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## Jurisdiction of Crimes in the high Seas

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### ABSTRACT

*In may 2021, a US warship had seized a huge weapons cache of Russian and Chinese origins off of a dinghy in the Arabian sea, however after the weapons were seized and the sailors questioned, they were let go without any hassle<sup>1</sup>, as this happened on international waters, now if the same crime had happened on land, it would have been a different scenario. Many a times with the lack of jurisdiction, crimes that are illegal on the land happen in the high seas, many vessels have their registration in Panama or Liberia to reduce taxes, ships follow the laws of the countries they are registered in in the high seas, how does it affect combatting crimes perpetrated when in the sea? the issue of jurisdiction in the high seas would be explored in this research paper as that would be a hindrance when the Panama flagged cruise ship carrying US passengers reaches the Bahamas. There are these traditional crimes that happen on land like thievery, murder, rape, what is the punishment and the extent of jurisdiction for it to happen on the high seas?, in traditional passenger vessels. More importantly there are certain crimes that are exclusive to the seas like piracy and smuggling. Piracy is towards the extent that it is synonymous with crimes in the high seas. This paper will explore the causes, issues, combat of piracy in detail. The main case as to piracy is who has the jurisdiction to combat piracy? The (UNCLOS)<sup>2</sup> is the guiding legislation behind the laws of the sea. This paper shall discuss the jurisdiction of the crimes, the crimes that occur as well as legislations combatting it.*

**Keywords:** Jurisdiction; Criminal Acts; International Maritime Law; Maritime Safeguards; Compensation And Punishment.

### 1. INTRODUCTION

The UNCLOS convention in 1982<sup>3</sup> has explained the maritime boundaries of a nation and the jurisdiction prevailing over it. From the land boundaries of a nation the maritime boundary extends upto 12 miles. The law of the land applies in that limit, this is known as the territorial waters, the respective coast guards patrol this area, and the crimes committed in this twelve mile zone, is charged or acted according to the land of the nation, the nation is also free to build any structure, extract natural resources and either forbid or allow the passage of ships or flights over the area. Further for over 200 miles beyond the twelve mile radius, the countries have a specific exclusive economic zone and it has claims to the sealife, mineral resources, fish found in it, however there is no jurisdiction over vessels and aircrafts of foreign countries from passing through it and over it, incase of overlap of zones between nations, they are often times divided equally, if it isn't it leads to situations like the present one in the south china sea<sup>4</sup>. Even beyond the territorial waters and the EEZ lies the international waters. In respect to the crimes that are committed in these areas, the laws of the countries owning the vessels where the crime has been committed applies here. It might seem straightforward, however the vessels in the sea are often on the move, which creates big problems of jurisdiction. The oceans are vast beyond the 12-mile cutoff points and EEZs. How are lawful issues taken care of in the immense stretches of sea past? In these areas, vessels and aeroplanes from any nation are allowed to fly over, fish, and mine mineral assets. Concerning violations carried out around there, the laws of the country claiming the vessel or construction, at which point the wrongdoing has been perpetrated, hold influence. For instance, which country's laws apply when an individual from Country X perpetrates a homicide on board a journey transport claimed by Country Y in international waters. Yet, between the hour of the wrongdoing and its revelation, the boat enters the regional waters of Country Z?<sup>5</sup>

In the case of international crimes that occur in the high seas or international waters, such as piracy, trafficking, violation of human rights, any state or organization could claim jurisdiction over it, with the claim of universal jurisdiction, and try to make the perpetrators into justice, with states not accepting the laws of the other states which leads to strains in international relations and the

victims not getting justice. The aspects of the different kinds of crimes occurring in the high seas and the issues pertaining to jurisdiction for justice shall be illustrated in the paper.

Kinds of crimes that occur in international waters:<sup>6</sup>

Typically, as any modes of travel there exists commercial and passenger vessels in the sea. Crimes against a person, such as assault or theft aboard these ships, are typically dealt with the jurisdiction of the state the country is registered to. There exists typical crimes of the sea such as piracy and trafficking of contrabands and humans.<sup>7</sup>

International waters have long been subjected to crimes be it theft or more serious charges like murder and piracy.<sup>8</sup>

### **Murder**

Various researches and close observation will make it clear that the only reason murder is so rampant in the high seas is due to the lack of punishment. The punishment for murder as stated above differs and depends on the country that the ship is registered to.

### **piracy**

piracy, any burglary or other vicious activity, for private closures and without approval by public authority sub committed on the oceans or noticeable all around outside the ordinary purview of any state. Since robbery has been viewed as an offense illegal of countries, the public vessels of any state have been allowed to hold onto a privateer transport, to bring it into port, to attempt the group (paying little mind to their identity or home), and, in case they are viewed liable, to rebuff them and to seize the boat. The discipline for carrying out robbery might contrast anyway considering the earnestness of the wrongdoing the discipline has consistently stayed genuine.

### **smuggling**

Different laws and conventions have rigorously forestalled smuggling of exotic creatures/plants, drugs. Notwithstanding clear restriction, runners keep on entering domestic land and reliably stay an issue to maritime security.

### **Illegal exploitation / trafficking**

This to date stays the most vile wrongdoing perpetrated in the, illegal exploitation overall has been clarified by Article 3, passage (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons characterizes Trafficking in Persons as the enlistment, transportation, move, holding onto or receipt of people, through the danger or utilization of power or different types of pressure, of kidnapping, of misrepresentation, of trickiness, of the maltreatment of force or of a place of weakness or of the giving or getting of bribes or advantages to accomplish the assent of an individual having command over someone else, with the end goal of exploitation. Piracy is one of only a handful of exceptional sea crimes that are explicitly mentioned to in UNCLOS<sup>9</sup>. In practically all regards, the UNCLOS articles on piracy systematize previously settled upon treaties and conventions and reflect standard international law. As a rule, the vital components of the crime of piracy under international law re that it is: (a) Any unlawful demonstration of viciousness or confinement, or any demonstration of theft; (b) For private closures; (c) From a private boat against another boat (which could be a non-private boat); and (d) In international waters.

The United Nations Convention of the Law of the Sea (UNCLOS)<sup>10</sup> places a commitment upon all States to collaborate in the concealment of illegal traffic in opiate drugs and psychotropic substances via ocean (article 108). Various other multilateral deals, like the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of (1988 Convention), additionally contain arrangements identifying with illegal traffic in drugs via ocean. No current deal explicitly gives the power to board an unfamiliar hailed vessel associated with illegal dealing of opiate drugs and psychotropic substances on waters toward the ocean of the regional ocean of any State without banner State assent.

Committed countries to the 1988 Convention are needed to:

- (a) Criminalize drug dealing (article 3);
- (b) Take measures to guarantee that they have purview over their banner vessels in drug dealing (article 4); and
- (c) Cooperate with different gatherings to smother unlawful traffic via ocean (article 17).

Upon the illustration of the crimes typical to the seas, the issues of jurisdiction of these crimes shall be illustrated.

Figuring out who has jurisdiction over wrongdoing requires the thought of a wide range of variables. This incorporates the express that has an area over the ports and oceans, individuals' identities, the banner condition of a vessel where the wrongdoing has been perpetrated, and numerous others.<sup>11</sup>

### **PORT STATE JURISDICTION<sup>12</sup>**

The Territorial Sea Baseline (TSB) marks where the coast and regional ocean meets. Any waters inside this boundary are inside the ward of that country. The port laws in which a vessel is visiting or had visited will be applied to the said vessel.

Besides, if wrongdoing is carried out in worldwide waters, the following port wherein the vessel will dock will then, at that point, likewise have purview. The Master of the Ship might make any occurrence aware of the following port state.

### **COASTAL STATE JURISDICTION**

If a vessel is going through a country's regional ocean, which is 12 nautical miles (nm) from the TSB, any wrongdoings perpetrated will be under the locale of that state. This applies notwithstanding whenever a said vessel is docking on one of its ports or not. The

beachfront state has each privilege to head an examination if the tranquillity of the state is upset. It can likewise explore if the Master of the Ship mentions help or if opiate dealing is involved.

#### JURISDICTION IN THE CONTINUOUS AND EXCLUSIVE ECONOMIC ZONES

The contiguous zone is 12 to 24nm from the standard. Any laws that are material inside the regional ocean may likewise be stretched out to this zone. The selective economic zone is the region past the regional ocean that goes no farther than 200nm from the benchmark. Here, a state may exercise ward over financial and ecological violations.

#### JURISDICTION BASED ON NATIONALITY<sup>13</sup>

The nationality of the accused, as well as the victim of any crime, may bring a state to claim jurisdiction over an incident. In any case, if the misconduct happens on the high seas or in the domain of another country, a state can authorize or ensure an individual dependent on its homegrown laws.

#### FLAG STATE JURISDICTION

Extraterritorial jurisdiction is applied when wrongdoing is carried out on the high oceans or outside a country's region. The banner state is the nation where a vessel is enrolled.<sup>14</sup>

The flag state will administer any violations submitted on board. This applies regardless of whether the vessel is outside of the country's regional oceans. In any case, it might in many cases be seen that the banner states job in the examination of violations submitted away from its boundaries can be very negligible.

The FBI<sup>15</sup> in the USA examines, In case you go on a voyage, you need to deal with it like you are going to a bit of city, says David Hearn, an administrative specialist in the FBI's Indian Country/Special Jurisdiction Unit, which facilitates with field workplaces and the FBI's lawful attaches abroad to examine wrongdoings on the high oceans. You don't know individuals on a voyage transport. You don't know who is in the lodge close to you. Misconduct doesn't stop since you are on a boat.

At the point when wrongdoing happens aboard, a few variables decide if the U.S. has legitimate jurisdiction. A muddled weave of global law applies, however, generally speaking, the FBI drives examinations of the accompanying situations:

If the boat is the U.S.- claimed, paying little heed to the ethnicity of the person in question or culprit;

If the wrongdoing happens in U.S. regional waters (inside 12 miles of the coast);

If the person in question or culprit is a U.S. public on a boat that left or is showing up at a U.S. port;

If its a demonstration of terrorism against the U.S.

These illustrations by the FBI elucidate how the jurisdictional aspects occur in passenger vessels, where a state flagged vessel has jurisdiction over it in international waters.

#### LEGISLATIONS AND CONVENTIONS DEALING WITH MARITIME CRIMES<sup>16</sup>:

The United Nations Office on Drugs and Crime (UNODC)<sup>17</sup> is the gatekeeper of the United Nations Convention against Transnational Organized Crime (UNTOC) and its valuable Protocols, and of the United Nations Convention against Illicit Traffic In Narcotic Drugs and Psychotropic Substances.

The United Nations Commission on Crime Prevention and Criminal Justice (CCPCJ), in its 20th meeting in 2011, considered the issue of battling transnational Coordinated wrongdoing carried out adrift. Goal 20/5 commands UNODC to gather an master meeting to work with the examination and arraignment of such cases by Member States, including by recognizing holes or potential regions for harmonization, and measures to fortify public limit, specifically in non-industrial nations, to all the more viably Battle transnational coordinated crimes.

When it comes to piracy and other unlawful acts, began to threaten the safety of ships and the security of their passengers and crews during the 1980s, with reports of crews being kidnapped, ships being hi-jacked, deliberately run aground or blown up by explosives. Passengers were threatened and sometimes killed<sup>18</sup>

This led to, In November 1985 the problem was considered by IMO's 14th Assembly and a proposal by the United States that measures to prevent such unlawful acts should be developed by IMO was supported.<sup>19</sup>

The Assembly adopted resolution Measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crew, In March 1988, a conference in Rome took on the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. The fundamental reason for the Convention is to guarantee that the right move is made against people submitting unlawful demonstrations against ships. These incorporate the capture of boats forcibly, demonstrations of viciousness against people on board transports, and the setting of gadgets on board a vessel that will probably obliterate or harm it. The Convention obliges Contracting Governments either to remove or indict affirmed wrongdoers.

The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organized crime.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, particularly Women and Children, is the primary worldwide legitimately restricting instrument with a concurred definition on dealing with people. The goal behind this definition is to work

with intermingling in public methodologies concerning the foundation of homegrown criminal offences that would uphold productive global collaboration in examining and indicting dealing with people cases.

The Protocol against the Smuggling of Migrants via Land, Sea and Air manages the developing issue of coordinated criminal gatherings that pirate transients, regularly at danger to the travellers and extraordinary benefit for the wrongdoers. A significant accomplishment of the Protocol was that, without precedent for a worldwide global instrument, a meaning of sneaking of transients was created and settled upon. The Protocol targets forestalling and battling the carrying of transients, just as advancing participation among States parties, while ensuring the freedoms of carried travellers and forestalling the most exceedingly awful types of their abuse, which frequently portray the smuggling system.

#### MARITIME LEGISLATIONS IN INDIA <sup>20</sup>:

The Anti-Maritime Piracy Bill was passed in 2019. This Bill approved the Indian legislators to make a move against theft on the high oceans. It depends on the rules of the UN Convention on the law of the sea. The laws or the Bill has a locale till 200 nautical miles from India's shore. Any activity happening inside this width goes under the ambit of Indian specialists. According to this Bill, piracy covers instigating and deliberately working with such demonstrations of viciousness and willfully partaking in the activity of a privateer boat or aeroplane. The discipline for the protests of theft was additionally set down in this Bill. Both life detainment and death penalties can be given in the event of a robbery, relying on the nature and sort of crime. The punishment for the acts of piracy was also laid down in this Bill. Both life imprisonment and death sentences can be given in case of piracy depending upon the nature and kind of piracy. Participating, organizing, aiding, supporting, attempting to commit, and directing others to participate in an act of piracy will be punishable with up to 14 years of imprisonment, and a fine. The Court will not have jurisdiction over offences committed on a foreign ship unless an intervention is requested either by the country of origin of the ship or by the ship-owner or any other person on the ship.

*The Republic of Italy V. The Union of India, (2012)*<sup>21</sup> In this case, Kerala police arrested two Italian marines for an Indian fisherman who was killed on board a fishing vessel 20.5 nautical miles off the Kerala coast. It was held by the supreme court that the state of Kerala had no jurisdiction to investigate the incident. It was ordered by the court for the respondent to set up a session court to try and dispose of the case in respect of the Maritime Zones Act of 1976, the Indian Penal Code, the Code of Criminal Procedure, and UNCLOS. The court gave its decision concerning the courts having jurisdiction over Italian marines. This was one of the primary cases in India regarding maritime jurisdiction.

## 2. CONCLUSION

The issue of jurisdiction though it has been illustrated clearly, in actual working it becomes a hindrance <sup>22</sup>, as the ships are primarily flagged in countries such as Panama, Honduras and Liberia, where their criminal jurisprudence is not as developed as other common law states. The IMO has conventions for crimes such as piracy, smuggling, exploitation in the seas, it needs to have stringent uniform laws for crimes against persons in ships, such as assault, theft etc. a uniform convention where the IMO has the jurisdiction, of trial shall be feasible.

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