



Chinese.....Channel 1

Japanese.....Channel 2

Korean.....Channel 4

Spanish.....Channel 5

French.....Channel 6

English.....Channel 8

IAPH 2013

The International Association of Ports and Harbors

May 6 - 10, 2013

THE PORT
OF LOS ANGELES 



Captain John Holmes

Deputy Executive Director Port of Los Angeles

Contemporary Piracy

A Legal Perspective *and a Port Management Concern*



Hugh Williamson

Lead Investigator

Dalhousie Marine Piracy Project

May 8, 2013

DALHOUSIE MARINE
PIRACY
PROJECT



Outline

- What is piracy (legally speaking)
- Who has jurisdiction
- Protecting commercial shipping
 - use of force
 - Armed guards



Piracy

- For hundreds of years, the pirate has been treated as a *hostis humani generis* – an enemy of all mankind.

Traditional piracy

- economic crime
- not supported (officially) by any state
- any state may capture and prosecute pirates



What is “piracy”?

The LEGAL definition or the PRACTICAL definition ?

- A crime of violence
- Against persons
- At sea
- For economic gain
- Of international concern



What is not Piracy?

- Pirate Fishing (IUU Fishing)
- Pirate Radio
- Terrorism
- Environmental Activism
- Drug smuggling
- Slavery
- Mutiny
- *Or downloading songs from the internet*



Classification of “piracy”?

- Legal and operational difficulty in separating out crimes against persons at sea

High Seas

1. UNCLOS Piracy – international law definition
2. Non-UNCLOS Piracy – violent crime etc with missing elements

Territorial Seas (up to 12nm)

3. Violent Crime against ships in transit (innocent passage)
 4. Violent Crime against ships in port or at anchorages
 5. Port Theft
- #2-4 are “piracy like” activities, with international implications.
5 is a local crime issue



How do you deal with Pirates?

- Piracy is a crime NOT an armed conflict.
 - An offence under national criminal law
 - Prosecuted in a court
 - Punished by imprisonment

Problems: whose law? Whose court? Whose jail?

AND who pays?



“Piracy” under international law

- Power (Jurisdiction) to deal with pirates may come from :
 - UN Convention on the Law of The Sea (UNCLOS)
 - Convention on the Suppression of unlawful acts against Navigation (SUA)
 - Hostage taking convention



UNCLOS

- Adapted from UN Convention on High Seas (1958)
“any illegal acts of violence or detention, or any act of depredation, committed for private ends.” UNCLOS art100-107

But

- 1) on the HIGH SEAS or areas outside jurisdiction of any state
- 2) Between pirate ship and another ship (two ships)



A crime of universal jurisdiction

Warship Status

- Only a warship or military aircraft may seize a pirate ship UNCLOS art 107
- “Privateers” or private security vessels do NOT have authority



UN Convention on the Suppression of Unlawful Acts against Safety of Maritime Navigation (SUA)

- The treaty allows any signatory to prosecute anyone who “seizes or exercises control over ship by force or threat of force or any other form of intimidation.”



SUA - Jurisdiction

Article 6

Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:

- (a) against or on board a ship flying the flag of the State at the time the offence is committed; or (b) in the territory of that State, including its territorial sea; or (c) by a national of that State.

NOT a crime of universal jurisdiction



Matters of jurisdiction

- Piracy on the High Seas = universal jurisdiction
- Piracy within Territorial waters = coastal state jurisdiction
- This raises issues of
 - Right of visit UNCLOS art110
 - Hot pursuit UNCLOS art 111
 - Right of assistance entry



Somalia Case

- UNSCR's allowed for entry into Somali territorial seas, and actions on land in suppression of piracy.



National Jurisdiction

- Prosecution of piracy must be in accordance with national criminal law and within the jurisdiction of national courts
- Criminal law may distinguish between
 - Piracy
 - Piratical acts (acts against ships)



How is the Crime of Piracy defined?

AS:

- Piracy under UNCLOS
- Piracy under the “law of nations”
- National formulation
- Other national criminal offences:
 - Robbery, assault, murder, etc



Issues to consider

- Consistency of treatment of suspected pirates before national courts
 - Standards of justice
 - Punishment
 - Treatment of juveniles and youth

Problems when transferring suspects or convicted persons between countries for detention, trial or imprisonment



Using force against Pirates

1. Self defence –
 - universal? concept - a personal right
 - always available when attacked and may be exercised by- crew, passengers, auxiliaries, military
2. Use of Force – to prevent an act or offence
 - Available with legal authority or justification



Who may use force?

- Warships – international law
- National law enforcement
(within territorial seas)
- Vessel Protective Details (VPD-military)
 - Under national control and ROE (subject to international law)
- Private Maritime Security Companies (PMSC)
 - for self defence and RUF (for due diligence)



Legal piracy problems for Port Authorities

- Law enforcement authority – port police, local police, coast guard, military
- VPD & PMSC – status, embarkation and disembarkation
- Weapons: import – export, and storage, disposal at sea, floating armouries



Questions or Comments?

Hugh Williamson
Dalhousie Marine Piracy Project
<http://dmpp.management.dal.ca>

For additional information on the Use of
Force by PMSC see:
www.100seriesrules.com

