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# WHY PROSECUTION OF PIRACY IS LIMITED?

*According to the Article 101 of the Convention on the Law of the Sea, piracy is defined as: 'any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship or a private aircraft, and directed on the high seas or in a place outside the jurisdiction of any State, against another ship or aircraft, or against persons or property on board such ship or aircraft' . Piracy is an ancient phenomenon that developed in conjunction with the archaic civilizations and their maritime history. For that reason, this article will critically discuss the main causes and effects and the reasons why the prosecution against piracy is limited.*

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**Hostis humani generis: A universal jurisdiction** If the ancient pirates are enclosed in the books of history and painting, the Somalian reality told about a swarm of desperate men, where the total absence of a central and functioning government needs the intervention of the international community to prosecute them. This idea of universal jurisdiction, where all states had the duty to prsecute the offenders[1], brings to Cicero's words (De Off. III, 107), pirates are enemies of the whole humankind[2]. However, this is only an idea, and it differs from the reality, where the international law contrasts with the municipal law, owing to the fact that many domestic law has different clauses to establish how to prosecute pirates[3]. As stated above, the insufficient legal basis could be an obstacle for the prosecution of pirates, especially because it is difficult to determine the appropriate jurisdiction for this type of crime. Notwithstanding, through international agreements, such as with Kenya, Seychelles or Yemen, the international community tried to regionalize the problem and transfer the pirates under regional courts[4]. Unfortunately, Kenya has long been accused of breaching the European Convention of Human Rights, and in the Seychelles, pirates are usually judged according to terrorism laws, as a result of their lack of specific laws in the field[5].

**Financial costs: 'Catch and Release'** According to the United Nations, if a shipping vessel or a warship captures suspected pirates in international sea, the pirates shall be judged according to the legal system of the nation which proceeds to the arrest[6]. Therefore, the rules provide that they must take the pirates into custody for prosecution, but unfortunately not many countries accept this burden, especially as it can lead to high costs[7], such as translation costs, sheltering as well as feeding costs for the pirates, transportation of defendants and witnesses. Moreover, these significant issues concern the collection of evidence, preparation of prosecution, detention and determination of the place of trial[8]. Furthermore, trials in the European country result to be absolutely less deterrents. For these reasons, usually it is stated: 'catch and release'[9]. In addition to this, whereas on one hand the prosecution costs are extremely high, on the other hand the costs to hire security guards and mercenaries are high as well. In response to this, there has been a proposal to establish a private force to control the coast and diminish the risks, but this is a controversial issue, especially due to the lack of legal regulation[10].

**International legal instruments** Despite the web of treaties in which States try to cooperate for reaching the secure subjection to the law, there are several limitations for the purpose of prosecution[11]. An additional limit for the piracy prosecution is the limitation of the military deterrence by the international law, especially as a result of the breach of the human right[12]. Despite their legitimacy, the military force are bound to a mere defensive response and, in addition, most pirates throw their weapons overboard[13]. Resolution 1851 (2008) aimed at obtnaining to extend the military force to operations in the central area of piracy and the UN Convention against Transnational Organised Crime

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aimed at obtaining information concerning the activities[14]. Unfortunately, the application of these legal instruments remained difficult due to the lack of interpretation[15]. Regrettably, the prosecution of pirates stems from the lacuna concerning the clarification of the human right as well as the application of the criminal jurisdiction[16]. For instance, the Belgian legal system requires a link between the offenders of international humanitarian law and the States[17].

**Human Rights: An additional limit** The States which are members of the European Convention on the Protection of Human Rights have a duty of care to the pirates who are in our custody, as well as to accord them a fair trial[18]. Despite this statement, these rights are frequently violated. There is the possibility that during the time between the capture and trial, the pirates are not allowed to communicate with lawyers or relatives[19]. Moreover, as a result of the domestic legal problems, there has not been a balance between the international human right and international criminal law, that has resulted in a breach of the above-mentionated rights during the trial[20].

**Conclusion** The violation of human rights by the government of Kenya raised serious issues, such as the lack of appropriate jurisdiction and the inadequacy of regional law. In addition, the high cost of arresting pirates is a burden that not many states accept, and the idea of 'catch and reales' has become more widespread. As a result, the prosecution of piracy has had limited success. Especially due to the fact that, the necessary universal jurisdiction to arrest pirates must be linked with several domestic legal systems which could raise controversial issues[21]. Many hyphothesis have been presented for resolving these issues, such as the establishment of an international court, (a thesis presented by Russia, but rejected by states which do not want an interference form the international law in their own domestic law) or the resolution of the lack of jurisdiction by giving the authority to judge the pirates to the Tribunal for the Law of the Sea[22]. All of these considerations emphasize that there is no real cohesion between the international communities and, for that reason, the prosecution of the pirates is absolutely limited. In this context it is obvious how the national interests overcome the international ones.

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[5] Ibid. Supra Fn 4 pg 1, 11

[6] Ibid. Supra Fn 4 pg 1 . See also, Ibid. Supra Fn 4

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CamminoDiritto.it
ISSN 2421-7123

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[13] Ibid. Supra Fn 2 pg 164. See also Ibid. Supra Fn 10

[14] Ibid. Supra Fn 2 pg 433

[15] Ibid. Supra Fn 10

[16] Ibid. Supra Fn 10

[17] Ibid. Supra Fn 12 pg 325

[18] Ibid. Supra Fn 4 pg 7

[19] Ibid. Supra Fn 4 pg 8, 9

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[21] Ibid. Supra Fn 2 pg 434

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