

Maritime Crimes Threatening Regional Security: Iran's Legal Perspective towards the United Nations' Holistic Approach

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Received: 2018/01/29

Accepted: 2018/07/12

Abstract

Over the past years, Iran's surrounding maritime area in the Middle East and Indian Ocean has encountered with a number of security threats, including piracy and armed robbery at sea, terror acts, illicit trafficking in arms and weapons of mass destruction, human trafficking as well as illegal, unreported and unregulated (IUU) fishing, and unlawful damage to the marine environment. Piracy and armed, in particular, as the main concerns can undermine local, regional and international security and stability. The following article tries to address the issues, with special focus on the eradication of organized maritime crimes through the international legal framework governed by the United Nations' holistic approach. The study analyzes Iran's own legal perspective on maritime security challenges and the ocean governance contributing to eradicate security threats. To this end, the paper encompasses various aspects and dimensions of the topic from the perspective of international law and the UN stewardship.

Keywords: Maritime Security, Organized Crimes, Iran's Legal Perspective, United Nations Approach.

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I. Introduction

Since the time Grotius¹ and Selden² initiated a debate on the freedom of the high seas, maritime security and national security have become fundamental to the progressive development of the law of the sea.³ Some scholars suggest that “the formidable acceleration of information exchanges, the increased trade in goods and services as well as the movement of individuals from one part of the world to another, have transformed our economic, social and political environment in both positive and negative ways, as well as the paradigm of national and international security.”⁴

Globalization has brought prosperity to major transnational criminal groups around the world. Piracy and armed robbery against vessels are not isolated cases as they occasionally occur in the Indian Ocean. Maritime security threats consist of unlawful or hostile exploitation of the maritime domain, terrorist attacks, criminal acts, or organized activities among others. In other words, the main concerns are related to the destructive effects of transnational criminal offences such as application of weapons of mass destruction, illegal seaborne immigration, smuggling of people, drugs, weapons, and other

1 Hugo Grotius, a Dutch jurist and philosopher, in his book entitled *Freedom of the Seas*, formulated a new principle that the sea was international territory and all nations were free to use it for seafaring trade. See Hugo GROTIUS, *The Freedom of the Seas*, Carnegie Endowment for International Peace Division of International Law, (New York: Oxford University Press, 1916).

2 John Selden, one of England’s greatest legal scholars argued that the sea was physically capable of being appropriated by the coastal state, sufficiently powerful to enforce its will over the sea. See: Scott C. TRUVER, *The Strait of Gibraltar and the Mediterranean*, (Leiden: MartinusNijhoff Publishers, 1980).

3 Natalie KLEIN, Joanna MOSSOP and Donald R. ROTHWELL, eds., *Maritime Security, International Law and Policy Perspectives from Australia and New Zealand*, (London: Routledge, 2010), at 23-4.

4 Manimuthu GANDHI, “National Security and Maritime Law: Emergence of Unilateralism and Other Forms of Challenges to Universal International Law” (2009) *Indian Journal of International Law*, Vol. 49, at 509.

contraband, as well as environmental threats, e.g. major pollution incidents and illegal dumping.⁵

For all the aforementioned concerns, security comes first. Among other things, acts of piracy have particularly challenged the regional security in recent years. Piracy and armed robbery pose challenges with an international dimension hence, they necessitate a multidimensional approach. As a matter of fact, to achieve the goal of addressing piracy and other security threats, an organized network consisting of a high degree of holistic cooperation and coordination is required in addition to due process of collecting and exchanging information and intelligence on a timely basis.⁶As the legal perspective, notably, the United Nations Convention on the Law of the Sea (UNCLOS) (1982) and its predecessor, the Convention on the High Seas (1958), accompanied with the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) and the 2000 United Nations Convention against Transnational Organized Crime (UNTOC), as well as other international and regional instruments provide an effective legal framework for the arrest, prosecution and punishment of perpetrators of acts of kidnap for ransom and ship-hijacking.

From the perspective of the UN, there is no agreed definition of 'maritime security'. It has, instead, identified what activities are commonly perceived as threats to maritime security. The UN Secretary-General in 2008, in his report on 'oceans and the law of the sea', identified seven specific threats to maritime security. These threats are: piracy and armed robbery against ships, terrorist acts involving shipping, offshore installation and other maritime interests, illicit trafficking in arms and weapons of mass destruction, illicit trafficking in narcotic drugs and psychotropic substances, smuggling and

⁵UN Documents, A/63/63, Oceans and Law of the Sea, Report of the Secretary-General, 10 March 2008, para.39.

⁶ Ibid.

trafficking of persons, illegal, unreported and unregulated (IUU), and finally, intentional and unlawful damage to the marine environment.⁷

Quite significantly, the contributions made by countries to fight against piracy and maritime crimes in the Indian Ocean and the Arabian Sea have been well recognized and commended by the international community and relevant UN bodies. The Security Council, pursuant to the Secretary-General's report has commended the aforementioned efforts by the Islamic Republic of Iran's⁸ navy and some other countries which have deployed ships or aircraft in the region to combat piracy and armed robbery.

It should be kept in mind that there is a positive and synergistic relationship between drawing a modern piracy policy, strengthening Iran's interagency coordination and enhancing international cooperation. The process of developing a contemporary piracy policy helped Iran draw the policy toward a more effective coordination and enhanced international cooperation. It is with the concrete view to the fact that "the complexity of issues involved in maritime security and the diversity of interests at stake are broader in scope than any single state or group of states can effectively handle."⁹

In order to answer the key questions and elaborate on the issues concerned, the current paper is divided into two parts. Chapter I addresses the issue of tackling organized maritime crimes and applicable legal framework under international law with a view to UN stewardship. Then, the second chapter will conduct an analysis regarding Iran's maritime security approaches through its legal framework and ocean governance contribution. The author will try to clarify Iran's legal perspective on maritime security challenges in the Indian Ocean region and how a stronger cooperation can contribute to eliminate organized high sea crimes in the region. To this end, the

7 Report of the Secretary-General on Oceans and the Law of the Sea, op.cit, para.39.

8 Hereinafter referred to as "Iran".

9 Paul Musili WAMBUA, "The jurisdictional challenges to the prosecution of piracy cases in Kenya: mixed fortunes for a perfect model in the global war against piracy" (2012), *World Maritime University Journal*, Vol. 11, at 96.

whole integrity of the article sees various aspects and dimensions of the topic from an international law perspective.

II.Tackling Organized Maritime Crimes: International Legal Framework Under United Nations Stewardship

Transnational organized crimes are on the rise across the Indian Ocean region, with a significant maritime dimension. A variety of sources of insecurity that afflict the region exist within one of the world's most important strategic and commercial zones, with the Persian Gulf serving as the global market's most significant source of crude oil and the northern Indian Ocean playing the role of a critical sector of global trading.

In this regard, organized activities not only include persistent challenges to maritime security, such as piracy or fisheries, but contemporary challenges, in the form of maritime terror, the proliferation of weapons of mass destruction, drug trafficking, and illicit human smuggling. In some cases, particularly, in the case of piracy and armed robbery against vessels which nowadays would manifest in various types of violence at sea and land, organized criminal groups would be associated with more than one illicit activity at seas resulting in significant obstacles, both in respect of the prevention of such crimes and the applicable legal framework.¹⁰ Undoubtedly, piracy and armed robbery as the main security concerns of the region can undermine international security and stability as well. Therefore, due attention should be paid to piracy and armed robbery at sea.

This chapter aims at addressing the main issue of the international legal framework applicable on maritime security threats to deal with organized crimes. Aligned with this direction, the article will address significant elements of a stronger cooperation to eliminate such crimes as per international law and the law of the sea and then it will respond

10 Eftymios PAPANASTAVRIDIS, *The Interception of Vessels on the High Seas; Contemporary Challenges to the Legal Order of the Oceans*, (Oxford and Portland: HART publishing, 2013), at 14.

to the following question: How can cooperation at the regional level be strengthened to maintain maritime security, especially in order to eradicate acts of piracy and armed robbery and other security threats under UN stewardship?”

A. Fighting Organized Maritime Crimes of Piracy and Armed Robbery at Sea under International Law

The existing legal instruments under international law provide a reliable framework for combating organized maritime crimes. The United Nations Convention on the Law of the Sea (1982) and its predecessor, the Convention on the High Seas (1958), together with SUA Convention, the 1979 Hostages Convention, and the 2000 UN Convention against Transnational Organized Crime (UNTOC) have set an effective legal framework and a comprehensive toolbox for arrest, prosecution and punishment of organized crimes’ perpetrators. The following section will elaborate on international obligations of regional states to cooperate to maintain maritime security and then it explains specific areas for capacity building aimed at dealing with maritime crimes, from international, regional, sub-regional, and national perspectives and it will ultimately address the way forward to accomplish the goal.

1. International obligation to cooperate to maintain maritime security

International cooperation, whether directly among states or through the involvement of related international organizations or other international mechanisms eliminating maritime crimes at seas, has been regarded as an indispensable key component of the global fight against maritime crimes specially piracy and armed sea robbery.¹¹ In this respect, it is noteworthy that any international effort to suppress piracy and combat robbery against ships must take place in a manner that is consistent with the rules and principles of public international law governing criminal

¹¹ Report of the Secretary General Addendum, Oceans and the Law of the Sea, A/62/66/Add.1, 31 August 2007, para.94.

jurisdiction and in particular cooperation in criminal matters, including detention, prosecution and extradition of the criminals. Accordingly, such a cooperation mechanism must be consistent with the legal regime established for the law of the sea, which is set out in the UNCLOS.

However, one of the most controversial and debated questions in this regard is “whether the provisions of the UNCLOS on piracy provide states only with a right to suppress piracy or also with a duty to do so, and whether states should be obliged to adopt and implement anti-piracy legislation”.¹² The strong wording of Article 100 of the UNCLOS has stipulated the unique characteristic, knowing that it is the one and only provision in the UNCLOS whose title is exactly the “duty to cooperate” and all states parties are obliged to cooperate to this end to the fullest possible extent. Being compared to other sections of the UNCLOS that specify various areas and means of cooperation, the mentioned article entitled “duty to cooperate in the repression of piracy” has not articulated “the specific obligations that falls within the scope of the general duty to cooperate, thereby leaving this provision open to interpretation with regard to the means that should be employed by states to fulfill their obligation.”¹³ Although the International Law Commission (ILC) in its commentary on Article 38 of the Convention on the High Seas, stated that “any state having an opportunity of taking measures against piracy, and neglecting to do so, would be failing in a duty laid upon it by international law.”¹⁴

Similarly, with regard to the obligation to cooperate, according to Article 13 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the SUA Convention),

12 Helmut Tuerk suggests, “Every State not only has a right, but also a duty, to take action to curb piratical activities.” Helmut TUERK, “Combating Terrorism at Sea- The Suppression of Unlawful Acts against the Safety of Maritime Navigation” (2008), University of Miami International and Comparative Law Review, Vol. 15, at 347-53.

13 Yaron GOTTLEB, “Combating Maritime Piracy: Inter-Disciplinary Cooperation and Information Sharing Case” (2014) Western Journal of International Law, Vol. 47, at 4.

14 International Law Commission Commentary to article 38, 1956.

“states parties shall cooperate” in the prevention of SUA offences and furthermore, under Article 12 of the SUA Convention they are required to afford one another the greatest measure of cooperation in connection with criminal proceedings to prosecute the offenders.¹⁵

Notwithstanding the UNCLOS’s shortcoming in not stipulating the specific obligations that fall within the scope of the general duty to cooperate to repress illegal activities at seas, as some scholars¹⁶ argue that Article 100 should be interpreted broadly in a manner that can be applied to ensure the international community’s common interest in protecting the freedom of navigation. In applying the broader interpretation, the presumption on cooperation in the face of piracy derives from the general principle of good faith in fulfilling treaty obligation and “a state that was in a position to act and failed to do so carries the burden of justifying-based on factual, legal or other grounds-its lack of action.” For assessing the compliance, the “due diligence principle”, a fundamental principle of international law,¹⁷ can be applied to justify the specific obligation which can be identified based on the general guideline sets out in Article 100 of the UNCLOS. These obligations, in general, include the whole piracy provisions of which should be interpreted in light of the general guidelines and requisite significant obligations such as the duty to exchange relevant information relating to piratical experiences.¹⁸

It follows from the forgoing that “although the current rules of international law on piracy are not entirely without deficiencies, as all other universally accepted rules of international law, represent a balance of interests of the subject and thus correspond to a political reality. In other words, they constitute a set of norms that the world

15 The SUA Convention, Article 12 and Article 13.

16 Douglas GUILFOYLE, *Shipping Interdiction and the Law of the Sea*, (London: Cambridge University Press, 2009).

17 Robert P. BARNIDGE, “The Due Diligence Principle under International Law” (2006), *Boston College International and Comparative Law Review*, Vol. 8, No. 81, at 121.

18 ILC Draft Articles on the Law of the Non-Navigational Uses of International Watercourses, 1994.

community is prepared to accept as international rules governing activities for the suppression of piracy.”¹⁹

2. The duty to exchange information and evidence as an obligation under the general duty to cooperate

As mentioned earlier, the duty to exchange relevant information as a particular obligation derives from the general duty to cooperate to suppress criminal acts of piracy and armed robbery against ships. To ensure successful information cooperation in counter-piracy and armed sea robbery operations, information sharing is impartibly significant to guarantee the prosperity. Furthermore, other relevant international and regional instruments and organizations have explicitly emphasized on the importance of information sharing as part of international cooperation in addressing the piracy incidents.

According to Article 13 of the SUA Convention, all states shall take measures to prevent illegal acts in or outside their respective territories, exchange information in accordance with their national laws, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in the article with the aim of preventing illegal acts and finally when an illegal act is committed in the territory of a member state, the latter must take all steps to ensure that cargo, passengers or crew are not unduly detained or delayed.

Significantly in this regard, the UN General Assembly has recognized ‘the crucial role of international cooperation at global, regional, sub-regional, and bilateral levels in combating, in accordance with international law, threats to maritime security, including piracy, armed robbery at sea, terrorist acts against shipping, offshore installations, and other maritime interests’, and emphasized that this goal should be achieved through ‘bilateral and multilateral instruments

19 Vladimir GOLITSYN, “Maritime Security (Case of Piracy)”, in Holger HESTERMEYER (et al), eds., *Coexistence, Cooperation and Solidarity, Liber Amicorum: Rudiger Wolfrum*, (Boston: Martinus Nijhoff Publishers,2012), 1157-1176, at 1176.

and mechanisms aimed at monitoring, preventing and responding to such threats'. The UNGA also took note of necessity of 'the enhanced sharing of information among states relevant to the detection, prevention and suppression of such threats, and the prosecution of offenders with due regard to national legislation.'²⁰

In this regard, the UN Security Council in its Resolution 1950, underlined the importance of continuing to enhance the collection, preservation, and transmission to competent authorities of evidence of acts of piracy²¹ and later in Resolution 1976, adopted on 11 April 2011, urges states and international organizations to share evidence and information for anti-piracy law enforcement purposes with a view to ensuring effective prosecution. In addition, the Security Council urged all states to share information on acts related to piracy and armed robbery at sea and highlighted the importance of sharing evidence and information with regard to the key figures of criminal networks involved in piracy and armed robbery.²²

Notably, there are some challenges which have been regarded problematic with respect to the information sharing duty and as some scholars explained, they are considered as: "scope of the duty to share information and the national security exception", "challenges deriving from the nature of the crime and the entities involved in counter-piracy operations", and "the proliferation of information networks and its discontents".²³ It is noteworthy to mention that national security concerns serve as a tool used by states to justify their decision not to share relevant information, which in many cases, refrained to be revealed as classified information.²⁴

Notwithstanding the aforementioned challenges, the circulation of comprehensive information as a key component of the duty to cooperate

20 UNGA Resolution 63/111, UN Doc.A/RES/63/111, 2008, Para.61. UNGA Resolution 66/231, UN Doc. A/RES/66/231, 2011, Para.81, and UNGA Resolution 67/78 UN Doc. A/RES/67/78, 2013, para.88.

21 UNSC Resolution 1950, UN Doc.S/RES/1950, 2010.

22 UNSC Resolution 2077, UN Doc.S/RES/2077, 2012.

23 Gottlieb, *supra* note 13.

24 Natalie KLEIN, *Maritime Security and the Law of the Sea*, (London: Oxford, 2011), at 254.

between navies engaging in operations against pirates and law enforcement entities must be promoted in order to achieve a holistic cooperative approach on repressing maritime piracy and armed robbery. This goal needs to be achieved through a comprehensive maritime policy and cooperative mechanism of mutual legal assistance between regional countries.

B. Certain Areas for Capacity Building to Eliminate Organized Maritime Crimes: Regional Cooperation under UN Surveillance

This section will elaborate on certain areas for capacity building for cooperation in eradicating maritime crimes in the Indian Ocean region. These areas include the implementation of international obligations to eradicate maritime crimes at regional and sub-regional levels through enhancing political, socio-economic, and more significantly legal and criminal justice cooperation with regard to investigation, prosecution, and extradition of suspected criminals and information/evidence sharing networks. The whole section will follow the rational behinds the United Nations' holistic approach to fight against maritime piracy threats through monitoring regional mechanisms.

1. United Nations holistic approach to fight maritime piracy threats through monitoring regional mechanisms

The United Nations has initiated elaborate efforts to eradicate maritime crimes specifically piracy and armed robbery against ships at seas. Within that framework, a variety of bodies and agencies are activated in terms of the application of counter-piracy measures to eradicate the root causes of the phenomenon.

The General Assembly, primarily, since adopting a resolution on 22 December 2007 on Oceans and the Law of the Sea, has encouraged states to cooperate in addressing threats to maritime safety and security through bilateral and multilateral instruments and mechanisms aimed at monitoring, preventing, and responding to such threats. It further urged “all states, in cooperation with the International Maritime Organization (IMO), to actively combat piracy and armed robbery at sea by adopting

measures, including those relating to assistance with capacity-building through training of seafarers, port staff, and enforcement of personnel, reporting and investigation of incidents, bringing the alleged perpetrators to justice, in accordance with international law, and by adopting national legislations, as well as providing enforcement vessels and equipment via guarding against fraudulent ship registration.²⁵

It was only few years after the revision of the SUA Convention, at the request of the Secretary-General of the IMO that the Security Council became specifically involved in efforts to repress maritime piracy and armed robbery against ships which had been growing in strategic arenas of the world. In 2008, the UNSC acting under Chapter VII, adopted Resolution 1838 which “calls upon all states interested in the security of maritime activities to take part actively in the fight against piracy on the high seas off the coast of Somalia, in particular by deploying naval vessels and military aircraft.”²⁶

In April 2010, Resolution 1918 dealt with the prosecution of individuals charged with piracy, affirming that “the failure to prosecute persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia undermines anti-piracy efforts of the international community,”²⁷ and calling “on all states, including states in the region, to criminalize piracy under their domestic law and favorably consider the prosecution and imprisonment of convicted pirates apprehended off the coast of Somalia, consistent with applicable international human rights law.”²⁸ Resolution 2020 of the Security Council stressed the need “for a comprehensive response to repress piracy and tackle its underlying causes by the international community.”²⁹

25 UNGA Resolution 62/215, UN Doc.A/RES/62/215, 2007.And UNGA Resolution 64/71, UN Doc.A/RES/64/71, 2009.

26 UNSC Resolution 1838, UN Doc.S/RES/1838, 2008, para.9.

27 UNSC Resolution 1918, UN Doc. S/RES/1918, 2010, para.1.

28 Ibid, para 2.

29 UNSC Resolution 2020, UN Doc. S/RES/2020 2011, para 2.

With respect to measures of the UN General Assembly, on 14 December 1981, it adopted Resolution 36/125 and expressed the need for “greater international efforts in the suppression of piracy on the high seas, in accordance with their international obligations, and to take appropriate action to protect asylum seekers from acts of violence at sea.”³⁰ The UN General Assembly has been contributing to the international fight against piracy and other criminal activities in the maritime domain by adopting annual resolutions to address the issues regarding oceans and law of the sea. Since 1984, the assembly has considered developments pertaining to the UNCLOS as well as those relating to ocean affairs and the law of the sea, initially under the item entitled “Law of the Sea” and then since 1998 under the item entitled “Oceans and the Law of the Sea” by adopting Resolution 52/26.³¹ Collectively by its regulatory framework, the UNGA contributes to a comprehensive development of the oceans and the law of the sea and one of its most significant implications refers to the ongoing threats of maritime piracy and armed robbery against ships at seas as stipulated in the most recently resolutions on “oceans and the law of the sea.”³²

Noteworthy to add is that as a global response to the maritime security threats, in 1999, the international community, pursuant to the GA resolution 54/109 of 9 December 1999, adopted the International Convention for the Suppression of the Financing of Terrorism. The Convention ‘bearing in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighborliness and friendly relations and cooperation among States and deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations’ recognizes ‘the urgent need to enhance

30 UNGA Resolution 36/125, UN Doc.A/RES/36/125, 1981.

31 UNGA Resolution 52/26, UN Doc.A/RES/52/26, 1998.

32 UNGA Resolution 68/70, UN Doc.A/RES/68/70, 2013.

international cooperation among states in devising and adopting effective measures for the prevention of the financing of terrorism as well as for its suppression through the prosecution and punishment of its perpetrators.³³ The convention would have also potential applicability to piracy movements, particularly with regard to its financing networks and violence involved in recent cases.³⁴

2. Capacity building to eradicate organized maritime crimes: Regional approach

Certain areas of capacity building are exemplified in regional, multilateral, sub-regional, and bilateral cooperation and boosting the coordinated maritime policy strategy among all concerned regional countries. In order to eradicate maritime threats and lucrative nature of criminal activities at sea, ‘these capacities should be multilateral and centralized and must seek to integrate the implementation of various convention regimes at the regional level, while remaining flexible and adaptive in implementing a proactive policy.’³⁵

In order to boost a strong capacity-building structure, the regional states should enact harmonized suitable legislation in accordance with international instruments making any attacks against ships an offence punishable under their respective legal systems. To this end, criminalization of threats, in the domestic legislation of all regional states, is an integral step in the strategy to effectively repression these criminal activities. Upgrading appropriate existing regional organizations has to be taken seriously to ensure the coordination and harmonization of policies and laws as well as establishing more fully fledged criminal justice cooperation mechanisms between the affected states to prevent maritime crimes including piracy, armed robbery against ships, and maritime terrorism.

33 The International Convention for the Suppression of the Financing of Terrorism, New York, 9 December 1999.

34 Charles H. NORCHI and Gwenaëlle Proutière MAULION, Piracy, in *Comprehensive Perspective: Problems, Strategies, Law*, (Oxford: Pedone & Hart, 2012), at 342-43.

35 *Ibid*, at 491.

Furthermore, the regional states should conclude agreements aimed at strengthening cooperation and coordination among them to effectively prevent and suppress illegal activities, including piracy and armed robbery at seas. In this respect, a salient suggestion would be to establish a new regional mechanism for collecting, sharing, and analyzing relevant info through information sharing center and making all patrolling states' capacities more coordinated and efficient. The states should also strengthen their commitment to international obligations deriving from international instruments in a way that an arresting state has an obligation to either prosecute the alleged offenders in its courts or extradite them to the requesting state. Also, the coastal states should come up with appropriate legislative provisions regarding the extradition of offenders suspected of attacking ships and they should further agree to ensure the greatest extent of cooperation in investigating attacks on ships.³⁶

As a matter of law, ship-hijackings are criminal offence under the 1988 SUA Convention but due to the aforementioned deficiencies in scope and jurisdictional shortcomings in piracy provisions, the UNCLOS was unable to encompass majority of attacks and hijacks. In addition, the current international framework for countering piracy, which is based on the UNCLOS regime, should either be modified by the international community to make it more relevant to the contemporary maritime violence or accompanied by additional instruments that impose greater obligations and responsibilities on signatory states. As such, the regional states should try to implement the existing arrangements and join other relevant conventions in order to suppress unlawful attacks on the region's maritime activities.

Taking into account the above shortcomings, efforts are needed to develop more robust mechanisms to address the lack of capacity and

36 Robert C. BECKMAN, "Combating Piracy and Armed Robbery against Ships in Southeast Asia: The Way Forward"(2002), *Ocean Development & International Law*, Vol. 33, No. 3-4, at 331.

security challenges in the Indian Ocean region and underpin the lack of a regional multileveled maritime policy. In this respect, an innovative approach to piracy control or a novel model of international cooperation must be developed ‘if an effective system or mechanism of international control is to be achieved.’³⁷To this end, cooperative ventures, maximizing dialogue at all levels, integrating procedures, and establishing permanent institutions to manage sustained cooperation and expanding the cooperative network to fight piracy could be considered as the best way. In order to undertake maritime security observations in policy making, there is also an urgent need to ‘embody limited confidence-building measures as well as fully operational alliances which are considered as an effective solution toward an integrated maritime policy.’³⁸

Noteworthy to add that strong cooperation with the shipping community is another way forward to strengthen maritime security and boost the capacity building measures. In this regard, ‘shipping companies must be given greater financial incentive to institute basic security protocols- including avoiding dangerous routes, maintaining constant anti-piracy watches, keeping close contact with shore and nearby vessels, developing and practicing anti-piracy contingency plans- through the offer of lower insurance premiums.’³⁹

In achieving a more robust coordinated policy toward suppressing high sea criminals, the existing naval patrol arrangements should be enhanced and revised periodically to determine whether adjustments or modifications are necessary. Moreover, in order to harmonize ocean governance strategies of regional states and undertaking an efficient maritime security policy toward developing sufficient regional capacity

37 John MO, “Options to Combat Maritime Piracy in Southeast Asia”(2002), *Ocean Development & International Law*, Vol. 33, No 3-4, at 349.

38 John F. BRADFORD, “Shifting the Tides Against Piracy in Southeast Asian Waters” (2008), *Asian Survey*, Vol. 48, No. 3, at 488.

39Chalk, “Evolving Dynamics of Piracy and Armed Robbery at Sea in the Modern Era: Scope, Dimensions, Dangers and Policy Responses”, *Op.cit*, at 14.

building, establishing a coordinative mechanism among navies including law enforcement agencies, and the private sector through providing necessary funds needs to be viewed as a priority. However, “much greater focus should be devoted to promoting the coastal monitoring and interdiction capabilities of littoral states abutting pirate-infested waters and these examples of government, non-governmental, and private sector involvement in the suppression of piracy and armed robbery at sea must be incorporated into a horizontally and vertically integrated governance structure”.⁴⁰

It is noteworthy to mention that the measures to control maritime crimes in the region should not be focused solely on piracy and armed sea robbery prevention or the risk of maritime terrorism. Such measures should recognize the interests of all stakeholders and encompass other illegal activities at sea, such as trafficking in arms, drugs, and humans, as well as the operational dimensions of maritime safety, search and rescue, and marine environmental protection.⁴¹ It is also important to end unfettered impunity for perpetrators of such crimes including through legal cooperation between regional states and regional shipping communities.⁴²

One of the serious challenges to regional coordination and cooperation in suppressing piracy is that many pirates involved in ship-hijacking are released unpunished. To prevent this deficiency, strengthening the extradition mechanism between interested countries in the region is highly recommended. ‘A durable-solution to bringing

40Elisabeth Mann BORGESSE and Francois N. BAILET, “Technology Cooperation and Transfer, Piracy and Armed Robbery at Sea: A Discussion Paper in Two Parts for UNICPOLOS II” (2003), *Ocean Yearbook*, Vol. 17, at 489.

41Bruce A. ELLEMAN, Andrew FORBES and David ROSENBERG, *Piracy and Maritime Crime; Historical and Modern Case Studies*, (Rhode Island: Naval War College Newport Papers, 2010), at 146.

42 Peter CHALK, “The Evolving Dynamics of Piracy and Armed Robbery at Sea in the Modern Era: Scope, Dimensions, Dangers and Policy Responses”(2009), *Maritime Affairs, Journal of National Maritime Foundation of India*, Vol. 5, No. 1, at 14.

Somali pirates and future piracy offenders to justice, which is consistent with human rights prescriptions and distributes the burden of investigation, prosecution, and punishment of the alleged offenders will depend on further development of the international legal framework and its domestic implementation.⁴³

III. Addressing Maritime Security Challenges in Iran's Legal Framework: Capacity Development Approaches

Maritime security issues are of great significance for Iran and its economic, social, and comprehensive growth depends on contributing to high secure ocean governance⁴⁴ and more discipline oriented policies toward the transportation of goods by its national merchant fleet and communications with other nations through oceans.⁴⁵

The following section explores maritime security approaches in Iran's legal framework and ocean governance contribution. In this direction, it will focus on Iran's legal perspective toward maritime activities in the Indian Ocean and capacity development approaches at the national level. It is considered that these should be enhanced to boost capacity building development at Iran's national legal framework.

43 John GAROFANO, Andrea J. DEW, eds., *Deep Currents and Rising Tides: The Indian Ocean and International Security*, (Washington: Georgetown University Press, 2013), at 148-49.

44 Daniel MORAN, "The Maritime Governance System" in Andrew T.H. TAN, ed., *The Politics of Maritime Power: A Survey*, (London: Routledge, 2007), 115-30. See also: Proshanto Kumar MUKHERJEE and Maximo Quibranza MEJIA Jr, "The ISPS Code: Legal and Ergonomic Considerations" in Maximo Quibranza MEJIA Jr, ed., *Contemporary Issues in Maritime Security*, (Malmo: World Maritime University, 2004), at 33-4. See: Anna ORIOLO, "The Multilateral Approach of the EU Maritime Security Policy: The Fight against Piracy, Terrorism and Violence at Sea" (2009), *The Global Community: Yearbook of International Law and Jurisprudence*, Issue 1, 251-66.

45 See James KRASKA and Raul PEDROZO, *International Maritime Security Law*, (Leiden/Boston: Martinus Nijhoff Publishers, 2013), at 5.

I. Iran's Maritime Activities to Maintain Maritime Security: UN Security Council's Positive Response

Being the third-largest of the world's five oceans, the Indian Ocean straddles Asia in the north, Africa in the west, Indo-China in the east, and Antarctica in the south.⁴⁶ The area encompasses several regional seas such as the Andaman Sea, the Arabian Sea, the Bay of Bengal, the Great Australian Bight, the Gulf of Aden, the Gulf of Oman, the Laccadive Sea, the Mozambique Channel, the Persian Gulf, and the Red Sea.⁴⁷ Because of the significance of the Indian Ocean and its choke points in international navigation especially the export of goods and oil resources, some those countries including Iran are more concerned and have already deployed their navies to the area.⁴⁸

In terms of dealing with threats of pirates and armed robbers in the Indian Ocean region particularly off the coasts of Somalia, the Gulf of Aden, and Arabian Sea, some action had taken by international and regional communities which contributed to constructing a more secure maritime order. Notably, the United Nations aimed at strengthening and assisting states to improve the on and offshore security situation, which is essential for a better cooperation to fight piracy and armed robbery against ships off the coast of Somalia with the notion of a threat to international peace and security.

The Security Council, in its resolutions adopted under Chapter VII, calls on all UN member states to take part in the fight against piracy. To this end, the effectively patrolling of the massive Indian Ocean and Gulf of Aden region requires the combined efforts of dozens of nations. Pursuant to the regulations of which international law set up for cooperation against pirates, "a salient element of the international

46 Milo KEARNEY, *The Indian Ocean Region in World History* (New York: Routledge, 2004). See also Sunil Kumar AGARWAL, "Contemporary Challenges of Security in the Indian Ocean Region", SSRN (June 2011) online: SSRN.

47 David MICHEL and Russell STICKLOR, ed., *Indian Ocean Rising: Maritime Security and Policy Challenges*, (Washington: Stimson, 2012).

48 Report of the Second Regional Forum on Maritime Manpower Planning, Training, Utilization and Networking of Centers of Excellence, Country Report of Iran, Economic and Social Commission for Asia and the Pacific, Bangkok, 15-17 October 2003.

response to piracy off the coasts of Somalia has been a military one in the shape of an enhanced naval presence and increased patrols. Naval vessels from a diverse array of interested states including the United States, a number of European countries (notably Britain, Germany, France, and Spain), Australia, India, Iran, South Korea, Malaysia, Turkey, and Russia have been active in the fight against piracy over the past four years and consequently remarkable and unprecedented international naval cooperation was designed to counter piracy and armed robbery threats against any kind of vessels.”

Bound to the international obligation to fight piracy and armed robbery at sea, Iran’s navy has been conducting more naval exercises near the strategic Strait of Hormuz, which is the main exit to the region’s crude supplies. Iran is a major petroleum exporter and depends on maritime shipping to get its products reach to its customers around the globe. Petroleum exports also account for roughly 75 percent of the government’s income. In the meantime, oil tankers are particularly valued by pirates because of high ransoms they could demand for their return due to the reliance of many countries on the petroleum trade.⁴⁹

In order to protect Iran’s maritime borders, Iranian officials have taken the threat posed by Somali pirates seriously and have deployed warships to the Gulf of Aden to ensure safe shipping of all of its vessels. Nevertheless, the main reasons of such a security strategy are also to promote Iran’s strategic interests in its territorial waters, the Strait of Hormuz, the continental shelf, the Exclusive Economic Zones, and the high seas, apart from safeguarding maritime fleets and oil tankers from pirates and sea-robbers.

In response to some of the pirate attacks, Iran has been dispatching its navy with advanced weaponry to the Indian Ocean region especially to the Gulf of Aden since 2008 in order to increase its capabilities in contributing to peace and security in the region. As a matter of fact, the Iranian Navy in 2014 reported some 157 incidents of countering pirates. The UN Security Council in pursuant to the Secretary-General’s report

⁴⁹ Christopher L. DANIELS, *Somali Piracy and Terrorism in the Horn of Africa*, (United Kingdom: Scarecrow Press, 2012), at 75.

commended the aforementioned efforts by the Iranian navy and some other countries which have deployed ships or aircraft in the region to combat piracy and armed robbery. The Security Council in its Resolution 1950 adopted on 23 November 2010 appreciated efforts of some states acting in a national capacity, to suppress piracy and protect vulnerable ships transiting through the waters off the coast of Somalia, and particularly welcomed the efforts of individual countries, including China, India, the Islamic Republic of Iran, Japan, Malaysia, the Republic of Korea, the Russian Federation, Saudi Arabia, and Yemen, which have deployed their ships and/or aircraft, as stated in the Secretary-General's report (S/2010/394).⁵⁰ This appraisal followed up by Resolution 2020 on 22 November 2011 pursuant to the Secretary-General's report on 2011 with regard to the countries which have taken some significant measures to combat maritime piracy and armed robbery.⁵¹

The Iranian Navy in cooperation with the Islamic Republic of Iran's Shipping Lines and Ports and Maritime Organization, dispatched its vessels to the high seas to defend- as its primary goal- the Iranian merchant vessels which are in danger of being attacked by pirates in order to receive huge ransom. Besides, the Iranian Navy has rescued some foreign vessels from being hijacked by pirates. In an operation to release the pirates-boarded Chinese merchant vessel- XIANG-HUA-MEN⁵², Iran's navy with the cooperation of the country's shipping lines as well as the Ports and Maritime Organization dispatched its integrated fleet upon the request of the Chinese vessel and after successfully defeating pirates, escorted the ship to Bandar Abbas.⁵³

50 UNSC Resolution 1950, UN Doc. S/RES/1950, 2010.

51 UNSC Resolution 2020, UN Doc. S/RES/2020, 2011.(Referring to the Secretary-General's report 'S/2011/662').

52 The Chinese vessel was passing the Indian Ocean to reach the Imam Khomeini port in the south part of Iran.

53<http://www.presstv.com/detail/2014/09/17/379044/iran-navy-saves-china-ship-from-pirates/>

B. Iran's Legal Perspective on Maritime Crimes; Initiatives in Progress

As mentioned earlier, organized crimes at seas are considered as global problems that endanger maritime security interests globally. It is important to keep in mind that there is a positive and synergistic relationship between articulating a modern counter piracy policy, strengthening Iran's interagency coordination and enhancing international cooperation. The following section will address Iran's relevant legislation and policies toward maritime security threats and the current status of Iran's participation in international and regional instruments.

The efforts by the international community to curb piracy and maritime insecurity off the coast of Somalia and the Gulf of Aden have been greatly hampered by the lack of appropriate legislative frameworks both at international and national levels. Internationally, the most significant limitations are posed by restrictive definitional and jurisdictional scopes in the provisions of Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS). The efforts by the international community gradually intensified and the debate narrowed down on how to most effectively deal with pirates following their capture in a way that will further the overall efforts made to counter piracy.

With respect to the integrated cooperation regime in the Indian Ocean region, 'some of the key states must come forward to forge regional multilateral solutions to address piracy, hijacking, trafficking, IUU fishing, terrorism, and the integrity of EEZs.'⁵⁴With regard to illegal fishing, the international community has endeavored to address this problem either by globally adopting multilateral instruments, such as the UN Fish Stocks Agreement (1995), the Compliance Agreement (1993), or regionally by the action of the regional fisheries management organizations (RFMOs). In order to contribute to the regional

54 Michel and Sticklor, eds., *supra* note 46, at 39.

framework, Iran along with Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, and United Arab Emirates has been active in the conservation and management of especially straddling fish stocks and highly migratory fish stocks and they have been the members of the Indian Ocean Tuna Commission.⁵⁵

It is noteworthy to mention that although the cooperative solutions through regional approaches are ways to fight piracy, the focal point still remains the national jurisdiction of regional states. Accordingly, ‘the domestication of the key international instruments governing the maritime security primarily the UNCLOS and the SUA Convention and the harmonization of regional legislative frameworks to promote greater cooperation and facilitate burden sharing in the prosecution of perpetrators of maritime crimes is *sine qua non* in the success of fight against piracy.’⁵⁶

Dutton explains that there are different types of legal frameworks of states with regard to the issue of criminalizing piracy and universal jurisdiction to prosecute individuals suspected of acts of piracy and armed robbery against vessels at sea.⁵⁷ This research gives a clarification between different states: “States with laws defining piracy according to the law of nations, states that directly incorporate international treaty commitments, states with laws defining piracy as a separate offense with a framework for exercising universal jurisdiction,

55 The Indian Ocean Tuna Commission (IOTC) is an intergovernmental organization responsible for the management of tuna and tuna-like species in the Indian Ocean. It works to achieve this by promoting cooperation among its Contracting Parties and Cooperating Non-Contracting Parties in order to ensure the conservation and appropriate utilization of fish stocks and encouraging the sustainable development of fisheries. Iran joined Indian Ocean Tuna Commission on 28 January 2002. See IOTC website for further information. Available at: <<http://www.iotc.org>>

56 Paul MusiliWambua, *supra* note 9, at 98.

57 Yvonne M. DUTTON, “Maritime Piracy and the Impunity Gap: Domestic Implementation of International Treaty Provisions” in Michael J. STRUETT, Jon D. CARLSON, and Mark T. NANCE, eds., *Maritime Piracy and the Construction of Global Governance*, (United Kingdom: Routledge, The New International Relations Series, 2013).

states with laws defining piracy without a framework for exercising universal jurisdiction and states relying on general criminal laws without a framework for exercising universal jurisdiction".⁵⁸

Besides, the Security Council has noted with concern "that the domestic law of a number of states lacks provisions criminalizing piracy and/or procedural provisions for effective criminal prosecution of suspected pirates"⁵⁹ and called upon "all states to criminalize piracy under their domestic law"⁶⁰ "Moreover, the states that have already enacted national legislation on piracy may wish to review it to ensure the implementation of the relevant provisions of the UNCLOS. The UNGA has also called upon "states to take appropriate steps under their national law to facilitate the apprehension and prosecution of those who are alleged to have committed acts of piracy..."⁶¹ and has urged all states to combat piracy actively, *inter alia*, by adopting measures and national legislation in co-operation with the International Maritime Organization (IMO).

Subsequently, according to a letter from the UN Secretary-General to the President of the Security Council dated 23 March 2012, with regard to the compilation of information received from member states, identified important measures taken by states to criminalize piracy under their domestic law and to support the prosecution of individuals suspected of piracy off the coast of Somalia and imprisonment of convicted pirates. Moreover, according to the IMO's Legal Committee Document, LEG 98/8 in 2011, the states' piracy laws 'might be useful to states which were either developing national legislation, or reviewing the existing legislation on piracy'.⁶²

Furthermore, according to the IMO circular on states' piracy laws, Iran amongst other countries as including China, France, Bulgaria,

58 Ibid.

59 UNSC Resolution 1918, UN Doc.S/RES/1918, 2010, preamble.

60 UNSC Resolution 1950, UN Doc.S/RES/1950, 2010, para.13.

61 UNGA Resolution 65/37, UN Doc.A/RES/65/37,2010, para.86.

62 http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/177

Poland, Finland, Oman, the Czech Republic, and Latvia has been a state which directly incorporated international treaty commitments into its legal framework. Iran's legal texts do not address piracy in its domestic legislation, however, under Article 9 of the Iranian Civil Law,⁶³ its treaty obligations have become part of its domestic laws, and therefore, it can be understood that piracy should be an offence over which they can exercise universal jurisdiction because the country follows a monist tradition and permit direct incorporation of treaties to which the state is a party.

However, the aforementioned provisions are not sufficient in cases of maritime piracy and armed robbery and cannot justify prosecuting individuals suspected of piracy before Iranian courts. The discussed Penal Code provisions do not define piracy and existing legal framework falls short of international standards that are set in Articles 101 to 107 of the UNCLOS.⁶⁴ Furthermore, Iran is a party to the SUA and according to Article 5 of the SUA Convention; Iran is obliged to make the offences set forth in Article 3 punishable by appropriate penalties. Although the article does not prescribe specific penalties for any of the offences and merely provides that the penalties should be "appropriate [taking] into account the grave nature of those offences".⁶⁵

Over the past several years, initiatives are being discussed to adopt a new anti-piracy law or adding a new provision to the existing Penal Code. As we already explored extensively about the increasing trends of Iran's contribution to maintaining maritime security in the region, the attention should almost be paid to the importance of having a comprehensive legal framework to prosecute and deal with the apprehended suspected pirates and armed robbers. To achieve this goal, Iran has initiated to enact an internal legislation on suppressing the

63 Article 9 of the Civil Code of Iran, 1928.

64 It should be noted that although Iran is a party to the Geneva Convention on the High Seas 1958 and has been a negotiating party to the UNCLOS and signed the Convention in 1982, but it has not ratified the Convention.

65 Article 5 of the SUA Convention. for further study of SUA Convention provisions.

unlawful acts of maritime crimes and this effort is potentially to fill the gap in its existing legal framework.

At the national level, the Islamic Republic needs to address the domestic legal context and deficiencies in its existing legislations. Strong political will and social demand on preserving ocean governance goals and ultimately boosting a coordinated mechanism to address maritime security challenges are necessary. It is also noteworthy to underline that the component “key to enlarging regional maritime security cooperative networks will be the development of mutual understanding of each state’s interests and the use of knowledge to creatively tailor their relationships in order to maximize value and minimize risks.”⁶⁶ This will definitely add to effective and efficient outcomes and will help strengthen the regional security.

At the regional level, Iran among other neighboring states should contribute to nascent regional and sub-regional arrangements that have been instituted to deal with organized crimes in the Indian Ocean region. In order to provide a comprehensive model for regional and sub-regional arrangements, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) is an example of holistic coordinated regional approach to repress the abovementioned threats. Another promising initiative, the Djibouti Code of Conduct, signed on 30 January 2009, which calls on member states to enact appropriate legislation to facilitate the arrest and prosecution of suspected pirates, is aimed at developing the regional states’ capacity concerning investigation, arrest and prosecution of suspected pirates, including those inciting or internationally facilitating such acts. It could form the basis of an agreement between the states of the Persian Gulf and Sea of Oman region with regard to a comprehensive cooperation mechanism for fighting maritime crimes.

Following the legal model of cooperation in the Malacca Strait, the states adjacent to the Persian Gulf, the Sea of Oman and the Arabian Sea should mutually adopt a regional cooperative arrangement in order

66 John F. Bradford, *op.cit.*, at 488.

to arrest any alleged offenders at sea. Furthermore, regional governments should strengthen their commitment to obligations deriving from binding international instruments in a way that an arresting state will either prosecute the alleged offenders in its courts or extradite them to the requesting state. The coastal states should provide their country with appropriate legislative provisions regarding the extradition of such offenders and they should further agree to ensure the greatest extent of cooperation in investigating attacks on ships.⁶⁷

The aforementioned legal provisions could be based on the guidelines and codes of conduct such as the IMO's Draft Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships, in a manner consistent with international obligations of states particularly human rights and humanitarian law as reflected in international law. Besides, it should be strongly encouraged to fully cooperate with regional and international organizations by all means, particularly with the IMO and the IMB's Reporting Center with respect to reports dealing with incidents constituting piracy or armed robbery against ships. In addition, all the states of the Persian Gulf and Sea of Oman region should follow to persuade the Vienna-based UN Programme in Transnational Organized Crime to deal with those attacks that can be classified as major criminal hijacks. These initiatives and structures will contribute to the role of the Islamic Republic of Iran to the current trends in eradicating organized maritime crimes.

IV. Conclusion

An insight into the existing legal instruments at eradicating organized maritime crimes make it clear that they have set an effective legal framework and a comprehensive toolbox for arrest, prosecution, and punishment of perpetrators of piracy and ship hijacking as well as all other illicit crimes including drug and contraband smuggling and money laundering.

67 Robert C. Beckman, "Combating Piracy and Armed Robbery against Ships in southeast Asia: The Way Forward", *Ocean Development & International Law*, *op.cit.*, at 331.

The current *modus operandi* of all aforementioned illegal activists, in a comparative approach, is clearly characterized by the use of latest information technologies and highly adaptive lucrative structures which in contrast necessitates a proactive and flexible approach to deal with criminals. While pirates and criminals have been taking advantage of advanced communications and technologies, the organizational capacity of financial criminals' networks clearly demonstrates the sophistication of illegal activities and organized maritime crimes in the region.

As discussed, the regional organized crimes will be eradicated only through a comprehensive and multidimensional approach, including the establishment of alternative activities for coastal communities, the establishment of the judicial system to reduce impunity for wrongdoers, an improvement in preventive measures for vessels transiting the region due to sophisticated criminal networks. These would enable key stakeholders to better adapt their activities in providing safety and security at sea, especially in the Indian Ocean region. Furthermore, regional governments should strengthen their commitment to obligations deriving from binding international instruments in a way that an arresting state will be obliged to either prosecute the alleged offenders in its courts or extradite them to the requesting state.

Any comprehensive response to the threats of pirates and organized criminals to maritime security would have two main perspectives: The first is related to instrumental measures and the management of the crisis situation; the second explores that protective measures are not only of preventative nature but in defence of incidents that may occur. These objectives can be ascertained only through a closer cooperation mechanism among the littoral and affected regional states and with a broader international community. Undoubtedly, the harmonized measures and joint action are more effective than unilateralism. In this sense, the international and regional cooperation is a core in combating piracy, armed robbery, and terrorism. Quite significantly, the approach towards maritime governance has traditionally been driven through national governments on the individual level and then building up into multilateral arrangements or global international organizations such as the UN and the IMO as its specialized agencies.

Consequently, a more proactive and comprehensive approach is not only desirable but indeed essential. Iran hopefully will continue with its approach of implementing the existing international and regional instruments on maritime security and furthermore to better involve in law enforcement initiatives of Indian Ocean's holistic cooperative mechanisms. International law and regional arrangements between states and organizations provide an appropriate legal basis to achieve this goal.

However, the whole international community's response must be integrated towards the adverse effects of organized maritime crimes which continue to be considered as a serious threat to regional and international shipping. Besides, considerations should be given to develop more robust mechanisms to address the lack of capacity and security challenges in the Indian Ocean region and existence of underpinnings for the lack of a regional multileveled maritime policy.

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