



Finding the Discrepancy: Piracy under International Law and Islamic Law

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ABSTRACT

The article compares the two body of laws, public international law (PIL) vis-à-vis islamic law, in regulating the act of piracy. The importance of this comparison arises as the history shows that the governance of the Oceans had shifted from one era to another: Sumerians, Phoenicians, Hellenic League, Rome and Ottoman Empire. Muslims began its supremacy over some areas of the Ocean in the 8th century and thus contributed to the establishment of several legal norms that applicable in the oceans i.e. sovereignty, use of force (including rule of war) and maritime security, including piracy. The article uses normative legal research by assessing relevant international law instruments such as UNCLOS, SUA Convention, Regional Agreements as well as Resolutions of the United Nations and sources of islamic law encompassing the Quran, hadith and scholars' interpretation. The result establishes that although both PIL and islamic law regulate the act of piracy, the punishments between the two are quite contrast.

ABSTRAK

Penelitian ini membandingkan hukum internasional dengan hukum islam dalam mengatur tindakan pembajakan di laut. Urgensi perbandingan kedua sistem hukum ini beranjak dari bukti sejarah yang menunjukkan bahwa salah satu penguasa lautan di masa lalu adalah kaum Muslim. Kerajaan/Kekaisaran Muslim memulai supremasinya sejak abad ke-8 dan oleh karenanya banyak kontribusi pemikiran Muslim di sektor hukum laut seperti kedaulatan, penggunaan kekerasan, keamanan dan bahkan pembajakan. Penelitian menggunakan metode normatif dengan melakukan asesmen terhadap berbagai intrumen hukum internasional serta sumber-sumber hukum islam seperti Al-Quran, hadits dan pemikiran-pemikiran cendekiawan Muslim. Hasil penelitian menunjukkan bahwa keduanya (hukum internasional dan hukum islam) sama-sama mengatur mengenai pembajakan, akan tetapi dilihat dari sisi penegakan hukum dan sanksinya memiliki perbedaan yang cukup kontras.

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A. INTRODUCTION

1. Background

The ocean covers approximately 70% of Earth's surface and remains a mystery since 80% of it has never been explored or mapped by humans. The Old Kingdom of Egypt (3000 BCE) is believed to be the first Kingdom which ruled and codified matters regarding shipping on the sea. Since then, the control of Mediterranean Sea was shifted from one to another: Sumerians, Phoenicians, Hellenic League, Rome (including Byzantine as the heir of Theodisius, the Roman emperor), Muslims, Byzantine (again) and Ottoman Empire. According to historians, seafarers from Phoenicians were the ones who constitute and codify a more universal maritime law compare to Old Kingdom of Egypt's shipping codes.¹

Islam ruled the Mediterranean Sea in 827 (CE) after the defeat of Phoenix by the Byzantine followed by Islam's succesful conquest of Sicily and Crete.² Muslim's naval department improved constantly and by 11th century it gained control over certain Islands in Spain, Italy, Malta, and Cyprus.³ Muslims' governance for centuries contributes to the establishment of several legal norms that applicable in the oceans *i.e.* sovereignty, use of force (including rule of war)⁴ and maritime security.

From 8th century onwards, the expansion of Islam in the Mediterranean Sea and Asia did not change the local culture, systems and laws precipitously.⁵ Instead, Islam accommodated the local customs and norms to be mutually acculturated with Islamic teachings and practices.⁶ During the expansion, the issues that the Muslim faced were, but not limited to, commercial and shipping-related cases, maritime warfare, freedom of navigation and shipowners' liability, vessel's personification and criminal-related activity including piracy.⁷ During the reign of Muslim, islamic law and principles governing piracy were not brand new laws, it used the work of interpretation by

¹ Hassan Salih Khalilieh, "Islamic Maritime Law in Its Mediterranean and Islamic Contexts," *World History Connected* 19, no. 1 (2022): 3, <https://doi.org/https://doi.org/10.13021/whc.v19i1.3504>.

² Khalilieh, 5.

³ Hassan Salih Khalilieh, *Admiralty and Maritime Laws in the Mediterranean Sea (ca. 800-1050) : The Kitāb Akriyat Al-Sufun Vis-a-Vis the Nomos Rhodion Nautikos*, vol. 64 (Brill, 2006), 16.

⁴ Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: John Hopkins Press, 1995), 113.

⁵ Khalilieh, "Islamic Maritime Law in Its Mediterranean and Islamic Contexts," 2022, 7.

⁶ Khalilieh, 7.

⁷ Khalilieh, 8-9.

referring to the armed robbery occurring in land as both piracy and land robbery have similar elements.⁸ This will be further elaborated below in the discussion.

International law and UNCLOS specifically are silent on what constitutes maritime security.⁹ One defines maritime security as the protection of a State's land and maritime territory including all of its components (environment, society and infrastructure) within that State from certain harmful acts occurring at sea.¹⁰ One of such harmful acts is piracy. For instance, Southeast Asia, in 2015 there were more than 120 incidents of piracy (vessel hijacking and robberies) in this region and make it as the most pirated waters.

Piracy is an eminent instance of threat to maritime security (*hostis humani generis*). It has always been since the dawn of archaic seafaring.¹¹ In broad term, piracy means the use of force with intent to commit theft or any other crime by an act to board or attempting to board any ship. International law, by referring to the 1982 United Nations Convention on the Law of the Sea (UNCLOS)¹² article 101 stipulates the definition of piracy. The article defines piracy into three categories: any kind of offences for private ends directed to other ships outside the jurisdiction of offender, voluntary participation in a ship with knowledge that it is a pirate ship and any act inciting or internationally facilitating the previous scenarios.

From islamic law perspective, the Quran, the primary source of Islamic law does stipulate the importance of the oceans for human being and to show God's majesty. For instance, surah Fatir verse 12, it explains the existence of two different bodies of water (fresh and sea water), yet from them we can get foods, resources to be extracted and ships can sail smoothly. Other examples, surah Ar-Rum verse 46 and Luqman verse 31, they say that ships sail on the oceans is only because of His permission and that

⁸ Mohamadamin Ghandi et al., "A Comparative Study of 'Piracy' from the Perspective of Just War Theory in Islamic Jurisprudence and International Law," *International Journal of Maritime Policy* 4, no. 16 (2024): 131, <https://doi.org/10.22034/irlsmp.2025.316739.1128>.

⁹ Utpal Kumar Raha and Raju K. D., "Maritime Threats to the South and Southeast Asia: Scope for a Regional Agreement," *Kathmandu School of Law Review* 5, no. 1 (2017): 50, <https://kslreview.org/index.php/kslr/article/view/995>.

¹⁰ Natalie Klein, *Maritime Security and the Law of the Sea* (Oxford: Oxford University Press, 2011), 11.

¹¹ Hassan Salih Khalilieh, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought* (Cambridge: Cambridge University Press, 2019), 170.

¹² *United Nations Convention on the Law of the Sea*, opened for signature December 10, 1982, 1833 U.N.T.S. 3 [entered into force November 16, 1994]. [UNCLOS]

represents His signs and majesty. However, the more relevant islamic law regulating sea piracy develops through other sources of law, which are sunnah (broad interpretation) and 'ijma (the more specific development by muslim scholars' practices). For example, Prophet Muhammad (PBUH) said that "those who perish while fighting at sea will receive double the compensation for fighting on land".¹³ The interpretation goes that sea jihad is more important than jihad on land therefore it is also urged for Muslims to travel and explore the sea.¹⁴

Possessing the title of *hostis humani generis* as well as the oldest crime on earth, previous studies on piracy are innumerable. Some of them encompass, for instance, how to punish piracy using the jurisdiction of International Criminal Court. Yvonne Dutton proposes the idea and argues due to the severity of pirate attacks, the perpetrators should be criminalized through the ICC by way of an optional protocol.¹⁵ Yvonne Dutton's finding is completely reasonable if we read the finding of Lucas Bento. He finds that piracy will keep flourishing as there are no adequate domestic, regional and international legal frameworks on the matter that heavily impact global shipping, manufacturing and tourism.¹⁶ The relatively newer study compare to Dutton and Bento's is from Wambua who assesses how UNCLOS, after 40 years, maintain its relevance in addressing piracy. Wambua argues that restricted definition and lack of enforcement mechanisms in UNCLOS flourish piracy (as stated by Bento).¹⁷

Studies on piracy from islamic perspective are also on the line. Khalilieh is one of Muslim scholars who writes a lot concerning maritime governance, including the issue of piracy.¹⁸ Ahmad & Zulkiffle's writing strengthens that indeed Islamic military

¹³ Tuba Azeem, "Muslims' Share of the Waves: Law, War and Tradition," *Policy Perspectives* 17, no. 2 (2020): 69, <https://doi.org/10.2307/j50009730>.

¹⁴ Azeem, 69.

¹⁵ Yvonne Dutton, "Bringing Pirates to Justice; A Case for Including Piracy within the Jurisdiction of the International Criminal Court," *Chicago Journal of International Law* 11, no. 1 (2010), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1640543.

¹⁶ Lucas Bento, "Toward An International Law of Piracy Sui Generis: How the Dual Nature of Maritime Piracy Law Enables Piracy to Flourish," *Berkeley Journal of International Law* 29, no. 2 (2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1682624.

¹⁷ Musili Wambua, "A Critical Review of the Global Legal Framework on Piracy: 40 Years after UNCLOS," *Maritime Affairs: Journal of the National Maritime Foundation of India* 18, no. 1 (2022): 134-48, <https://doi.org/https://doi.org/10.1080/09733159.2022.2091020>.

¹⁸ Hassan S Khalilieh, "Islamic Maritime Law in Its Mediterranean and Islamic Contexts," *World History Connected*, vol. 19, n.d., https://commons.wikimedia.org/wiki/File:Khalili_Collection_Islamic_Art_04.jpg; Khalilieh, *Admiralty and Maritime Laws in the Mediterranean Sea (ca. 800-1050) : The Kitāb Akriyat Al-*

expansions contribute to the principles of law of the sea, including freedom of the high seas and UNCLOS principles are aligned with islamic law.¹⁹ In relation specifically to piracy, Ramizah & M Firdaus argues that piracy is within the broad range of *hirabah*, an act of violence that transgress the rights of a person, as it does not limit its scope to land robbery (airplane hijacking is also included).²⁰

2. Research Questions

From the foregoing explanation, there are two questions this article tries to answer: i) how do international law and islamic law regulate piracy? ii) how are the comparisons between the two bodies of law in seeing piracy?

3. Research Methods

The author uses normative legal research with statutory and doctrinal approaches as the methods to answer the proposed research questions. Firstly, the author will examine legal instruments from both fields i.e. international law which covers UNCLOS and SUA Convention and islamic law which covers the Quran, hadith as well as Muslim scholars' interpretation. Secondly, the author will analyze the research questions using books, journal articles and reliable online sources to support his arguments.

B. DISCUSSION/ ANALYSIS

1. Piracy under the Regimes of International Law and Islamic Law

a. International Law Perspective

Although piracy has been recognized at the very least since 509 B.C., few attempts were made since the beginning of the 20th century, particularly in 1926 when the League of Nations constituted a Committee to address the issue of piracy.²¹ Later, the attempts

Sufun Vis-a-Vis the Nomos Rhodion Nautikos; Khalilieh, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought*.

¹⁹ Nehaluddin Ahmad and Norulaziemah Zulkiffle, "Navigation Rights in Islamic Tradition and Modern International Law," *Manchester Journal of Transnational Islamic Law & Practice* 19, no. 3 (2023).

²⁰ Ramizah Wan Muhammad and Muhammad Firdaus Ahmad Mokhlis, "Piracy, Armed Robbery at Sea, and Hirabah: An Islamic Law Perspective," *Islamic University of Maldives Journal of Laws* 1, no. 1 (2024), <https://jol.iu.edu.mv/article/view/9>.

²¹ Frederick Boamah, "The Role of the UN Security Council in the Fight Against Piracy in the Gulf of Guinea," *Central European Journal of International and Security Studies* 17, no. 3 (September 4, 2023): 66-89, <https://doi.org/10.51870/LQHU1305>; Ekaterina Anyanova, "Piracy in Modern International Law," in

can be seen from the 1932 Harvard Draft Convention on Piracy which heavily influenced the International Law Commission (ILC)'s work on the law of the sea (1949-1956) before in 1958 the High Seas Convention was adopted.²² The provisions on piracy in the High Seas Convention are barely changed and now are regulated in its predecessor, UNCLOS.

The contemporary international law on piracy is deemed insufficient, especially due to its nature and scope. From scholarly debate for instance, W. E. Hall defines piracy as an act of depredation on sea or land without permission of a sovereign.²³ Hall's argument received an objection from Thomas Joseph saying that piracy shall be conducted outside the territorial jurisdiction of States, meanwhile, the phrase "without permission of a sovereign" according to Joseph indicates that piracy falls within national jurisdiction.²⁴ From legal instrument perspective, UNCLOS has loopholes in regulating piracy but other—mostly Regional—legal instruments, Resolutions and documents are backing it.

There are at least two international conventions which are relevant the most to piracy and have been ratified by half of sovereign States from all around the world, namely UNCLOS and Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention).²⁵ There are also several regional instruments such as the 2004 Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (RECAAP), Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden and Code of Conduct Concerning the Repression of Piracy, Armed Robbery against Ships, and illicit Maritime Activity in West and Central Africa. These Regional Instruments serve as complementary frameworks particularly for regional coordination and cooperation to tackle piracy. The UN also adopted a number of resolutions

Global Peace and Security, ed. Norman Chivasa (Durban: IntechOpen, 2023), <https://doi.org/10.5772/intechopen.108111>.

²² Boamah, "The Role of the UN Security Council in the Fight Against Piracy in the Gulf of Guinea."

²³ Lawrence Azubuike, "International Law Regime against Piracy," *Annual Survey of International & Comparative Law* 15, no. 1 (2009): 46.

²⁴ Azubuike, 47.

²⁵ *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, opened for signature November 3, 1988, 1687 U.N.T.S. (entered into force March 1, 1992), <https://treaties.un.org/pages/showdetails.aspx?objid=08000002800b9bd7>. [SUA Convention]

addressing piracy, many of them referring to situation in Somalia.²⁶ The UN Security Council Resolution 2608(2021) for example, one of the mandates is for States and Regional Organizations to cooperate with Somali government to combat piracy within its territorial jurisdiction.²⁷

Under UNCLOS, regulations that related to piracy can be found in Articles 100-107. The Articles cover definition of piracy, States' obligations to cooperate in the repression of piracy including criminalize the offender and seize the pirate ship and also regulate circumstances when warship or governmentship become a pirate ship. Article 101 of UNCLOS defines several circumstances which constitute piracy. From the article, it can be concluded that piracy covers any kind of offences²⁸ for private ends directed to other ships outside the jurisdiction of the offender, voluntary participation in a ship with knowledge that it is a pirate ship and any act inciting or internationally facilitating the previous scenarios.

Due to its nature as the oldest subject of international law as well as *hostis humani generis*,²⁹ any State is allowed to exercise its jurisdiction to seize the pirate ship including its property on board and arrest the persons³⁰ (the seizure can only be carried out by warships, military aircraft or any official government ship).³¹ Article 105 of UNCLOS further regulates that the jurisdiction of State carrying the seizure extends to its national court to impose, in good faith, whatever sanctions and actions towards the ships or property subject to the rights of third parties. However, it shall be noted that if there is a

²⁶ For instances Resolutions S/RES/2077 (21 November 2012); S/RES/2125 (18 November 2013); S/RES/2383 (7 November 2017).

²⁷ UNSC Resolution 2608(2021), para. 14. <https://digitallibrary.un.org/record/3950495?v=pdf&ln=en>. Accessed August 22, 2026.

²⁸ The offences shall be carried out by crew or passengers of pirate ships. This element is known by two-ship requirement which leads to controversy as found by Lawrence Azubuike.

²⁹ Christopher Harding, "Hostis Humani Generis' — The Pirate as Outlaw in the Early Modern Law of the Sea," in *Pirates? The Politics of Plunder, 1550–1650*, ed. C. Jowitt (London: Palgrave Macmillan, 2007), 20–21, https://doi.org/https://doi.org/10.1057/9780230627642_2; Amedeo Policante, "HOSTIS HUMANI GENERIS: Pirates and Empires from Antiquity until Today" (Goldsmiths College, University of London, n.d.), 42, https://research.gold.ac.uk/id/eprint/8047/1/POL_thesis_Policante_2012.pdf; Douglas R. Burgess Jr., "Hostis Humani Generi: Piracy, Terrorism and a New International Law," *University of Miami International and Comparative Law Review* 13, no. 2 (2006): 298, https://repository.law.miami.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1069&context=u_miclr.

³⁰ UNCLOS, art. 105.

³¹ UNCLOS, art. 107.

mistake whatsoever in seizing the alleged pirate ship, the State carrying the seizure shall be liable for damage and compensation to the flag state.³²

As expounded by Azubuike and other scholars, there are a number of loopholes in UNCLOS especially related to the two-ship requirement. The hijacking of *Achille Lauro* is one of the instances of loopholes in UNCLOS. In 1985, Palestinians gunmen, with political motives, hijacked *Achille Lauro*, a small Italian cruise ship that sailed from Italy to Ashdod, Israel. These Palestinians were given an order by Mohammed Abu Abbas, head of Palestine Liberation Front (PLF), to take the passengers and captain as hostages and barter them with fifty PLF prisoners in Israel.³³ This occurrence, however, did not fall within the definition of piracy as set out in UNCLOS because 'another ship' was not entangled.³⁴ International Law Commission (ILC), in its 1956 Draft Articles concerning the Law of the Sea with commentaries, further reiterates that "acts committed on board a ship by the crew or passengers and directed against the ship itself, or against persons or property on the ship, cannot be regarded as acts of piracy."³⁵ From this incident, SUA Convention was adopted in 1988 to fill the loophole.³⁶

The International Maritime Organization (IMO) noted several hijacking cases that occurred between 1961 and 2010. The hijacking cases are, but not limited to: the hijacking of *SS Santa Maria* in La Guaira, Venezuela (1961); *Anzoategui* in Venezuelan Coast (1963); *MV Avrasya* in Turkey (1996); *SS Limburg* in the Gulf of Aden, Yemen (2002) and *M/V M. Star* in the Persian Gulf in 2010.³⁷ Three years after the *Archille Lauro* incident, SUA Convention was adopted (entry into force in 1992) and updated in 2005 through its Protocol, to fill the loopholes regarding the safety of maritime navigation in general and in particular, to punish persons who commit acts prohibited under the

³² UNCLOS, art. 106.

³³ Loch K. Johnson, "The Achille Lauro Hijacking: Lessons in the Politics and Prejudice of Terrorism (Review)," *Journal of Cold War Studies*, 2007, <https://muse.jhu.edu/pub/6/article/223547/pdf>.

³⁴ Mazyar Ahmad, "Maritime Piracy Operations: Some Legal Issues," *Journal of International Maritime Safety, Environmental Affairs, and Shipping* 4, no. 3 (2020): 63, <https://doi.org/https://doi.org/10.1080/25725084.2020.1788200>.

³⁵ United Nations General Assembly, "Report of the International Law Commission on the Work of Its Eighth Session," 1956, https://legal.un.org/ilc/documentation/english/reports/a_cn4_104.pdf.

³⁶ International Maritime Organization, "IMO and Maritime Security Historic Background," accessed June 22, 2026, <https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/IMOandMaritimeSecurity-HistoricBackground.pdf>.

³⁷ International Maritime Organization.

Convention.³⁸ The Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Protocol of 2005),³⁹ amends, eliminates some of the wordings and adds several offences prohibited under SUA Convention. The Convention dictates that any person commits an offence if unlawfully and intentionally, amongst other offences, seizes or exercises control over a ship by force or threat or any form of intimidation⁴⁰ or endangers the safe of navigation of a ship by performing acts of violence against persons on that ship.⁴¹ Protocol of 2005 expands the scope of the offences under article 3bis, 3ter and 3quater. For instances, the use of explosive, radioactive material or Bacteriological or Biological, Chemical and Nuclear (BCN) weapons against or on ship;⁴² the use of a ship in a manner that causes death or serious injury or damage;⁴³ transports a person from a ship to another knowing that person has committed offences;⁴⁴ or injures or kills persons in connection with offences under the Convention and its Protocol.⁴⁵ There are still many offences set out both in SUA Convention and Protocol of 2005.

The author limits the international rules governing piracy only to UNCLOS and SUA Convention along with its Protocol of 2005. Additionally, as SUA Convention covers so many offences, the author will only use article 3.1.(a)-(b)⁴⁶ and 3.2.(b)⁴⁷ for comparison. The formulation of the article is relatively similar to UNCLOS article 101.

b. Islamic Law Perspective

There are four sources of Islamic Law (*Sharia*) namely the Quran, *hadith*, *'ijma* and *qiyas*. Firstly, the Quran, it is the holy book for Muslim which consist of words of God as

³⁸ Even though SUA Convention does not explicitly mention 'piracy', however, it sets more specific and narrow circumstances which are punishable and relevant to act of piracy compare to UNCLOS.

³⁹ Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, opened for signature October 14, 2005, 3462 U.N.T.S. (entered into force July 28, 2010), https://treaties.un.org/Pages/showDetails.aspx?objid=080000028057cc85&clang=_en. [Protocol of 2005]

⁴⁰ SUA Convention, art. 3.1 (a).

⁴¹ SUA Convention, art. 3.1 (b).

⁴² Protocol of 2005, art. 3bis.1 (a) (i).

⁴³ Protocol of 2005, art. 3bis.1 (a) (iii)

⁴⁴ Protocol of 2005, art. 3ter.

⁴⁵ Protocol of 2005, art. 3quater (a).

⁴⁶ Article 3.1(a)-(b) dictates that any person commits an offence within the meaning of SUA Convention of that person unlawfully and intionally seizes or exercises control over a ship by force or threat or performs an act of violence against a person on board a ship that is likely endanger the safe navigation.

⁴⁷ This article deals with accessory, meaning the person abets the commission of any offence in paragraph 1.

guidelines in life.⁴⁸ In other words, the Quran comprises the most authentic laws of God that were descended gradually to Prophet Muhammad SAW through Jibril (in other religions known as Gabriel).⁴⁹ Secondly, *hadith*, in short hadith comprises the deeds, sayings and even approval of Prophet Muhammad SAW.⁵⁰ As the Quran was revealed to Him, what he did and said are believed to be the most acceptable interpretation of the Quran.⁵¹ The other two remaining sources are *ijma* and *qiyas*. Etimologically, *ijma* has two meanings *i.e.* consensus and provision.⁵² From the definition, *ijma* means consensus between the intellectuals regarding certain matters.⁵³ Meanwhile, *qiyas* is a method to achieve certain conclusion by measuring and comparing two or more existing legal norms or facts which involve public interests.⁵⁴

These four sources complement each other. The characteristic of the Quran as the main source of Islamic law are authentic and universal, meaning that it does not change throughout the time.⁵⁵ In other words, the Quran only consists of basics rules⁵⁶ and the other three sources, sequentially,⁵⁷ will function to interpret or give deeper explanation and understanding on certain matters which have not been regulated.

⁴⁸ There are 114 Surah and 6666 verses in the Quran.

⁴⁹ Farooq A. Hassan, "The Sources of Islamic Law," *Proceedings of the ASIL Annual Meeting* 76 (1984): 65, <https://doi.org/doi:10.1017/S0272503700030123>.

⁵⁰ According to Muslim scholars, one of the Quranic basis of hadith as one of the sources of Islamic law is Surah An-Nisa: 115. It exemplifies "And whoever defies the Messenger after guidance has become clear to them and follows a path other than that of the believers, We will let them pursue what they have chosen, then burn them in Hell—what an evil end!". See Quran.com, "An-Nisa:115", <https://quran.com/an-nisa?startingVerse=115>, accessed August 24, 2026. See also muslim.or.id, <https://muslim.or.id/6966-kaedah-penting-dalam-memahami-al-quran-dan-hadits.html>, accessed August 24, 2-26.

⁵¹ Hassan, "The Sources of Islamic Law," 66.

⁵² Kutbuddin Aibak, "Ijma' Sebagai Dalil Hukum Fiqh," *Ahkam* 9, no. 1 (2004): 24, <https://doi.org/1411-271XX>.

⁵³ Aibak, 24.

⁵⁴ Aharon Layish, "Islamic Law in the Modern World Nationalization, Islamization, Reinstatement," *Islamic Law and Society* 21, no. 3 (2014): 284, <https://www.jstor.org/stable/i40131393>.

⁵⁵ Mohammad Umar Said, "Nāsikh-Mansūkh Dalam Al-Qur'ān; Teori Dan Implikasi Dalam Hukum Islam," *MAGHA: Jurnal Ilmu Al-Qur'an Dan Tafsir* 5, no. 2 (2020): 174, <https://doi.org/10.24090/maghza.v5i2.4174>.

⁵⁶ The basic rules encompass the nature of Allah SWT along with His creations; the relationship of human beings with Allah SWT; orders and prohibitions; and relationship with other creatures. See Hadi Yasin, "Ayat-Ayat Akhlak Dalam Al-Quran: Membangun Keadaban Menuju Kemuliaan," *Tahdzib Al-Akhlaq: Jurnal Pendidikan Islam* 2, no. 2 (2019): 3–4, <https://doi.org/https://doi.org/10.34005/tahdzib.v2i2>; Siska Lis Sulistiani, "Perbandingan Hukum Islam," *Tahkim: Jurnal Peradaban Dan Hukum Islam* 1, no. 1 (2018): 105–6.

⁵⁷ If there are certain matter that the Quran does not regulate, then *hadith* will be used as the second source. This goes the same way for *ijma* and *qiyas* as the third and fourth sources of Islamic law.

The scope of Islamic law encompasses *hudud*, *qisas* and *ta'zir*. *Hudud* means any criminal act which is regulated by *nash* (the Quran and *hadith*). The crimes that fall within *hudud* are adultery; accusation of adultery; theft; robbery (*hirabah*); insurgency; drinking *khamr* (alcohol) or misuse of drugs and apostate.⁵⁸ Meanwhile, *qisas* embodies two criminal acts namely murder and mistreatment.⁵⁹ The crimes which are not included both in *hudud* and *qisas* lie within the regime of *ta'zir* which the rule and punishment will be decided by an authorized institution.⁶⁰

Similar to criminal law in general, Islamic law necessitates three requirements to be applicable. They are formal (*al-rukun al-syar'i*); material (*al-rukun al-madi*); and moral requirements (*al-rukun al-adabi*).⁶¹ In order to be applicable, firstly, there has to be written rule (*nash*) to forbid particular matters and enforce sanction for any violation of the such rule. This is a fundamental requirement that in line with legality principle. Secondly, there has to be a concrete criminal activity which has been completely and perfectly committed. It matters because Islamic law also recognizes "attempted crime" (*al-syuru fi al-jarimah*) which has different punishments from those crimes that have been perfectly committed. Lastly, it relates to the perpetrator of crimes. The perpetrator shall meet bare minimum to be held criminal responsibility *i.e.* adult, sane and do not commit crime under the threat of others.

Looking back to the history of piracy, *kursaliyya* (corsairs), *haramiyya/lusus al-bahr* (thieves at sea), *bawarij* (pirates) are terms that were used interchangeably.⁶² The Quran does not specifically govern piracy, however, Muslim jurists from classical era to the contemporary era associate piracy mostly to *hirabah* and *fasad* (evil deeds causing destruction on Earth).⁶³ Nevertheless, the latter is too general and one argues that *fasad* is "the impact of *hirabah* in terms of security, economy and political instability to one's

⁵⁸ Nurul Irfan, *Hukum Pidana Islam* (Jakarta: AMZAH, 2016), 24.

⁵⁹ Irfan, 24.

⁶⁰ Irfan, 25.

⁶¹ Irfan, 26–27.

⁶² Khalilieh, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought*, 171–73.

⁶³ Khalilieh, 173; Muzdalifah Muhammadun, "Konsep Kejahatan Dalam Al-Quran (Perspektif Tafsir Maudhu'i)," *Jurnal Hukum Diktum* 9, no. 1 (2011): 16, <https://doi.org/https://doi.org/10.35905/diktum.v9i1.276>.

country.”⁶⁴ Therefore, to avoid overlapping and too broad explanation, *hirabah* will be the focus of discussion.

Hirabah can be found in the Quran surah Al-Maidah verse 33⁶⁵ and it literally means making war or waging war. Various definitions are employed by Muslim scholars. Sayyid Sabiq for instance, he explained *hirabah* as mischief, bloodshed, robbery, injury to personal dignity, impairment to environment, religion, public order and laws which are committed by armed groups—Muslim or non-Muslim—within Islam regions.⁶⁶ Abd al Barr defines *hirabah* to include four evil deeds which are “disturb free passage in the streets and render them unsafe to travel”; “corruption”; “killing”; and generally “violating what Allah forbids.”⁶⁷ Based on what Sayyid Sabiq and Abd al Barr think about *hirabah*, it is understandable if *hirabah* is also interpreted broadly as terrorism, extraordinary theft as well as piracy that is conducted in the ocean.⁶⁸

Khalilieh construes piracy as “privately motivated armed robbery directed against innocent commercial vessels, their contents, crews, and passengers, and against coastal installations and targets, thereby posing a threat to the public peace for the sole purpose of looting movable property for private gain.”⁶⁹ Additionally, the actor of piracy under Islamic law may be passengers, seafarers or organized bandit who are under the abode of Islam. In conclusion, the core of Islamic law on piracy lies in the actor and to whom the offence is carried out.⁷⁰ Both the actor and victims or objects shall be within the abode of Islam.

⁶⁴ Muhammad and Mokhlis, “Piracy, Armed Robbery at Sea, and Hirabah: An Islamic Law Perspective,” 26.

⁶⁵ This verse stipulates “Indeed, the penalty for those who wage war against Allah and His Messenger and spread mischief in the land is death, crucifixion, cutting off their hands and feet on opposite sides, or exile from the land. This ‘penalty’ is a disgrace for them in this world, and they will suffer a tremendous punishment in the Hereafter.” See Quran.com, “Al-Maidah,” accessed June 22, 2026, <https://quran.com/5?startingVerse=33>.

⁶⁶ Endang Jumali, “Hirabah Dan Hubungannya Dengan Hukuman Ta’zir Bagi Pelaku Korupsi Dalam Hukum Pidana Islam (Kajian Tafsir Ahkam Terhadap QS. Al-Maidah Ayat 33),” *Asy-Syari’ah* 17, no. 2 (2015): 150, <https://doi.org/https://doi.org/10.15575/AS.V18I1.657>.

⁶⁷ Muhammad and Mokhlis, “Piracy, Armed Robbery at Sea, and Hirabah: An Islamic Law Perspective,” 26.

⁶⁸ Muhammad and Mokhlis, 26.

⁶⁹ Khalilieh, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought*, 177.

⁷⁰ Khalilieh, 179 In his writing, “Islamic jurisprudence defines a pirate as a predator who targets: (a) subjects of the Abode of Islam – Muslims and dhimmīs and their movable properties regardless of their either fixed or varying locations; (b) musta’mins, holders of a pledge of safe-conduct; (c) subjects of states that are parties to treaties with the Abode of Islam; (d) subjects of states not at war with the Abode of Islam.”

Surah Al-Maidah verse 33 in its text stipulates punishments for those who “wage war against Allah and His Messenger” and “spread mischief on Earth”. In particular, this verse refers to those who publicly commit robbery, murder or terrorism (create fear) against individual either Muslim or non-Muslim. The punishments vary depending on the gravity of the case: death and crucifixion for murder or rape; cutting off hands and feet on opposite sides for armed robbery; or exile from the land for terrorizing innocent people. If the perpetrator commits offences outside the stipulated ones (lesser), the punishment subjects to the Judge’s discretion.

There is one *hadith* narrated by Imam Muslim⁷¹ concerning the *muharibin*⁷² and apostates that is related to *hirabah*. Anas bin Malik reported that there were people from ‘Uraina tribe who wanted to meet Prophet Muhammad SAW at Medina but they fell sick due to bad wheater. Prophet Muhammad SAW thus said they could visit the camels (from *sadaqa*) to drink their milk and urine so they could feel better. They did feel better but later they attacked the shepherds and took the camels. Upon hearing this, Prophet Muhammad SAW ordered his people to chase them and eventually cut their hands and feet, pulled out their eyes and threw them on the stony ground till death.

If we compare the Quran surah Al-Maidah verse 33 and *hadith* narrated by Imam Muslim, the punishments are identical. However, it should be noted that the Quran also regulates thieves in surah Al-Maidah verse 38. Robbery as set out in verse 33 bears a higher gravity rather than thieves in verse 38, the elements and impacts of these two offences are also different. In simpler explanation, robbery is conducted publicly and by force, meanwhile thieves is done clandestinely and does not require element of force. Therefore, it is logical if the punishment under surah Al-Maidah verse 38 (thieves) is lighter –only cut off hands.⁷³

From the foregoing explanation, in Islamic law and practice, piracy falls within the rule of *hirabah*. According to the finding of Khalilieh, all four Muslim schools of thought (*madhhab*) agreed that the rule on *hirabah* is also applied at sea.⁷⁴ However, according

⁷¹ Shahih Muslim, “The Book of Oaths, Muharibin, Qasas (Retaliation) and Diyat (Blood Money),” accessed June 22, 2026, <https://sunnah.com/muslim/28>.

⁷² *Muharibin* refers to the actors of *hirabah*. Khalilieh uses maritime *muharibin* to define pirates.

⁷³ This verse stipulates “As for male and female thieves, cut off their hands for what they have done—a deterrent from Allah. And Allah is Almighty, All-Wise.”

⁷⁴ Khalilieh, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought*, 177.

to Ahmed Al-Dawoody,⁷⁵ the application of *hirabah* to piracy (at sea) is close to the *madhhab* Hambali such as al-Buhuti, ar-Rahaibani and al-Ba'li. They argue that the Quran does not specify the *locus* of an action that falls within *hirabah*, therefore it can be applicable both on land and at sea.⁷⁶ This process of thinking, analogizing and interpreting an issue to the existing rule and practice fall within the definition of *qiyas*, one of recognized sources in Islamic law. Accordingly, the actor of piracy (maritime *muharib*) is subject to the law of the Quran and *hadith* with heterogeneous punishments depending on the gravity of the offence.

The application of the punishment shall follow the fundamental requirements of Islamic law. The judge or even any institution that is authorized to conduct law enforcement shall carefully assess the situation, whether one offence falls within the definition of *hirabah* (piracy) along with its elements. The perpetrator shall be armed with lethal weapons, publicly directs an attack or whatever form of force against innocent people. There is, however, a debate whether the offence is carried out in populated areas (urban area) or does not have to consider the location at all. Besides, the perpetrator's age, sanity and whether he or she commits the offence under duress or threats shall be considered by law enforcer before giving the punishments. In conclusion, according to Al-Dawoody,⁷⁷ the main elements of *hirabah* encompass unlawful attack and/or spreading terror against innocent people and the motives can be wealth, intimidation or terrorism—that is why he says *hirabah* is basically the act of terrorism.

Lastly, one thing that shall be considered is related to Al-Maidah verse 34. It stipulates that the perpetrator of *hirabah* will be forgiven if they repent their sins. This verse invites controversy as to what extent someone can free from liability. In practice, even if the perpetrators repent their sins, it does not mean they are necessarily free from their criminal responsibility. This will be unfair especially to the damages suffered by the persons being robbed or attacked. Additionally, the punishment exists as the deterrent effect, thus, no similar crimes occur in future.

2. The Comparison between International Law and Islamic Law on Piracy

⁷⁵ Ahmed Al-Dawoody, *Hukum Perang Islam* (Jakarta: PT Gramedia, 2019), 271.

⁷⁶ Al-Dawoody, 271.

⁷⁷ Al-Dawoody, 271.

This section will analyze the comparison between the ruling on piracy under international law (UNCLOS and SUA Convention) and Islamic law. UNCLOS specifies actions which lie within the act of piracy. It stipulates in article 101 that piracy is “any illegal act of violence”; “detention”; “any act of depredation”; “any act of voluntary participation in a ship knowingly that ship is a pirate ship” or “any act of inciting or facilitating any of previous act⁷⁸”. Those acts shall be committed by “the crews” or “passengers” of a pirate ships and directed against “another ship or persons or property on the ship” either on the high seas or anywhere outside jurisdiction of any State. UNCLOS –and customary international law recognizes universal jurisdiction for the act of piracy. It means any State may seize a pirate ship, arrest the persons and property on board and impose whatever sanctions deemed necessary –in good faith in accordance with that State’s national law.⁷⁹

Contrary to UNCLOS, SUA Convention encompasses more detail offences regarding to the safety of maritime navigation. Not all of the listed offences under the Convention and its Protocol represent the act of piracy. It is article 3 which has relatively similar wordings to UNCLOS concerning piracy. The article stipulates that any person commits an offence if that person unlawfully and intentionally “seizes or exercise control over a ship by force or threat or any other forms of intimidation” or “performs an act of violence against a person on board a ship that is likely to endanger the safe of navigation”. This Convention’s mechanism to punish the perpetrator prioritizes the consent of State Parties, meaning only States that are parties to the SUA Convention which can enforce the law.

The two Conventions have different mechanism in relation to enforce criminal jurisdiction. UNCLOS stipulates that any State has jurisdiction over a pirate ship and may seize such the ship, the persons and property on board. This universal jurisdiction represents how serious the impact of this crime is to international community. Meanwhile, SUA Convention limits the jurisdiction of States only to those which Parties to the Convention. Geographical limitation is also one factor that differs UNCLOS and SUA

⁷⁸ This refers to an act described in subparagraph (a) or (b) of article 101 of UNCLOS.

⁷⁹ UNCLOS, art. 105.

Convention. The former applies the rules of piracy in area beyond national jurisdiction (ABNJ), meanwhile the latter applies within national jurisdiction.

Despite the different mechanisms of enforcement of law and how the States' jurisdiction is established, eventually specific actions and punishments rely on the national law of State exercises its jurisdiction against the pirate ship or persons or property of such ship. Accordingly, one State's approaches differ from the others. It is interesting when the States which exercise jurisdiction over the perpetrator consider themselves as Islamic States, thus their basis of national laws are Islamic law. In that case, the author believes that rule on *hirabah* which based on the Quran and *hadith* may or may not be applied depending on the circumstances within those States.

Islamic law has relatively the same regulations concerning piracy compare to UNCLOS and SUA Convention. Although debates amongst muslim jurists and scholars regarding the act of piracy exist, however, in general it can be concluded that Islamic law has relevant regulations to those under UNCLOS and SUA Convention. Majority of jurists and four schools of thought associate piracy to *hirabah*. Sayyid Sabiq defines *hirabah* as any offence that is carried out in every aspect of life such as most importantly wealth, persons and their properties, environment and even dignity. The other scholars may view *hirabah* only as robbery which is conducted publicly and by force. Khalilieh also viewed piracy under Islamic law similar to that under public international law.

Piracy as defined by Sayyid Sabiq fits the requirements set by UNCLOS which covers any act of violence, detention, depredation or even inciting and facilitating the act of piracy. Sayyid Sabiq's definition also fits SUA Convention because he viewed *hirabah* in broad term. However, when it comes to other jurists and scholars who associated piracy to *hirabah* in narrow sense (robbery by force), the rule on piracy under UNCLOS and SUA Convention may only fit half of the requirements under those two Conventions.

There are important points to be noted. Firstly, UNCLOS requires the actors of piracy are "crews" or "passengers" of a pirate ship and they commit the offence against another ship. However, Islamic law does not regulate that the act of piracy shall be carried out by crew or passenger of pirate ship against other ships (two-ship requirements). Islamic law only stipulates that the perpetrators are armed groups who use force to carry the attack. In relation to UNCLOS, technically it does not regulate that

the crew or passenger from a pirate ship shall be “armed”, but of course assuming pirates are not armed is quite illogical. Secondly, in relation to SUA Convention, unlike UNCLOS which states depredation, this Convention regulates the offence in a broad manner *i.e* “any act of violence”. *Hirabah* may fall within the meaning of “act of violence” and the requirement of use of force or threat exists already under this Convention.

In relation to the punishment, it differs piracy in Islamic law from public international law. As previously stated in the discussion that punishments for piracy under public international law vary depending on national law of States exercising jurisdiction over the act of piracy. We really cannot set clear comparison as each sovereign State has different concept of law adjusting to its needs. While in Islamic law, the punishments for the perpetrator are clear and vary depending on the gravity of the offence. For armed robbery, the punishment will be cutting off hands and feet on opposite sides. This punishment might be seen as too much for those countries which uphold hardcore human rights, however, according to islamic countries which really apply islamic law as their daily system, this might not be an issue. It is derived from the Quran also *hadith* and it has to work that way.

In imposing punishments, we all know that the rules are not always implemented as they have to be. Even though the punishment sets out under Islamic law sounds too much and inhuman, the author believes that in practice, cutting off hands and feet on opposite sides is not always conducted. The judge or other law enforcers shall consider other relevant circumstances before imposing a decision.

C. CONCLUSIONS

The rule in combatting piracy as *hostis humani generis* has been, for a long time, categorized as customary international law until the shifting era from merely a custom to the need of codification. As elaborated in the previous part regarding the scope limitation, UNCLOS and SUA Convention serve as the foundational legal instruments to eradicate piracy that corroborated by several Regional Instruments and UNSC Resolutions. On one hand, under UNCLOS, piracy encompasses four elements namely illegal act of violence, for private-ends, two-ship requirements and conducted in ABNJ. UNCLOS is very limited substantially and its geographical application. On the other hand, SUA Convention serves as complementary instrument that interestingly does not

mention piracy but numerous illegal acts. SUA Convention is also more preferable in terms of jurisdiction because unlike UNCLOS that categorizes piracy in ABNJ only, it provides mechanism for illegal acts in question in territorial water and beyond—depending on the coastal state's jurisdiction as well as cooperation with others. Lastly, according to islamic law, piracy is a form of *hirabah*, that is an illegal act that is conducted publicly (armed) against innocent people and the intentions behind such act can be wealth robbery, intimidation or spreading terror. Unlike UNCLOS and SUA Convention, the debate on categorizing piracy as *hirabah* is whether illegal acts on land can be associated at sea. As established above, the majority muslim jurists, particularly from *madhhab* Hambali view *hirabah*'s applicability both on land and at sea.

The main differences between public international law represented by UNCLOS and SUA Convention and islamic law in regulating piracy lie on the substantial element (partly) and the sanction. First regarding substantial element, while UNCLOS and SUA Convention require specific *locus* (ABNJ for UNCLOS and within national jurisdiction for SUA Convention), islamic law does not specify *locus* because the focus of it is more of the prohibited conduct and its elements as well as the effects. Second regarding the sanction and the most distinct one, public international law relies heavily on States exercising jurisdiction against the pirates or their ship, therefore it can be vary depending on national law of the States concerned. To the contrary, islamic law relies on the Quran and hadith (as well as 'ijma and qiyas), therefore the sanction is very specific. As piracy falls within *hirabah*, Al-Maidah verse 33 serves as the main provision which sanctions whoever is liable for *hirabah* with execution, amputation of foot and hand, crucifixion and banishment.

The interaction between public international law and islamic law regarding piracy should be understood to the level that it is more relevant in the theoretical stage. The author is not pessimistic about the actual implementation as piracy both in waters of national jurisdiction and outside national jurisdiction remains challenging to be addressed. Let's have Saudi Arabia as a simple example to construe the overall discussion. Supposedly a pirate ship attacks a Saudi Arabian ship in the Exclusive Economic Zone (EEZ) of Saudia Arabia in the Red Sea. Depending on an actual case, because Saudi Arabia is Party to UNCLOS and SUA Convention as well as its Constitution is Islamic Law (Sharia Law), thus these interaction is actually likely and beyond a mere

theoretical stage. *Ergo*, the findings may be useful for both theoretical and practical level, yet further research is definitely needed especially to explore how Islamic States face the situation.

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