

THE INTERNATIONAL COOPERATION IN THE STRUGGLE AGAINST THE MARITIME PIRACY

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Abstract

Pirates are sea robbers who attacked other ships and rob their goods and sometimes capture the attacked ship or the crew and passengers for their own purposes. Piracy as illegal activity is attested over 2000 years ago in ancient Greece; pirates threatened the trading routes of Greece. Later, Roman ships were attacked by pirates who stole their cargoes of wine, grain, clothing and olive oil. Piracy has the highest point between XVII-XVIII centuries being the “golden age of pirates”. Unfortunately, even today the pirates still exist and create huge problems in certain area of the world. Any act of piracy is a direct threat for maritime security by endangering, the welfare of seafarers and the security of commerce, tourism and navigation. The piracy could lead at the loss of lives and injured persons or hostage-taking situations. The results of the piracy are affecting directly the commerce and navigation causing serious financial losses for ship-owners. Another side effect of the piracy is the spectacular increasing of the vessels insurance and increasing of the security expenditures and humanitarian assistance. At the end the cost of the sea transport will dramatically increase and the producers and consumers will suffer financial and economic losses.

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1. Introduction

The maritime piracy was an offence against the law of any society since the beginning of the world. Usually, when we are referring to a pirate we are referring to a sailor, who attacks, robbes, seizes or destroys any vessel at high seas or sometimes even situated on ports or stationing at the shore. Moreover, the pirates are involved in many other illegal activities like slave trading or smuggling. The pirates are doing that for personal interest, even sometimes during the history were mentioned pirates-government secret agreements or understanding in some certain points against some certain common enemies. Anyway, the pirates' attacks were always treated as unauthorized acts and they were considered criminals all over the world. In their golden age period periods when those robberies were very common on the seas of the world, piracy was punished with death penalty and the goods of the pirates were always confiscated. From legal point of view it was a real distinction between pirates and the privateers or buccaneers (some kind of pirates, but not treated exactly like common criminals). Although, privateers or buccaneers have been considered and treated usually like pirates, they were more like navy soldiers acting based on written orders and deals concluded in advance with different governments. Privateers or buccaneers had the approval of a government of a country to attack certain type of vessels belonging to another country (war enemy). Usually, their tasks were to capture or destroy ships of the enemy nation and confiscate their merchandises. From legal point of view their authorization consisted from a letter of marque and reprisal. These letters were a written contract who brought benefits for both sides – privateers and government. For privateers was an easy high-profitting job without the huge risk of potential punishment from government side. From government's perspective the privateers were contributing to the navy power of the mentioned nation. Moreover, the government contracting party didn't have to add any additional budget expenditures for the crew member, weapons or supplies of the privateers. More than that periodically, the privateers were offering to government side a consistent percent of their pray in exchange for their so called “immunity”.

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2. Short History of the Maritime Piracy

It is important to underline, from the beginning, that maritime piracy was a very usual issue during the ancient Greek and the Roman period. The vessels of those periods had precarious technical capabilities and were forced to navigate pretty close to the sea shores, which made them the convenient easy reachable targets for the pirates of that time. The main bases for the Greek pirates were the Lipari and Crete Islands and for the Roman pirates was the Istria peninsula. Other famous pirates were the Lycians (located on the shores of present Turkey). They have been active in this area early as 1194 BC right up until the 19th century. Being a real trouble for ancient commerce is well known that the Ramses the third, Pharaoh of Egypt managed to assemble a large fleet of vessels and decisively defeated the Lycians, leaving the coast free of piracy for a while. Another important historical mention of Lycians has been issued by Herodotus. He mentioned that the Lycians contributed to the invasion of Greece in 480 BC by Xerxes with 50 vessels. Roman soldiers were also often involved in the fights against Lycian coast pirates. After the fall of the Roman Empire, the Lycian pirates "flourished" once again until the 18th centuries when the British military vessels managed to defeat them and to clean up the Turkey shores. Other famous ancient pirates were the Cilician pirates, situated on the southern coast of Asia Minor (on Turkey territory). In 300-200 BC they had a very powerful fleet causing a lot of troubles for the commerce of Egypt and the Roman Empire. An important historical event was involving Cilician pirates and the Julius Caesar Emperor in 78 BC. At that particular moment, Julius Caesar wasn't yet Emperor; he was on a vessel and tried to return to Rome. Pirates captured the vessel and kidnapped Caesar among other persons. For their release the pirates asked for ransom. The history tells us, Julius Caesar was insulted at the low level of the ransom demand. At his insistence, the pirates raised the ransom demand to a level in accordance with his status. The Julius Caesar's family paid rapidly the requested sum. After the release moment, Julius Caesar managed to assemble an army, which captured all the pirates and crucified them.

Another important period for the history of piracy was the Caribbean period. The so-called Caribbean era began in the 1500s and lasted until the 1830s after the maritime nations of Western Europe and North America with colonies and economic interest in the Caribbean area began fighting the pirates from this area. Piracy flourished in the Caribbean area during the period 1660-1730, because of the permissive attitude of the nations of that time and because of the existence of pirate harbors such as: Nassau in the Bahamas, Port Royal in Jamaica and Tortuga in Haiti. Maritime piracy has been considered as "legal activity" by some nations, especially France under King Francis I (king between 1515 and 1547). He encouraged the piracy in his hope to weaken the maritime power of Spain and Portugal's in the Atlantic and Indian Oceans. This official name of the pirates "working" under French legal protection was known as "privateering". The French privateers were alone in the year 1520 in their fight against the Spanish armada, but later they took advantage of the English and Dutch vessels, involved, as well, in the war against Spanish supremacy on seas. The French privateers were interested especially in the silver shipment of the Spanish Empire, coming from the New World to Seville. The Spanish maritime authorities tried to diminish the pirates' threats using the convoy system during sea transport. Nevertheless the Spanish Empire, despite being the most powerful military nation at the time, could not afford a permanent military vessel presence to control a tremendous area of ocean or to permanently protect their commercial fleet. Moreover, whenever a war was declared in Europe between the Spain, England, France and the Dutch Kingdom the result was always encouraging of the piracy and privateering in the Caribbean area. The trans-Atlantic Spanish maritime power started to decline and step by step English, Dutch and French traders could violate the Spanish rules imposed on seas. England, France and the Netherlands started to

set up their own colonies aiming new commodities - tobacco and sugar. Another very well-known pirate of the history was Madame Ching or Ching Shih (1775–1844). She inherited the commanding position from her husband and terrorized the middle Qing China for decades. She commanded over 300 junks (traditional Chinese sailing ships) and had under her leadership from 20,000 to 40,000 pirates, known as the Red Flag Fleet. Because of her extraordinary power, she had a lot of battleships with the major nations of those times: Chinese Empire (Qing dynasty), the British Empire and the Portuguese Empire. She was one of the few pirate captains to retire without any major defeat in battle and is considered to be the most successful pirate in history. By 1804, this coalition was a formidable force, and one of the most powerful pirate fleets in all of China. This huge fleet under command of Ching Shih established hegemony over many coastal areas and managed to impose taxes on settlements and other dues as a real state administration. According to some historical sources, she died at 69 after a life behaving as a real queen of China. Unfortunately, all this history of violence at sea has not disappeared even today, so there are still pirates in our days. Among them, the best-organized and those who pose the most problems of shipping are those on the Somali coasts. Today, only the piracy in Somalia costs nearly \$ 7 billion worldwide in 2011, of which 2 billion in military operations, armed equipment and armed guards to protect vessels.

3. The United Nations Law Provisions Regarding the Maritime Piracy

Today, according to the international maritime law (United Nations Convention on the Law of the Sea), piracy may be defined as one of the following acts committed on the sea:

- any illegal acts of violence or holding, or any act of robbery, committed against the passengers of a private ship or a private aircraft;
- at the high seas, against another ship or against persons or property on board of the ship or aircraft;
- against a ship, persons or property in a place outside the jurisdiction of any state;
- any act of voluntary participation or giving help to a ship knowing that is a pirate ship or involved in this kind of piracy activities;

A vessel may be considered a pirate vessel if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts mentioned above or has been used to commit any such act. Once defined as a pirate vessel, anybody in the high seas or in any other place may seize a pirate vessel or a vessel captured previously by pirates or under the control of pirates. Anybody may seize and arrest the persons and confiscate the property and existing goods on board. The penal law of the state which carried out the seizure may decide upon the penalties for pirates and other legal aspects in this regard. More or less, the same treatment will receive the vessels involved in the illicit traffic in narcotic drugs and psychotropic substances. The Security Council of United Nations reaffirmed in repeated cases “that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982, sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities” (Security Council resolution 1897 (2009), adopted on 30 November 2009). The United Nations Convention on the Law of the Sea, at article 100 of determined that ‘all States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.’ In this respect, the General Assembly of the United Nations invited the states of the world to cooperate to fight maritime piracy and armed robbery at sea in different resolutions. The best example in this regard, is the resolution no. 64/71 of 4 December 2009, when the General Assembly recognized “the crucial role of international cooperation at the global, regional, sub-regional and bilateral levels in fighting and combating, in accordance with international maritime law, threats to maritime security, including the maritime security piracy”.

4. International Law Cooperation on Maritime Piracy Issue

During the history, different states tried to work together, especially based on regional ground, in order to fight and combat the maritime piracy. Step by step the state of the world realized the military actions are not good enough to fight against this scourge. Cooperation on daily basis and international maritime law proved to be very valuable tools in this domain. One important method in this respect was to report as prompt as is possible piracy incidents to enable accurate information on the scope. In the modern times a key element in fighting efficiently the maritime piracy was the information-sharing with states potentially affected by incidents of piracy and armed robbery against any vessels. After the creation of International Maritime Organization, this information exchange has been enhanced and proved to be more effective. Another important role was played by the international law specialists who constantly call upon the states of the world to take appropriate measures under their national law system in order to facilitate the arresting and prosecution of individuals who are alleged to have committed acts of maritime piracy.

United Nations, in close cooperation with the International Maritime Organization, actively worked to fight piracy and armed robbery at sea by adopting legal provisions, including those relating to personnel assistance with capacity-building. Training of seafarers, port staff and increasing the number of security personnel in the area of prevention, were only few mandatory issues regulations in the fight against piracy. United Nations and International Maritime Organization realized the importance of reporting and investigation of all these incidents, charging and bringing the alleged pirates in the front of the justice, in accordance with international and national law. Another important stage was for the states of the world to permanently modify the national legislation according to international legal provisions adopted by United Nations, as well as to enforcement the ships with necessary anti-piracy equipment and monitoring against fraudulent ship registration. Another important step in fighting contemporary piracy has been the establishment of the Contact Group on Piracy off the Coast of Somalia on 14 January 2009, following the adoption of Security Council resolution 1851 (2008). Until a reform process was initiated in 2014 the Contact Group had five "special sections":

Naval Cooperation - "for effective naval operational coordination and supporting the building of the judicial, penal and maritime capacity of Regional States to ensure they are better equipped to fight piracy and maritime security challenges" (having as Chair: United Kingdom)

Legal Issues - "ensuring specific, practical and legally sound guidance to the Contact Group, states and organizations on all legal aspects of fighting piracy" (having as Chair: Denmark.)

Self-Defensive Actions - "providing know-how for states, maritime industry and labor entities regarding the actions that should be taken to provide self-defensive actions to protect the ships from hijacking by pirates in the high risk waters of Somalia" (having as Chair: Republic of South Korea.)

Public Diplomacy - "enhancing the awareness of the dangers of maritime piracy and highlighting the best practices to eradicate this criminal phenomenon" (having as Chair: Egypt.)

Flow of Illegal Funds - "coordinates international efforts to identify and disrupt the financial networks of pirate leaders and their financiers" (having as Chair: Italy.)

After 2014 the Contact Group has been re-organized in three working groups: capacity building, operations at sea and tracing of the financial networks of piracy. Civil war in Somalia creates conditions favorable to the actions of well-armed pirates, supported by reach businessmen involved in the smuggling of modern weapons and ammunition. Since the Somali Provisional Government does not have the necessary

means to prevent these criminal acts, some states started to send their own military vessels in the region, to protect the maritime transport. Nevertheless, only in 2011, pirates operating in the Somali area carried out over 200 attacks and the total amount of redemptions requested was up to 160 million dollars.

Another important judicial tool against contemporary piracy was the adoption on 29 January 2009 of the Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden (Djibouti Code of Conduct) under the auspices of the International Maritime Organization. This Code of Conduct has been signed by majority of the African countries and implemented few mandatory legal provisions on national level:

- criminalizing the piracy and robbery at sea;
- development of the regional frame to counter piracy and robbery at sea;
- development of the safety and security of the navigation in accordance with international law;
- national maritime security policies to safeguard the maritime trade from any unlawful acts;
- safe and secure operations of port facilities and ships at all levels;
- effective protection of marine environment;
- arresting, investigating and prosecuting persons suspected to be pirates;
- seizing pirate ships and the property onboard;
- coordinating and information sharing;
- reporting of all relevant incidents;
- mutual assistance and support among signatories countries;
- sharing training and education methods in this area;

5. International Maritime Organization and Fight Against Maritime Piracy

Is a well-known fact that International Maritime Organization is a United Nations' specialized agency, having as a main goal the establishing of the standard-setting authority for the safety, security and environmental performance of the shipping on international level. Another important role is to issue a regulatory framework for the worldwide shipping industry that is fair and effective, universally adopted and universally implemented. The great threat of maritime piracy and armed robbery against vessels has been on the official agenda of the leadership of the agency since the beginning of 80s. In first decades the attention was focused on the South China Sea, Straits of Malacca and Singapore. Due to the latest evolution, after 2005, the agency has been focused on maritime piracy of the coast of Somalia, Indian Ocean and the Gulf of Aden. At the time being, the attention of the agency is directed to implementing an efficient strategy for ensuring maritime security in Central and West Africa. International Maritime Organization, with the support and cooperation of the shipping industry, managed to develop and implemented a significant number of security measures against pirates. Today, information and data about acts of piracy and armed robbery against vessels are 24/7 available on IMO's Piracy and Armed Robbery module within the Organization's Global Integrated Shipping Information System (GISIS). International Maritime Organization permanently promotes the cooperation and provides permanent assistance, to the states of the world aiming to create and develop their own national and regional measures to eliminate the threat of maritime piracy, armed robbery against vessels and other illegal maritime activities. Eloquent cases in this regard are the Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden (Djibouti Code of Conduct), agreed between a lot of African countries (25) in and around the western Indian Ocean and the Code of Conduct

concerning the repression of piracy, armed robbery against vessels. As an UN agency, IMO is working on daily basis in close cooperation and coordination with other UN bodies: UNODC, UNHCR FAO, regional offices of UNOCA and UNOWA. Due to the aim of combating piracy and illegal activities on seas, IMO is cooperating with other international partners: Interpol and WCO. From this perspective, IMO member states situated in West and Central Africa have the general scope is to criminalize on national level piracy, attacks against ships and other illegal maritime activities and acts.

Another specific aim of IMO is to harmonize the general procedures in this area and to create common training programs in maritime safety, taking advantages from Maritime Security Trust Fund, to achieve the above-mentioned goals. The common fund was created based on financial contributions to the IMO West and Central Africa countries. From this point of view, to enhance the efficiency in the area of fighting maritime piracy the financial contribution should be substantially increased and the UN should have a serious financial and material contribution in order to tackle this worldwide scourge.

6. Conclusions.

To increase the efficiency of the counter-piracy world-wide campaign the international cooperation between states of the world, between international organizations and between major maritime powers should be increased. United Nations, the International Maritime Organization (IMO) and the European Union (EU) and North Atlantic Treaty Organization (NATO) should be still in the future the main actors of the war against pirates and piracy. From this perspective, the activity of European Maritime Safety Agency (EMSA) is still not very visible, because the agency is not sufficiently involved in the suppression of this phenomenon, although the Member States of the European Union are among the most suffering “entities” because of the piracy. Only a couple of nations have supported piracy repression efforts. The international effort should definitely include a campaign to deter and defeat the crime of sea piracy, money laundering result of this type of crime, interception of money transfers involving ill-gotten ransoms and juridical support of different lawyer houses. After the U.S.-flagged M/V Maersk Alabama was seized with twenty American citizens on board, calls for expeditionary military action in select coastal towns and villages in the Puntland state of Somalia, started to intensify on international level. Many nations, including France, Denmark, Malaysia, India, and Russia, have sent battleships to the mentioned area. But to increase the effectiveness of these international military operations intelligence collaboration could also improve maritime domain awareness, and reduce the threat posed by pirates. The well-known Nairobi Report suggested creation of a specialized intelligence system, aimed at penetrating the piracy organizations and gangs. Generally speaking, Somali clan and tribal leadership are in opposition to the piracy organizations operating from the country. Therefore the local intelligence gathering could prove to be a valuable source of counter-piracy intelligence. The IMO reports and the Security Council resolutions provide an effective basis for a more integrated, institutionalized international maritime security efforts in the Horn of Africa. Regional models—including ReCAAP and Mowca—can be “exported” to East Africa to create a new maritime security model for that geographical area. Instead, of using huge, slow battleships and ineffective large military forces, small, rapid patrol vessels and corvettes would represent a better solution for counter piracy patrols and actions. Answering effectively to the threat of piracy along the coast of Somalia will require not only occasionally patrolling of that the area, but rather attacking the root, deep causes of piracy, by providing comprehensive support for operations (financial, military, logistics, investigations, and prosecutions). This means aside the maritime powers should start the long-term regional task-force actions with

numerous maritime patrol craft, suitable weaponry, soldiers training, modern communications tools, and a unique international maritime security coordination center. Another important tool would be to increase the judicial cooperation via United Nation and national judicial systems to include identifying of a more effective judicial tools (international treaties, world-wide criminal prosecuting of certain doings etc). The states of Africa, with the financial, military and logistical support of international community should take the lead in eradicating maritime piracy in the Gulf of Aden and the Red Sea, taking in consideration the fact this is a great, permanent challenge of our days.

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