

The alleged seizure of the *El Hiblu 1* by rescued migrants

Not a case of piracy under the law of the sea

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On 28 March 2019, a Maltese patrol vessel [intercepted](#) the Palau-flagged tanker vessel *El Hiblu 1* ([IMO: 9753258](#)) at the outer limit of Malta's territorial sea, and the ship was subsequently boarded and secured by a Maltese special operations team using a helicopter. The reason for this operation was that the *El Hiblu 1* had allegedly been hijacked by members of a group of migrants it had rescued earlier, and that these migrants had forced the crew to steer the vessel towards Europe. It appears that no one was injured prior or during the operation. Afterwards, the *El Hiblu 1* was brought to the [port of Valletta](#). Reportedly, Maltese authorities [have now charged](#) three teenage migrants from Guinea and Côte d'Ivoire with "terrorist activities".

Italian Interior Minister Matteo Salvini was [quick to allege](#) that the incident constituted "the first act of piracy on the high seas with migrants." Equally, Maltese authorities reportedly at one point spoke of a "[pirated ship](#)" and so did the master of *El Hiblu 1* according to his [own account](#). The purpose of this post is to clarify that, based on the reported facts, the seizure *El Hiblu 1* is not a case of piracy under the international law of the sea. Importantly, this post does not argue that no criminal conduct, for example under the law of the flag State, has taken place on the *El Hiblu 1*. Rather it shows that the incident does not provide Malta – or any other interested State – with universal jurisdiction under Article 105 of the 1982 United Nations Convention on the Law of the Sea ([UNCLOS](#)) to try the persons involved for acts committed in relation to the incident.

Background: The *El Hiblu 1* Incident

On 27 March 2019, the *El Hiblu 1* [reportedly](#) rescued about 100 migrants off the coast of Libya. Prior to the rescue operation, a European aircraft monitoring the area had spotted the migrant's two boats and asked the *El Hiblu 1* to rescue them. The vessel *Alan Kurdi*, operated by the German NGO Sea-Eye, was also in the area but not close enough to take over the rescue. Neither was, according to Sea-Eye, the Libyan coast guard able to undertake a rescue operation. After the rescue, the *El Hiblu 1* continued its journey towards its final destination Tripoli. It is unclear whether or not the Libyan Maritime Rescue Coordination Centre (MRCC) or the crew of the European aircraft asked the *El Hiblu 1* to remain on its previous course. In any case, when the *El Hiblu 1* had almost reached Tripolis, it suddenly changed course towards Malta and its master told the Maltese authorities that some of the rescuees had taken control of the vessel and that he and his crew were being threatened in case they did not take the rescuees to Europe. Soon after, the Maltese authorities intervened.

As some commentators have [noted](#), the operational history of the *El Hiblu 1*, including its departure from its previous area of operation in Turkish waters and its sudden change in ownership and flag (from Turkey to Palau) just prior to the incident appears to be rather unusual, if not suspicious – and similarities to previous incidences of smuggling have been highlighted. So far, however, no further details are available.

The definition of piracy under Article 101 of UNCLOS

For the purposes of the international law of the sea, piracy is defined in Article 101 of [UNCLOS](#). The definition contains several elements, at least two of which are not fulfilled in the case of the *El Hiblu 1*. In relevant part, piracy is defined as “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, and directed [...] on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft” (Article 101(a)(i) of UNCLOS).

If the media reports turn out to be correct, and the crew and master of the *El Hiblu 1* have indeed been coerced into changing course with threats of violence (note that Maltese authorities have indicated that there might be [doubts as to the master’s version of events](#)), the first part of the definition would be fulfilled. Such conduct would qualify as “illegal acts of violence or detention, or any act of depredation”. Under a broad definition of “private ends”, these acts could arguably also be considered as having been “committed for private ends”, namely, to take control of a vessel and to force this vessel to take the perpetrators to a destination of their choice. However, the correct interpretation of the “private ends” criterion remains [heavily disputed](#), and even in cases of terrorism its application has been cast into doubt due to its political rather than private motivation. The infamous [Achille Lauro incident of 1985](#), in which an Italian-flagged cruise ship was seized in the Mediterranean by members of the Palestine Liberation Front (PLF) posing as tourists, is an example on point. In this respect, the case of the *El Hiblu 1* provides food for thought due to the motives of the alleged hijackers.

In any case, the seizure of the *El Hiblu 1* clearly does not fulfill two further requirements of Article 101(a)(i) of UNCLOS. First, the piratical acts must have been committed “on the high seas” (or in the Exclusive Economic Zone of a coastal State, see Article 58(2) of UNCLOS). Yet, when the *El Hiblu 1* abruptly changed course, it was reportedly located about 6 nautical miles off the Libyan coast and thus [within the Libyan territorial sea](#). Therefore, the seizure of the *El Hiblu 1* was not piracy. It could more accurately be called an “armed robbery at sea” (despite the absence of any weapons on board the *El Hiblu 1*), which is not a legal term of art, but a term that is commonly used for “piratical acts” that take place in the territorial sea of a coastal State. Such crime is not subject to universal jurisdiction under Article 105 of UNCLOS, but falls within the criminal jurisdiction of the coastal State in whose territorial sea it occurred – which is in this case Libya. In principle, the perpetrators are also subject to the [parallel criminal jurisdiction](#) of the flag State (in this case Palau or, if online information on the change of flag is incorrect, Turkey) and their State of nationality (Guinea or Côte d’Ivoire).

Second, Article 101(a)(i) of UNCLOS requires that the piratical acts are directed “against another ship or aircraft, or against persons or property on board such ship or aircraft”. Due to this requirement, a vessel hijacking by persons already on board of the ship, such as passengers or crew members in case of a mutiny (cf. Article 102 of UNCLOS) is not considered piracy even if it takes place on the high seas. Instead, such incidents are subject to the criminal jurisdiction of the flag State (and the parallel criminal jurisdiction of the State of nationality). For example, there is widespread agreement that the “other ship requirement” was not fulfilled in the *Achille Lauro* incident mentioned above, since the PLF hijackers had already been on board the vessel.

Conclusion

In conclusion, and contrary to some statements issued in the course of events, the *El Hiblu 1* incident is not a case of piracy under the international law of the sea. Accordingly, it was correct of the Maltese authorities to wait for the *El Hiblu 1* to reach the Maltese territorial sea before intercepting and boarding the vessel (see also Article 6(1)(b) of the [SUA Convention](#)). They would not have been permitted to board the *El Hiblu 1* on the high seas without the permission of its master or the flag State. The Maltese authorities also correctly did not choose to charge the alleged hijackers with piracy-related offences (Article 328N of the [Maltese Criminal Code](#)). Instead, it appears that they have been charged with “terrorist activity”, which includes “the unlawful seizure or the exercise of control over a ship [...] by the use of force or threat thereof, or by any other form of intimidation (Article 328A of the [Maltese Criminal Code](#); cf. Article 3(1)(a) of the SUA Convention). The merits of these charges are for Maltese criminal lawyers to judge, but at first glance it would seem unusual to bring terrorism-related charges against persons resorting to intimidation presumably in order to avoid serious harm of their own.

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