

attack must take place on the high seas or at a place not subject to state sovereignty. All three conditions must be met simultaneously. States and state actors cannot, by conventional definition, commit acts of piracy. Except for an act of mutiny, when mutineers act against the authority of the state. Warfare, espionage or terrorism is not piracy. The same would appear true when private actors acting for political or ideological motives (e.g. a privateer, mercenaries, environmentalists, insurgents, or religious fundamentalists) cannot commit acts of piracy. For example the Greenpeace protest over the Brent Spar and the attack on the USS Cole were not acts for private material gain.

In the past many governments frequently used privateers to attack, burn or capture enemy ships and supplement their navies during times of war. Pirates became Privateers by issue of a Letter of Marque, an official governmental authority granting permission to attack and plunder enemy ships with impunity on behalf of that particular flag state. To the enemy a privateer was a pirate and was a pirate by any other name and when attacking one of their ships committed an act piracy and not an act of war.

We can now see the emergence of two distinct characteristics in an act of piracy.

The first is based on the pecuniary and selfish motives of the individuals involved i.e. Intent to kidnap, ransom or plunder for private gain, while in the absence of an official authorisation or mandate. It must be for self gain not political motive. The second is an emphasis on definition and even individual perception.

When is a pirate not a pirate?

What exactly is an act of Piracy? Different Governments of different States, different conventions and different underwriters and insurance groups all have different ideas. Pirates are also capable of viewing their actions through a social or political prism. To some an act piracy includes only attacks on ships at sea and to others the definition applies only to ships in international waters, some conditions apply whether a ship is underway, at anchor or berthed.

There are a number of other variations on the definitions of what piracy involves, which include other statistics including robberies and attacks whilst the vessel is at anchor or still in port or include acts against refugees like the attacks on the Vietnamese boat people.

From here on in the water becomes increasingly muddy. There are a number of problems with the UNCLOS definition. The crime must be committed "on the high seas" in order to fall within the parameters of the definition for piracy for the purpose of the 1997 Act. The UNCLOS definition states;

"and directed:

*on the high seas
in a place outside the jurisdiction
of any State;*

There is no effort here to differentiate between what are the high seas and a country's territorial waters. The problem becomes more complex still when a countries Exclusive Economic Zone is factored into the equation, and it is probably this interpretation that is

attractive to the administration of some government states for its political convenience in refuting claims that piracy exists or is even a problem in their jurisdiction.

For the purpose of public international law, piracy cannot be committed while a vessel is within a country's territorial waters, if an offence that has equivalent characteristics as an act of piracy is committed within a country's territorial limits it is classed as armed robbery.

Defining the crime has become something of a political football. Under public international law, if piracy included acts of armed robbery carried out not only on the high seas but also within a nation's territorial waters, then nations would no longer appear to have exclusive jurisdiction over their own territories so many piratical acts today come under local legislation or law as territorial matters.

According Article 105 of the 1982 Convention, every state may take action against pirates at any time in international waters (*the high seas*) but only by "warships or other ships which are clearly marked and identifiable as being on government service and are authorized to that effect". The courts of the state which has seized the vessel can however decide on the penalties to be imposed. Article 105 states that a pirate ship cannot be pursued further once it has reached national waters, the exception being with the "consent of the flag state" provided that the act was actually committed on the high seas and not in a place under state sovereignty. An unauthorised intervention by a warship of a foreign state would

constitute a violation of that state's sovereignty. In short this means that there is legal foundation for taking action against piracy other than on the high seas.

However the majority of attacks against ships take place take within the jurisdiction of states. Piracy as defined by the UN Convention does not address this aspect.

Because of this omission the International Maritime Board uses the following definition which is generally agreed is far more robust than the UNCLOS definition. The IMB definition attempts to address the situation and cover both actual and attempted acts whether the ship is at sea, at anchor or on the berth.

For statistical purposes the IMB defines piracy and Armed Robbery as

"The act of boarding a ship or attempting to board a ship with the apparent intent to commit theft or any other crime and with the apparent intent and capability to use force in the furtherance of that act."

While not carrying much legal muscle this is considered a far more robust definition and reflects the popular view of the international and shipping communities and there is a strong sentiment for embracing the IMB definition of piracy as unilateral.