



MODERN DAY PIRACY

LEGAL AND INSURANCE ISSUES

Presented by: John M. Woods

Clyde & Co US LLP

The United States Constitution
Article I, Section 8

*The Congress shall have power ... To define and punish piracies
and felonies committed on the high seas, and offenses
against the law of nations... .*

18 U.S.C. § 1651

Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.

The 1958 Convention on the High Seas

Article 15 defines Piracy as:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(3) Any act of inciting or of intentionally facilitating an act described in subparagraph 1 or subparagraph 2 of this article.

Article 19 of the **Convention on the High Seas** additionally gives authority to any State to seize and arrest pirates:

On the high seas, or in any other place outside the jurisdiction of any State, **every State** may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 20 limits who may seize pirates to **warships** and **military** aircraft:

A seizure on account of piracy may only be carried out by warships or military aircraft, or other ships or aircraft on government service authorized to that effect.

Although the U.S. is not a party to the **United Nations Convention on the Law of the Sea** ("UNCLOS or the "1982 Law of the Sea Treaty"), **Article 101** sets forth the same definition of piracy as is found in the 1958 Convention of the High Seas:

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or air-craft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 103 of UNCLOS defines a pirate ship:

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 105 of UNCLOS permits capture of pirate ships:

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 ("SUA" or "Rome 1988 Treaty")

Although this United Nations Convention does not define piracy or address it specifically, the offenses punishable under **Article 3** of SUA appear to cover acts of modern piracy:

A person Commits an Offense when he

- (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
- (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
- (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
- (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
- (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
- (f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
- (g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).

United Nations Resolution 1846 (2008) on Somali Piracy

Article 9

Calls upon States and regional organizations that have the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and relevant international law, by deploying naval vessels and military aircraft, and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery off the coast of Somalia, or for which there is reasonable ground for suspecting such use

UN Resolution 1851

This Resolution, in effect, applies SUA specifically to pirates. Allows states and regional organizations to take all necessary measures "appropriate" (including force) in Somalia to interdict those using Somali territory to plan, facilitate or undertake such acts."

Article 6:

... *decides* that for a period of twelve months from the date of adoption of **resolution 1846, States and regional organizations cooperating in the fight against piracy and armed robbery at sea off the coast of Somalia for which advance notification has been provided by the TFG to the Secretary-General may undertake all necessary measures that are appropriate in Somalia**, for the purpose of suppressing acts of piracy and armed robbery at sea,

Bilateral Accords with Kenya

As part of a "stepped-up effort to hold pirates accountable for their actions and deter future attacks in the Gulf of Aden and off the Somali coastline" the United States, the UK and EU have entered into Bilateral Accords with Kenya to allow Kenya to prosecute pirates captured by foreign nations in Kenya.

On February 11, 2009, the United States Navy captured seven Somali alleged pirates when a Marshall Islands-flagged vessel called for help as pirates equipped with AK-47s and rocket-propelled grenades attempted to board.

On March 5, 2009, Kenya assumed custody of these seven alleged pirates under the terms of a "memorandum of understanding" signed with the United States in January.

The bilateral agreement took effect the same day, March 5, 2009, when Kenya accepted the alleged pirates.

Potential Issues with Prosecuting Pirates in Kenya

Although prosecuting pirates in Kenya may appear the best solution to date, certain countries, including Germany, have expressed concern that Kenya's justice system is inadequate; human rights advocates have been critical of the conditions of Kenyan prisons. In fact, one Somali has filed a civil lawsuit against the German Government for its prosecution of him under Kenyan authority on grounds of inhumane treatment he received since his captors handed him over to Kenyan authorities.

He is seeking €10,000 (\$13,000) in damages.

Criminal Prosecution of Pirates in the United States

United States of America v. Abduwali Abdukhadir Muse **Southern District of New York**

On April 21, 2009 the United States filed charges against Abduwali Abdukhadir Muse in connection to his alleged participation in the April 8, 2009, hijacking of the Maersk Alabama container ship in the Indian Ocean, and the subsequent taking of the captain of the ship as a hostage.

Muse was taken into custody by the United States Navy on April 12, 2009, while at sea in the Indian Ocean, the same day, the U.S. Navy rescued the captain of the Maersk Alabama from a life boat in the Indian Ocean where he had been taken hostage by Muse and three other men.

The Criminal Complaint alleged violations of the following Federal Statutes:

18 USC Section 1651 (Piracy, as defined by the Law of Nations)

18 USC Section 3238 (Offenses not committed in any district)

* This Section of the US Code states that if an offense is committed on the “High Seas” the trial of the offender shall be in the district in which the offender is first brought.

18 USC Section 2 (Principals; Aiding and Abetting)

18 USC Sections 2280(a)(1)(H) (Violence against maritime navigation)

18 USC Section 924(c)(1)(A)(iii) (Penalties)

18 USC Section 1203 (Hostage Taking)

Civil Claims against Ship Owners for Injuries Sustained by Crew Members

Richard E. Hicks v. Waterman Steamship Corporation; and Maersk Line, Limited

District Court, Harris County, Texas

2009-26129

On April 27th, 2009 Richard E. Hicks, a Florida resident and chief steward of the U.S.-flagged Maersk Alabama freighter, sued Mobile, Ala.-based Waterman Steamship and Maersk Line, Limited, asking for money for medical costs and lost earnings due to injuries in the amount of \$75,000.

The Complaint was brought pursuant to:

- 1. 46 USC Section 688 (The "Jones Act")**
- 2. General Maritime Law**
- 3. Common Law**

General Average

Under the York-Antwerp rules, General Average requires four key elements:

- *Peril*
- *Extraordinary Loss/Expenditure*
- *Voluntary incurring of such Loss/Expenditure*
- *Common Benefit/Common Marine Adventure*

Sue and Labor

And in the case of any Loss of Misfortune, it shall be lawful and necessary for the Assured, their Factors, Servants and Assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the Vessel, or any part thereof, without prejudice to this insurance to the charges whereof the Underwriters will contribute their proportion as provided below. And it is expressly declared and agreed that no acts of the Underwriters or Assured in recovering, saving or preserving the Vessel shall be considered as a waiver or acceptance of abandonment....



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