

MARITIME PIRACY AND TERRORISM EMERGENCE AS LEGAL CATEGORIES

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This paper explores the emergence of maritime piracy and terrorism as significant legal categories within international law and domestic legal frameworks. Historically viewed as acts of lawlessness on the high seas, maritime piracy has evolved into a complex issue that necessitates comprehensive legal responses. At the same time, maritime terrorism has surfaced as a contemporary threat to global maritime security, closely intertwined with broader discussions of terrorism in international relations. The analysis begins with a historical overview of piracy, tracing its evolution from ancient practices to modern challenges. Key legislative efforts, including the United Nations Convention on the Law of the Sea (UNCLOS) and regional treaties, are highlighted as critical measures aimed at combating piracy. The paper examines how traditional definitions of piracy have adapted to encompass contemporary acts, reflecting significant changes in maritime operations, technology, and geopolitical contexts. The rise of terrorism in maritime settings is analyzed, focusing on high-profile incidents such as the 2000 USS Cole bombing and various cruise ship hijackings. The legal systems' challenges in addressing acts of maritime terrorism are emphasized, particularly given their dual nature as both criminal acts and threats to national and international security. The paper evaluates the legal frameworks that govern maritime piracy and terrorism, discussing international conventions, customary international law, and national legislation. A critical analysis of enforcement mechanisms reveals notable gaps and inconsistencies in legal approaches, particularly concerning jurisdiction, prosecution, and the treatment of suspected pirates and terrorists. The role of international cooperation is underscored, emphasizing the necessity of collaborative efforts between states and maritime organizations to effectively combat these phenomena. The impact of piracy and terrorism on maritime trade, security, and international relations is explored. By addressing the legal intricacies and socio-political dimensions of maritime piracy and terrorism, this study aims to contribute meaningfully to ongoing discourse on global maritime security and the role of law in mitigating these threats.

Key words: Maritime Piracy, Maritime Terrorism, International Law, Legal Frameworks, UNCLOS, Jurisdiction, Global Security, Maritime Trade, Socio-Economic Factors, International Cooperation.

Осадца Роман. Виникнення морського піратства та тероризму як правових категорій

Стаття досліджує виникнення морського піратства та тероризму як значущих правових категорій у рамках міжнародного права та національних правових систем. Історично розглянуте як акти беззаконня на морських просторах, морське піратство перетворилося на складну проблему, що потребує комплексних правових відповідей. Одночасно морський тероризм став сучасною загрозою для глобальної морської безпеки, тісно переплітаючись із більш широкими обговореннями тероризму в міжнародних відносинах. Аналіз починається з історичного огляду піратства, відстежуючи його еволюцію від давніх практик до сучасних викликів. Основні законодавчі зусилля, включно з Конвенцією Організації Об'єднаних Націй з морського права та регіональними угодами, висвітлюються як критичні заходи, спрямовані на боротьбу з піратством. У статті розглядається, як традиційні визначення піратства адаптувалися, щоб охопити сучасні акти, відображаючи значні зміни в морських операціях, технологіях і геополітичних контекстах. Після встановлення історичного контексту обгово-

рення переходить до морського тероризму. У статті розглядаються особливості, що відрізняють морський тероризм від піратства. Аналізується зростання тероризму в морських умовах, зосереджено увагу на резонансних інцидентах, як-от теракт на USS Cole у 2000 році та захоплення круїзних суден. Підкреслюється, з якими викликами стикаються правові системи в боротьбі з актами морського тероризму, з урахуванням їхнього подвійного характеру як кримінальних дій і загроз національній і міжнародній безпеці. Стаття оцінює правові рамки, що регулюють морське піратство та тероризм, обговорюючи міжнародні конвенції, міжнародне право й національне законодавство. Критичний аналіз механізмів виконання виявляє суттєві прогалини та невідповідності в правових підходах, особливо щодо юрисдикції, переслідування та поводження з підозрюваними піратами й терористами. Акцентується роль міжнародної співпраці, що підкреслює необхідність спільних зусиль між державами та морськими організаціями для ефективної боротьби із цими явищами. У статті розглядається вплив піратства та тероризму на морську торгівлю, безпеку й міжнародні відносини. Ці загрози можуть дестабілізувати регіони та суттєво вплинути на глобальні економічні процеси. Соціально-економічні фактори, які сприяють відродженню піратства, як-от бідність, політична нестабільність та відсутність ефективного управління в прибережних районах, ретельно вивчаються, щоб забезпечити всебічне розуміння проблеми. Стаття пропонує рекомендації щодо вдосконалення правових рамок і кооперативних заходів для ефективної боротьби з морським піратством та тероризмом. Запропоновані вдосконалення передбачають встановлення чіткіших визначень у міжнародному праві, покращення підготовки правоохоронних органів і посилення механізмів обміну інформацією та нарощування спроможностей серед держав. Вирішуючи правові складнощі та соціально-політичні аспекти морського піратства й тероризму, це дослідження має на меті зробити суттєвий внесок у поточний дискурс про глобальну морську безпеку та роль права у зменшенні цих загроз. Виникнення морського піратства та тероризму як окремих правових категорій потребує багатогранного підходу, що поєднує історичні інсайти, правовий аналіз і практичні рекомендації. Цей підхід є важливим для забезпечення ефективного управління морською безпекою у XXI столітті.

Ключові слова: морське піратство, морський тероризм, міжнародне право, правові рамки, юрисдикція, глобальна безпека, морська торгівля, соціально-економічні фактори, міжнародна співпраця.

Shipping companies often operate vessels in the world ocean in gross technical rules violation of maritime safety and use vessels that are unseaworthy on international sea routes; there is a practice of impunity for persons guilty of piracy, hijacking and seizure of a sea vessel, the sea pollution and other offenses. Domestic laws adopted in accordance with maritime conventions do not always find practical implementation. The following domestic scientists were involved in the development of this problem: T.V. Averochkina, P.P. Andrushko, O.O. Balobanov, V.O. Glushkov, B.V. Demidenko, S.O. Dopilka, I.A. Dryshlyuk, I.I. Lukashuk.

The extreme danger of piracy was due to the fact that Roman law recognized pirates as "enemies of the human race" and that they "must be hanged by the first person in whose hands they fall". Such a phenomenon as piracy was considered a crime under common law. Until the second half of the 20th century, there was no multilateral international agreement in which states

would give a generally accepted definition of piracy and coordinate the fight against it. These issues were regulated mainly by the legislation of individual states and customary norms that had developed over the centuries [17].

The study of pirate attacks shows that pirates operate in large and small groups. They use small high-speed vessels, armed with knives and light firearms. They usually approach the vessel from the stern and use long grappling hooks to get on board. It should also be noted that piracy has always been directed against individuals and shipping in general. It is necessary to understand that almost all participants in maritime trade suffer from the actions of pirates – shippers and consignees – trading companies that own the transported goods; carriers – shipping companies that own the vessels; insurance companies that insure both the vessels and the cargo. Pirate actions undermine the prestige of sovereign states, complicate international relations, and create a threat to regional security.

The definition of the “piracy” concept is a complex and controversial issue. This is a purely methodological issue, since based on the accepted definition of this concept, its essence and internal structure, it will be possible to approach the definition and classification of threats, determine the security system, the place and role of special services in this system and formulate their tasks and functions related to the protection of the interests of states in the field of shipping.

The etymological concept of piracy comes from the Latin *piratia*, ancient Greek *peirateia* and Greek *peirates* [9]. Translated from English, piracy means robbery on the high seas. In the domestic dictionary of international maritime law, piracy is considered as sea robbery. The French encyclopedia of Paris characterizes piracy as “a crime committed at sea against a vessel, crew, or cargo.” It arose with the advent of merchant shipping [11], and as it expanded, it developed and changed, significantly complicating the situation at sea. It is known that in the area of the Chinese seas in 1949–1954, the Chiang Kai-shekites committed 110 pirate attacks on foreign merchant ships and Great Britain was forced to give the order to escort British merchant ships [15].

In generalized terms, “piracy” [14] should be understood as an unlawful act that is committed outside the jurisdiction of a State. Such a definition of piracy was given back in 1930 by the Harvard Research Center in the draft Convention on Combating Piracy, and the provisions of this draft were included in some articles of the 1958 Geneva Convention on the High Seas [16], the 1982 UN Convention on the Law of the Sea [17].

Under the concept of “piracy” was previously considered quite a significant range of unlawful acts at sea, but today the main qualifying feature of a pirate act is the commission of such an act, which “occurs for personal purposes”, that is, “without the intention to prove its right” [7]. The pirate himself is often spoken of as *hostis humani generis* – an enemy of the human race. As early as in 1668 the English merchant and diplomat A. Jenkinson confirmed that “all pirates and sea robbers are outside the law of all nations, that is, they are not subject to the protection of rulers and laws. Everyone should be authorized to fight them as

traitors in order to eradicate them” [3]. In the middle of the century, pirates and piracy were used by maritime powers in their own interests to fight the belligerent, and these actions were aimed at undermining the maritime and military power of the enemy [9].

From the point of view of the composition of the participants, modern pirates are divided into three groups. The first group includes small gangs that simply rob the crew and quickly hide. The second group includes gangs that not only rob the crew, but also seize the cargo of the ship. The third group consists of large gang organizations that seize not only the cargo, but also the ship itself, turning it into a “ghost ship”, which is then used to attack other ships and for other pirate activities.

Pirate groups of the first type are generally unorganized and attack ships only when they are docked or in port. They are primarily interested in the ship's safe, which usually contains substantial amounts of cash to pay port expenses and crew salaries. This type of robbery usually does not cause bodily harm to people and leaves the ship when it has achieved its goal. Pirate groups of the second type are more organized and are linked to criminal syndicates on land that help pirates sell captured cargo and produce false documents. Pirate groups of the third type are components of organized criminal groups. They are often run from a single center of such a criminal community. They are highly skilled robbers. Many of the ships they hijack are sold to developing countries. Tankers carrying fuel for ships are increasingly attracting the attention of pirates. In South-East Asia, where there is a large number of small ships and fishing boats in a vast area of water, there is always a ready market for fuel sold at a similar price.

Sea lane robbery occurs when a small ship with pirates approaches a large merchant or other ship with a crew and sometimes passengers; the pirates board the ship and, threatening its occupants, take away their personal valuables and money (this type of piracy is characteristic of the South China Sea). It is practiced mainly by poor coastal populations, who have long combined seafaring and fishing with sea robbery. It is not uncommon for inhabitants of remote islands to attack passing ships for food and

cigarettes that are otherwise unavailable to them.

Temporary hijacking involves the pirates taking control of a ship carrying the pirates' desired cargo. The pirates stop such a ship, arrest and isolate the crew. The pirates' vessel then approaches the hijacked ship and the goods are reloaded from the merchant ship onto the pirate vessel. After the pirates leave, the crew remains aboard their ship, but locked in some room [15]. A ship robbed by pirates remains unmoved and unsupervised.

If the pirates intend to steal both the cargo and the ship, they kill the crew, throw them overboard or put them on life rafts and send them out to the open sea. The ship is then repainted, renamed, its flag and home port are changed, after which it is sold on the black market. Usually such a ship is then used for other criminal activities, such as transporting illegal immigrants, weapons and drugs. Sometimes pirates offer a hijacked and renamed vessel for the transportation of perfectly legal cargo, which is then stolen by them and does not reach the port of destination. Large criminal syndicates are engaged in this type of criminal activity [13]. This type of piracy is most typical of the entire South-East Asian region, where at least five piracy syndicates operate.

An example of this piracy type is the hijacking of the tanker MT Global Mars in February 2000. The vessel had left the port of Klang in Malaysia and was bound for India with 6,000 tons of palm oil products on board. Near the coast of Thailand, the tanker was attacked by a group of pirates armed with swords and automatic rifles as it left the Strait of Malacca for the Andaman Sea. Eighteen members of the ship's crew were captured and put on a small fishing boat owned by the pirates, where they were held captive for 13 days before being allowed to sail with minimal food and water [12]. The pirates repainted the Global Mars, renaming it the "Belavan". The ship's flag was changed and it was provided with false documents. A few days later, the "Belavan" was found anchored off the coast of Southern China. About 3.5 thousand tons of cargo had disappeared.

It should be noted that the spread of modern high technology is contributing to the

growth of maritime piracy. The development of the Internet, mobile communications and other means of communication and information allows maritime robbers to easily obtain the necessary information concerning the schedule of the voyage, the nature of the cargo, the composition of the crew, which gives them the opportunity to carefully plan an attack and prepare for it well [4].

Nowadays, the damage caused by piracy has reached unprecedented levels. The media almost daily notify about pirate hijackings of ships and hostages. The attention of the world community has been drawn to the problem of maritime safety due to the increasing incidence of pirate activities in the Somali region. However, a few years ago it was impossible to imagine that this danger would affect the interests of Ukraine and CIS countries [5].

In general, a number of factors contribute to the incidence of piracy. Most pirate attacks take place in lightly patrolled straits or coastal waters where pirates can launch a quick surprise attack. One factor in States such as Angola, Somalia and Costa Rica, where piracy is prevalent, is their inability to provide jobs for their citizens. In addition, since 1991, Somalia has virtually no central authority, and the coast guard openly assists pirates. In the Philippines, the low salaries of naval officers influence the emergence of pirates. Modern maritime piracy is a business not only for pirates, but also sometimes for states. In China, maritime robbery is unofficially facilitated by state leaders interested in establishing their authority in disputed territories. In the mid-1990s, fishermen in Sierra Leone, Senegal, Guinea-Bissau, Guinea-Bissau, Portugal, South Korea and Spain repeatedly went on strike because of pirate attacks off the coast of that country.

The significant impact of piracy on commercial shipping and security in other areas is also evidenced by the fact that:

- crews of commercial vessels have refused to enter the Bangladeshi port of Chittagong unaccompanied by security forces, forcing the Bangladesh Navy and Coast Guard to introduce patrols in the port area;

- vessel traffic around the Indian port of Kolkata is restricted to daylight hours only due to pirate activity;

– in the Mediterranean Sea, the Greek Government had to introduce patrols of naval ships and boats around the island of Corfu in 1997 to protect tourism and fisheries from Albanian pirates;

– in the Caribbean, especially around Colombia and Venezuela, Nicaragua, Costa Rica and numerous islands, yacht and fishing boat owners have to take into account the huge impact of piracy.

Pirates are operating in Brazil with the almost total acquiescence of the authorities, who do not pay due attention to the problem of piracy. Their main area of operation is the port of Rio de Janeiro. Despite the estimated damage to the economy from pirates' activities of more than 200 million dollars a year, the Sri Lankan government has to put up with piracy because the country's navy, involved in an armed conflict with forces opposed to the government. It does not have the capability to fight pirates effectively [16].

In the Asia-Pacific region, piracy is also not uncommon, mainly in the areas of the Straits of Malacca and Singapore, where up to 600 cargo ships pass daily [7]. Indonesian piracy in modern conditions is even recognized as a separate subtype. It is characterized (unlike maritime robbery in Somalia) by the complete destruction of people on board hijacked ships, as the main target of pirates in this region is valuable cargo.

It is important to note that the practice and official statistics of the International Maritime Organization (IMO) show that piracy remains a serious problem. Pirate attacks and acts of robbery committed in the waters of the China Seas (52%), South America (15%), the Indian Ocean (11%), the Strait of Malacca (9%) and East Africa (8%) pose the greatest threat to ships. The majority of pirate attacks and maritime robbery occur in South-East Asia. Piracy has also increased in Brazilian waters. Cases of piracy in the Mediterranean and Black Seas have been recorded [6].

The International Maritime Bureau's (IMB) new annual report on piracy and armed robbery against ships was recently published. The report contains information and statistics for the period from January to December 2022. According to the Maritime Piracy Report 2022 [8], the level of maritime piracy in the world has fallen to its low-

est level in three decades, according to the International Maritime Bureau.

It should be noted that during the first five months of 2023, about 44 cases of piracy occurred in Asian waters. Only 29 incidents occurred in the Strait of Malacca and near Singapore [8].

In May 2023, 11 ships were attacked by pirates, according to the International Maritime Organization's (IMO) monthly piracy report for May. During May, the Strait of Malacca was a hotspot, with seven incidents recorded in the area. The IMO also notes that most pirate attacks were on bulk carriers. In total, pirates attacked five bulk carriers, two tugs and two tankers in May [8].

Unfortunately, it is impossible to obtain exact figures. Ship owners and crews often try to avoid lengthy investigation procedures in ports and for this reason conceal the facts of the attack, which remains a significant problem.

However, despite the lack of accurate statistics, there is a general trend of increasing piracy and robbery attacks on ships, which is determined by a number of factors, the main ones being economic, political, as well as the lack of an adequate legislative framework.

One of the most significant factors: it is considered a normal but illegal means of making money. Moreover, in some communities, piracy is the only means of survival.

Unlike land robbers, pirates attack in space outside territorial jurisdiction – the high seas, the coasts from the sea or the airspace above them.

The targets of pirates' attacks are ships or ports, after looting which they leave or attempt to escape back to the sea or the space above it. Pirates pursue "personal objectives", of which enrichment is the primary one, but they may also include revenge, spite, taking passengers and crew members as hostages to be exchanged for detained pirate gang members.

All of these characteristics have always been responsible for the fact that piracy affects all of humanity and jeopardizes the established international legal order. That is why piracy has always been recognized as a crime of an international character directed against the exercise of freedom of navigation as an integral part of the freedom of the high seas.

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