PIRACY JURE GENTIUM

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A. Introductory Comments

1. The international law of piracy is embedded in:

(a) Custom, as it has evolved over the centuries. The prohibition of piracy goes back to the era of the “fathers” of international law and beyond.\(^1\) In fact, this is not an ordinary prohibition. Under customary international law, piracy is a crime: the very first crime recognized as such by international law.\(^2\) Some scholars even maintain that the prohibition of piracy has consolidated as *jus cogens*.\(^3\)

(b) The 1958 Geneva Convention on the High Seas (Articles 14–21).\(^4\) This is a genuine codification treaty the declaratory character of which is openly avowed in the text itself. Thus, the Preamble to the Convention sets out that the Conference framing it “adopted the following provisions as generally declaratory of established principles of international law”.\(^5\) The text of the Geneva Convention is largely based on a draft finalized by the ILC (International Law Commission) in 1956.\(^6\)

(c) The 1982 LOS (Law of the Sea) Convention, signed in Montego Bay,\(^7\) which repeats the relevant clauses of the Geneva Convention practically verbatim (Articles 100–107).

2. It is noteworthy that the international community had approximately a quarter of a century (between 1958 and 1982) to reflect on

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\(^3\) See M.N. Shaw, International Law, at 126 (6th ed. 2008).


\(^5\) Id., 82.


the LOS provisions concerning piracy, benefiting from a rare second-chance opportunity to change them. The fact that the original text was kept unaltered must be stressed, especially against the background of (i) some objections (expressed principally by scholars) to certain elements of the 1958 definition of piracy, and (ii) the inclusion in the 1982 text of many other innovations in LOS (not germane to piracy). The intact 1982 retention of the 1958 provisions on piracy affirms that States accept them as an accurate reflection of international law.

3. Whether generated by custom or by treaty, the theme of this paper is piracy jure gentium, i.e. piracy as defined by international law. To be sure, nothing precludes any State—acting unilaterally, at its own discretion—from stigmatizing in its domestic legislation, under the rubric of piracy, certain acts which do not come within the bounds of the definition of piracy jure gentium. Although such acts will be punishable within the jurisdiction of the State concerned, the relevant legislation will not have any extra-territorial repercussions. The acts exceeding the definition of piracy jure gentium “therefore are not of universal cognizance, so as to be punishable by all nations.” What singles out piracy jure gentium is that—if, and only if, its strict conditions are met—every State acquires, under international law, special powers outside its territorial domain vis-à-vis pirates (see infra, paragraph 43). These special powers cannot be arrogated by any given State in circumstances which exceed the scope of piracy jure gentium.

4. Since the term “piracy” resonates in a powerful manner with the public at large, it is occasionally used by the media and even by statesmen and lawyers in diverse settings which have nothing to do with piracy jure gentium. Without exhausting the field, I shall give two prominent examples of attempts to broaden the spectrum of piracy:

(a) When floating platforms were stationed outside the territorial sea of coastal States, for the transmission of unauthorized