and the ongoing civil war has exacerbated the nation's food security crisis, with one in four individuals facing food insecurity. The regions of the Dry Zone and the Irrawaddy delta, which encompass over 80% of the country's agricultural land and house a third of the population, have been particularly hard hit by poverty and food scarcity.

As of September 2022, 1.3 million individuals had been displaced internally, and over 13,000 children had lost their lives. By March 2023, the United Nations estimated that 17.6 million people in Myanmar required humanitarian assistance, with 1.6 million internally displaced and 55,000 civilian structures destroyed. In March 2023, Volker Türk, the United Nations High Commissioner for Human Rights, reported a continued escalation of armed conflict. He noted that investigations were underway into numerous incidents involving the burning of homes and the killing of civilians, including children. Overall, 15.2 million individuals were facing food insecurity. In March 2024, Tom Andrews, the United Nations Special Rapporteur on Human Rights in Myanmar, indicated that 18.6 million people were in urgent need of humanitarian assistance.