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Ivanova D. A., a post-graduate student of
the Maritime and Custom Law Department
National University "OAL"

Piracy is not a Historical Memory, but is a Fact that Flourishing

The article highlights one of the global problem such as piracy, which we face very often these days in many different parts of the world and the weaknesses in its legal regulation.

Keywords: piracy, international law, the United Nations Convention on the Law of the Sea.

Стаття присвячена висвітленню однієї з глобальних проблем таких як піратство, з якою ми зустрічаємось з кожним днем дуже часто у різних частинах світу та недолікам у його правовому регулюванні.

Ключові слова: піратство, міжнародне право, Конвенція Організації Об'єднаних Націй з морського права.

Статья посвящена освещению одной из глобальных проблем таких как пиратство, с которой мы сталкиваемся с каждым днем все чаще в разных частях мира, а также недостаткам в его правом регулировании.

Ключевые слова: пиратство, международное право, Конвенция Организации Объединенных Наций по морскому праву.

Relevance of the topic. Among the relevant problems, which are before the word community and demand immediate settlement, an important place belongs to maritime security.

Maritime security is a section with many dimensions, which occupied the mankind for centuries, something that is confirmed and by historical information. The main reason is the fact that older as also today the majority the global transportations are taking place via the sea. One of the most important aspects of maritime security is maritime piracy. Maritime piracy after two centuries of continuous contraction outlines in recent years a worrying increase in various parts of the world, increase, which has led to a close cooperation between international organizations, bodies and States in order to be implemented the legal texts and in the same time to be ensured the regular flow of foods and services.

Analysis of the latest researches. The latest researches were made by scientists such as M. Halberstam, D. Colombos, V. M. Pruss, A. P. Rubin, B. H. Dubner and others.

Research goals. The article's task is to investigate the state of piracy in maritime law, its legal regulation and the weaknesses of the norms aimed at the opposition to the piracy.

The basic material. Maritime piracy is not a historical memory that comes to people's daily life through films. But is a fact, a phenomenon which is manifesting in various regions of the world with alarmingly high rhythms.

Pirates have often been described in a rather romantic way in books and movies as brave freedom fighters that rob the rich ships to help their people. That is the conception of piracy known to most people around the world. That conception is, however, very far from the truth and is indeed, not what piracy is under international law. Piracy has existed for centuries and has been more or less common at different periods, but it has always been a major threat to shipping

and to the people that work or travel on ships and to international trade, because not only piracy threaten the sea lanes, it has severe economic consequences, contributing to marked increases in shipping costs and impeding the delivery of food aid shipments. Ninety percent of the World Food Programme's shipments arrive by sea, and ships into this area now require defense. Piracy is headline news. Internationally, maritime nations are struggling to find ways to effectively respond to a growing renaissance in illicit activity at sea.

Several socio-economic and political factors contribute to maritime piracy and acts of armed robbery of ships, such as underdevelopment and political instability, criminality and corruption, and ineffective government and law enforcement agencies. Small and inadequate navies and coast guards also contribute to the existence of piracy and armed robbery of ships, especially if there is a lack of will to act on reported incidents. The lenient sentences that pirates and maritime criminals receive when apprehended, the lucrative nature of the crime, the cost of defense mechanisms to shipping companies and vessel owners, and the lack of international and regional co-operation in the conviction of pirates all contribute to these crimes. Geography also has an impact on maritime attacks. Islands provide concealment for pirates and slow vessels down, making them more vulnerable to attacks.

International legal regulation of issues related to combating international crimes committed in the World Ocean and marine areas, recently gaining increasing importance, since endangered the possibility of it using peaceful, affects the interests of states, including those relating to their internal and external security.

The issues of combating piratical actions were decided, in conjunction with other problems of using the high seas, by bilateral agreements, national legislation of certain states and customary law, which have been formed over the centuries.

Between 2000 and end of May 2013, a total of 4 759 incidents of piracy and acts of armed robbery of ships occurred worldwide. Although there was a sharp increase in incidents (attempted and actual attacks) in Somalia in 2009, the number of successful hijackings of ships remained constant and attacks were proportionally less successful, which could be attributed to the presence of a foreign navy in these waters.

The Convention that applies to international piracy or piracy *jure gentium* is still UNCLOS. It means that it is the traditional conception of what piracy is, what jurisdiction applies and where piracy can occur that is applicable today. The fact that the rules governing piracy have not changed does not mean that piracy has not.

Modern piracy has evolved and the Santa Maria, the Mayaguez and the Achille Lauro incidents are examples of when acts committed at sea cannot be classified as piracy because they do not fit the traditional definition that is included in UNCLOS. Many of the incidents that occur today would have been classified as piracy if they had occurred on the high seas. Instead, they are committed within the territory of a state and are therefore not acts of piracy under international law. Such incidents have also increased and have become very common in certain parts of the world.

The Santa Maria, the Mayaguez and the Achille Lauro Incidents. When commenting on the Geneva Convention, Dubner states that in his view, the articles in the Geneva Convention have one serious problem and that is, that they do not seem to be applicable to the kind of acts and incidents that occur today, but rather to acts which constituted piracy centuries ago. He gives the example of

political incidents that have taken place during the twentieth century like the Mayaguez and the Santa Maria incidents (in 1975 and 1961) and concludes that they would probably not be classified as piracy according to the definition in the Geneva Convention (and now also UNCLOS) [1].

The Santa Maria Incident took place in 1961 and the Geneva Convention was not yet in force at that time (it entered into force in 1962). On January 23, a Captain Galvao and his seventy men managed to take over the Santa Maria, a Portuguese ship belonging to the Portuguese Colonial Navigation Company and the ship was at the time carrying over 600 passengers. It had just left the port of Curacao in the Netherlands Antilles and was supposed to go to Florida and then return to Lisbon, Portugal. The course of the ship changed after Galvao had seized the ship. Galvao himself had previously been employed by the Portuguese government to report on the conditions in Angola and Mozambique (then colonies belonging to Portugal). His reports were very critical and he even claimed that people were treated like slaves and this led to that the report never being published in Portugal. Galvao then became an opponent of the Salazar regime in Portugal. He was imprisoned, but managed to escape after eight years and he then joined General Humberto Delgado in South America. Delgado was defeated by Salazar in the elections in 1958 and was of course an opponent of Salazar. The report made by Galvao was published in a London newspaper just a few days after the seizure of the Santa Maria. Galvao made an announcement on the radio on January 24 and he said that the Santa Maria had been captured:

... in the name of the Independent Junta of Liberation led by the General Humberto Delgado, the legally elected President of the Portuguese Republic, who has been fraudulently deprived of his rights by the Salazar Administration [2].

The passengers on the Santa Maria were not treated badly, but the crew was not as lucky. The crew on deck had been wounded by machine-guns and hand grenades and eight wounded men and the body of one officer were put in a lifeboat in the British West Indies. It is believed that some of Galvaos men were hiding among the original crew, but most of them boarded the ship at the same time as Galvao. Portugal requested help to search for and capture the Santa Maria and stated that it was a piratical attack. British and American naval ships in international waters first found the Santa Maria and Galvao subsequently said that he would bring the ship to safety if he and his men were treated as political insurgents. The ship went to Brazil where Galvao was granted political asylum even though the United States claimed that they had acted under international laws against piracy. Delgado, however, claimed that it was a political act and one that was carried out on his orders. It is obvious that Article 15 in the Geneva Convention not would cover the Santa Maria incident as it has a two-ship requirement and this all happened on one ship. It was also an act for political purposes and not for private ends [3].

The Mayaguez incident raised the question whether a state can commit piracy or not. The Mayaguez, an American ship, was seized by a patrol boat at least 60 miles off the coast of Cambodia. The United States of America saw this as a piratical attack. The incident was different in the way that it was not a private ship and the Cambodian patrol boat was a warship. The reason that the United States of America saw it as a piratical attack was because they had not recognized the Khmer Rouge government of Cambodia [4].

A more recent incident is the Achille Lauro, an Italian ship that was seized on October 7, 1985, on the way from Alexandria to Port Said. Members of the Palestine Liberation Front made the attack and they got onboard the ship by pretending to be tourists. They demanded that 50 Palestinian prisoners would be released by Israel or they would kill the passengers. When their demands had not been met, an American Jewish man in a wheelchair, Leon Klinghoffer, was shot and then thrown overboard. The hijacking ended on 10 October 1985 when Egypt granted the hijackers free passage if they let the passengers go. The hijackers were on their way to Egypt on an Egyptian plane when the plane was forced to land by American military aircraft. The plane landed in Italy and four of the hijackers were tried and sentenced in Italy. However, the alleged mastermind did get away [5]. The United States of America saw this attack as an act of piracy [6].

Halberstam has looked at the Achille Lauro incident from a customary law perspective and found that such acts as the seizure of the ship and the murder of the passenger would be included in piracy as it has been seen in customary law. Even when insurgents were exempted, it applied only to those that directed their acts against a certain state [7]. She also discusses whether it would be considered as piracy under the Geneva Convention. Her conclusion is that the requirement "for private ends" can be interpreted as excluding insurgents as well as those that act with no personal motive, from the laws of piracy. However, this would not exclude the persons that seized the Achille Lauro because even if they were members of a terrorist group they attacked an Italian ship and killed an American Jewish man when they were discovered and according to Halberstam, the motive would then not have been political, but maybe revenge [8]. Even if it could be considered as an act for private ends, it would still not meet the two-ship requirement in Article 15 in the Geneva Convention and Article 101 UNCLOS.

Halberstam states that the biggest difference between the Santa Maria and the Achille Lauro is that the hijackers of the Santa Maria met the conditions for exemption of insurgents under customary law, but the hijackers of the Achille Lauro did not. In the Santa Maria incident, insurgents fighting for political independence performed the seizure and the acts were directed against the government they were fighting [9]. Dubner suggests that acts today are more influenced by and committed for political reasons and not for private ends like in the Santa Maria incident above. An Example of that are acts of terrorism and acts committed by liberation groups. He also states that traditional piracy is now a dead issue and the reason is that nothing has been done to update the articles in the Geneva Convention to apply to alleged terrorism on the seas. One solution, according to Dubner, would be an international dispute settlement mechanism and instead of having acts of war, they could be piratical acts committed by states or individuals acting on behalf of states or for politically motivated reasons. Dubner continues by stating that three more problems exist in the Geneva Convention. They are that the Articles only apply to individuals, that acts constituting piracy have been enacted mainly for the purpose of expediency and last that the Geneva Convention assumes that the municipal law of the state making the capture or some other appropriate state will contain articles dealing with punishment of pirates. The same problems would then exist in UNCLOS, as it is in essence the same as the Geneva Convention [10].

The piracy committed for political reasons has become more common, has already been shown in the incidents of the Santa Maria, the Mayaguez and the Achille Lauro. These three incidents were all very different and what they really do have in common is that they were not committed for private ends. Instead, they had other motives and are therefore not included in the traditional piracy. Incidents that are carried out because of political reasons are far from the only ones that happen today. Piracy that is motivated by personal gain has always been the most common and that remains the same today. A major obstacle when working on the problem of piracy around the world has always been the lack of information and statistics on where and how the attacks actually are carried out. Without such information, it is very difficult to see if the laws work or if something different is needed. It can also be difficult to get states to understand the importance of continuity in the fight against piracy if they do not even know that it is a problem.

One important organization that is working on changing that is the ICC International Maritime Bureau (IMB) and its Piracy Reporting Centre (PRC). The centre was created in response to the increasing number of piracy attacks and it is devoted to help fighting piracy around the world. For example, the centre issues status reports on piracy and armed robbery daily, reports incidents to the IMO and to local law enforcement in the area, help law enforcement to apprehend and bring pirates to justice and every year an annual report on piracy statistics is published (also quarterly reports). The IMB, however, does not limit the reports to only piracy attacks, but also includes armed robbery at sea [11].

So piracy consequences are summarized in the following: crime against life and property, threat to the financial internal and international relations of each State but also of mankind as is disturbing the regular and smoothly goods transportation. It is reminded that via maritime transportations are handling the majority of goods and commodities. All these led the international community to take measures in order to combat this phenomenon.

Conclusion. Piracy is still a major problem in big parts of the world and remains a threat against international shipping, but above all, a threat to people working and travelling on the seas. Acts of piracy could also be a major menace to the environment in many sensitive areas of the world. If a large would be left unmanned during a pirate attack in, it could lead to a disaster. The environment and the lives of the people in the area would be in grave danger. Such an event could also seriously damage shipping that carry important cargo to businesses around the world. That is why all subjects of international law should takes drastic measures and fight acts of piracy.

Already at that time the drafters realized that the law of piracy has to change when international law change. The world, as well as international law has undoubtedly changed, but the law of piracy remains in many aspects. There are weaknesses in the UNCLOS regime on piracy.

There are some reasons that must be solved as soon as possible. Here they are: lack of national legislation, logistical challenges, lack of political will, and insufficient evidence.

So, the piracy protection measures should be a complex of special means towards prevention, fight and opposition to the acts of piracy, aimed at guaran-

teeing a vessel's safety, cargo and people.

Historically, defense of piracy has formed as a complex substitute of international and within the state law and as a part of measures, taking international community for the sea navigation safety. However, today, is not enough international and national regulator of law for the protection against piracy and the question is then if the views over piracy under international law have changed remains to be seen in the future.

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