CHAPTER FIFTEEN

JURISDICTION OVER PIRATES AND MARITIME TERRORISTS

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INTRODUCTION

This chapter will first outline the principles of jurisdiction governing piracy and crimes at sea which are set out in the United Nations Convention on the Law of the Sea, 1982 (LOSC)¹ and in general international law. It will then discuss three challenges posed to the regime governing piracy and crimes against ships. First, it will discuss the challenges posed by the hijacking of an Italian cruise ship, the MS Achille Lauro, in 1985 and the response of the international community in adopting the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 (1988 SUA Convention).² Second, it will explain the challenges posed by Somali piracy to the piracy regime in LOSC. Third, it will examine the challenges posed by piracy in Southeast Asia to the rules and principles on piracy and crimes at sea. It will then examine whether the 1988 SUA Convention and other UN terrorism conventions could be effective tools in combating piracy in Somalia and Southeast Asia.

The chapter will then focus on the problems posed by the threat of maritime terrorism to the international legal regime governing jurisdiction over crimes at sea. It will examine two developments—first, the adoption by the international community of the Protocol to the 1988 SUA Convention, 2005 (2005 SUA Protocol)³

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to enhance cooperation to deal with threats to the safety of maritime navigation from acts of maritime terrorism and second, the development of the Proliferation Security Initiative by the United States to enhance cooperation to combat the threat of the proliferation of weapons of mass destruction by sea.

The chapter will conclude by examining whether the international legal regime on jurisdiction over crimes at sea has been adapted or amended by the measures taken to meet the above challenges.

**LOS C and Principles of Jurisdiction Governing Crimes at Sea**

Jurisdiction refers to the power of a State under international law to govern persons and property by its municipal law. It includes both the power to prescribe rules (prescriptive jurisdiction) and the power to enforce them through executive and judicial action (enforcement jurisdiction).4

The principles governing jurisdiction over maritime activities, as set out in customary international law and LOSC, depend on whether the act took place within a maritime zone under the territorial sovereignty of a coastal State, or in a maritime zone outside the territorial sovereignty of a coastal State.

In maritime zones under the territorial sovereignty of a coastal State, that is, in internal waters, archipelagic waters and territorial seas, coastal States have both prescriptive and enforcement jurisdiction.5 Coastal States have prescriptive jurisdiction based on the territorial principle. Other States may also have prescriptive jurisdiction based on the nationality principle (if the offenders are their nationals), the flag State principle (if the criminal acts take place on or against a ship flying their flag) or the passive personality principle (if victims of the criminal acts are their nationals). With respect to enforcement jurisdiction, the coastal State’s jurisdiction is exclusive. No other State may exercise enforcement jurisdiction in maritime zones under the territorial sovereignty of a coastal State without its express consent.6

In maritime zones outside the territorial sovereignty of a coastal State, namely on the high seas, the general principle is that ships are subject to the exclusive jurisdiction of the State whose flag they fly.7 Other States may have prescriptive jurisdiction over criminal acts by persons aboard ships on the high seas based on the nationality or passive personality principles. However, the general principle with respect to enforcement jurisdiction is that ships on the high

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5 See, *LOSC*, Articles 2 and 49.
6 *SS Lotus (France v. Turkey)* 1927 PCIJ (ser A) No. 10, 18–19.
7 *LOSC*, Article 92(1).