

What Piracy did for Good Order at Sea: A Perspective on Lessons Learned

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- Introduction

- Relates to safe & secure shipping, sustainable development
- Bad order threatens:
 - Sea as resource
 - Medium of transportation
 - Sovereignty of State
- Common denominator = inability to exercise jurisdiction
- What is jurisdiction?
 - Ability of State to exercise governmental functions over persons & property
 - Criminal jurisdiction create debate - exercised in one of two ways:
 - Permissive rule – followed to limit criminal jurisdiction
 - Prohibitive rule

- International framework:

- Generally good order on high seas depends on flag state laws
- Except piracy, slave trade & unauthorised broadcasting

- Def of piracy – Art 101 UNCLOS gives 5 criteria:

- Committed on high seas
- Violent nature
- At least 2 vessels
- Aggressor must be private ship
- Private aims

Do not create criminal norm?


Do not prohibit/no punishment


- UNCLOS seem to address issues:


- State have obligation to co-operate
- Universal jurisdiction to seize ship, arrest person

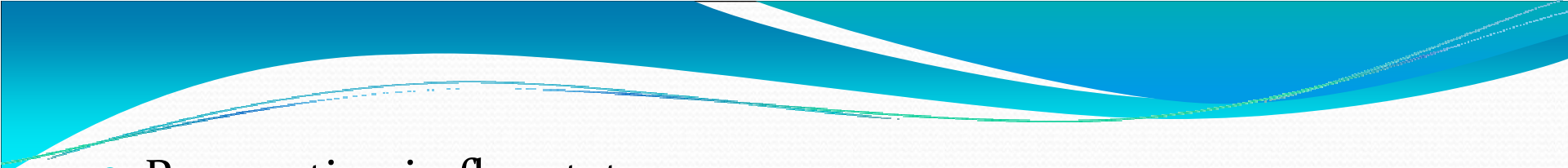
- But not as wide


- Seizure only carried out by warship

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- Not true universal jurisdiction
 - Large number captured in territorial waters
 - UN Security Council broadened scope of territorial waters in Somalia
 - UNCLOS leaves lacuna – other treaties?
 - SUA Convention
 - Provides for various crimes endangering safety of ships
 - Applies to all maritime areas
 - Allows for internal seizure – bypass two-ship requirement
 - BUT – written for international terrorism
 - Treaty law – not potential for wide application like UNCLOS
 - Jurisdiction adequately addressed – concern lies with manner in which piracy addressed
 - UN Resolution 2077 of 2012 – concerns re prosecution
 - Emphasis now on prosecution of piracy

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- UNCLOS does not provide co-operation – how to address gaps?
 - “extradite or prosecute” treaties
 - Regional agreements
 - Domestic laws
 - For successful prosecution must comply with human rights law
 - Use of force
 - Arrest & fair trial rights
 - Actual prosecution & punishment
 - Prosecution & punishment
 - Treaties show + duty to suppress but not compel to prosecute
 - Catch & release of concern
 - Efforts on co-operation & not handing over

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- Options in prosecution:
 - Jurisdictional prosecution
 - Prosecution in ICC
 - Prosecution in flag state
 - Prosecution in 3rd country
 - Prosecution in International Piracy Tribunal
 - Jurisdictional prosecution
 - Territorial/national jurisdiction
 - Not best solution
 - Prosecution in ICC
 - Currently no jurisdiction
 - Lack capacity
 - Signatory states

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- Prosecution in flag state
 - Lack political will if no interests affected
 - Prosecution in 3rd country
 - Kenya agreement
 - Djibouti Code of Conduct
 - Different role players create difficulty
 - Ship riders
 - Most effective solution?
 - International Piracy Tribunal
 - Either ad hoc tribunal or hybrid
 - UN proposes hybrid in Eastern Africa
 - Sustainability?
 - Strengthen regional judicial capacity
 - Justice must be seen to be done

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- Have we learned anything?
 - Co-operation expensive, co-operation not equal
 - Jurisdictional concerns in prosecution, crimes treated differently
 - Seriousness of crimes dependent on economic impact?
 - Human rights violations
 - Conclusion: Do away with fragmented approach towards different maritime crimes & work towards unitary solution for all crimes committed at sea.