



SCRUTINIZING PROVISIONS OF THE ISLAMIC PENAL CODE OF THE ISLAMIC REPUBLIC OF IRAN IN COMBATING PIRATE IMPUNITY: FROM CLASSIC PIRACY TO MODERN PIRACY

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Article Info	ABSTRACT
Article type: State Practice Article history: Received 10 April 2023 Received in revised form 16 June 2024 Accepted 22 June 2024 Published online 30 June 2024  https://ijicl.qom.ac.ir/article_3257.html Keywords: Piracy, Modern Piracy, IRI Jurisdiction, Universal Jurisdiction, Personal Jurisdiction.	Modern piracy poses a significant challenge to global stability, jeopardizing international order and creating insecurity on the world's waterways. While reminiscent of traditional piracy, contemporary piracy manifests in distinct forms that diverge from its classical antecedent, particularly in terms of violence, the breadth of activities, methods employed, and underlying motives. Currently, the jurisdiction over these offenses rests with domestic courts. Despite the concerted efforts of the international community to prosecute perpetrators within these courts, both governments and international law have encountered considerable obstacles in achieving success. A particularly contentious issue is the jurisdictional complexities faced by governments during legal proceedings. In light of various United Nations Security Council resolutions, the concept of universal jurisdiction has evolved, albeit subject to diverse interpretations. The Islamic Republic of Iran has adopted specific procedural frameworks to address this issue. In accordance with Iranian law, both universal and territorial as well as personal jurisdictions are invoked to combat the immunity associated with modern piracy. The provisions articulated in Articles 3, 4, 7, 8, and 9 of the Islamic Penal Code unequivocally indicate that the Islamic Republic of Iran possesses substantial jurisdiction over individuals accused of modern piracy. Nevertheless, it is evident that legislative capacity remains underutilized, particularly concerning the existing gaps and deficiencies in the definitions and punitive measures related to piracy within the Islamic Penal Code. This has inadvertently resulted in piracy being perceived as a subset of other criminal offenses. Nonetheless, Iranian courts, grounded in the principles of universality, territoriality, and personal jurisdiction as delineated in the aforementioned Articles of the Islamic Penal Code, do indeed possess the requisite authority to adjudicate piracy cases.
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Table of Contents

Introduction

1. Territorial Jurisdiction of Iranian Criminal Courts Against Piracy in the Islamic Penal Code of Iran
2. Personal Jurisdiction of Iranian Criminal Courts Against Piracy in the Islamic Penal Code of Iran
3. Universality Jurisdiction of Iranian Criminal Courts Against Piracy in the Islamic Penal Code of Iran

Conclusion

Introduction

Piracy has resurfaced in regions such as Somalia and the Gulf of Aden, highlighting a persistent issue that has never fully vanished from the international arena.¹ It is essential to recognize the significant distinctions between modern piracy and the definitions established by the 1958 High Seas Convention and the 1982 United Nations Convention on the Law of the Sea.

Modern piracy is characterized by illegal acts of violence occurring in areas beyond governmental jurisdiction, the types of vessels involved, and the motives behind these acts. For instance, in the Somalia and Gulf of Aden regions, piracy can sometimes occur without the use of violence, relying instead on the threat of violence, or may take place within inland waters and ports that fall under governmental jurisdiction. Furthermore, piracy manifests in various forms, including attacks on vessels from speedboats, as well as assaults on fishing and recreational boats, oil and chemical platforms, and tankers. A crucial distinction lies in the motives of the perpetrators, who may claim to act in the interest of alleviating poverty.²

Acts of violence occurring in areas beyond governmental jurisdictions, particularly involving vehicles that are subjected to piracy, distinguish contemporary piracy from its classical definition. Specifically, modern piracy in the regions of Somalia and the Gulf of Aden can occur without actual violence, relying instead on the threat of violence. Such acts may also take place in inland waters and ports, as well as within the jurisdictions of sovereign states. Additionally, piracy can manifest both on board vessels and via speedboats, targeting fishing and recreational boats, oil and chemical platforms, and tankers. A significant distinction lies in the motives attributed to these acts, where some claim to act in furtherance of humanitarian assistance to the impoverished.³

While numerous governments, in accordance with the High Seas Convention (1958) and the United Nations Convention on the Law of the Sea (1982), possess the authority to prosecute acts of piracy under principles of universal jurisdiction and common law, the practical exercise

1 John Mo, *Options to Combat Maritime Piracy in Southeast Asia Ocean Development and International Law* (2002) 83.

2 Gholamali Ghasemi and Mohammad Setayeshpur, 'International Community's Acts to Confront Modern Piracy', *Iranian Journal of International Politics* 2 (2019) 4-5.

3 Ibid.



of such jurisdiction remains limited. Concerning the Islamic Republic of Iran, as a signatory to the Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA), it bears responsibility to prosecute or extradite individuals accused of piracy.¹ Despite this obligation, Iranian naval forces have demonstrated reluctance to arrest suspected pirates, and due to jurisdictional limitations, Islamic Republic of Iran has been unable to prosecute those apprehended, resulting in their repatriation.²

Articles 3 to 9 of the Islamic Penal Code of Iran (adopted April 21, 2013) delineate four principles of jurisdiction: territorial, protective, active or passive personal jurisdiction, and universal jurisdiction. Of these, only protective jurisdiction is not applicable in the context of piracy. This study aims to examine the legislative approach of the Islamic Republic of Iran regarding the jurisdiction of its courts over piracy and to articulate existing legal frameworks aimed at combating impunity. Modern piracy represents a significant challenge to global stability, creating insecurity on international waterways and posing threats to states. It resembles traditional piracy but has evolved in form, diverging from classical definitions through variations in violence, scope, operational methods, and underlying motives. Currently, the jurisdiction over these offenses resides primarily with domestic courts. Despite concerted efforts by the international community to bring perpetrators to justice, success remains elusive within both governmental and international legal frameworks. The complex issue of jurisdiction presents considerable challenges for governments in legal proceedings. Nevertheless, following the enactment of various Security Council resolutions, universal jurisdiction has been interpreted in multiple ways. The Islamic Republic of Iran has adopted specific procedures addressing this matter, recognizing both universal and territorial jurisdiction, as well as personal jurisdiction, in its efforts to combat impunity related to modern piracy. This article explores these issues in detail.

1. Territorial Jurisdiction of Iranian Criminal Courts Against Piracy in the Islamic Penal Code of Iran

The principle of territorial jurisdiction is a foundational concept in criminal law that has been integral to the establishment of sovereign states.³ Article 3 of the Islamic Penal Code asserts that crimes committed within Iranian territory fall under Iranian jurisdiction. Notably, international law considers ships and aircraft, including Iranian military vessels, as extensions of Iranian territory.

According to Article 101 of the United Nations Convention on the Law of the Sea, also reiterated in the Convention on the Law of the Sea, piracy is defined as a crime that can occur on the high seas or in regions not under the jurisdiction of any state. Although Islamic Republic of Iran is not a member of these conventions, had it been, the nation would have been able to prosecute pirates attacking Iranian territory based on territorial jurisdiction and piracy charges. In the absence of such legislation, Iranian courts may resort to prosecuting pirates under alternative legal frameworks, such as theft or kidnapping, which do not carry the same international crime

1 Seyyed Sajjad Kazemi, 'In Search of Jurisdiction for Prosecution of Piracy off the Coast of Somalia and the Gulf of Aden', *Journal of International Police Studies* 32 (2017) 10.

2 Ali Khaleghi and Seyyed Sajjad Kazemi, 'An Analysis of the Jurisdiction of Iranian Courts in the Case of Piracy', *Quarterly Journal of Criminal Law and Criminology Studies* 3 (2015) 89.

3 Eugene Kotorovich, 'The Piracy Analogy: Modern Universal Jurisdictions, Hollow Foundation', *Harvard International Law Journal* (2004) 71.



characteristics, including enhanced penalties. Nevertheless, Iranian courts can address certain piracy-related offenses under the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, to which Islamic Republic of Iran is a party.¹

In accordance with international law, attacks on Iranian vessels in the high seas are viewed as incidents occurring within the jurisdiction of the country whose flag is flown.² Thus, the jurisdiction of Iranian courts to prosecute piracy against Iranian ships is firmly grounded in the principle of territorial jurisdiction.

2. Personal Jurisdiction of Iranian Criminal Courts Against Piracy in the Islamic Penal Code of Iran

Personal jurisdiction serves to complement the principle of territorial jurisdiction and can be categorized into two forms: the nationality principle and the passive personality principle.³

2.1. Active Personality Principle

Article 7 of the Islamic Penal Code states that any Iranian national who commits an offense abroad will be tried and punished under Iranian law upon their return to Islamic Republic of Iran, provided that: a) the act is criminalized under Iranian law; b) if the offense carries discretionary punishment, the accused has not been tried and acquitted, or if convicted, the sentence has not been fully enforced in the jurisdiction of the crime; and c) there are no legal grounds in Iranian law for a dismissal or cessation of prosecution.

Moreover, acquiring citizenship after the commission of a piracy offense, unlike in some countries such as France or Lebanon,⁴ does not extend jurisdiction to Iranian courts. However, Iranian courts retain the authority to address piracy accusations based on personal jurisdiction pertaining to the individual's nationality at the time of the offense.

2.2. Passive Personality Principle

The passive personality principle represents a significant addition to the Islamic Penal Code. Article 8 stipulates that any non-Iranian who commits an offense against an Iranian citizen or the state, and who is subsequently found or repatriated to Islamic Republic of Iran, will be prosecuted for their actions. This principle allows Iranian courts to exercise jurisdiction over perpetrators of piracy, especially given recent incidents where Iranian warships have apprehended pirate suspects while patrolling international waters. Due to the lack of jurisdiction to prosecute, these individuals were ultimately released off the coast of Somalia.⁵

3. Universality Jurisdiction of Iranian Criminal Courts Against Piracy in the Islamic Penal Code of Iran

The principle of universal jurisdiction permits any state to prosecute individuals for crimes that have not occurred within its territory, do not involve its nationals, and do not violate its vital

1 Khaleghi and Kazemi, Op. Cit. (2015) 78, 84.

2 Mohammad Reza Ziaei Bigdeli, *Public International Law* (Ganje Danesh Publication 2004) 181.

3 Donald Francis Donovan and Anthea Roberts, 'The Emerging Recognition of Universal Civil Jurisdiction', *American Journal of International Law* 1 (2006).

4 Javidzadeh A, *Jurisdiction of the Criminal Court in International Criminal Law*, Imam Sadeq University (1992).

5 Khaleghi and Kazemi, Op. Cit. (2015) 16.



interests.¹ This principle enables governments to exercise criminal jurisdiction over individuals who have committed offenses against international law, rendering traditional jurisdictional principles inapplicable.² This differs from international jurisdiction, which is granted to member states of an organization through the ratification of a statute to achieve specific organizational goals.³

In Iranian criminal law, universal jurisdiction is articulated in Article 9 of the Islamic Penal Code. This article states: "The perpetrator of offenses that, pursuant to special laws or treaties and international regulations, is to be tried in any country where he or she is found shall be tried and punished in accordance with the penal laws of the Islamic Republic of Iran, if found in Iran." The 1392 amendment to the Islamic Penal Code further expanded this article by including "regulations," thus incorporating customary law into the factors establishing jurisdiction for the courts of the Islamic Republic of Iran. However, two conditions must be met: first, the crime must be defined in a special law, treaty, or regulation, and second, it must be punishable under the laws of the Islamic Republic of Iran.⁴

Piracy is recognized as the foremost crime under customary international law that falls within the scope of universal jurisdiction. This customary rule gained traction with the ratification of the 1958 Convention on the High Seas and the 1982 Convention on the Law of the Sea. However, since the Islamic Republic of Iran has not acceded to these conventions, if the incorporation of international custom into domestic Iranian law is not acknowledged, Iranian courts may lack jurisdiction over piracy offenses.

Conclusion

The prosecution and trial of piracy suspects present significant legal challenges in addressing the ongoing crisis of piracy in international waters. Articles 3, 4, 7, 8, and 9 of the Islamic Penal Code clearly indicate that the Islamic Republic of Iran possesses substantial jurisdiction over individuals accused of modern piracy. Multiple forms of jurisdiction—universal, territorial, and personal—may apply, affirming that Iranian courts can adjudicate piracy cases within their jurisdiction.

Nonetheless, there remain critical legislative gaps that need to be addressed, particularly concerning the definitions of piracy and its associated penalties within the Islamic Penal Code, which have led to its classification as a lesser offense. While Iranian courts may have jurisdiction based on the principles of universality, territoriality, and personal jurisdiction, the lack of membership in the 1982 Law of the Sea Convention and the necessity for criminalization under Security Council resolutions underscores the need for a specific law addressing maritime piracy.

To effectively combat piracy and ensure the jurisdiction of Iranian courts, it is imperative

1 Devika Hovell, 'The Authority of Universal Jurisdiction', *European Journal of International Law* 2 (2018); Seyyed Yaser Ziaee and Saeed Hakimiha, 'Legal Conditions of Application of Universal Jurisdiction in International Law', *Journal of Public Law Research* 53 (2017) 114-115.

2 Theodor Meron, *Humanization of International Law* (The Hague Academy of International Law, Martinus Nijhoff Publisher 2006) 118.

3 J. Ashley Roach, 'Countering Piracy off Somalia: International Law and International Institutions', *American Journal of International Law* 3 (2010) 394.

4 Hojatollah Rezaei and Mohammad Ali Mahdavi Sabet, 'Origin and Legitimacy of Exercising the Principle of Universal Jurisdiction in National Courts to Prosecute International Crimes', *Journal of Criminal Law and Criminology* 17 (2021) 33.



for the Iranian legislator to enact comprehensive legislation that addresses the gaps and shortcomings in existing maritime piracy regulations. This will facilitate the establishment of full jurisdiction for Iranian judicial authorities over piracy cases in collaboration with other nations.





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