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ENFORCEMENT OF FOREIGN JUDGMENTS IN UAE - THE PRINCIPLE OF RECIPROCITY

In UAE, the enforcement of foreign judgments are governed by its statutory legal regime and the bilateral treaties and hence, the common law principles such as reciprocity did not play a vital role in the enforcement of foreign judgment. A decision of the English High Court in *Lenkor Energy Trading DMCC v Puri* brought a shift in the legal regime adopted by the UAE domestic courts. The decision reinforced the UAE Ministry of Justice to issue a Directive, confirming that the principle of reciprocity will be applicable in the absence of a treaty for mutual recognition of judgments, the

decision has established the enforcement of an English Court judgment in the UAE.

The criteria that must be satisfied for a foreign judgment or order to be enforceable in the UAE is laid down under Article 85 of the Implementing Regulations to the UAE Civil Procedure Code. Article 85(1) provides that in UAE, judgments and orders issued in a foreign state may only be enforced under similar conditions as those prescribed in the laws of foreign jurisdictions for the enforcement of judgments and orders issued in the UAE. Therefore, in the absence of a treaty for

enforcement, there is a need for reciprocity between the UAE and the state issuing the judgment in respect of which recognition and enforcement is sought. Accordingly, the courts in UAE will only enforce a foreign judgment or order where reciprocity exists between the UAE and the issuing jurisdiction.

Article 85(2) of the Cabinet Resolution lays down the conditions for the enforcement of foreign judgments. In particular, Article 85(2) of the Cabinet Resolution provides, amongst other things, that: a) the foreign judgment and/or order being enforced must have been issued



**THOUGHT
for
the MONTH**

There is only one thing that
makes a dream impossible
to achieve: the fear of
failure

PAULO COELHO

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- b) the parties to the foreign judgment and/or order had been required to appear before the relevant foreign court and were properly represented;
- c) the foreign judgment and/or the order being enforced does not conflict with

a judgment and/or order previously issued by the UAE Courts; and
 d) the foreign judgment and/or the order being enforced does not involve anything that violates public order or morality.

The Directive is a significant positive

development in the enforcement of English Court judgments in the UAE. Additionally, the Directive will likely increase the confidence of parties agreeing to English Court jurisdiction clauses where their counterparty is located in the UAE or has assets in the UAE ■

DOES THE CURRENT MARITIME LAW EFFECTIVELY SAFEGUARD MARITIME SECURITY



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Safeguarding vessels in the Sea is one of the most tedious and challenging jobs for the Cost guards. For the smooth transportation of a vessel from one place to another, every vessel has to abide by specific protocols. A vessel carrying a cargo supply may fall prey to Pirates, or the vessel itself can perform many other illegal activities such as smuggling, human trafficking, unreported fishing and Unauthorized Broadcasting from the High Seas. Such Crimes will significantly impact Maritime Security, and it might leave a question in the minds of common people as to

whether the existing maritime laws are sufficient to safeguard Maritime Security. This Article talks about Maritime Crime, Piracy, and the corresponding laws to curb increasing rates of such Crimes. Further, the Article also talks about How Piracy is addressed in the United Nations Convention on the Law of Sea (UNCLOS), 1982.

In order to protect and safeguard vessels from such crimes and to maintain maritime security, the International Maritime Organization (IMO) has formed the Maritime Safety Committee (MSC). The MSC deals with all matters related to maritime

safety and maritime security, which fall within the scope of IMO, covering both passenger ships and all kinds of cargo ships. This includes updating the SOLAS Convention and related codes, such as those covering dangerous goods, life-saving appliances and fire safety systems.

The MSC also deals with human element issues, including amendments to the STCW Convention on the training and certification of seafarers. The MSC has a wide range of issues on its current agenda, including goal-based standards, autonomous vessels, piracy, and armed robbery against ships, cyber security, e-navigation, and the modernization of the Global Maritime Distress and Safety System (GMDSS). This committee also provides various guidelines for dealing with the threat along with other committees like the Facilitation and Legal Committee.

The UNCLOS piracy “scheme” is found primarily in Articles 100-107 and Article 110. Article 101, which is covered in more detail below; defines the maritime crime of piracy as follows “The term Piracy means any illegal act either

by the master, officer, or crewmembers of the ship on board with the intent to loot the cargo or the passengers on board the vessel or to fulfil some other personal demands.” Along with Article 110, Articles 102- 107 of UNCLOS sets out the definitions, powers, and authorizations associated with the general obligation in Article 100 and with the specific definition of the maritime crime of piracy set out in Article 101.

The essence of Article 102 is that a sovereign immune vessel, such as a warship or other authorized maritime law enforcement vessel, by definition cannot commit an act of piracy. This is important because many maritime law enforcement acts undertaken by such authorized vessels, such as warning shots, boarding, search, and seizure, would, if carried out by a private vessel (and not for the purpose of self-defense), amount to piracy. However, because a State-authorized maritime law enforcement vessel is carrying out the will of its sovereign rather than taking action for private ends, it cannot be described as piratical, and its acts cannot be defined as piracy.

The only exception to this rule is the situation codified in Article 102, that is, where the crew of such an authorized vessel has mutinied and thereafter commits an act of piracy. If this is the case, the vessel is no longer a proper representative of its State and is then considered a "private" vessel and thus capable of committing piracy. Additionally, it must be remembered that if a private vessel may lawfully claim that it was acting in self-defense, its conduct is unlikely to amount to piracy.

Article 103 defines a Pirate vessel. The definition describes the types of vessels that are subject to Articles 104-106, which is a separate consideration from the Conduct described in Article 101. According to Article 103 of the UNCLOS a Pirate Ship may be defined as follows “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.” On analysing the above definition the following may be considered a Pirate vessel:

- a) A vessel in which pirates travel to a place to commit an act of piracy or in which pirates travel from a place where they have committed an act of piracy;
- b) A vessel in which people are traveling, where it is believed, on reasonable grounds, that the people in that vessel intend to commit an act of piracy; and
- c) Any vessel which pirates have already taken through an act of piracy and which they still control, generally by still being aboard that vessel. However, once a pirated vessel is no longer under the control of pirates, it ceases to be a pirate-controlled vessel subject to the right of visit under Article 110.

Article 104 states that it is a matter for flag States to decide whether a pirate vessel bearing that State’s flag loses that State’s nationality (and thus, in the normal course of events, that State’s protection). However, in reality, this provision neither assists nor hinders the maritime law enforcement agents of any State in their capacity to deal with the pirate vessel and the people on board. This is because, as Article 105 makes clear, any State may seize a pirate vessel and carry out legal processes with respect to that vessel in international waters, regardless of whether the law of the flag State of that pirate vessel indicates that such vessels retain that State’s nationality. Article 106 states that where any seizure of a vessel on suspicion of it being a pirate vessel is ultimately found to have been “without adequate grounds”, the flag State of the seized vessel may be able to claim compensation from the State of the nationality of the authorized vessel responsible for the seizure.

On analysing the aforesaid paragraphs, Articles 103- 106 define what constitutes a Pirate vessel and describe the actions which may be taken in relation to such vessels, in particular their liability to seizure. Article

107, on the other hand, defines the types of vessels that are permitted to take those seizure actions as laid down in Article 105. As noted previously, only appropriately authorized State vessels such as warships, coastguard cutters, and marine police vessels have the authority to seize pirate vessels. Authorized vessels are allowed to do so using the right of visit under Article 110. Article 107 does not preclude the detention of a pirate vessel by its intended victim in the exercise of self-defense, provided that the pirate vessel and those in it are handed over to an appropriate governmental authority at the first available opportunity.

Further, it is to be noted that UNCLOS is not the sole source of international law that "creates" the offense of piracy. For instance, piracy is also an offense under Article 15 of the Geneva Convention on the High Seas, 1958, nor is UNCLOS the sole source of international law regarding universal jurisdiction over piracy; customary international law includes the same rule. Piracy as a criminal offense subject to universal jurisdiction, or concurrently to all national jurisdictions, also exists in other customary and treaty-based international law. However, it is generally accepted that the definition of piracy provided in Article 101 reflects customary international law.

CONCLUSION

Crimes committed on high seas are difficult to track and solve, as there are no people or any such authority to witness the act, unlike those committed on land. The main reason piracy is the most committed crime on the high seas is because of the lack of proper implementation of laws in such areas. Even the pirates choose such sea routes that are not guarded efficiently. These sea courses are used as a common route for the supply of cargo and essential materials. Even today, 90% of the export-imports of goods are done through sea routes. Thus there is a requirement for more effective implementation of the existing Maritime Laws to curb the issue of Piracy ■



Adv. Joy Thattil, presenting a paper, at the Seminar conducted by Hinode Maritime, in New Delhi on 20th January 2023.



Dubai Shipping Agents Association (DSAA) Committee Members, taken out at the Gala Dinner, held at PARK HYATT Ballroom, Dubai Creek Golf & Yacht Club, on 12th of January 2023



HOT NEWS

INDIAN GOVERNMENT PLANS STRICT AGE RESTRICTIONS ON CARGO VESSELS

India's government is preparing to impose a remarkable set of vessel age restrictions on all ships handling Indian cargo, according to The Economic Times.

The restrictions would prevent Indian owners from buying and registering any ship over 20 years of age and would require deregistration after 25 years. Passenger vessels would be exempt.

Similar restrictions would be applied to foreign-flag tonnage when engaged in handling "EXIM/coastal cargo" at Indian ports or providing maritime services in the Indian EEZ. In addition, any foreign ship competing for Indian cargo would have to be less than 20 years old.

The impact on Indian ship-owners remains to be calculated.



By way of comparison, if a 25-year hard limit were applied to the U.S. coastwise merchant fleet, it would be reduced in size by one quarter.

The new rules appear to be aimed at an unwanted practice in Indian government-subsidized shipping, according to the Economic Times.

Indian-flagged vessels are eligible for a subsidy of 5-15 percent on top of their charter rates when they move cargoes for India's state-owned enterprises. Charterers have reportedly favoured cheaper, older tonnage to compete for these subsidies, leading to a reduction in average vessel quality

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