Piracy across Maritime Law: Is There a Problem of Definition?

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Introduction

In discussing the legal concept of piracy, one is faced with two sets of definitions, based on international and domestic law, respectively. On the one hand, the weight of the international law definition, as expressed in Article 101 of the United Nations Convention on the Law of the Sea (LOS Convention), 1 by fundamentally circumscribing piracy to attacks “committed for private ends by the crew or the passengers of a private ship… and directed… on the high seas” against another ship, restricts the phenomenon of piracy in a number of respects. First, attacks carried out in the name of a political or ideological cause, or what otherwise may be referred to as maritime terrorism, have been said to lie outside the definition of the LOS Convention. Second, attacks from within the targeted ship by either its crew or passengers do not fit the definition. Third, the definition severs piracy from its natural prolongations or forerunners in territorial and internal waters. These excluded situations have had to be referred to using other terms, coined principally by the International Maritime Organization (IMO) in furtherance of its mandate in maritime security. On the other hand, definitions in domestic law, whether in the public (criminal) or private (marine insurance and carriage of goods) sphere, continue to reflect a much more expansive and traditional approach to piracy: domestic law does little in the way of bothering about any distinctions based on the attack’s motives, locale or whom it is done by.

Through an examination of the definitions of piracy and related terms across maritime law, this essay will show that these two approaches as to the meaning of piracy, though potentially confusing, should actually be

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understood in the light of the history of maritime security threats as well as the functional attributes of State sovereignty. Indeed, the relative novelty of the phenomenon of maritime terrorism, coupled with the nineteenth-century banning of privateering, explain why there was no perceived need for the drafters of the LOS Convention to cater for attacks other than ‘for private ends’. Moreover, the sovereignty of the flag and coastal States justified the limited extent of piracy under Article 101 of the LOS Convention insofar as the ship’s internal affairs and waters under national jurisdiction are concerned. Ultimately, it will be shown that the restrictions in the LOS Convention’s definition have had little bearing on the dynamic approach of domestic branches of the law towards the phenomenon of piracy. The analysis is focused on English law.

**Common Meaning**

Legal definitions of piracy should first and foremost be contrasted with the general meaning of the term. As observed by a legal authority on the subject:

> The word *piracy* has been applied to acts of murder, robbery, plunder, rape and other villainous deeds and which have transpired over centuries of mankind’s history.\(^2\)

Today, however, general dictionaries set forth the following definitions of ‘piracy:

- “the practice of attacking and robbing ships at sea”.\(^3\)
- “the action of committing robbery, kidnap, or violence at sea or from the sea without lawful authority, esp. by one vessel against another; an instance of this”.\(^4\)
- “1: an act of robbery on the high seas; also: an act resembling such robbery; 2: robbery on the high seas”.\(^5\)
- “1 (Brit) robbery on the seas within admiralty jurisdiction; 2 a felony, such as robbery or hijacking, committed aboard a ship or aircraft”.\(^6\)

On the basis of these definitions, it is possible to say that, in common parlance, piracy consists in the main of an attack against a ship at sea without


