

## Piracy and Maritime Terrorism; Serious Perils to Sea Security



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**Abstract** *In today's global environment, security concerns are posturing grave and animated challenges towards domestic as well as global stability. Two particular issues, piracy and maritime terrorism, are one of the modern challenges having worldwide bearing on maritime trade and security. The huge and mostly uncontrolled maritime zone permits pirates and terrorists to achieve their ulterior motives. To devise effective countermeasures against them, it must be defined whether or not a nexus is forming between pirates and terrorists as the matching physiognomies make it perplexing to divergent them away from each other. The research paper examines the manifestation of piracy and maritime terrorism, the existing national/ international legal framework on the matter and practices adopted worldwide to address the issue. By appraising the legal instruments, copious useful recommendations are presented to enhance their effectiveness in fighting piracy and maritime terrorism from intimidating the safety of the seafaring trade and security.*

**Key Words:** Legal Framework, Maritime Security, Maritime Terrorism, Nexus, Piracy, Regional & International Cooperation, Threats

### Introduction

Oceans not only play a vital role in the sustenance of the world economy by allowing 90% of trade but also provide multiple sources of livelihood of people (Organisation., 2012). Numerous activities that assure life on earth are executed in the sea. Hence, safeguarding the security at sea provides a guarantee to continue the wealth generation activities at earth (Bailet, 1999). Unfortunately, piracy and maritime terrorism extend grave threats towards the upkeep of safety and security at sea. From the last many decades, piracy and maritime terrorism have badly affected channels of safe navigations. Although, the occurrence of such perils may be limited to a specific region but produces impacts at the global level. Sea transport is taken as one of the key lifelines of trade. More than 80% of goods are transported by sea, and this involves almost 1, 25,000 ships with a crew of more than 2 to 3 million seafarers. As maximum sea territory is an unfettered area; therefore, ships with the crew are always in danger to maritime savagery (Chalk P. G., 2006). The attacks of pirates and terrorists are generating serious threats towards sea security and trade.

The importance of trade via sea is growing day by day. With this background, safe channels of carrying goods on sea lanes, unbarred from piracy and regional clashes, are of the highest importance. Freedom of seafaring activities is paramount the prosperity of almost every nation (Jürgen Schwarz, 2002). Policy Guidelines issued by the German Ministry of Defence divulges the importance of sea trade as: *"Free trade routes and secure natural resources are crucial for the future of the world. Around the globe, changes are taking place in markets, channels of distribution and the ways in which natural resources are developed, secured and accessed. Disruption of transport routes and the flow of raw materials and commodities, e.g., by piracy or sabotage of air transport, pose a threat to security and prosperity"*, (Defence, 2011). It may be

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concluded that piracy and terrorism enhance austere danger by causing substantial economic loss to many countries as well as heavy losses to international trade\_(Knyazeva, 2014).

Piracy and maritime terrorism have certain similarities; however, there are significant features that allow us to distinguish one from the other. Both the terms Piracy and Maritime Terrorism are used to define malicious activities done by nasty actors employed at sea. Latest recommendations pertaining to the relationship between pirates and terrorists augment more misperception in appreciating the variances between piracy and maritime terrorism. The intent of this paper is to highlight nexus as well as dissimilarities between maritime terrorism and piracy. Therefore, comprehensive analysis is mandatory to recognize the implications of the threats posed by piracy and maritime terrorism. After 9/11 terrorist attacks, serious concern has increased that terrorists may opt ships as terrorist weapons against port facilities. In some cases, pirates facilitated terrorists which evolved a big challenge for the world community. It is reported that piracy on the high seas is presently being adopted as main strategies by the militant organizations\_(Mejia, *Ship piracy: ship type and flag.*, 2008). The interlinking of piracy with maritime terrorism displayed significant perils to international markets as a major part of consignments, gas and oil is shipped via sea-lanes vulnerable to pirates like the South China Sea, Malacca Strait, East and West African coasts, etc.\_(Ng, *Port security in Asia.*, 2008).

As piracy and maritime terrorism issues are basically a land problem; therefore, it is necessary to resolve them on land instead of answering at sea. Hirsi has supported this stance as *"pirates and terrorists are not fish; they don't live in the sea; they live in the cities....."*\_(Hirsi, 2011). The aforesaid assertion confirms that state(s) should come ahead to take responsibility as well as a hard stance against the criminals engaged in piracy and maritime terrorism, being a land problem. Further to it, the international community should also support the endeavors of coastal countries to fight the menace of piracy and maritime terrorism efficiently. Maritime security has become a significant issue for coastal states. Piracy and maritime terrorism have made sea lanes insecure which badly affected their national economies. In this regard, military protection of commercial ships by NATO is one of the measures taken by the international community.

Both piracy and maritime terrorism are taken as a kind of international terrorism. With such background, global terrorism has raised serious apprehensions with its extremely intricate features. As the world has changed into a global village, thus, piracy and maritime terrorism had posed severe threats not towards a nation but raised perils for global security (Pidzhakov, 2015). The first episode of maritime terrorism was witnessed in 1985 while Palestinian extremists hijacked the 'cruise liner, Achille Lauro'. Pirates demanded the release of Palestinian prisoners against the release of the detainee (crew & passengers) of the ship\_(Salinas, 2002). Some other successful maritime terrorist attacks were USS Cole (2000)\_(*Chalk P. , 'Threats to the Maritime Environments: Piracy and Terrorism'*, 2002), French oil tanker *Limburg* (2002) (Edition, 2002), ferry in the Philippines (2004)\_(*Baker, 2004*) and Japanese oil tanker *M. Star* (2010) (Jazeera).

As the issue of piracy and maritime terrorism is intricate in nature; therefore, it requires a multi-layered way out of the problem. As compare to political or military measures, international legal measures are not effective to counter the threat of piracy and maritime terrorism. It is always wise to prevent rather than cure. Therefore, re-strengthening of the legal framework at the national and international level is paramount to decrease the threats of piracy and maritime terrorism. In this backdrop, this paper broadly analyses the scope, limitations and deficiencies of main international legal gadgets with regard to combat piracy and maritime terrorism. It also gives recommendations that what is required to improve the efficiency of these legal instruments to monitor and prevent the perils extended towards sea trade and security.

### **How to Define Piracy & Maritime Terrorism**

United Nations (UN), being an international forum, plays a key role for peace and stability among the nations. Regardless of serving as the representative body of the global community, it failed

to propose an acceptable definition of piracy and maritime terrorism. Therefore, it becomes paramount for states to define piracy and maritime terrorism; otherwise, it may cause misperception and legal repercussion about their jurisdictions. (Mejia, *Ship piracy: ship type and flag*, 2008). It is unanimously agreed that the definition of piracy given by the UN, is vague and unclear with regard to its application. Parallel to this, the UN failed to give a definition of 'Terrorism' having acceptance worldwide. That is why; defining piracy and maritime terrorism has become a great challenge for the nations. Despite this, the International Maritime Bureau (IMB) and the Council for Security Cooperation in the Asia Pacific (CSCAP), suggested significant definitions for piracy and maritime terrorism.

### Definition of Piracy

The paper identifies that only fighting of piracy and maritime terrorism at sea is not headway to minimize its perils. Appropriate steps onshore are required to have success against these threats (Feldt, 2012). Piracy was being described with different implications prior to promulgation of the Geneva Convention on the High Seas (1958). A comprehensive and legal definition of piracy was first time introduced in UN Convention on the Law of the Sea (UNCLOS), 1982. Subsequently, this definition was mutually adopted by the International Maritime Bureau (IMB) and the International Maritime Organization (IMO). As per IMB *"piracy is an act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in furtherance of that act"* (Chalk P. , 2008), while UNCLOS defines piracy as (Conventions, 1982):

*"(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; and*
- (c) Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)."*

The provisions of piracy as defined in UNCLOS are basically derived from Articles 14 to 21 of the Geneva High Sea Convention, 1958. International Maritime Organization (IMO) recognises these referred Articles as 'Customary International Law'. As per aforesaid definition, piracy is restricted to the actions committed in the sea outside the coastal waters of the nation. This shows that the acts of violence against ships happening in territorial waters do not come within the domain of definition. As the element of 'political ends' is missing in the definition; therefore, it is also not applicable in the case of maritime terrorism. (Johnson, 2005).

### Definition of Maritime Terrorism

As compared to piracy, maritime terrorism is a current issue which the world is facing. It displayed terrible threats by aiming at both war and merchant ships. The Council for Security Cooperation in the Asia Pacific (CSCAP) has expressed a wide-ranging description of maritime terrorism as *"the undertaking of terrorist acts and activities (1) within the maritime environment, (2) using or against vessels or fixed platforms at sea or in port, or against any one of their passengers or personnel, (3) against coastal facilities or settlements, including tourist resorts, port areas and port towns or cities"* (Chalk P. , *"The Maritime Dimension of International Security: Terrorism, Piracy, and Challenges for the United States."* , 2008). In the absence of a unanimously recognized definition of maritime terrorism, the following definition is given by Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), 1988 is generally relied upon. The same is as follows:

*"Any attempt or threat to seize control of a ship by force*

- (1) *to damage or destroy a ship or its cargo;*
- (2) *to injure or kill a person onboard a ship; or*
- (3) *to endanger in any way, the safe navigation of a ship that moves from the territorial waters of one State into those of another State or into international waters”.*

The definition given above is not comprehensive to elaborate on the nature of maritime attack either against merchant vessel or war (naval) ship. On this account, maritime terrorism became ambiguous as the various judicial forums were defining piracy with different connotations. This practice remained to continue due to the absence of laws governing maritime terrorism and to penalize offenders involved in it. (Jesus J. , 2003). The deficiency of explicit universal guidelines on terrorism at sea is due to not giving it a priority. (Ronzitti, 1990).

## **The International Legal Instruments**

Piracy exists as long as people had navigated across the oceans. It remained an irritating problem by posing serious perils to Southeast Asia (particularly along the South China Sea and the Malacca Strait). (Brooks, 2008). Merchant convoys passing by way of this zone had always been exposed to assaults of pirates. Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia Information Sharing Centre (ISC) issued a report that pirates executed successful attacks within Asian waters (Bulletin, 2009). These attacks produced worse effects, not to the regional markets to the world economies. United Nations, the International Maritime Organization (IMO), the EU, NATO, and the League of Arab States took numerous actions to stop piracy and maritime terrorism. This shows the severity of the matter. Nonetheless, these measures proved insufficient to suppress piracy and maritime terrorism as these issues are still persisting. The main aim of this paper is to study these threats and to analyze the different regulations adopted by the international community to combat these perils. These regulations consist of 'Convention on the Suppression of Unlawful Acts' relating to the safety of seafaring navigation and 'Protocol on the Suppression of Unlawful Acts' involving the security of immobile platforms positioned on the continental shelf.

International legal instruments were introduced to provide protection to ships against piracy and maritime terrorism. To codify rules pertaining to piracy and maritime terrorism, the first legal instrument (HSC) was pronounced. Likewise, UNCLOS, SUA Convention 1988, SUA Convention 2005, PSI Interdiction Principles, RMSI and ISPS were offered to minimize the dangers of piracy and maritime terrorism. Detail of same is given below:

### **UN Convention on the Law of the Sea (UNCLOS)**

International law necessitates member countries to work together in the suppression of piracy. In this regard, the most significant pact against piracy is UNCLOS. The rules of piracy give immunity and authority to the flag nations to enjoy the norm of "Exclusive Jurisdiction" while operating at the high seas. (Beckman, *Combating piracy and armed robbery against ships in Southeast Asia, 2002*). These rules confer rights to warships of all states to apprehend pirates and confiscate goods onboard ships of pirates, while in Exclusive Economic Zone or at high sea. The states have jurisdiction to prosecute the pirates under these rules. The definition of piracy given under UNCLOS. (Goldie, 1988) has substantial restrictions with regard to the phenomenon of piracy. The definition of piracy in UNLOCS delimits piracy for private ends while the aspect of maritime terrorism for political ends is generally omitted from the definition. (Zou, 2005). Moreover, the definition of piracy in UNCLOS covers pirates' actions at high seas, whereas, its application to the ships moving in Southeast Asia, Singapore, Malacca Strait, Territorial Sea and Archipelagic Waters is missing.

According to IMB, most of the incidents occurred in Southeast Asia are not taken as acts of piracy. Moreover, pirate attacks frequently come about in regions where the application of the law is not present or if exists, is identical weak. (Ellen, 1986). On account of the shortcomings mentioned above, the definition of piracy as enunciated in UNCLOS, further confuse the implementation of

the law (Zou, 2005). Due to non-clarity in definition, intersecting rights of the seafaring domain in the South China Sea have developed customary power enmities between the nation-states (Ng, Port security in Asia, 2008). In addition, conflicts over maritime boundaries also made law enforcement extremely difficult (Clingan, 1989). Contrary to the 'right of hot pursuit' given by the UNCLOS, navies of other states are generally not permitted to hunt pirates beyond the domestic limits (Luft, 2004). By concluding, the provisions of piracy contained in UNCLOS do not force any government to accuse the alleged offenders (pirates) operating within their regional sea borders (Jesus J. , 2003).

### **The Suppression of Unlawful Acts (SUA), 1988 and the SUA Protocols, 2005**

After 9/11 attacks, a considerable increase in cases of transportation of weapons and terrorism at sea has been observed. As the piracy laws were not sufficiently effective to handle the issues of maritime terrorism, therefore, a precise set of rules was needed to regulate the matter of maritime terrorism. In this regard, the first international legal document covering maritime terrorist acts was introduced in 1988 with the name of SUA. The main purpose of the convention was to penalize offenders intricate in seafaring extremist acts by levying a legal compulsion on the states to prosecute criminal as per their own laws. The scope of UNCLOS is extended till the high seas and the EEZ, while, SUA was made applicable to the waters within national jurisdiction. This made SUA a most vital tool against threats of maritime terrorism (Beckman, *Combating piracy and armed robbery against ships in Southeast Asia: the way forward.*, 2002).

### **Nexus between Piracy and Maritime Terrorism**

The researchers of International Relations used the term 'Terrorism' very frequently during the 90s (Plaku, 2013). Likewise, scholars of maritime security talked over about the association of piracy with maritime terrorism. The impression of maritime terrorism seems to be a part of piracy as there is a specific difference between them. Both piracy and maritime terrorism share some common geography like peril to safe navigation, criminal behavior and dangers for the sea routes (Modzhoryan, 1991). Piracy and terrorism had corresponded link in the past. Both pirates and terrorists pursued almost the objectives of similar nature. Studies reveal that both non-state actors needed finance to support their day-to-day operations (Annati, 2009). Money serves as a lifeline for every activity committed in pursuance of piracy and maritime terrorism. That is why pirates and terrorists work together to ensure the availability of sufficient funds. It is observed that pirates financially facilitate terrorists to accomplish land-based operations (Brookes, 2009). Moreover, terrorists and pirates pursue common interest while they come across during sea-based assaults (Tomberlin, 2009). This nexus has added more intricacy by imposing deep impacts on sea security and international stability. Both piracy and maritime terrorism have forceful physical and psychological bearings upon global society by not casting dangers for the public but also affecting the relations among the states (Romashev, 2001).

### **The Distinctions between Piracy and Maritime Terrorism**

The difference between piracy and maritime terrorism was highlighted by giving clarity that piracy is for personal gains, whereas maritime terrorism is committed for political ends (Dopilka, 1993). Despite having similar means and methods for committing piracy and maritime terrorism, the objectives of terrorists are different than the pirates. The main target of maritime terrorism is to threaten governments to change some decisions of political nature, while, piracy is committed for financial benefits. The global community recognizes piracy as a distinct kind of crime having separate domain as compared to maritime terrorism. The thin line between these two crimes is the motives and objectives either of political or nonpolitical. There are certain elements which can segregate piracy from maritime terrorism; nonetheless, there is a very thin line between them (IDSA, 2009). If piracy is committed for monetary purposes, then maritime terrorism is for the purpose of achieving political goals.

## Perils of Piracy and Maritime Terrorism

The global community agrees that maritime terrorism and piracy pose serious perils towards any feasible target at sea. Prior to suggesting the way out to handle the issue effectively, it would be better to understand the nature and level of threats. This determination shall help the states to propose measures for mitigating to the magnitude of dangers posed by piracy and maritime terrorism.

### Nature of Perils

The nature of threats can be determined by judging the encouraging environments for piracy and maritime terrorism. Martin Murphy identifies seven elements (Murphy, 2008) that contribute to piracy which are "(1) legal and jurisdictional weakness; (2) favorable geography; (3) conflict and disorder; (4) under-funded law enforcement/inadequate security; (5) permissive political environments; (6) cultural acceptability/maritime tradition; and (7) promise of reward". As the pirates exploit weaknesses of the nation, therefore, the probability of threats will continue till the time nature of conditions is not changed. Likewise, terrorism at sea is often for political ends, and this carries an additional element when compared to piracy.

### Level of Perils

If the nature of threat remains unchanged, then the probability of attack continues till the availability of supportive conditions. On the other hand, hazards of piracy and maritime terrorism could be mitigated by ascertaining its level either local, regional or international. Piracy, being a global issue, should be controlled with international efforts (Shapiro, 2011), whereas, another viewpoint is that it should be handled by local laws (Patch, 2009). Nonetheless, when a state takes countermeasures against pirates or terrorists, either in territorial waters or high seas have international effects. Every state has an assigned interest in safeguarding the maritime territory and that it requires mutual struggle from all states for the reason to defend the maritime from said perils. However, many nations take piracy and maritime terrorism as a local issue, whereas the threats exhibited by piracy and maritime terrorism have bearings at the global level.

### The Categories of Perils for Sea Transport

The analysis of modern techniques and practices reveals that piracy and maritime terrorism extend the following type of threats for sea transport:

Forcefully boarding on ships, control of vessels by power or danger of the use of force;

- Placing in risk the individual's on board ship;
- Put in danger the secured steering of the ship;
- Inflicting damage to the vessel or its cargo;
- Destruction of a ship;
- Employing any device that could damage/destroy the ship or its cargo;
- The damaging/demolition of sea navigation apparatus or disrupting its function;
- Purposefully giving the wrong intimation that could threaten the safety of navigation.

### Conclusions

By concluding the aforesaid, it is said that piracy and maritime terrorism extend grave perils to the security of sea transport, lives of sea-going people, along with obscuring relations among states. In these days, we observe different types of piracy and maritime terrorism purely depending upon their nature of planning, type of attack, dynamics and modalities, techniques and tools as well as the zone of their operation. Despite having nexus in nature of engagements and actions, both pirates and terrorists are at variances with respect to their motives and goals. Pirates carried out their actions for selfish reasons (financial gains), whereas, terrorists aim to make public their actions together with putting a psychological effect on the governments. Consequently,

piracy and maritime terrorism have some likenesses by threatening sea transport on the same premise; however, both crimes are not the same and belong to diverse social phenomena.

Any viable option to encounter these crimes is launching the joint efforts by military and civil authorities. Moreover, the implementation of international legal instruments in true letter and spirit is paramount to minimize the threat of piracy and maritime terrorism. The critical review of these legal instruments discloses that still there are certain loopholes which need further improvement to make them effective. Other than the existing international legal instruments, states should enhance mutual and regional cooperation with each other to combat piracy and maritime terrorism successfully. The criminals have disparate motivations, and select objectives depended upon distinct aims. In broad-spectrum, pirates are offenders who use force violence in the quest of monetary benefits, whereas terrorists are individuals who opt violence for accomplishing some political purposes. Both abuse the sea territory because it offers them a chance to fulfil their nefarious motives. Both are local issues but demonstrate worldwide perils. For the misperception, either piracy or maritime terrorism have nexus or otherwise requires specific recommendations to mitigate the perils for safe navigation.

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