Piracy, Law of the Sea, and Use of Force: Developments off the Coast of Somalia

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Abstract

Attacks against ships off the coast of Somalia have brought piracy to the forefront of international attention, including that of the Security Council. SC Resolution 1816 of 2008 and others broaden the scope of the existing narrow international law rules on piracy, especially authorizing certain states to enter the Somali territorial waters in a manner consistent with action permitted on the high seas. SC resolutions are framed very cautiously and, in particular, note that they ‘shall not be considered as establishing customary law’. They are adopted on the basis of the Somali Transitional Government's (TFG) authorization. Although such authorization seems unnecessary for resolutions adopted under Chapter VII, there are various reasons for this, among which to avoid discussions concerning the width of the Somali territorial sea. Seizing states are reluctant to exercise the powers on captured pirates granted by UNCLOS and SC resolutions. Their main concern is the human rights of the captured individuals. Agreements with Kenya by the USA, the UK, and the EC seek to ensure respect for the human rights of these individuals surrendered to Kenya for prosecution. Action against pirates in many cases involves the use of force. Practice shows that the navies involved limit such use to self-defence. Use of force against pirates off the coast of Somalia seems authorized as an exception to the exclusive rights of the flag state, with the limitation that it be reasonable and necessary and that the human rights of the persons involved are safeguarded.

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