

Sea Piracy And Law Of The Sea.

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Abstract.

As the sea become world's largest source to trade between the nations during the last few decades. Of course there are lots of problems in this regards when we are using the sea on such a large scale. The problem of piracy is most dangerous problems, among the all problems of the sea at the same time. Nations are trying to control this crime individually and collectively but the problem is still on its peak. Lots of international and national laws and conventions are held in this regard to control it. Here we will try to find out the reasons of growing up this problem and also the solution that how can we control this problem in a better way.

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1. Introduction.

Today the international community is facing the danger of sea piracy on a large scale than ever before. We can see that these days piracy is destroying and disturbing the shipping industry worldwide. The ships of all the states, their crew and also the economy of the states are in a great danger because of the threats of pirates.

A deep study shows us the waters around Somalia Nigeria and in some parts of Asia are in great danger because of the activities of the pirates. That's why the United Nations Security Council declares the piracy as a threat to the international security and peace.

It is a crucial fact that the ship piracy has a long history within the sea of the world; it remains exist in the whole history of seafaring some times in small scale and some time on large scale. Major forces of the world as for Great Britain, United States, France, and Dutch have great efforts against piracy to control and to save the oceans of the world. With the efforts of these states the sea piracy becomes to an end in the 19th century. In 1815 in the war of Algerian the U.S navy defeated the pirates in the major parts of the world.

After the fifteen years of cold war and after the desolation of Soviet Union, we have to accept this bad fact once again that the sea piracy is once again in action since 1980. The numbers of attacks of pirates is going on day by day and still it has no end in any side of the oceans. Of course there are several reasons because of that piracy once again backing in its old shape.

After the 1982 there appears a trend in the world to be globalize and liberalization, and it increase the sea trade throughout the world and is also provide an opportunity to the criminals to restart their activities within the sea. In start the ship owners also ordered their crew of ships not to inform any one about the attack of the pirates on their ships, because if the legal action takes a lots of time to solve that case and they have to stop their ships during that processing. But now when piracy becomes a great danger to the crew of the ships and also provide at least 1% lost from their total income, all the major shipping companies just like as British National Union Of Marine, Aviation And Shipping Transport Officers (NUMAST) or The Baltic and International Maritime Council (BIMCO) Put the sea piracy on the international agenda.[\[1\]](#)

1.1.Historical background.

The word "pirate" is derived from the Greek "Peirata" and the Latin "Pirata". The history of piracy is more than 2000 years old. In that age pirates attacks the ships of the others to steal the goods from the ships or to hijack the ship to use it for their own purpose. At that time the pirates start to

attacks on the ships of ancient Greece which were carrying the cooking oil and other kinds of foods. The age between 1620 to 1720 is called the golden age of piracy as at that time piracy in the all parts of sea was on its high point. At that time the piracy of the ships have a lots of kinds and shapes, just like as to hijack the ship, to kidnap the crew, to steal the goods from ship or to

“As has been observed elsewhere, piracy may well be the world’s third oldest profession, medicine being the second oldest.’ Piracy is an age old offense; references to it were made in Justinian’s Digests in 529 AD, in King John’s Ordinance of 1201, and in numerous European laws from then on. It was also the subject of Papal Bulls and international treaties from early times. Pope Alexander VI’s Bull of 1493 dividing the Atlantic Ocean between Spain and Portugal held each responsible for regulating piracy in its area as did the Treaty of Tordesillas, which confirmed this arrangement the following year. Britain’s first Piracy Act came in 1698 and was followed by further Acts in 1721, 1837 and 1850. The Territorial Waters Jurisdiction Act of 1878 finally preserved the offense of piracy *jure gentium* under English law.”

So a cavernous study of the history of the piracy shows that it remains in power in all the ages in all the parts of sea, we can see that sometimes the pirates attacks and hide themselves in some uninhabited islands but on the other hand some times in past some states give the piracy, a Legal Status under their national laws. The example of Madagascar is one of the best in this regards. Madagascar even declares itself as a pirate republic and calling itself a Libertalia. At that time Madagascar involves in such activities for more than 35 years.

History shows that these pirates of Madagascar carried out their activities in all the major parts of the sea of the world, as for in Indian Ocean the Atlantic Ocean etc. History shows that at during the 19th century the colonies make it difficult for the pirates to use the uninhabited areas and islands of the worlds as there shelters.[\[2\]](#)

1.2.Purpose of Thesis.

As we can see that the international sea is a common property of all the states of the world and no one has the specific rights on that part of sea. So definitely there should be some kind of work in this regards to improve that part of sea for its better and safer use from all the states of the world. We can see that during the last some decades, as the international shipping industries starts to use the sea on a large scale for different purposes then on the other hand there appears lots of problems in this regards, such as sea pollution, sea robbery, sea piracy etc. At the same time there are a very few parts of international sea which are free from these dangers these days. The main purpose and topic of our thesis is to describe the piracy in details. We can see that there are some international laws regarding this problem as for UNCLOS 1982 and The High Seas Convention 1958. But in spite in the presence of both the laws, the problem of piracy becomes increase day by day rather than to

decrease. What is the main reason of that? Is there any kind of lacking in the present law about the piracy? Is there any kind of problem in the applicability of that law? In short we can say that our purpose is to find out that reason because of that the international laws and international community remains fail to control the piracy? And what kinds of changes they need right now to control the piracy in international laws.

2. Definition of piracy.

Whenever we put our attention on the sea piracy then we must start our work with the Research Drafts of Harvard. This research draft has the basic importance for some special laws of piracy. We can say that this draft is a guide line to make the laws on piracy, the reasons, why this draft have so much importance are the following,

- This draft is the best ever work on sea piracy.
- It is the main point from where the conventions of piracy can take up their provisions.
- The commentary of this draft provides some valuable legislative history which is more helpful in the upcoming conventions to define the sea piracy.

Well according to that research draft the definition of piracy is as follows!

“ Any act of violence or depredation committed with intent to rob, rape, wound, enslave, imprison or kill a person or with intent to steal or destroy property, for private ends without bona fide purpose of asserting a claim of right, provided that the act is connected with an attack on or from the sea or in or from the air. If the act is connected with an attack which starts from on board ship, either that ship or another ship which is involved must be a pirate ship or a ship without a national character.

OR

Any act or voluntary participation in the operation of a ship with knowledge of facts which makes it a pirate ship. OR

Any acts of instigation or of intentional facilitation of an act describe in paragraph 1 or paragraph 2 of this article”.

So according to these definitions we come to know that there are some essential parts in this definition of piracy just like as, There must be some wrongful attack against the person or property for public ends and secondly there must be at least more than one ship involved in all this operation

to fulfill the definition of piracy and at least one of the ships must be of pirates ship or a stateless ship. Then the worlds attack means some kind of armed force which is used by one ship against the other ship. Similarly in this draft the drafters says that if there appears some kind of mutiny on the ships of any state then still it is under the jurisdiction of flag state, but if that mutiny affects and spread on the other ships of that area of the sea then it goes within the definition of piracy.

2.1.International Law Commission.

According to the article 39 of the ILC draft, piracy consists on the following acts.

1. Any illegal act of violence detention or any act or depredation committed for private ends by the crew or the passenger of a private ship or a private aircraft, and directed.
 - On the high seas against another ship or against persons or against property on board such ship,
 - Against a ship person or property in a place outside the jurisdiction of any state.
2. Any act of voluntary participation in the operation of a ship or an aircraft with knowledge of facts making it a pirate ship or aircraft.
3. Any act of incitement or international facilitation of an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

So here we can see that ILC also accepts the rules and regulations made by the Harvard research draft. It said that the acts against any ship within the high seas for depredation or violence are called piracy but on the other hand the article 39 of ILC said that if the violence is committed against the ship by its crew and passenger itself then it would not be under the definition of piracy. One thing should also kept in mind that if the passengers or crew of the ship seize the ship within the high seas without any legal reason then also it will not be under the definition of piracy.

Then we can see that the 1958 convention on the High Seas accepts and adopts almost all the parts of the article of ILC on piracy. At the end of this we conclude that the piracy as originally defined in the Harvard Research Drafts and also defined in High seas conventions have same essential parts which are as follows,

1. An act of violence or robbery.
2. The act must be within the high seas.
3. The must be from private persons.
4. The act of violence must be from some private ship.

5. That act must be happened far from the territorial jurisdiction of any state.
6. There must be two ships involved and one of them does some unlawful acts against the 2nd.[\[3\]](#)

2.2.UNCLOS 1982.

Finally in the United Nations Conventions on Laws of the sea piracy is defined in these worlds.

Article 101 says,

“Piracy consists of any of the following acts:

(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;

(c) Any act of inciting or of intentionally facilitating an act described in sub paragraph (a) or (b).”[\[4\]](#)

So here we can see that the definition of piracy is near about same in all the conventions and of the United Nations and also in the International Law Commission.

2.3.Who is Pirate?

According to the United Nations Convention on the Law of the Sea (UNCLOS) under article 101/A only the occupants of a ship who commit an act piracy against the occupants of the other ships are called the pirates. It is clear in this article that if the crew of the ship or the passenger of the ship takes some kind of action against their own ship then they would not be called as pirates.

Similarly if a person is already on board and tries to stop the ship or try to change its way from one side to another then that act of that person will not be called the piracy but it would be an act o “Hijacking” according to the international laws as we can see in the case of Achille Lauro incident.

[\[5\]](#)

2.4.How the pirates attacks.

Whenever we see the attacks of the pirates we have come to know that all the attacks are near abbot same with each other in action. Sometimes it is committed by the local fisherman’s to get some illegal money an some time there looks an involvement of some big group of criminals etc. these

days the investigations shows that the modern pirates are armed with heavy weapons having power boats and also radio telecommunication system and radar system computer modules, to contact with each other, and a good surveillance system to attack any ship. These armed robbers attacks on any ship, snatch the money from the crew and the other costly parts of the ship and then return back into the deep sea left behind the crew, locked, injured or in dead shape.

Investigations show that the modern pirates are typically armed more than the crew of the any ship so it's hard for the crew of the ships to face these pirates. Moreover these pirates are well trained but on the other hand the crew or seafarers are never trained to face these kinds of situation at all, and most of times they are do not have any kind of weapons in their positions. Some international insurance companies and also some states do not allow the seafarers to have weapons with them on board. And some of the states just like Indonesia restricted all the armed ships to sail through their territorial waters in any condition. During the last some years the piracy is changing its shape, we can see that the modern pirates attacks on the ship and take the ship under their control and demand for ransom from the shipping company or the owners. This is the most dangerous face of piracy today.[\[6\]](#)

2.5.Universal Jurisdiction.

Infect the UNCLIS provides the universal jurisdiction against the pirates at all. According to that jurisdiction all the states can take action against the piracy everywhere in the high seas. It does not matter whether the pirates take any action against the ships of that state or not. Not only this, but a state can also make a trial against those arrested pirates under its local laws and to punish them. These are the powers which are provided by the UNCLOS to all the states regarding piracy.

We can see that one of the classic idea, to provide such universal jurisdiction against the piracy to the states was the idea of John Bassett Moore's statement in the Lotus:

“the scene of the pirates operations is the high seas, which it is not the right or duty of any nation to police, he is denied the protection of the flag which he may carry, and is treated as an outlaws, as the enemy of mankind— *hostis humani generis*—whom any nation may in the interest of all capture and punish”

According to the article 19 of the high seas convention and the article 105 of the UNCLOS, a pirate ship have no connection with its flag state and all the states can stop that pirate ship to arrest those pirates and also to trail them. The concepts of universal jurisdiction means that the pirates emphasize that the pirates are not to the subject to the authority of any state and are a threat to all the states. [\[7\]](#)

3. Delimitation against other types of maritime crimes

3.1. Piracy and Terrorism.

As piracy is defined in article 101, of the UNCLOS 1982. But on the other hand terrorism has no universally accepted definition at all. The international community is fighting with the challenges of the problems of definitions of piracy in the last century. But we can see that the definition of terrorism is still illusive at all. It's a fact that most of the counter-terrorism treaties have been adopted in response to historical incidents. "In internal water if the insurgents confined their attacks to the ships of the opposing state, then no charge of piracy would be arising. But if the insurgent attacks the ship and the nationals of third neutral state, then the charge of piracy would attach, and all states could exercise the SPECIAL JURISDICTION to attacks the insurgents as pirates".^[8]

We can see that there are some counter-terrorism treaties which are so broad that they can also cover the definition of piracy in it at all. Just like as, the convention for the unlawful acts against the safety of maritime navigation 1988 "SUA Convention". This convention comes into existence after the world known incident on the Achille Lauro. Of course it does not cover that whole definition of piracy but we can see that it covers the most parts of the definition of piracy in it. The main purpose of this act is to oblige the states to punish the acts terrorism which are happened within the territorial jurisdiction same like as the acts of piracy is punishable under the provisions of the UNCLOS 1982.

Its second example is the convention against the taking of Hostages 1979. The offense of taking hostage is covered under this treaty at the moment and it also covers the holding of crew foe ransom in the typical acts of piracy being committed in Somalia and some other parts of the sea at the moment. The main purpose of these both the Conventions is to create and punish the peoples which are involve in these kind of activities and to provide the states some guideline in this regards.

- **The seizure of the Achille Lauro.**

On October 1985, some of Palestinians hijackers attack the Italian cruise "Achille Lauro" in international waters, Thirty miles from Port Said, Egypt. The cruise was caring near about 90 passengers and twelve among them were the Americans. Under the orders of attackers the ship moved its way towards the Syrian waters. The main purpose of the hijackers was to release the fifty Palestinians persons from the Israeli jails in return of these passengers.

In the main while Syria refuse to give permission to that ship to land at its port. But on the other hand the hijackers threats that if Syria does not change its decision then they will start to kill all the passengers one by one. The negotiation remain progress less in the end the hijackers dragged a crippled American passenger towards the railing and there the hijackers shot him twice.

After being denied entry to Cyprus the hijackers sail back to the Port Said where having negotiated safe passage from the Egypt they surrendered to the Egyptian officials on 9 October. The Egyptian authorities refuse to try or extradite the Palestinians.

In its response the American president Reagan, ordered its forces to intercept the plain carrying the hijackers. Then in the evening of 10th of October four navy F-14s stops the Boeing 737 and forced it to land on USA-NATO common airbase in Sicily. The Italians arrest the four hijackers. President Reagan demands from Italy to hand over these hijackers to USA for extradition. He wishes to trail the hijackers in case of murder.

The comprehensive crime control act 1984 defines the charges of hostage taking. In its section 1203, anyone whether inside or outside the jurisdiction of United States who “seize or detains or threatens to kill, to injure or to continuously to detain” another person in order to compel third person or government in order to compel to do, any act as a condition for the release of the detainee is guilty of hostage taking. So in the case of Achille Lauro, America has a strong prima facie case against hijackers on this charge.

One thing more which is important here is that, according to the arrest warrant 18 U.S.C. 1651, “whoever on the high seas commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in United States, shall be in prison for life”

So in the case of these Palestinians hijackers, they were under the charge of piracy specifically according to the law of the nations. But their acts were not qualified as piracy under the international law of piracy, though their act was for private ends but the requirement of another ship was not satisfactory. So we can also see that in the incident of Achille Lauro and in the incident of Santa Maria the activities of attackers are out from the definition of piracy.[\[9\]](#)

3.2.Piracy and Insurgency.

The author of the Harvard Research draft excludes the public acts from the definition of piracy. The main purpose to do it was to avoid the line drawing problems associated with determining the rights and legitimacy of insurrectionist movements. The author of this draft ignores a line of cases which defines the act of piracy based on the action of a group, rather than its status. These decisions state that if the opposition limited its actions to the government against which it is fighting, the members of it would not be called the pirates under the international laws. And only the attacked state has the right of jurisdiction to oppose them. And most important is that if this opposition orders some ships or nationals of third states then that act will be called piracy and is would be under the jurisdiction of all the states. We can see that the distinction between the piracy and insurgency is totally based on the actions of the opposition. [\[10\]](#)

3.3.Armed robbery against ships.

“Any kind of unlawful act of violence or detention or any act of depredation, or threat thereof, other

than an act of “piracy” directed against a ship or person or property on board such ship within a state’s jurisdiction over such offense”. [\[11\]](#)

So here we can see that when the act of piracy occurs in the territorial jurisdiction of any state then that act would be called the act of robbery not the act of piracy. And in this case only the territorial state has the right of interrogation in these kinds of matters and no international state has a right of jurisdiction in this case. Even the flag state also cannot take part in any kind of action to save its ship in that part of sea without the permission of the coastal state.

3.4. Act of piracy and terrorism in international waters.

The basic question which we will discuss here is about that, whether a war ship which is going through the international waters be permitted to attack unilaterally on pirates or terrorists those who are outside the international waters and are in territorial waters. We know it well that the coastal states have a complete right of jurisdiction on its internal waters. Under the article 22 of UNCLOS the coastal state has rights to protect themselves from marine pollution and maritime casualties by making some local laws in this regard.

International waters means that narrow parts of sea which connect some parts of sea or lands. The other states can use these waters as a part of international sea for innocent passage whether it is still a territorial sea.

According to the article 29 of UNCLOS if a war ship of any state passes through the waters of any other state and refuse to act according to the rules of the coastal state then the coastal state can order him to leave its jurisdictional sea. The basic problem is that on one side the UNCLOS allows all the states to take necessary actions against the piracy in international sea then on the other hand if the international waters have the authority of international sea then why don’t the international war ships can take any kind of action against these pirates in that part of sea. Why these international ships are bound to obey the rules made by the coastal states in that part of sea if it is considered as international sea.

There is another problem that if the international ships take some kind of actions against the pirate’s ships unilaterally, without the permission of the coastal state then in case of any kind of damage or loss the flag state will be responsible to the coastal states in this regard.

Some of the experts say that the ships should take the unilateral action in international waters at the time of need. They explain that there must be some benefits to do it which are as under. First of all it will make the other world aware about that problem and also their effects on the neighbor states. Secondly the speedy and quick action by the any war ship can reduce the danger of losses of humans and also to the environment. The states must try to give permission to the war ships to take

some kind of action in the time of emergency.[\[12\]](#)

3.5.Piracy statistics.

Whenever we put our attention on the statistics of the piratical incidents we become aware that there are two kinds of piracy at the same time. First one is that which happened within the shore of any state, by the speed boats etc. the second one is a part of international crime. Sometimes it becomes to an end on some prize but sometimes the pirates take away the ship or vessel itself permanently.
[\[13\]](#)

The annual report of the IMO in 1999 shows that in that year 309 total incidents of piracy appear worldwide. But on the other hand whenever we put a deep study of that report we become aware that a very few piratical attacks among them were happened within the high seas. Only thirty eight incidents were that which were happened among the high seas. But the remaining other 271 incidents were happened within the jurisdictions of different coastal states in the whole world. Similarly the number of these piratical attacks increases during the year of 2000. The annual report of IMO about the year 2000 shows that in this year the total incidents of piracy in this year were 471, out of them only 133 happened within the high seas. Here we must put one thing in our mind that these reports are about the actual attacks, and not about the attempts of the pirate's attacks.

3.6.Figure: Piracy and Armed Robbery 1978-2000

(Registered Incidents).

[\[14\]](#)

3.7.Most Affected Areas in The World By Piracy.

Of course the whole high sea is not much affected by the pirate's activities. There are some specific areas in the international high seas and within the jurisdiction of the states which are under the attacks of these pirates. Now we will try to point out those major areas which are considered more dangerous because of these piratical activities.

1. Somalia.

Somalia is called the new paradise for the pirates in the modern age. There are some reasons behind this. Whenever we have a look upon the map of Somalia we can see that it has one of the longest coasts in Africa, which is near about 3300 kilometers long. During the November to December 2005, within only one month, at least 7 ships and their crew were believed to be hijacked by the

Somali pirates.[15]

At the start of 2007 the situations was under control in Somalia and other parts of the world but the report of “**IMB**” **2007to 2008** says that the attacks of pirates in the area of Somalia increase up to double in numbers then the past.[16]

2. South China.

As compare with the Somalia, piracy in south china’s sea has much old history. It starts from the 14th century and today it is one of the world’s most affected areas by the piracy. According to the **Singapore National Shipping Association** in 1992, there was seven most affected areas by the piracy in south Asia and three of them was only in south of China. The report shows that in 1993, from May to December, in the whole world, total 67 incidents of piracy happened and if we have a look on the location of those incidents then we become aware that 42 of them were happened in the area of south east China's Sea.[17] So from the numbers of this report we can guess the danger of this part of sea at present time for the world’s maritime agencies.

3. South East Asia.

South East Asia is the third one part of the sea which Is important because of the piratical attacks. Of course there are some reasons behind that, some of them are as follows. First of all the geographical shape of this area is much different than the other parts of the worlds. There are lots of narrow waterways in this part of sea and a large number of the cargo ships daily use these ways. It is a fact that at this time one third ships of the world using the sea of south East Asia for different purposes. And the report shows that in 2000, sixty five percent of piratical attacks happened only in south East Asia out of the total numbers of the piratical attacks of the world. Approximately 600 ships use this past of sea daily for different purposes and the number of piratical attack is 200 per year in that part of the sea[18].

3.8.Effect of piracy on shipping Industries.

Today the whole international community accepts the fact that the pirates are in a position to disrupt the worlds shipping industries on a large scale. Today all the shipping industries are under pressure because of the activities to insured their ships as against piracy and robbery. This is all because that the ship owners have the danger to lose their goods on the ships, danger to lose the machinery available on the ships and the ship owners are also responsible for the safety of the passengers available at the ship.

4. Piracy And International Laws.

As we have come to know that the whole international community is sealing with the problems of piracy, so because of that the international law provides some definitions and powers to all the

states regarding piracy. Here in this chapter we will discuss all the powers definitions and provided by the international laws and international conventions in this regards.

4.1.Codification Of laws Related To Piracy.

The history of modern piracy is not so much long and there were a lot of efforts on international level in this regard to control these crimes. Here we will explain a brief history of codification of the works of codification about the piracy in international laws.

- **League of Nations work!**

The issue of piracy was one of the most important issues which are presented in league of Nation. It prepares a commission for the progressive codification of the work of one of its subcommittee about piracy. That report of piracy has some ambiguities, as for it restricted piracy in the high seas, but excluded the acts of the state controlled vessels and acts for political purposes. There was also some solutions presented in that report but those are not recognized universally at all. The reaction of the states about that report was not good because some of the states think that this problem is not on high level in the world. The League of Nations assembly decides on the basis of that report to put the issue of piracy in its codification conference.

- **The Harvard Research Draft 1932**

This was the first ever draft to make some customary laws. It recognizes the competence of individual states over the offense, as for each state have the jurisdiction over piracy. This draft provides some extra powers to the states which are not available under the leagues Draft.

- **The Geneva Convention on the High Seas 1958.**

The Harvard research draft formed the basis, after the Second World War, for the international law commission's work on piracy for inclusion in the UN's 1958 Geneva Convention on the high seas. There were some states in the world which were not satisfied by the Geneva Convention, so in the third meeting of UN, it was tried to make such a rule regarding piracy which should be acceptable by the all states overall. So it seems to have deemed it wise, therefore to avoid re opening old controversies by merely repeating verbatim the relevant articles on piracy from the 1958 convention.

- **The United Nations Convention on the Law Of The Sea 1982 (UNCLOS).**

The United nation convention of 1982 has eight articles related to the problem of piracy (Article 100-107). The old errors and weaknesses are not only still available in this convention but also increase the problem because of some of its zonal provisions. This UN convention never pays any

kind of attention to the report of International Law Association of 1970. Now this convention is applicable to the whole world regarding piracy but of course it has much weakness in it at all which demand to restore them for the better result of this convention.[\[19\]](#)

4.2.Provisions of piracy.

The framework of the law of the sea is provided in article 100-107 in UNCLOS 1982. These articles replicate the articles 14-21 of High seas Convention 1958. Here we will explain that how both the conventions explain the Piracy.

4.3.Geneva Convention 1958.

As we know that piracy is one of the oldest problems for the shipping industry and the international community as well, so it is first of all defined and discussed in detail at Geneva Convention 1958. Here we will see what are the rules and regulations prescribed by this convention about piracy.

- Article 13

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall *ipso facto* be free.

- Article 14

All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

- Article 15

Piracy consists of any of the following acts:

(1) Any illegal acts of violence, 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:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(2) 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;

(3) Any act of inciting or of intentionally facilitating an act described in sub paragraph 1 or sub

paragraph 2 of this article.

- Article 16

The acts of piracy, as defined in article 15, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

- Article 17

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 15. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

- Article 18

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

- Article 19

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.[\[20\]](#)

4.4. United Nations Convention On Law of the Sea 1982.

The convention of United Nations on the law of the sea defines the sea piracy in these words and the articles about piracy in that convention are as follows.

- Article 100

All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

- Article 101

Piracy consists of any of the following acts.

(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;

(c) Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

- Article 102.

Piracy by a warship, government ship or government aircraft whose crew has mutinied,

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

- Article 103.

Definition of a pirate ship or aircraft

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

- Article 104.

Retention or loss of the nationality of a pirate ship or aircraft

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

- Article 105.

Seizure of a pirate ship or aircraft

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

- Article 106

Liability for seizure without adequate grounds

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure.[\[21\]](#)

4.5.Explanation.

Here we will explain the powers of the states provided by the UNCLOS regarding piracy.

- International cooperation.

In the first of all UNCLOS says in its article 100 to improve the regional and international cooperation in respect of piracy to control it. That cooperation must be on the high level, just like as the transfer on intelligence information's transfer of prisoners and to help each other states to control piracy. We can see that there are some examples in this regard about state cooperation in the worlds in this regards just like as Regional cooperative agreement on combating piracy and armed

robbery against ships in Asia (ReCAAP). The International Maritime Organization (IMO), United Nations Contact Group On piracy of the coast of Somalia, the International Maritime Bureau of the international Chamber Of Commerce and many of the others. The states are also free under this provision to make bilateral or regional contracts in this regard.

- Private Ends.

We can see in the article 101 of the UNCLOS 1982, there are essential parts to declares some ones act as piracy, as for the act must be for some private and

- Contents of piracy.

Whenever we have a look on the definition of piracy then we become aware that the UNCLOS makes this definition limited and create some restrictions on some ones acts to declare that as piracy. According to the article 101 there must be some essential parts in some ones acts and those parts are as follows,

That act must be for private ends, there must be two ships involve, that must be against the other ship or aircraft and that act must be illegal and then in the end if some ship is involve or help the other ship in any activity having knowledge that the other ship is involve in piracy then the act of that ship must be called piracy also. And at last that piratical activity should be within the high seas, not within the jurisdiction of any state. We can see that it's not such a broad and clear definition. In the past some years there appears some incidents of piracy which are far from this definition for example if the crew of the ship itself or any passenger of the ship by force try to control or to move its way illegally than what could be that act called?

- Seizer of the ships.

Then in article 105 the UNCLOS provides, lots of powers to all the states to arrest the pirate ships and to take the goods under control and to make the decision in good faith about the sentence of the pirates and the future of the ship and the goods also. No other state can interfere in this regards. But here one thing should be kept in mind that such arrest and seizer must be within the high seas and outside the jurisdiction of any other state.

5. Flaws of UNCLOS 1982.

Whenever we have a look upon the implementation and results of the UNCLOS 1982 we come to know that that it has lots of weak points in it regarding piracy. There is some confusion in this act which must be clear from the UN to get its better results. These flaws in the convention always

make some kind of problems to solve any case regarding piracy. The main unclear parts of this convention are as follows.

- “Illegal Act”

When we read article 101 we come to know that it is essential part of some ones act of piracy that the act of that person must be illegal. The article has no more details about the definition of illegal; we cannot understand that what kinds of act are illegal for all the states jointly. It might be possible that a lot of criminal acts remain unpunished because of the lack of knowledge and universality. We all know that there is no any department which can clarify that some ones act is legal or illegal on international level.

- “private End”

Then we can see in the same article, the word “private end” that the act of piracy must be done with the intention of private ends. As Birnie notes “piracy is thus clearly confined to private ends; all political seizure are ruled out unless “private” is to be liberally interpreted in certain circumstances. Here we can see that it is not clear that who one explain the definition of private end, weather the international laws or the municipal laws. Here one more question also arise that whether the international maritime terrorism is within the definition of piracy or not, as for it is also for some private purposes.

- “Two ships”

The other generally recognized controversy is about the involvement of at least two ships in that piratical attack. It’s a problem to understand the definition of UNCLOS 1982 clearly in the same position. Experts says that if there would be at least two ships involve in the piratical attack then the famous attacks on “SANTA MARIN” and “ACHILLE LAURO” (private ends aside) could not qualify as piracy. What can we say in that case if the ship is under the attack by its own crew or the passenger of that ship? Of course that act is for private ends within the high seas and will be an illegal act but there is no other ship is involve in all that.

- “Jurisdictional problems”.

Here we will talk about the controversy issue of jurisdiction of the piratical attacks. The definition says that only that attack will be considered a piratical attack which should be happened within the high seas, outside the territorial limits of any state. This definition is much difficult, as for we can see there are lots of international states whose territorial jurisdictions are not acceptable by the other states. Then if some ship is arrested from that disputed area then it would be a new problem to

prove it that whether it is arrested from the high seas or from the jurisdiction of any other state.

- Some other term “Voluntarily Participation” or “Incitement” and “Intent”.

Then in the definition, there are also some unclear and unexplained words which make the definition more suspected. As we can see, in article 101 of the UNCLOS 1982,

“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”

“Any act of inciting or of intentionally facilitating an act described in sub paragraph (a) or (b).”

So we cannot find the explanation of these words in this convention at all. And we have a doubt over here that who will define these terms, the international law or the municipal laws?

- Miscellaneous.

Apart from the upper defined problems, there are also a lot of other miscellaneous in this convention which are as follows.

Article 100, for example impose the duty to all the states of the world to cooperate their best to control the piracy from the sea, but there is no such a department in this regard which could be check whether the states are cooperating in the same manner as prescribed in the convention or not?. Similarly the article 102 says that,

“Committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft”.

Here we can see that the article is silent in case of military aircraft totally.

Then in article 105 it is defined that the pirate ship may be seized, but how can we say that some ship is under the control of the pirates or not. It will be only clear after its inspection and seizer within the high seas. Then if the state which stop the ship remains fails to find out something as defined in article 101 of this convention then that state will be responsible for that seizure and will pay the damages for that suspension in case. So here we can see that in one side states have a right to stop and investigate the pirate’s ships then on the other hand the states are also responsible for the suspension damages to that ship.[\[22\]](#)

6. International Maritime Organization.

(I.M.O)

The main purpose of this organization is to work for the improvement of safety of shipping and to prevent the sea from pollution from shipping, under the authority of UN. Its old name was the Inter-Governmental Maritime Consultative Organization but in 1982 it was renamed with International

Maritime Organization. Currently 165 states are its members and 36 intergovernmental and 63 non-governmental organizations are working under it.

The IMO has made significant contribution to fighting against piracy. For example in the past pirates usually change the name of the stolen ship and then match it with the fake documents but IMO makes a solution for that. All the ships have a specific number issued by the IMO visible on their hulls all the time. By this number the port officials and the buyers can verify the status of the ship and it becomes difficult for the pirates to sell the pirated ships under fake documents. The IMO's international ship and port facility security code entered into force in July 2004. But now the statistics show that only 53% of the ships in the world meet these requirements.

The IMO also suggests that the coastal states declare some of its jurisdictional sea only for the oil tankers or merchant ships and that area must be restricted for the small boats. Now it totally depends on the flag or coastal states that how much these states act according to the instruction of IMO to reduce the piracy from the sea.[\[23\]](#)

7. Legal Actions Against Pirates.

Whenever we read the UNCLOS 1982 and its provisions about the piracy then at that time there appears a question in our mind that, which kind of actions may be taken against the pirates? It's true that all the states of the world dislike this crime and want to punish piracy. But enforcement of actions against the pirates and the criminal prosecution of pirates are left to the individual states. We can see that there is not a single one institute department or organization in the world on international level to punish the pirates. The main reason is that the UNCLOS 1982 does not create any kind of international tribunal to hear the case of piracy against any individual brought before it.

The history of criminal proceedings against the pirates is much long. We can see that in English American colonies the pirates were punished under the law of England in New York, and under the United States law as early as 1813. American's piracy cases continued through the nineteenth century. While pirates are treated and punished under the different laws and on the other hand the recovery from them create some other issues.

As Justice Bruce & Charles F. Jemmett discussed:

“All ships, vessels, boats, specie, or other property recaptured from the pirates.. should be subject and liable to condemnation as droves and perquisites of Her Majesty in her office of Admiralty; but that if any part the said property should be duly proved to have belonged to, and to have been taken away from, any of Her Majesty's subjects, or the subject of any foreign power, such property should

be decreed to be restored to the former owner on payment.... As salvage remuneration.”[24]

7.1. Use Of Force In Disruption Of Piracy.

Whenever we have a look on the piracy provisions of UNCLOS then we can see that in its article 110 this convention provides all the member states to use reasonable force to disrupt piracy. This article does not provide us all the details that the states can use how much power in this regard but it just provides a basic guideline for the member state. The navies of all the member states have a right to use reasonable force to combat piracy at all. The rules of engagement (ROAs) which are adopted by the navies of different states tell us that the actions of the navies and force used by the navies in the case of Somalia must be of police level rather than the military levels.

We can see that in case of Indian war ship “Tabar” that attacks a suspected pirate ship and as a result the ship sinks. After the inquiry it becomes clear that that was not a pirate ship but was a fishing ship and recently hijacked by the pirates and having hostages on board as well. So here the navies must adopt some different strategy in these kind of cases when the hostages are on board.

In the shipping industries it’s a perception that the international law is much weak in the matter of providing powers to the navies as against the piracy. But on the other hand the fact is that the navies have almost all the necessary powers which are required by the navies to combat this crime. But here one thing should be kept in mind that the navies cannot use these powers freely and must have some safety measures in this regard to save the other peoples.[25]

7.2. Problems about Detention and prosecution of pirates.

Unfortunately near about 50 to 60% of arrested pirates are released by the navies who arrest them in the sea. We can see that the problems start from here with this action of navies with the pirates. There are also some reasons behind that act of navies. There is a confusion that where to bring the arrested ship for prosecution and for investigation etc. We can see that in a single act of piracy there are lots of jurisdictional problems. As for there may be lots of states involved in one pirated ship regarding jurisdiction, the crew, the passengers, the pirates, the ship owner, the goods owner etc and also the flag state. But the international law of the sea provides a power to all the states to arrest the pirates and to try them in their courts.

To try a case of piracy it is necessary first of all that the trial state has the necessary domestic legislation in this regard. States must always keep in mind the instructions provided by the UNCLOS and SUA convention. The IMO assembly’s resolution also provides some guideline in this regard that how to use the provisions of UNCLOS in this regard.

Another big problem is the willingness of the trial of the pirates by the states. We can see that there are a lots of western countries which are not agreed to trail these pirates within their states at all. The main reason is that these pirates demands the asylum after the trial and create lots of problems in those states also. Some states are involve in political crises some states have difficulties in proper prosecution and beyond the all lack of evidence and to prove the crime against the pirates is also a big problem to deal with these kind of problems.

Then in the end I would like to explain that these pirates are properly sophisticated persons and they know very well the importance of evidence, so they always try to destroy the Profs before to arrest during the piracy. More over when the trial is going on in one place and the investigation is happening in some other place and delay in decisions are all the main reasons to destroy the evidence and to destroy the facts as well. Then in the end there is a lack of international collaboration to investigate these kinds of cases.

7.3.Crew Issues.

It is a general rough estimate that near about 1400 crew members remains hostage under the control of pirates within last some decade. All of these are the central witnesses of those piratical attacks. Some of the crew members died during that attack, some of them injured badly some of them are shocked and some of them leaves that profession permanently after that attacks. Only very few crew members continue to go into the sea after these kinds of attacks. It is the duty of the ship owners to provide them complete treatment and security because these are the main eye witnesses of these crimes and the investigation departments and researchers can get valuable information's from these witnesses. [26]

7.4.Ransom Recovery Matters.

There is a general estimate that near about 75 million dollars has been paid to pirates in respect of ransom for the safer release of crew and the ship also. With all the other major problems of piracy, the recovery of ransom is also a big challenge for the law enforcement agencies of the world today. Though it's a really big amount in numbers but the facts are quite different from this picture. During the year 2008, a workshop of UN takes place in Nairobi, according to that the ransom money, paid by the ship owners is distributes among the different parts which are as follows.

- 20% of its share goes to the leaders of the pirates.
- 20% is reserved for the next mission.
- 30% is for the gunman.
- 30% is for the government officials.

The history shows that there have been no efforts from the ship owners or from the insurance companies to recover these ransom amounts. The main problem is that there are no more public or private companies which are ready to spend more money to recover these ransom amounts in future. Here appears some questions that why the companies are not interested to do so? And why it's difficult to trace these kinds of transactions?

Infect the main problem to track and recover this amount is that it distributes among the participants' very quickly. Then the other problem is that the way of transaction of money is also very difficult to track. The common way to transfer the amount of ransom is called "Hawallah". In it the physical cash is not transferred but only the title changes from one person to another person. Mostly pirates use the state of Dubai to do these kinds of dealings.

There is also an institution for the purpose of recovery of these kinds of transactions which is called "International Center of Assets Recovery". The main purpose of this organization is to provide useful guidelines to all the states to trace the transactions and to recover them, which has been paid as ransom or in any other kind of crime. The role of this organization is also not good to recover the ransom money because in this problem there are no clear offenders, a very few persons arrested and there are also a lack of evidence in this regards. Secondly the way of transaction of money adopted by the pirates is also informal and difficult to trace. Now there is a need to improve the intelligence cooperation in this regard and to collect more evidences and to adopt some new laws and new means to face this problem.

Some political steps are being taken on international level and the UN's Security Council also authorizes all the states to take part in the land based activities in Somalia against the piracy. The main purpose of that is to collect more and more information's about the pirates their systems, findings etc. The states are required to adopt some laws regarding money-laundering, especially Kenya. These is also a proper strategy is needed to control this crime on international level not only among the states but also between the international organizations. The tracing of ransom money is not only a matter of private interest but some public interest is also involved in it.

We can see that the ransom proceeds are being invested in Kenya and the effects of money laundering appears in the result of higher costs of property and houses there. The prices of the costs of Mombasa increase 100%last year because of the investment of black money there. Moreover the re-routing of the ships in the Kenyans costs badly effects on the economical position of this state.
[\[27\]](#)

7.5.Private Security Companies.

Because of the increasing number of the piratical attacks in the world and these days there appear a trend to hire some private security guards for the safety of the crew and ship also. It is also because of that there is no sufficient security system in the sea for all the international ships and of course it is impossible for the states to provide security individually to all the ships. Here the question arises whether the use of these security guards is under the law?

The use of these kinds of armed security guards depends first of all on the laws of the flag states then on the laws of interested persons as well, and thirdly each port state visited. Today we can see that there are lots of private security companies which are providing different kinds of packages to the shipping companies and the necessary defense training to the master and crew as well. On the other hand these private security companies have no legal position under the international laws and those running armed escort ships suffer from a lack of legal certainty about their activities.

We can see that there are some other precautionary things are under the observation to make the ships secure from the piracy. Just like as the use of long range acoustic devices (LRADs), fire houses net guns, tamers and flares. The use of dogs is also under observation in this regards as well. The walls of the ships can become safer by using the barbed wires. Similarly the obstacles windows may be a good defense against the RPG rocket attack.

The use of these kinds of Private security guards also creates some legal questions as well. As we know that the master of the ship has the supreme authority in the ship, on its crew on its passenger and on its security guards as well. And according to the SOLAS convention no one in the ship can derogate the authority of captain in making of decisions about the safety of the peoples and about the environmental protection. So in conflict it will be difficult to make a decision to start fire and to stop fire, for the both the master of the ship and the security guards as well. It is also depends on the rules made by the flag states, about the security guards when to fire how to fire and how to defend the ship. The flag states must try their best to solve the problem without killing any suspected near the ship.

In the end almost all the insurance companies dislikes and against this decision about the presence of weapons and private security guards on board. In their presence the chance of counter fire increases and there is a chance of casualties on both the sides. Some legal issues also arise at that time when the commercial ships hair the armed boots for their protection. Here once again the question arises about their command and control.

8. Human Rights Laws And Sea Piracy.

The treatment with the captured pirates under the international laws is also another major issue. Human treatment, basics facilities of life right to brought up before the proper court, restrictions on illegal detention, illegal torture on the prisoners and, to hand over these pirates to some third state for the prosecution of the case of murder all are considered as the basic points of human rights laws. The European convention on human rights and the international convention on civil and political rights impose some obligations upon the states regarding the matter of pirates.

As we know that all the European states which have the naval vessel in the coasts of Somalia are also the parties in the European Convention on Human rights. Though all these states have a right to sail on that part of sea under the authority of Security Council's resolution. The Security Council's resolution also forced to obey the human rights while dealing with the pirate's just like as their treatment with pirates, their capture, detention and transfer.

Under the human rights laws the detention of the pirates can be divided into three basic categories. First of all starts at that stage when the pirates are arrested with an intention to bring to the arrested state for prosecution. The ECHR applies here in this case immediately after the arrest of the pirates. The navies are bound to inform the judicial officers about the arrest of the pirates and to bring them before the court without any delay.

Secondly, when some pirates are arrested and detained for some weeks with an intention to hand over them to some third state. Here the whole case is under the authority of the court. The court can also order to follow the rules of ECHR in extra-territorial sea as well. And in the end the third situation starts at that time when some pirates are arrested and it is not clear that who will prosecute these pirates at all. If the pirates are detained in this situation on the capturing states vessel, which ship would probably be assumed as being under the state's jurisdiction for the purpose of the ECHR, similar to a consulate or embassy. But on the other hand if the pirates are detained on their own ship then it is not clear that whether which kind of human rights laws would be applicable and who will be responsible for that.

The main purpose of the ECHR is to provide justice to the pirates. We can see that this commission is not covering the problems of human rights at all but on the other hand the courts have still an authority to issues some guidelines in this regards.[\[28\]](#)

8.1. Maritime Violence in Territorial Water & Human Rights.

“Whenever we talk about the human rights then of course at that time there appear some questions in our minds automatically. As for, are human rights more important than the sovereign rights of any state. Is piracy not a crime against mankind? According to the Harvard Draft, piracy is a crime against mankind and states could punish it even if they do not have any municipal legislation

covering the crime of piracy.

We can see that these days an international tribunal and compulsory disputes provisions exist to deal with the rights provided by the UNCLOS. The principle of universality should give every nation right to try pirates under their local laws. Here we will talk about the sovereign's rights in its territorial waters. Of course the doctrine of sovereign rights should not take precedence over human rights violation when talking about the piracy at all committed within the territorial waters of any state. Because of the new technology it's the need of territorial waters is nonexistence for all the states. Peoples who believe in international laws deeply should not be offended by allowing a breach of sovereign right when the human rights of hapless refugees are violated on a large scale.

The means to competence any state for damages it may suffer due to war ship incursion into its territorial waters exist today. Yes their will undoubtedly be abuse at some points in future. The abuse may take the form of intimidation or excess, and may be an affront to the sovereignty of a state. However it will be simple for any state to deny access to its territorial waters by relating this to the offending states in advance and by resolving any maritime violence problem within its own waters. Why should state be entitled to the shield of sovereignty, when it refuses to solve the problems in its territorial waters?

Again I would limit this right to entry into territorial waters to situation where the non-littoral states is pursuing "pirates" who are attacking their refugees or foreign vessels caring cargo that can damage the environment. This right of entry should not be extended for the purpose of protecting international residents or domiciles of the littoral stat. what I seek is the adoption of a "piratical" or "maritime violence" principle of human and/or environmental intervention to prevent human's sufferings and environmental disasters".[\[29\]](#)

8.2. International courts for sea pirates.

As we know that there are lots of difficulties to deal with the pirates and also in their prosecution, so in this regards there are lots of international suggestions to create some international courts to deal with this crime. There are also some suggestions to increase the powers of currant international court of justices to deal with these kinds of cases also. But these proposals remain fail to get much support on international level.

From the experience of other international tribunals we have come to know that it is a very lengthy process to establish such kind of international court. There are also some financial and human resources problems involve in it. Secondly the international courts will be available at that place when there is no other court to deal with such kind of case. But we can see that in case of piracy there are lots of national courts who are dealing with these problems. So we see that there is no need

of international courts for this crime at all, what is needed, just to improve the laws and to make some proper and better way of proceedings in this regards.[\[30\]](#)

9. Is the present legal framework sufficient?

Here we will talk about all the multinational agreements customary international laws, which provides adequate powers to the vessels of the states to stop inquire arrest the pirates and also to use the reasonable force against these kinds of activities. According to these laws the states can trial the pirates transfer them from one place to another and to recover the damages from them. As we know that the international laws are not applicable within the territorial jurisdiction of any state, so each state must create some local laws regarding piracy.

Each state must keep in mind these guide lines provided by the international laws, to make rules in this regards.

- Piracy should be a crime under its local laws.
- The provisions against piracy should be for the law enforcement agencies with certain required powers.
- That law must provide some authorities to the courts of the states to make trial of the pirates for justice.
- There must be some provisions regarding the recovery property from the pirates for its delivery to its real owner.

As we know in most of cases that there are a lots of problems in investigation and fair trial of the pirates when the pirates are arrested from the international seas and brought to some other states for their trial.

- So there must be some clear rules and regulations for the investigation and for the treatment with the pirates and for their handing over to some third state. There must be some detailed information's regarding the procedure of trial of the pirates.
- There must be some continuous efforts to improve the way of prosecution and thy way of transfer to some other country.
- All the states must affix some of its officials to work in this regard just like as to collaboration for investigation for negotiation and for dialogues with the other states.

- If it is possible then there must be a joint investigation department on international levels to deal with this crime, for investigation and to collect the evidence. All the rules made by this department should be acceptable for the whole international states.
- The UN and IMO must try to improve the standard of evidence and to make some rules for the states to collect the better evidence as against the piracy.

As we know that if the pirates are arrested by the state A then they will be trailed by that states under their local laws rather than to trail those pirates in that state from there they belongs at all. So in it,

- There must be some legislation in this regards on the long term basis to trial these pirates in related countries.
- There must be some work regarding improvement of the intelligence system of the states. There should be some intelligence assistance from the concerned states in this regards to the trial states.
- There should be some international trust fund under the authority of UN or IMO to provide some financial supports to the states to meet the expenses of trials against the pirates in poor states just like as Kenya and Somalia.

The European states must take some extra steps against piracy. Though these states are not involved as much in piracy but of course these are the states mostly affected by the activities of the pirates in the high seas. As we know that most of the shipping companies affected by the pirates belong from these countries so in such a case,

- These companies must also be ready to provide the evidence and witnesses against the piracy all the time.

As for the issues of the private security firms, there must be some special steps to be taken in this regards.

- There must be some rules regulations and standard of the security system of the companies acceptable on the international states as a whole.

Then we can see that unwillingness of public and also the shipping companies in the matter of the recovery of the ransom money is also another big problem. This is the one of the major cause which is spreading the piracy on such a large scale! Of course because of the latest technologies and the intelligence departments it becomes easy today to trace the ransom money.

- The arrested pirates in different cases are the best source to get the informational in this regards.

The law enforcement agencies and the intelligence agencies can get a lot of useful information's from these pirates in this regards.(where to pay the ransom what are the uses of that ransom money what are the ways to pay that ransom money etc).

- Secondly the use of civil laws of any state with the help of information's of the law enforcement agencies and also intelligence reports can be much helpful in this regards.
- There must be some committee based on the shipping companies, insurance companies, and legal advisors and also on the intelligence reporters in this matter to recover such ransom amounts.
- We can see that the governments are also not showing much interest in recovering the ransom money. So the best solution is that there must be a trust fund in this regards to meet the expenses. Secondly there must be a rule to deposit some amount from the recovered ransom money in this fund also.

We can say that piracy is the not the real problem. Infect the real problem is that thing which promotes the piracy. The nations must try to cut those roots which are creating piracy.

- Poverty, illiteracy, lack of law and order and the lack of political establishments, these are the one of the major problems which is creating the piracy in the different parts of the world.[\[31\]](#)

9.1. Major Problems In combating Maritime Piracy.

It is a natural thing that whenever we think about laws of piracy the powers of international community in this regards then there appears a question in our mind that why the piracy is still exist today. What are the major problems to combat piracy from the high seas? Here we will discuss some of those points which are considered as a great difficulty in combating maritime piracy.

- First of all, we can see that the modern pirates are highly equipped with the latest technologies and also armed with heavy weapons. They can easily move from the territorial state one state to another state. So it's not possible for a single state to restrict their activities alone.
- Sometime the militants see that in the crime of piracy, there involve the local unemployed fisherman's of a state. It is very difficult to recognize them until they become under arrest by thy law enforcement agencies on the spot. As we already knows that the financial problems of the poor states is one of the major reason to improve the modern sea piracy.
- Thirdly, we can see there are some conflicting interests involve which are creating some disturbance to control the piracy in the high seas as well. We can say that these conflicts are of four basic categories which are as, the conflict between public interest and private interest then conflict of interest between two public interests and then conflict between different national interest and in

the end the conflicts between international obligations of a coastal state and its domestic interests.

These are the basic reasons because of that piracy is not under control properly. States must cooperate and do some work in this regards and also improve the safety measures to keep the sea away from the piracy for the upcoming generations. [\[32\]](#)

9.2.Possible Options To Combat Maritime Piracy.

Here we will discuss some of the options to control the problem of the piracy in the modern age. As we can see that the UNCLOS 1982 still remains fails to control properly this crime from the sea of the world. So these may be some possible solutions to control this crime as follows.

- Regional agreements.

Regional agreements are the first and the better one idea to deal with the crime of piracy. States can make some multilateral or bilateral agreements with each others to act against piracy jointly within the limitations prescribed by the law. According to these agreements the states can set the rules for the region jointly to control the piracy. There must be some extra departments to check the work of these agreements and the effect of their implementation. The states can also impose some extra harbor or port fesses to the vessels to manage the funds for these kinds of agreements properly.

- Treaties within the limits of UNCLOS.

Then on the second number the option of the international treaties is available under the limits of UNCLOS. In a treaty to control piracy, there should be some universal principles to control piracy and also some regional principles as well in it. But on the other hand there are some problems in making treaty, as it takes a lots of time in composition and required the ratification by all the states otherwise it will never results properly.

- International cooperation.

The help from World Trade Organization is the third option regarding piracy. We can see that the shipping is covered by the world trade organization in the world. The members of the WTO have lots of negotiation regarding shipping and its problems in the sea. Thus right now there is no agreement under the WTO to control piracy by its member states but it may come into being at the time of need with a little interest of the member states.

- Creation of some new laws.

The development of some new laws regarding piracy is the forth one option in this regard to combat piracy. As we know that all the states have free hand to make laws regarding piracy so the states

must do some necessary work in this regards. But there will be a problem that how all the other states can accept that model law. There is a possibility that may be the laws made by one state or some states jointly, are not accepted by the other states of the world.

- System's Improvement.

Then on the fifth number, we can improve the present available system of the states against piracy. In it all the states must try to improve their ways to registration of ships and also the way of the inspection of the ships within their territorial jurisdictions. States must provide necessary information to the shipping companies in this regards, maintain some insurance companies, improve their present piracy laws and also to make necessary treaties with the other regional states.

- Private companies/ Security Company.

Then on the sixth number the option of the private securities companies is available. The states can take help of these companies to fight with the pirates to negotiate with them. States can also use the security guards of these companies on board for the protection of the ship. There are also some problems in this regards as for lots of states of the world does not allows any ship having weapons to enter in its territorial waters. Though it is not according to the rules of the coastal state but of course it will be a good threat to the pirates and will decrease the chances of the piratical attacks on such a ship.[\[33\]](#)

10. Conclusion.

In the end I want to conclude my thesis, so according to me the laws about the sea piracy are not satisfactory at the moment. All the present laws are just to fill up the gap of law of piracy but not able to defeat piracy at all. As for according to the UNCLOS 1982 which is applicable at the moment, there are no more differences in the provisions regarding piracy as a compare with the high Seas convention 1958. In my opinion this law is not sufficient to defeat the problem of piracy today.

We can see that according to the definitions of UNCLOS 1982 it is very difficult to prove the offense of piracy against any person. It has lots of ambiguities in it. Secondly no state is bound according to the law to take part in actions against the pirates. It's all up to the states own will to do whatever it wants. Thirdly these states have full authority to prosecute these pirates under their local laws. Because of corruption and political matters it becomes impossible some times to punish the real offender.

In the end there are no international courts to deal with the pirates or with these kinds of crimes. All the states have rights to prosecute these criminals. So it's another main problem to control this

crime.

10.1. Some Suggestions.

Here I will provide some of my suggestions to improve the international laws regarding piracy to control it.

- The international law must be clearer and free from any kind of uncertainty about the piracy.
- There must be some international sea forces to control this crime and all the member states of UN should take part in those forces necessarily.
- Private security companies should be encouraged to come forward in this regard. The shipping companies must have the permission to hire the private security guards.
- In the end there must be some international courts to deal with all the crimes of piracy. Its procedure should be same and its punishment should be same for all the pirates of the world.

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