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The Comparative Analysis of International Maritime Terrorism (IMT) and Other Crimes Committed at Sea

Abstract

The issue of combating (international) maritime terrorism is very topical in public international law. Given current dispute among international legal scholars about the concepts and their relationship, it is important to assess the possibility of extending the law of piracy to (international) maritime terrorism or even to an armed robbery at sea. It is of particular mention that there is no uniform practice and scholarly definitions vary in relation to the mentioned issue.

Accordingly, the article aims to propose definitions of (international) maritime terrorism, piracy and armed robbery at sea and to answer the question of how appropriate it is to extend piracy law to (international) maritime terrorism and armed robbery at sea. Houthi group attacks against the ships of different states in the Red Sea shows the need to consider potentially important criterion in terms of separating maritime terrorism and piracy which is related to the magnitude of the threat from the attacks.

Keywords: *(International) maritime terrorism; Piracy; Armed robbery at sea; International law of the sea; Public International Law.*

Introduction.

Nowadays, in the light of current events, ² the issue of combating (international) maritime terrorism (hereinafter the IMT) has become very topical issue in Public International Law.

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² Following Russia's invasion of Ukraine, Russia has damaged foreign-flagged commercial ships, which fully meets the elements of a war crime. Against the background of the said conflict, there are many reports of Russian Navy ships blocking Black Sea ports and laying mines on trade routes. For example, since February 24, 2022, Russia has implemented a blockade of the Ukrainian cities of Berdyansk and Mariupol, which are located on the coast of the Sea of Azov. See *Suakhev*, Breaches of International Maritime Laws in Russia's War against Ukraine, International Bar Association, 14 June, 2022. <https://www.ibanet.org/breaches-international-maritime-law-russia-ukraine> [last visited 04.06.2024]; How Ukraine Overcame Russia's Grain Blockade, COUNCIL OF FOREIGN RELATIONS, February 27, 2024. <https://www.cfr.org/article/how-ukraine-overcame-russias-grain-blockade#:~:text=Soon%20after%20sending%20more%20than,own%20shore%20and%20shallow%20waters.> [last visited 04.06.2024]; *Lott A.*, Russia's Blockade in the Sea of Azov: A Call for Relief Shipments for Mariupol, EJILTALK, March 14, 2022. [https://www.ejiltalk.org/russias-blockade-in-the-sea-of-azov-a-call-for-relief-shipments-for-mariupol/#:~:text=Russia%20also%20controls%20the%20airspace,\(see%20the%20map%20above\).](https://www.ejiltalk.org/russias-blockade-in-the-sea-of-azov-a-call-for-relief-shipments-for-mariupol/#:~:text=Russia%20also%20controls%20the%20airspace,(see%20the%20map%20above).) [last visited 04.06.2024]; *Perez-Leon-Acevedo J., Chakhvadze G.*, UNCHARTED WATERS: SHOULD INTERNATIONAL MARITIME TERRORISM BE INCLUDED IN THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT?, Duke Journal of Comparative and International Law, Vol. 34, № 1, 46, 2024, 78.

Given existing scientific debate among international legal scholars about the concepts and their relationship,³ it is important to assess whether it is appropriate to extend the law of piracy to the IMT or even to armed robbery at sea.⁴ It can be said that even before the 1990s, there was an established practice of qualifying terrorist acts as piracy⁵ which has not changed substantially since the 9/11 terrorist acts as in some cases the IMT has been qualified as piracy and vice versa.⁶ Before the adoption of the 1982 Convention on the Law of the Sea (hereinafter the UNCLOS) the trend of extending piracy rules to the IMT can be partly explained by the existence of very broad, customary definition of piracy which encompassed the IMT.⁷

Against this background, the presented paper demonstrates that there are at least 5 maritime incidents the legal qualification of which is still disputed and/or which potentially contribute to the adoption of new criteria for separating these terms:

(1) In 2003, the maritime attacks were carried out on chemical tankers in the straits of Malacca and while the perpetrators were acting for purely private ends and aimed at seizing equipment and other valuables, the incident was still qualified as terrorism.⁸

(2) The “*Superferry*” incident is of particular mention here as it illustrates the practical difficulty of separating the IMT and piracy – although, this bloodiest incident is generally considered as maritime terrorism, there are growing reports suggesting that perpetrators were acting merely for private ends aiming at extorting money from shipowners.⁹

³ See *Knyazeva N.A., Korobeev A.I.* Maritime Terrorism and Piracy: The Threat to Maritime Security, Mediterranean Journal of Social Sciences, Vol. 6, № 6 S3, 2015, 229; *Filipe B.*, CONFLATING PIRACY AND MARITIME TERRORISM: THE NEED FOR LONG TERM SOLUTIONS, № s2095157, Leiden, 2017/2018, 6.

⁴ It appears that the idea of extending the law of piracy to other maritime crimes (such as the IMT) is well established in the doctrine of modern international law. See *Karim S. Md*, Maritime Terrorism and the Role of Judicial Institutions in the International Legal Order, Leiden/Boston, 2016, 39.

⁵ *Brock S.B.*, STOP GIVING PIRATES A LIFEBOAT TO ESCAPE FROM THEIR ATTACK: THE PROBLEMS IN CONFLATING MARITIME TERRORISM AND PIRACY, Loyola Maritime Law Journal, Vol. 22, 2021, 73; *Hong N., Adolf K.Y. Ng.*, The international legal instruments in addressing piracy and maritime terrorism: A critical review, Research in Transportation Economics, Vol. 27, № 1, 2010, 55.

⁶ See *Singh C., Bedi A.S.*, Working Paper No. 543 War on Piracy: the Conflation of Somali Piracy with Terrorism in Discourse, Tactic and Law, International Institute of Social Studies, 2012, 15.

⁷ See *Rajput A.*, Maritime Security and Threat of a Terrorist Attack, Pace International Law Review, Vol. 34, № 2, 2022, 39.

⁸ See *Young A.J., Valencia M.J.*, Conflation of Piracy and Terrorism in Southeast Asia: Rectitude and Utility, Contemporary Southeast Asia, Vol. 25, № 2, 2003, 269.

⁹ See *Tantraphol N., Lorenz F.M.*, The Applicability Of national Anti-Terrorism Laws To Piracy: A Comparative Analysis Of Japan, The Philippines, And Singapore, Case Western Reserve University School of Law, 2012, 9; *Prodan*, MARITIME TERRORISM AND RESILIENCE OF MARITIME CRITICAL INFRASTRUCTURES, NATIONAL SECURITY AND THE FUTURE, 1-2 (18), 2017, 105; *Plöger*, THE PREVENTION OF MARITIME TERRORISM Is today's maritime security sufficient?, University of Oslo, 2008, 12-13.

(3) The “Santa Maria” incident is yet another important maritime incident, which due to its complex nature leaves the question of its legal qualification still an unresolved issue in international legal scholarship.¹⁰

(4) The practical problem of separating the IMT from other maritime crimes dates back to the “Achille Lauro” incident, which was qualified by the USA and several UN member states as piracy.¹¹ However, this incident which contributed to the adoption of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereinafter the SUA Convention)¹² could be seen as a proof that piracy does not include politically motivated acts thus making a strong case for separating these terms.¹³

(5) Finally, the attacks carried out by the Iran-backed Houthi group are worth noting,¹⁴ which demonstrate the need to consider a new, potentially important criterion for distinguishing between (international) maritime terrorism and piracy, which is related to the magnitude of the threat of the attacks.¹⁵

There are fundamental similarities between (international) maritime terrorism and piracy, which include, inter alia, the following: a) both crimes may take place on the high seas; b) both crimes are directed against the safety of the ship, its crew, property on board the ship and navigation; c) both international maritime terrorism and piracy involve violence or threat thereof; d) both crimes may involve the use of the same means to achieve the intended goals

¹⁰ See e.g., Plöger, THE PREVENTION OF MARITIME TERRORISM Is today's maritime security sufficient?, University of Oslo, 2008, 8.

¹¹ This qualification remains controversial since two underlying elements of piracy were not fulfilled, namely: a) acts were not committed for private ends; and b) two-ship requirement was not met. See Halberstam, TERRORISM ON THE HIGH SEAS: THE ACHILLE LAURO, PIRACY AND THE IMO CONVENTION ON MARITIME SAFETY, The American Journal of International Law, Vol. 82, № 2, 1988, 269-270; Tuerk, Combating Terrorism At Sea – The Suppression Of Unlawful Acts Against The Safety Of Maritime Navigation, University of Miami International and Comparative Law Review, Vol. 15, № 3, 2008, 337-339; Paust J.J., Extradition and United States Prosecution of the Achille Lauro Hostage-Takers: Navigating the Hazards, Vanderbilt Journal of Transnational Law, Vol. 20, № 2, 1987, 235-254; KOZANHAN M.K., UNLAWFUL ACTS THREATENING MARITIME SECURITY AND SUA CONVENTION, Journal of Naval Sciences and Engineering, Vol. 17, № 1, 2021, 191.

¹² See Joyner C.C., Suppression of Terrorism on the High Seas: The 1988 IMO Convention on the Safety of Maritime Navigation, Israel Yearbook on Human Rights, Vol. 19, 1989, 343-345; McGinley, Achille Lauro Affair–Implications for International Law, Tennessee Law Review, Vol. 52, № 4, 1984-1985, 693-704; See also: Kandler, Violence at Sea The Legal Framework to Combat Maritime Terrorism, THE ARCTICE UNIVERSITY OF NORWAY, 2016, 24, 28; Plöger, THE PREVENTION OF MARITIME TERRORISM Is today's maritime security sufficient?, University of Oslo, 2008, 19.

¹³ See Honniball A.N., PRIVATE POLITICAL ACTIVISTS AND THE INTERNATIONAL LAW DEFINITION OF PIRACY: ACTING FOR 'PRIVATE ENDS', Adelaide Law Review, Vol. 36, 2015, 287.

¹⁴ See Who are the Houthis and why are they attacking Red Sea ships?, BBC, 15 March, 2024. <https://www.bbc.com/news/world-middle-east-67614911> [last visited 10.06.2024].

¹⁵ See Kraska, Attacks on U.S. Warships Justify Self-Defense Against Houthi Forces Ashore, LAWFARE, January 2, 2024, <https://www.lawfaremedia.org/article/attacks-on-u.s.-warships-justify-self-defense-against-houthi-forces-ashore>, [last visited 10.06.2024]

(e.g. hijacking of ships).¹⁶ Some authors attempt to bring the IMT definition under the umbrella of piracy.¹⁷ Professor Douglas Guilfoyle, the prominent expert of international maritime law, points out that by their very nature, most modern maritime terrorist incidents can be qualified as piracy.¹⁸ This trend is somewhat supported by the domestic legislations of (some) states and the Japanese legislation included, where the given definition of piracy is so broad that it potentially includes the (international) maritime terrorist acts as well.¹⁹

The trend of conflation between the concepts of piracy and armed robbery at sea is worth mentioning as well which, as authors point out, may stem from anachronistic and broad definition of piracy under the UNCLOS.²⁰ Thus, the presented article aims to propose definitions of (international) maritime terrorism, piracy and armed robbery at sea and answer the question whether it is appropriate to extend piracy law to the IMT and armed robbery at sea.

Chapter 1. The Concept of (International) Maritime Terrorism

There is no single, uniform definition of international terrorism in modern public international law.²¹ The 1937 Geneva Convention on the Prevention and Punishment of Terrorism defined international terrorism as a criminal act directed against a state and aimed at instilling fear in individuals, groups of individuals or the civilian population, however, the said convention did not enter into force.²² Since 1960 the plethora of international

¹⁶ See *Modzhoryan L.A.*, Terrorism at Sea. The Struggle of the State to Ensure the Safety of Maritime Navigation, Moscow, 1991, 227-230; *Knyazeva N.A., Korobeev A.I.*, Maritime Terrorism and Piracy: The Threat to Maritime Security, Mediterranean Journal of Social Sciences, Vol. 6, № 6 S3, 2015, 229; *Hong N., Adolf K.Y. Ng.*, The international legal instruments in addressing piracy and maritime terrorism: A critical review, Research in Transportation Economics, Vol. 27, № 1, 2010, 51; *SHAH H.A.R.*, A LEGAL ANALYSIS OF PIRACY AND ARMED ROBBERY AT SEA IN THE STRAITS OF MALACCA: THE MALAYSIAN PERSPECTIVE, Birmingham, 2013, 105.

¹⁷ See e.g., *Bahar M.*, Attaining Optimal Deterrence at Sea: A Legal and Strategic Theory for Naval Anti-Piracy Operations, Vanderbilt Journal of Transnational Law, Vol. 40, № 1, 2021, 26-40.

¹⁸ See *Karim S. Md.*, Maritime Terrorism and the Role of Judicial Institutions in the International Legal Order, Leiden/Boston, 2016, 48.

¹⁹ See *Tantraphol N., Lorenz F.M.*, The Applicability Of national Anti-Terrorism Laws To Piracy: A Comparative Analysis Of Japan, The Philippines, And Singapore, Case Western Reserve University School of Law, 2012, 18.

²⁰ See *Musto C.*, THE ELEMENTS OF MARITIME PIRACY: PLUMBING THE DEPTHS FOR A LEGAL SOLUTION TO AN ENDURING GLOBAL PROBLEM, Australian National University (ANU College of Law), 2012, 16.

²¹ See e.g., *Stahn C.*, An Introduction to INTERNATIONAL CRIMINAL LAW, Leiden, 2018, 29; *Walker C.*, Terrorism and the Law, Oxford, 2011, 132; *Garmon T.*, International Law of the Sea: Reconciling the Law of Piracy and Terrorism in the wake of September 11, Tulane Maritime Law Journal, Vol. 27, № 1, 2002, 271; *Alexander D.C.*, Maritime Terrorism and Legal Responses, Denver Journal of International Law and Policy, Vol. 19, № 3, 1991, 529.

²² See Treaty-based crimes of terrorism – universal counter terrorism instruments, United Nations Office on Drugs and Crime (UNODC), United Nations Office on Drugs and Crime, <https://www.unodc.org/e4j/en/terrorism/module-4/key-issues/treaty-based-crimes-of-terrorism.html> [last visited 10.06.2024]; *Stahn C.*, An Introduction to INTERNATIONAL CRIMINAL LAW, Leiden, 2018, 29.

conventions adopted under the auspices of the United Nations offer a fragmented approach in defining international terrorism by prohibiting individual manifestations of international terrorism instead of developing an agreed, uniform definition of the crime.²³ In this regard one author notes that “the current trend of international law in relation to terrorism lies in the fact that the emphasis is shifted to the reflection of the provisions of international conventions in domestic legislation, and not to the development of a universally recognized definition of terrorism”.²⁴ Some scholars believe that the international community will never reach an agreement on an objective and universal definition of international terrorism since “one man’s terrorist is another man’s freedom fighter”.²⁵

As regards domestic regulation of international terrorism, the Criminal Code of Georgia criminalizes the participation in international terrorism.²⁶ Under the Law of Georgia on Combating Terrorism, international terrorism is defined as „terrorist activities that were performed: a) by terrorists, terrorist groups or terrorist organisations in the territory (territories) of another state (other states), or if another state (other states) suffered damage; b) by citizens of one state against citizens of another state; c) when both terrorists and victims of terrorism are citizens of the same or different state(s) but the terrorist act has been committed beyond the territories of those states”.²⁷

²³ See International Convention for the Suppression of the Financing of Terrorism (Source: <https://treaties.un.org/doc/db/terrorism/english-18-11.pdf>; In force since April 10, 2002); International Convention for the Suppression of Terrorist Bombings (Source: <https://treaties.un.org/doc/db/terrorism/english-18-9.pdf>; In force since May 23, 2001); Convention on the Marking of Plastic Explosives for the Purpose of Detection (Source: <https://treaties.un.org/doc/db/terrorism/conv10-english.pdf>; In force since 21 June, 1998); Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) (Source: <https://treaties.un.org/doc/db/terrorism/conv8-english.pdf>; In force since March 1, 1992); Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (Source: <https://treaties.un.org/doc/db/Terrorism/Conv9-english.pdf>; In force since March 1, 1992); Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Source: [https://sherloc.unodc.org/cld/uploads/res/treaties/definitions/treaty/protocol to the convention for the suppression of unlawful acts against the safety of maritime navigation 2005 html/Protocol to Maritime Convention E.pdf](https://sherloc.unodc.org/cld/uploads/res/treaties/definitions/treaty/protocol%20to%20the%20convention%20for%20the%20suppression%20of%20unlawful%20acts%20against%20the%20safety%20of%20maritime%20navigation%202005%20html/Protocol%20to%20Maritime%20Convention%20E.pdf); In force from July 28, 2010); Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (Source: [https://sherloc.unodc.org/cld/uploads/res/treaties/definitions/treaty/protocol to the protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf 2005 html/Protocol to Fixed Platform Protocol E.pdf](https://sherloc.unodc.org/cld/uploads/res/treaties/definitions/treaty/protocol%20to%20the%20protocol%20for%20the%20suppression%20of%20unlawful%20acts%20against%20the%20safety%20of%20fixed%20platforms%20located%20on%20the%20continental%20shelf%202005%20html/Protocol%20to%20Fixed%20Platform%20Protocol%20E.pdf); In force since July 28, 2010); Kandler K., Violence at Sea The Legal Framework to Combat Maritime Terrorism, Tromsø, 2016, 6; Stahn C., An Introduction to INTERNATIONAL CRIMINAL LAW, Leiden, 2018, 29.

²⁴ Gorashvili G., Criminological Characterization of Terrorism, Tbilisi, 2011, 18.

²⁵ Ganor B., Defining Terrorism: Is One Man’s Terrorist another Man’s Freedom Fighter? Police Practice and Research, Vol. 3, № 4, 2002, 287.

²⁶ The Criminal Code of Georgia, Article 323 (2), Source: Legislative Herald of Georgia, Publication date: 13/08/1999.

²⁷ LAW OF GEORGIA ON COMBATING TERRORISM, Article 1 (d), Source: Legislative Herald of Georgia, Publication date: 11/07/2007.

For the purposes of this article, the following working definition of international terrorism is proposed: The crime of international terrorism involves the use of violence or the threat of violence as a method of instilling fear in certain groups and individuals to achieve a political goal, which is carried out by coercing the civilian population, a government or any segment thereof to carry out this or that act or refrain from its implementation and which contains a transnational element, meaning that it is not limited to the territory of a single state.²⁸

Analysis of respective international instruments shows that the *actus reus* of international maritime terrorism includes the following criminal acts (see Table №1):

Table №1: The main elements of *actus reus* of International Maritime Terrorism

a) Seizing or controlling a ship or fixed platform by force or threat of force.
b) Violence against a person, damage to a ship, marine facilities or fixed platform, or placing an object or device on a ship or fixed platform, if any such act endangers safe navigation.
c) Destruction of a ship, marine facility or fixed platform.
d) Injuring or killing persons in connection with the crimes set out in other subsections of the Convention.
e) Use of biological/chemical/nuclear weapons, radioactive materials or hazardous substances on ships or platforms and/or against ships or platforms.
f) Using vessels to cause murder, serious injury or harm, including environmental damage. ²⁹

²⁸ See Kandler K., Violence at Sea The Legal Framework to Combat Maritime Terrorism, Tromso, 2016, 7; Ambos K., & Timmermann A., Terrorism and Customary International Law, RESEARCH HANDBOOK ON INTERNATIONAL LAW AND TERRORISM (Ed. B. Saul), Cheltenham, 2020, 16 & 22; Cassese A., & Gaeta P., CASSESE'S INTERNATIONAL CRIMINAL LAW, Oxford, 2013, 148-149; Perez-Leon-Acevedo, Chakhvadze, UNCHARTED WATERS: SHOULD INTERNATIONAL MARITIME TERRORISM BE INCLUDED IN THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT?, Duke Journal of Comparative and International Law, vol. 34, № 1, 46, 2024, 46-49.

²⁹ See Perez-Leon-Acevedo, Chakhvadze, UNCHARTED WATERS: SHOULD INTERNATIONAL MARITIME TERRORISM BE INCLUDED IN THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT? Duke Journal of Comparative and International Law, vol. 34, № 1, 46, 2024, 46-47.

It should be noted that land preparation for maritime terrorism normally falls within the *actus reus* of the said crime.³⁰ Christopher C. Joyner defines maritime terrorism as “the systematic use or threat to use acts of violence against international shipping and maritime services by an individual or group to induce fear and intimidation in a civilian population in order to achieve political ambitions or objectives”.³¹ Samuel Pyeatt Menefee defines maritime terrorism as “any illegal act directed against ships, their passengers, cargo or crew, or against seaports with the intent of directly or indirectly influencing a government or group of individuals”.³² It should be noted that these definitions are not accepted legal definitions of maritime terrorism.³³ Some authors distinguish between the concepts of political and economic terrorism, which, in my view, leads to conflation between the concepts of maritime terrorism and piracy.³⁴

As regards the *mens rea* of international terrorism, it normally includes the goal of spreading terror among the population or (special) intention to force the government or international organization to take some action or to refrain from taking it.³⁵ This subjective element *ipso facto* applies to international maritime terrorism as well.³⁶

One apparent deficiency of the SUA Convention’s definition of maritime terrorism is that it is non-exhaustive, namely, it does not cover the sabotage attacks on coastal installations and ports for the purpose of committing terrorist acts³⁷ as well as using ships as a weapon against port facilities.³⁸ In addition, Felicity Attard rightly points out that the 1988 SUA Convention

³⁰ See Karim S. Md, *Maritime Terrorism and the Role of Judicial Institutions in the International Legal Order*, Leiden/Boston, 2016, 45; Perez-Leon-Acevedo, Chakhvadze, UNCHARTED WATERS: SHOULD INTERNATIONAL MARITIME TERRORISM BE INCLUDED IN THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT? *Duke Journal of Comparative and International Law*, vol. 34, № 1, 46, 2024, 47.

³¹ See Karim S. Md, *Maritime Terrorism and the Role of Judicial Institutions in the International Legal Order*, Leiden/Boston, 2016, 40.

³² *Ibid.*, 40-41.

³³ *Ibid.*, 41.

³⁴ See e.g., Bezkorovainiy V., Sokolyuk S., *Piracy, Maritime Terrorism and Disorder at Sea: The View from the Ukraine*, The Corbett Centre for Maritime Policy Studies, № 8, 2012, 17.

³⁵ See e.g., Perez-Leon-Acevedo J., Chakhvadze G., UNCHARTED WATERS: SHOULD INTERNATIONAL MARITIME TERRORISM BE INCLUDED IN THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT?, *Duke Journal of Comparative and International Law*, Vol. 34, №1, 2024, 47.

³⁶ *Ibid.* See also: Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) (Source: <https://treaties.un.org/doc/db/terrorism/conv8-english.pdf>; In force since March 1, 1992), articles 3 (1) and 3 (2); Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Source: [https://sherloc.unodc.org/cld/uploads/res/treaties/definitions/treaty/protocol to the convention for the suppression of unlawful acts against the safety of maritime navigation 2005.html/Protocol to Maritime Convention E.pdf](https://sherloc.unodc.org/cld/uploads/res/treaties/definitions/treaty/protocol%20to%20the%20convention%20for%20the%20suppression%20of%20unlawful%20acts%20against%20the%20safety%20of%20maritime%20navigation%202005.html/Protocol%20to%20Maritime%20Convention%20E.pdf); In force from July 28, 2010), article (1) (a)).

³⁷ See e.g., Bakala A., *SEA PIRACY AND TERRORISM AT SEA: THE PROBLEM OF RELATIONSHIP AND DISTINCTION OF CONCEPTS*, National University "Odessa Law Academy", 2013, 321.

³⁸ See e.g., Kandler K., *Violence at Sea The Legal Framework to Combat Maritime Terrorism*, Tromso, 2016, 33; Tuerk H., *Combating Terrorism At Sea – The Suppression Of Unlawful Acts*, *University of Miami International and Comparative Law Review*, Vol. 15, № 3, 2008, 353; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) (Source: <https://treaties.un.org/doc/db/terrorism/conv8-english.pdf>; In force since March 1, 1992), article 3, paragraph 1, subparagraph „e”.

focused primarily on post-crime regulation and failed to provide proper boarding procedures which was one of the main reasons for its subsequent amendment.³⁹

Under the SUA Convention, international maritime terrorism is also related to the use of maritime transport.⁴⁰ In particular, Article 3 'ter' of the 2005 Protocol of the SUA Convention establishes that any person commits an offense within the meaning of this Convention if that person unlawfully and intentionally takes a person on board a ship knowing that person has committed an act that constitutes an offense under Articles 3 'bis' or 3 'ter' of the Convention or an offense referred to in one of the agreements contained in the Annex and intends to help that person to avoid criminal liability.⁴¹

Eventually the Council for Security Cooperation in the Asia Pacific (CSCAP) Working Group defines maritime terrorism as "the undertaking of terrorist acts and activities (1) within the maritime environment, (2) using or against vessels or fixed platforms at sea or in port, or against any one of their passengers or personnel, (3) against coastal facilities or settlements, including tourist resorts, port areas and port towns or cities."⁴²

Chapter 2. Piracy

Piracy is one of the oldest crimes, which has traditionally been considered as a crime against international law, subject to universal jurisdiction.⁴³ In the "Lotus" case, Judge Moore of the Permanent Court of International Justice (PCIJ) notes that piracy belongs to the category of crimes that are regulated exclusively by law of nations.⁴⁴ It is uncontested among international law scholars that the person who commits the crime of piracy may potentially be adjudicated by courts of any state.⁴⁵

The issue of developing a uniform definition of piracy has been on the agenda for years. For instance, Alfred Rubin distinguished at least six different meanings of piracy (See Table №2):

³⁹ See *Attard F*, IMO's Contribution to International Law Regulating Maritime Security, *Journal of Maritime Law & Commerce*, Vol. 45, № 4, 2014, 513.

⁴⁰ See *Plöger S.M.*, THE PREVENTION OF MARITIME TERRORISM Is Today's Maritime Security Sufficient? Oslo, 2008, 8.

⁴¹ *Ibid.*, Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Source:

[https://sherloc.unodc.org/cld/uploads/res/treaties/definitions/treaty/protocol to the convention for the suppression of unlawful acts against the safety of maritime navigation 2005.html](https://sherloc.unodc.org/cld/uploads/res/treaties/definitions/treaty/protocol%20to%20the%20convention%20for%20the%20suppression%20of%20unlawful%20acts%20against%20the%20safety%20of%20maritime%20navigation%202005.html)/Protocol to Maritime Convention E.pdf; In force from July 28, 2010), article 3 „ter”.

⁴² See e.g., *Plöger S.M.*, THE PREVENTION OF MARITIME TERRORISM Is Today's Maritime Security Sufficient?, Oslo, 2008, 7.

⁴³ See *Kontorovich E*, The Penalties for Piracy: An Empirical Study of National Prosecution of International Crimes, Northwestern University School of Law, Faculty Working Papers, 2012, 6.

⁴⁴ *Kurlekar A., Pai M*, THE DIVERGENCE BETWEEN INTERNATIONAL LAW AND INDIAN LAW APPLICABLE IN COUNTER PIRACY MEASURES: ANALYSED THROUGH THE DECISION OF THE REPUBLIC OF ITALY V. UNION OF INDIA, Vol. 6, №3, 2013, 531.

⁴⁵ See e.g., *Dixon M., McCorquodale R*, Cases and Materials on International Law, Oxford, 2016, 148; *Burgess D.R.*, Hostis Humani Generi: Piracy, Terrorism and a New International Law, *University of Miami International and Comparative Law Review*, Vol. 13, № 2, 2006, 194.

Table №2: Definition of the term “piracy” by Alfred Rubin

(1) A vernacular usage with no direct legal implications;
(2) An international law meaning related to unrecognized states or recognized states whose governments are not considered to be empowered at international law to authorize the sorts of public activity that is questioned, like the Barbary States of about 1600-1830, the Malay Sultanates of about 1800-1880, and the Protectorate of the Ionian Islands of about 1820-1830;
(3) An international law meaning related to unrecognized belligerency, like Confederate States commerce raiders and privateers during the American Civil War of 1861-65 in the eyes of the Federal Government of the United States;
(4) An international law meaning related to the private acts of foreigners against other foreigners in circumstances making criminal jurisdiction by a third state acceptable to the international community despite the absence of the usual territorial or nationality links that are normally required to justify the extension abroad of national criminal jurisdiction;
(5) Various special international law meanings derived from particular treaty negotiations;
(6) Various municipal law meanings defined by the statutes and practices of individual states.

46

As for the statistics of piracy, the latter has been constantly increasing for the last period. For instance, according to official data, in 2022 there were 58 cases of piracy.⁴⁷ In 2023, this

⁴⁶ Rubin A, The Law of Piracy, Denver Journal of International Law and Policy, Vol. 15, № .2, 1987, 173-174.

⁴⁷ See e.g., Vitale, IMB 2023 report highlights rise in maritime piracy, Ship Technology, July 27, 2023, <https://www.ship-technology.com/news/imb-2023-report-highlights-rise-in-maritime-piracy/?cf-view&cf-closed> [last visited 04.06.2024].

number increased by 7 units and amounted to 65 incidents.⁴⁸ According to the International Maritime Organization, there were 6, 752 acts of piracy worldwide between 1984 and 2012, most of which occurred in the last two decades.⁴⁹ According to official data, the number of piracy and armed robbery at sea increased by 12% in the first six months of 2023 compared to the same period last year.⁵⁰ Nowadays, the coast of Somalia has become the epicenter of piracy. According to official data, by 2011 there were approximately 1 500 pirates operating on the coast of Somalia, and today their number has exceeded 4000.⁵¹

Piracy was originally defined in Article 15 of the Geneva Convention on the High Seas under which piracy encompassed the following acts: „Any illegal acts of violence, 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: (a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State”.⁵² Under the convention the piracy also meant any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft as well as any act of inciting or of intentionally facilitating an act described in subparagraph 1 or subparagraph 2 of this article.

⁵³

The International Maritime Bureau (IMB) defines piracy as “an act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in furtherance of that act”.⁵⁴ It is clear from the above definition that it is much broader than the definition of piracy provided by the UNCLOS and actually covers possible piratical attacks in any maritime zone.⁵⁵

Under article 101 of the UNCLOS Piracy encompasses the following acts: „(a) 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: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii)

⁴⁸ *Ibid.*

⁴⁹ IMO, Reports on Acts of Piracy and Armed Robbery against Ships, MSC. 4/Circ. 193, 2 April, 2013, https://www.wcdn.imo.org/localresources/en/OurWork/Security/Documents/193_Annual2012.pdf [last visited 04.06.2024].

⁵⁰ See *Ajdin*, Piracy attacks on the rise, Splash 247, July 13, 2023. <https://splash247.com/piracy-attacks-on-the-rise/> [last visited 04.06.2024].

⁵¹ See The Economics of Piracy, Pirate Ransoms and Livelihoods off the Coast of Somalia, GeoPolicity Inc., May 2011, <https://nation.time.com/wp-content/uploads/sites/8/2011/05/the-economics-of-piracy-pirate-ransoms-livelihoods-off-the-coast-of-somalia-geopolicy-may-2011.pdf> [last visited 04.06.2024]; *Abbas*, PIRACY IN SOMALIA, The Nippon Foundation, 2011-2012, https://www.un.org/depts/los/nippon/unff_programme_home/fellows_pages/fellows_papers/djama_1112_djibouti_PPT.pdf [last visited 04.06.2024]; WHO DEFEATED THE SOMALI PIRATES?, CIMSEC, September 2, 2012. <https://cimsec.org/who-defeated-the-somali-pirates/> [last visited 04.06.2024].

⁵² 1958 Convention on the High Seas, article 15, paragraph 1 (Source: <https://www.legal-tools.org/doc/7b4abc-1/pdf/>; In force since September 30, 1962).

⁵³ *Ibid*, paras. 2 and 3.

⁵⁴ See *Nelson E.S.*, Maritime Terrorism and Piracy: Existing and Potential Threats, Global Security Studies, Vol. 3, № 1, 2012, 16.

⁵⁵ See *Amri A.A.*, THE INTERNATIONAL LEGAL DEFINITION OF PIRACY AND ITS MOTIVES, Jati, Vol. 19, 2014, 31-32;

against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)".⁵⁶

From the international legal definition of piracy, we can distinguish the following main elements of this crime (see Table № 3):⁵⁷

Table №3: Main elements of the crime of piracy

a) Piracy can be carried out on the high seas, in the exclusive economic zone or outside the exclusive jurisdiction of a state.
b) The crime of piracy is directed against another ship, its persons or property on board, as well as against the safety of navigation.
c) The crime of piracy can be committed by a private vessel, a military vessel or a government vessel.
d) It is necessary for the ship's crew to establish control over the other vessel.
e) Piracy includes any unlawful act of violence or detention or any robbery.
f) Piracy is committed for private ends.

Nowadays there is no complete consensus on the definition of the term "private ends", but there is no doubt that piracy and maritime terrorism are two different crimes. This was somewhat confirmed in the case "Castle John and Nederlandse Stichting Sirius v. NV Mabeco and NV Parfin", where the court had to decide whether the detention of two ships in the high seas by members of "Greenpeace" which was engaged in an environmental campaign and as such aimed at drawing public attention to the dangers of dumping waste from ships into the sea, was piracy.⁵⁸ The court positively answered this question by separating private and public ends.⁵⁹ According to the court, in this case "the applicants do not argue that the acts at issue were committed in the interest or detriment of a State or a State system rather than purely in support of a personal point of view concerning a particular problem, even if they reflected a

⁵⁶ See The 1982 Convention on the Law of the Sea, article 101 (Source: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf; In force since 16 November, 1994).

⁵⁷ For the more detailed description of the piracy elements provided by this table see: *Logina A*, THE INTERNATIONAL LAW RELATED TO MARITIME SECURITY: AN ANALYSIS OF ITS EFFECTIVENESS IN COMBATING PIRACY AND ARMED ROBBERY AGAINST SHIPS, Malmö, 2009, 4-41; See also: *Nilasari, Steele L*, UNCLOS Definition of Piracy: Is it still relevant for Modern Piracy, *Mulawarman Law Review*, Vol. 7, № 2, 2022, 92-99.

⁵⁸ See *Honniball A.N*, THE 'PRIVATE ENDS' OF INTERNATIONAL PIRACY: THE NECESSITY OF LEGAL CLARITY IN RELATION TO VIOLENT POLITICAL ACTIVITIES, ICD Brief, № 13, 2015, 8-9; *Menefee S.P*, THE CASE OF THE CASTLE JOHN, OR GREENBEARD THE PIRATE?: ENVIRONMENTALISM, PIRACY AND THE DEVELOPMENT OF INTERNATIONAL LAW, CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL, Vol. 24, № 1, 1993, 1-16; *Qureshi W.A.*, The Prosecution of Pirates and the Enforcement of Counter-Piracy Laws are Virtually Incapacitated by Law Itself, *SAN DIEGO INTERNATIONAL LAW JOURNAL*, Vol. 19, № 1, 2017, 107; *Castle John and Nederlandse Stichting Sirius v. NV Mabeco and NV parfin*, *International Law Reports*, Vol. 77, 1988, 537-541.

⁵⁹ *Ibid.*

political perspective [...] the Court of Appeal was entitled to decide that the acts at issue were committed for personal ends”.⁶⁰ Furthermore, in *Dahir v. Republic* case, the court strictly distinguishes between private and political ends and therefore, excludes maritime terrorism from the ambit of piracy.⁶¹ The analysis of other cases shows the inconsistent practice of the courts, which, as the authors point out, creates a kind of shelter for pirates to use the loopholes in the regulation in accordance with their own interests.⁶²

It is debatable whether the requirement of private ends in the definition of piracy also includes political goals.⁶³ In my view, a very broad definition of private ends encompassing politically-motivated acts of violence blurs the line that exists between piracy and maritime terrorism.

Another important element of the concept of piracy is the requirement of two ships. Piracy is a criminal act that takes place on the high seas or outside the exclusive jurisdiction of states and involves at least two ships – that is, one ship attacks another.⁶⁴ This requirement excludes acts of internal hijacking by ship’s crew members or passengers (See Table № 4: Distinction between Piracy and Maritime Terrorism).⁶⁵

Table № 4: Distinction between Piracy and Maritime Terrorism

Similarities:	Differences:
1. Violence or threats of violence: Both Piracy and Maritime Terrorism involve violence or threats of violence. ⁶⁶	1. Motive: Maritime terrorism is a crime determined by a purely political motive, while piracy is committed for private ends. 2. Attracting Public Attention: Pirates try their best to avoid the limelight and usually use whatever means necessary to achieve their goals,

⁶⁰ *Ibid.*

⁶¹ See *Gardner M*, Piracy Prosecutions in National Courts, JICJ, Vol.9, 2012, 811.

⁶² See *QURESHI W.A.*, The Prosecution of Pirates and the Enforcement of Counter-Piracy Laws are Virtually Incapacitated by Law Itself, SAN DIEGO INTERNATIONAL LAW JOURNAL, Vol. 19, № 1, 2017, 108; See also: *Institute of Cetacean Research and ors v Sea Shepherd Conservation Society and Watson*, Appeal judgment, 725 F3d 940 (9th Cir), ILDC 2176 (US 2013), 24th May 2013, United States; Court of Appeals, Paragraph 4.

⁶³ See *Heller*, A Response to Kontorovich and Gallagher About Piracy (Updated), *Opinio Juris*, February 27, 2013, <http://opiniojuris.org/2013/02/27/a-response-to-kontorovich-and-gallagher-about-piracy/> (The author believes that politically motivated acts of violence committed on the high seas have traditionally not been considered as piracy), [last visited 13.06.2024]; This opinion is shared by José Luis Jesus and Professor Douglas Guilfoyle (Prof. Guilfoyle notes that considering that, given definition provided by the Geneva Convention on the High Seas and the 1982 Convention, piracy does not include political objectives), See: *Ibid*; Guilfoyle, Political Motivation and Piracy: What History Doesn’t Teach Us About Law, *EJILTALK*, 17 June, 2013, <https://www.ejiltalk.org/political-motivation-and-piracy-what-history-doesnt-teach-us-about-law/>, [last visited 13.06.2024].

⁶⁴ See *Kandler K.*, Violence at Sea The Legal Framework to Combat Maritime Terrorism, Tromso, 2016, 5.

⁶⁵ *Ibid.*

⁶⁶ See e.g, *Modzhoryan L.A.*, Terrorism at Sea. The Struggle of the State to Ensure the Safety of Maritime Navigation, Moscow, 1991, 227-230; *Knyazeva N.A.*, *Korobeev A.I.*, Maritime Terrorism and Piracy: The Threat to Maritime Security, *Mediterranean Journal of Social Sciences*, Vol. 6, № 6 S3, 2015, 229; *Hong N.*, *Adolf K.Y. Ng.*, The international legal instruments in addressing piracy and maritime terrorism: A critical review, *Research in Transportation Economics*, Vol. 27, № 1, 2010, 51; *SHAH H.A.R.*, A LEGAL ANALYSIS OF PIRACY AND

2. Both crimes are directed against the safety of the ship, its crew, property on board and navigation. ⁶⁷	while (maritime) terrorists aim to influence society because even minor acts of terrorism attract the attention of states. ⁶⁹
3. Use of the same means: Both crimes may involve the use of the same means to achieve the intended objectives (e.g. hijacking of ships). ⁶⁸	3. Two Ship Rule.
	4. Unlike Piracy Maritime Terrorism can be committed in any maritime zone.

Chapter 3. Armed Robbery at Sea

The distinctive aspect of Armed Robbery at Sea from Piracy is the geographic location. ⁷⁰ It is worth noting that this definition was shared by the UN Security Council, which took unprecedented measures to combat Somali pirates. For instance, the UNSC Resolution #1816 refers to such acts committed in the territorial sea as armed robbery at sea. ⁷¹ A similar definition is given in the United Nations General Assembly resolutions, where armed piracy is defined as any unlawful act of violence against or detaining, destroying or threatening to commit such acts against ships, which does not constitute piracy, directed against ships or persons on board or property, and carried out by a State within the jurisdiction. ⁷² Unlike piracy, armed robbery at sea is not a crime of universal jurisdiction. ⁷³ Unlike piracy, the objective aspect of armed robbery at sea involves an attempt or preparation to commit the crime. ⁷⁴

Armed robbery at sea, as a criminal act, is directed against a ship, persons on board or property. ⁷⁵ The legal definition of armed robbery at sea does not include the requirement of two ships, meaning that armed robbery at sea can be committed on board a single vessel. ⁷⁶

It should be noted that in international legal scholarship there is no consensus regarding the motive of armed robbery at sea. Some authors believe that this crime can be committed with

ARMED ROBBERY AT SEA IN THE STRAITS OF MALACCA: THE MALAYSIAN PERSPECTIVE, Birmingham, 2013, 105.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ See *SHAH H.A.R.*, A LEGAL ANALYSIS OF PIRACY AND ARMED ROBBERY AT SEA IN THE STRAITS OF MALACCA: THE MALAYSIAN PERSPECTIVE, Birmingham, 2013, 106; *NUSSIO, BOHMELT, BOVE*, DO TERRORISTS GET THE ATTENTION THEY WANT? COMPARING EFFECTS OF TERRORISM ACROSS EUROPE, Public Opinion Quarterly, Vol. 85, №. 3, 2021, 900.

⁷⁰ See *Kandler K.*, Violence at Sea The Legal Framework to Combat Maritime Terrorism, Tromsø, 2016, 5; Resolution A.1025(26) Adopted on 2 December 2009 (Agenda item 10); CODE OF PRACTICE FOR THE INVESTIGATION OF CRIMES OF PIRACY AND ARMED ROBBERY AGAINST SHIPS, article 2.

⁷¹ See UNSC Resolution 1816, 2 June, 2008, <https://digitallibrary.un.org/record/627953>.

⁷² See UN General Assembly Resolution A.922(22), paragraph 2.2 of the annex; A 26/Res.1025, paragraph 2.2 of the annex; *Logina A.*, THE INTERNATIONAL LAW RELATED TO MARITIME SECURITY: AN ANALYSIS OF ITS EFFECTIVENESS IN COMBATING PIRACY AND ARMED ROBBERY AGAINST SHIPS, Malmö, 2009, 42.

⁷³ See *Bunga G.A.*, THE REGULATION OF PIRACY AND ARMED ROBBERY AT SEA IN INTERNATIONAL LAW, Jurnal Hukum dan Peradilan, Vol. 9, № 3, 2020, 433.

⁷⁴ See *Logina A.*, THE INTERNATIONAL LAW RELATED TO MARITIME SECURITY: AN ANALYSIS OF ITS EFFECTIVENESS IN COMBATING PIRACY AND ARMED ROBBERY AGAINST SHIPS, Malmö, 2009, 44.

⁷⁵ *Ibid.*, 43-45.

⁷⁶ *Ibid.*, 47.

any motive.⁷⁷ In my view, a very broad definition of the motive of armed robbery at sea, which includes, among other things, politically motivated acts, blurs the line that exists between armed robbery at sea and (international) maritime terrorism. The main goal of armed robbery at sea is financial, personal gain, and they, like pirates, try to avoid the public attention as much as possible, using only the means necessary to achieve their goals.⁷⁸

Conclusion

The presented analysis indicates that the legal nature of (international) maritime terrorism, piracy and maritime armed robbery is different. Maritime terrorism is primarily a crime determined by political motives, while piracy is committed for private ends. The difference between the mentioned crimes is also related to the requirement of two ships.

However, although armed robbery at sea is often considered a subcategory of the crime of piracy, we are actually talking about two different crimes here, which unequivocally refutes the view that the law of piracy extends to armed robbery at sea.

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⁷⁷ *Ibid.*, 45-47.

⁷⁸ See *SHAH H.A.R.*, A LEGAL ANALYSIS OF PIRACY AND ARMED ROBBERY AT SEA IN THE STRAITS OF MALACCA: THE MALAYSIAN PERSPECTIVE, Birmingham, 2013, 106.

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