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*LKI Explainers* examine an aspect of Sri Lanka's international relations.

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## Maritime Piracy

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LKI Explainers examine an agreement or another aspect of Sri Lanka's international relations. They summarise key points and developments, with up-to-date information, facts, and figures.

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## **Abbreviations**

UNCLOS	United Nations Convention on the Law of the Sea
SUA	Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation
UNODC	United Nations Office on Drugs and Crime
MDA	Maritime Domain Awareness
IORA	Indian Ocean Rim Association

This LKI Explainer examines key aspects of maritime piracy. It will also consider options for Sri Lanka to further develop maritime security cooperation at the regional level, to combat piracy.

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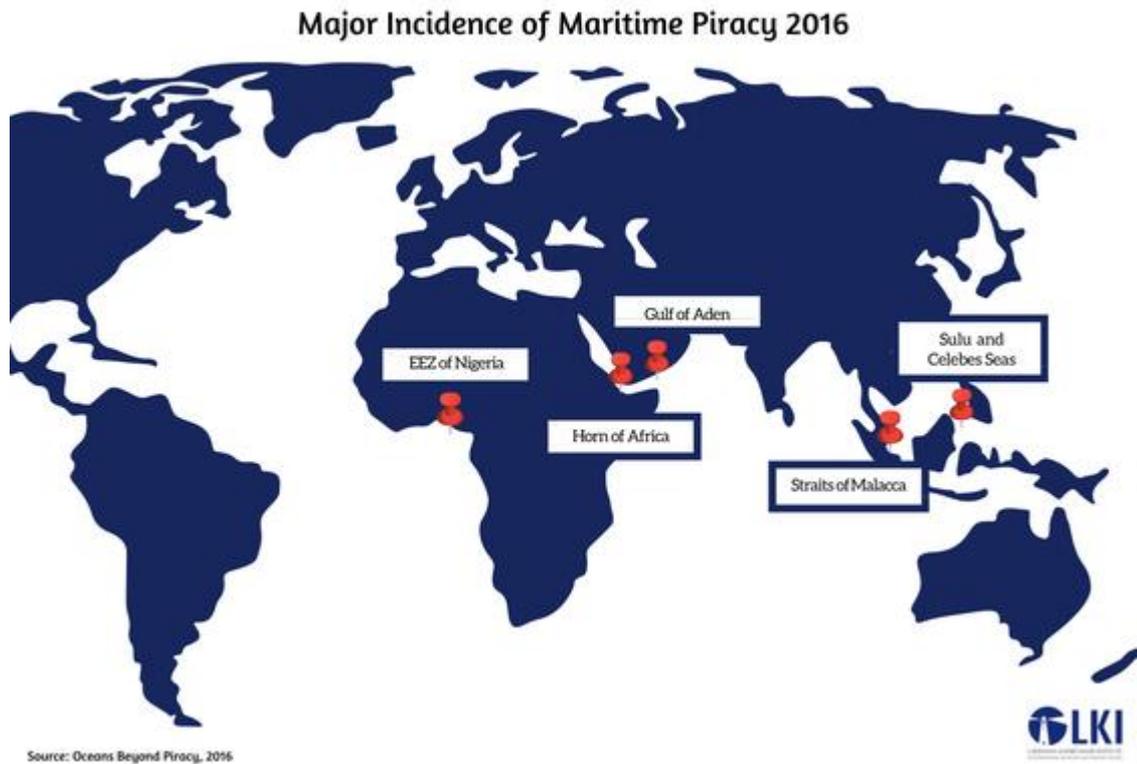
## 1. What is Maritime Piracy?

- The legal definition of piracy can be found in [Article 101](#)<sup>1</sup> of the United Nations Convention on the Law of the Sea (UNCLOS). It states that piracy consists of ‘any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft ... on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft.’
- However, the limitation of the UNCLOS definition, of piracy to the “high seas,” i.e. international waters beyond the territorial waters of a state, does not allow for a more flexible and holistic approach towards the problem, given that most piracy [does not occur](#)<sup>2</sup> on the high seas.
- The [1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation](#)<sup>3</sup> (SUA Convention) expanded the recognised geographical scope of piracy to a state’s territorial waters. States can choose whether to apply UNCLOS or the SUA Convention in prosecuting piracy.

## 2. Current Trends

- The incidence of modern maritime piracy reached its highest levels [around 2010/2011](#).<sup>4</sup> Although it has since declined, it remains a major security threat.
- Piracy has recently been concentrated in East Africa, particularly around the Horn of Africa/Gulf of Aden. Rigorous anti-piracy action has led to a relative [decline in that region](#)<sup>5</sup> but at the same time, there has been an upsurge in piracy in West Africa.
  - In 2016, there were [95 piracy incidents](#)<sup>6</sup> in West Africa, up from 54 in 2015.
  - In West Africa, piracy involving kidnap and ransom increased by [nearly one-third](#)<sup>7</sup> from 2015 to 2016.
  - Oil tankers were the targets of pirates in [nearly 40%](#)<sup>8</sup> of the incidents.
  - Unlike in the Gulf of Aden, the majority of incidents in West Africa involved [armed pirates](#).<sup>9</sup> This indicates that they are better funded and organised than their Somali counterparts in East Africa.
- Piracy in Southeast Asia, meanwhile, has decreased significantly since 2015 due to increased patrolling and regional coordination.
  - Nevertheless, Southeast Asia had the [highest recorded number of incidents](#)<sup>10</sup> (129) of piracy in 2016 compared to all other regions.

- Unlike in West Africa, most of the ships targeted by the Southeast Asian pirates were [bulk carriers \(43\)](#),<sup>11</sup> only about half as many [tankers \(23\)](#)<sup>12</sup> were targeted.



- While many factors explain the high incidence of piracy around the world, two major causes are poor environmental practices and weak governance.
  - Unsustainable use of resources, [particularly over-fishing](#)<sup>13</sup> has deprived many coastal communities in piracy-prone regions of their traditional livelihoods, for example, in Somalia, [dumping of toxic chemicals](#)<sup>14</sup> in the ocean has further contributed to the depletion of fish stocks.
  - Many of the countries where pirates operate suffer from serious governance issues. Some (like Somalia) [lack a properly functioning government](#),<sup>15</sup> whereas others (like Nigeria) suffer from [widespread and ingrained corruption](#),<sup>16</sup> and still others (like the Philippines) are challenged by [militant separatist movements](#).<sup>17</sup>

### 3. Responses to Maritime Piracy

- There are two major ways of dealing with piracy: legal measures and security measures. Legal measures mostly focus on prosecution of piracy, i.e. what states do once they identify a pirate threat, while security measures focus on deterrence, i.e. monitoring and preventing individuals and communities from resorting to piracy.
- The UNCLOS treaty provides the legal framework for prosecuting piracy.
  - [Article 105](#) of UNCLOS declares that states have universal jurisdiction on the high seas to seize a ship under the control of pirates, arrest the persons on board, and seize

any property on board as well. Any persons arrested in such a manner would have to be tried under the laws of the country that makes the seizure.<sup>18</sup>

- [Article 111](#) also gives states a right of “hot pursuit,” i.e. their vessels can pursue a ship engaging in illegal activity (such as piracy) in their territorial waters into the high seas. They must cease once the pursued ship enters the territorial waters of another state.<sup>19</sup>
  - Nevertheless, a series of United Nations Security Council resolutions in 2008 against Somali piracy (beginning with [Resolution 1816](#))<sup>20</sup> seemed to allow ships pursuing pirate ships to enter Somali territorial waters.
  - This right was intended to be specific to the Somali case and therefore not a basis for customary international law.
- Many navies face practical problems of how to prosecute pirates captured on the high seas, who cannot be easily transferred to their home jurisdictions.
  - To assist with this issue, the United Nations Office on Drugs and Crime (UNODC) developed a ‘[piracy prosecution model](#).’<sup>21</sup> Under this model, states bordering piracy hotspots set up transfer agreements with international anti-piracy taskforces operating in the region, to prosecute apprehended pirates apprehended by the taskforces.
- While such legal measures are important, cooperative security measures have been the primary driver of the decline in piracy in recent years.
- [Anti-piracy operations in the Gulf of Aden](#)<sup>22</sup> feature international naval task forces that patrol and escort merchant vessels, and seize any suspected pirate vessels. These include:
  - [Combined Task Force 150](#), which operates broadly under the USA’s Operation Enduring Freedom (14-15 ships);<sup>23</sup>
  - [Combined Task Force 151](#), set up specifically for anti-piracy operations in 2009 (six ships);<sup>24</sup> and
  - [Operation Atalanta](#), operated by the EU (European Union) Naval Force (3-4 ships).<sup>25</sup>
- Anti-piracy operations are also present in Southeast Asia.
  - Indonesia, Malaysia, and the Philippines recently launched [joint naval patrols](#).<sup>26</sup>
  - Prior to this, Singapore, Malaysia, and Indonesia participated in the [Malacca Straits Patrols programme](#), which consisted of sea patrols, aerial patrols, and an intelligence exchange group.<sup>27</sup>
- Besides patrolling, countries are also combating piracy by strengthening their Maritime Domain Awareness (MDA).
  - MDA is defined by the [International Maritime Organisation](#) as ‘the effective understanding of any activity associated with the maritime environment that could impact security, safety, economy, or environment.’<sup>28</sup>
  - This can be achieved through activities like patrolling, but also through radar, satellites, drones, buoys, and other forms of surveillance equipment.
  - For MDA to be effective across a greater geographical area, countries must cooperate in sharing information. Sri Lanka, India, and the Maldives have signed a [trilateral](#)

[maritime security agreement](#) that prioritises the enhancing of MDA.<sup>29</sup> In the broader Indian Ocean region, the Indian Ocean Rim Association (IORA) recently released an [action plan](#) that proposes to build a ‘regional surveillance network ... including sharing of data on maritime transportation systems.’<sup>30</sup>

- Besides such national and international measures, the pirate threat has also prompted merchant vessels to hire private security teams to protect their vessels.
  - The cost of such contracted maritime security was the largest component of total costs of piracy in both [East](#)<sup>31</sup> and [West Africa](#)<sup>32</sup> in 2016. For example, in East Africa, [USD 726.1 million](#)<sup>33</sup> was spent on contracted maritime security compared to [USD 228.4 million](#)<sup>34</sup> respectively, on Navy security.

#### 4. Opportunities for Sri Lanka

- Sri Lanka is currently part of several key regional initiatives to combat piracy, including the Regional Cooperation Agreement on Combatting Piracy and Armed Robbery against Ships in Asia (ReCAAP) and IORA.
- There is potential for Sri Lanka’s contribution to increase in the following ways:
  - Sri Lanka could leverage its position as [Lead Coordinator](#)<sup>35</sup> of IORA’s Working Group on Maritime Safety and Security to promote regional anti-piracy measures already included in the IORA Action Plan, such as the regional MDA surveillance network.
  - Sri Lanka could advocate to strengthen [the trilateral agreement with India and the Maldives](#)<sup>36</sup> to include activities such as joint patrolling.
  - Sri Lanka could also coordinate with the [South Asian Regional Intelligence Coordination Centre](#)<sup>37</sup> set up by the UNODC [in Sri Lanka](#)<sup>38</sup> to promote its ‘piracy prosecution model’ within the region.
  - Sri Lanka [locally constructs the ‘Arrow’ class patrol boats](#),<sup>39</sup> which proved very effective [in battles](#)<sup>40</sup> against the naval wing of the Tamil Tigers during the country’s civil war. Having already sold [nine such vessels](#)<sup>41</sup> to Nigeria, it could seek to export more to other states, and also share its [know-how and experience](#)<sup>42</sup> in small boat operations with other regional navies.
  - In addition, Sri Lanka should look to [promote public-private partnerships](#)<sup>43</sup> to position itself as a logistical hub for maritime security.
  - Finally, Sri Lanka could provide [sea marshal](#)<sup>44</sup> (armed law enforcement officers who escort vessels to guard against piracy) services to commercial vessels transiting through its waters.

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