

*Hostis humani generis***Text from Wikipedia Article, captured August 19, 2017**

International waters (also called “the high seas”) have their own customs and usage, rules and articles, and laws. Unlike the case with land, above the high-tide mark, where title, ownership, and sovereignty are created by law based around use and possession, no nation may claim as its territory the high seas, for continuous use and possession of them is impossible; as such, no nation may thus forbid trespass through the high seas. The high seas, since they cannot be owned by anyone, are held to belong to all humanity, and every nation is held to have a separate and equal right to have its ships navigate over them; this is the concept of *mare liberum*, or the freedom of the seas. As the sea is the common property of all, the perils of the sea and of navigation are shared by all mariners, and all nations. A law of amity and reciprocity holds among the seafaring powers, especially in regard to matters related to the protection of life and to a lesser extent, property; for instance, the law stipulates the obligation of every mariner to assist those who are shipwrecked, and the obligation of every harbormaster to provide safe harbor to any vessel in need during a storm, regardless of the flag it flies.

Perhaps the oldest of the laws of the sea is the prohibition of piracy, as the peril of being set upon by pirates, who are not motivated by national allegiance, is shared by the vessels and mariners of all nations, and thus represents a crime upon all nations. Since the time of the Ancient Romans, pirates have been held to be individuals waging private warfare, a private campaign of sack and pillage, against not only their victims, but against all nations, and thus, pirates hold the peculiar status of being regarded as “hostis humani generis,” the enemies of humanity. Since piracy anywhere is a peril to every mariner and ship everywhere, it is held to be the universal right and the universal duty of all nations, regardless of whether their ships have been beset by the particular band of pirates in question, to capture, try by a regularly constituted court-martial or admiralty court (in extreme circumstances, by means of a drumhead court-martial convened by the officers of the capturing ship), and, if found guilty, to execute the pirate via means of hanging from the yard-arm of the capturing ship, an authoritative Custom of the Sea.

Although summary battlefield punishment was conducted by certain nations at certain times with regard to pirates, it was regarded as irregular (but lawful if the attenuation of due process was dictated by urgent military necessity), as individuals captured with pirates could potentially have a defense to charges of piracy, such as coercion. For instance, in early 1831, the 250-strong crew captured off Ascension was brought to Ascension and summarily hanged, as they were acting in a rebellious manner and threatening to overthrow the 30-man crew of HMS *Falcon*, a British sloop-of-war, which took them captive. As the summary punishment in this case was due to military necessity, there was clear evidence of the offense, and it was done proximate in time and location to the battlefield, it can be classified as merely irregular, and not a violation of the custom of the sea.

In more recent times, much of the customary law of the sea has been codified. Piracy is the broadest exception to the principle that a ship on the high seas is subject to the protection of, and jurisdiction of, its flag state. Piracy is considered an offense of universal jurisdiction, such that any state may board and seize a ship engaged in piracy, and any state may try a pirate and impose punitive sanctions in accordance with that state’s own laws. Piracy is defined in Article 101 of the 1982 Convention on the Law of the Sea, and the 1958 Convention on the High Seas also regulates this exercise of jurisdiction.

The tradition of classing the pirate as “hostis humani generis” has been expanded to one other particular class of seafaring criminal, that of the slaver, who, by trafficking in human flesh upon the high seas, is similarly held to be in a state of war against all humanity. These treaties, as well as the customary international law, allow states to act similarly against slavers.

Although the tradition of privateering has been in decline over the past several centuries and international treaties are held to have abolished it, privateering, or the use of private ships as raiders of commerce of the enemies of the sovereign whose flag the privateer flies, is not considered piracy but warfare against a particular national enemy, and thus does not represent a crime against the customary international law, provided those involved adhere to the law of naval warfare.