Role of courts in harmonizing international and domestic legal frameworks on piracy

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Abstract:

The study seeks to investigate the role of courts in harmonizing international and municipal laws on piracy. The study appreciates that piracy is an international crime and has become endemic off the coast of Somalia calling for concerted efforts to curb the vice. It proceeds on the premise that at least for the time being, the international community must rely on national courts to prosecute modern day pirates. The objective of the study is to investigate the international and domestic legal regime on piracy and examine the role of court in harmonizing the two. The study uses dualism theory which represents the world view that international and domestic law are separate legal orders needing to be transformed into domestic law by legal acts of states. The methodology of the study entails both primary and secondary data sources. The primary sources are content analysis of court decisions issued in various jurisdictions handling piracy cases focusing on the United States, the Netherlands, Seychelles and Kenya. The study finds that courts have a significant role to play in determination of piracy cases since they are the ones which address common questions of international law regarding the exercise of universal jurisdiction and the elements of the crime of piracy. The study establishes that courts through case law influence existing hard law regulations and its interpretation. It however notes that the courts are yet to achieve the necessary consistency in resolving key issues of international law in these cases. In this regard, the study finds that in applying universal jurisdiction in such cases such as piracy, judges should be guided by international law in so far as the same does not conflict with domestic law of the forum state. It further demonstrates that the decisions by the courts do not address the root causes of piracy and argues that if the menace of piracy is to be comprehensively addressed, such root causes need to be addressed.