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Analysis of the Action to Combat to Impunity of Modern piracy from the Perspective of International Law

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Abstract

The crime of piracy as the oldest international crime has emerged in a modern way in recent years. In addition, piracy is one of the first and main crimes that have been subject to universal jurisdiction. Today, this crime has moved away from its classic way and has progressed to the point of a transformation. This has caused the United Nations Security Council, as the main pillar of maintaining international peace and security, to deal with it many times by issuing resolutions. Despite continuous efforts to prosecute the perpetrators of piracy in domestic courts, the international community has not been able to effectively deal with this phenomenon, because states are facing problems to suppress piracy, including the increasing human rights norms. For this purpose to fight against piracy, new and potential solutions have been proposed, including the establishment of a special international court, referring piracy to the International Criminal Court, as well as dealing with the crime of piracy as a terrorist crime through anti-terrorist conventions. In this regard, according to outcomes of this research, combat to modern piracy in the International Criminal Court can be considered the most effective and efficient way. Compiled with a descriptive and analytical method, by setting this outcome as a hypothesis and examining the characteristics and the limitations of combat to this crime, new and potential solutions of combat to impunity of modern piracy, especially in International Criminal Court, has been discussed.

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1. Introduction

Modern piracy, today, has made the watercourses unsafe. Pirates, come from places like the coast of Somalia or Strait of Malacca with primitive constructed wooden, but armed, boats, to hunt and obtain multi-million dollar ransoms from international companies.

Increasing piracy, especially in the Western Indian Ocean, the Gulf of Aden and the Gulf of Guinea, has become a serious threat to maritime transportation which needs the attention of international organizations and countries around the world. Tackling this problem requires considerable power, resources and cooperation.

In response to pirate attacks in the Western Indian Ocean, countries worldwide have increasingly authorized the deployment of armed guards from private military and security companies (PMSCs) on merchant ships (Cusumano, 2020: 19).

Piracy distinguishes from many other international crimes because it occurs outside the jurisdiction of states. As a crime which is subjected to universal jurisdiction, piracy, would prosecuted by any country that has caught the pirates in its jurisdiction.

The International Maritime Organization (IMO) announced in its annual piracy report that piracy increased in 2018 and reached a three-year high. The IMO's Piracy Reporting Center recorded 201 cases of piracy and armed robbery in 2018, up from 180 in 2017 and the highest since 2015, when 246 cases of piracy were recorded.

According to the IMO, the Gulf of Guinea remains extremely dangerous for maritime transportation. Reports of attacks in waters from Cote d'Ivoire to the Democratic Republic of Congo more than doubled in 2018. The West African region also witnessed a new wave of violence in the last quarter of 2018, with 41 cases of kidnappings recorded in Nigerian waters. In addition, According to the IMO, oil tankers carrying gasoline were the main target of these attacks.

According to the US Energy Information Administration, each day, about 4.8 million barrels of oil and petroleum products, equivalent to about 5 percent of maritime trade, passed through the Black Sea in 2016. In this regard, the spokesperson of the



IMO has stated that “there is an urgent need for cooperation and information sharing between the authorities of the countries of the Gulf of Guinea region in order to take effective measures against piracy” (Evans and Galani,2020: 196).

Nowadays, no international or regional courts have been established specifically for piracy and the perpetrators of piracy is prosecuted entirely under the jurisdiction of national courts. These courts prosecuted pirates based on inherent jurisdiction, i.e. Personal, real, territorial and global jurisdiction, or based on transfer agreements as a third country, such as Kenya. Affected a large part of the interests of countries, the increase of piracy in various maritime parts of the world, demands that various measures, from the proposal of equalizing the crime of piracy with terrorism to issuing security council (SC) resolutions stating that the crime of piracy is considered a threat to international peace and security or adding this crime to the crimes under the jurisdiction of the International Criminal Court (ICC) (Evans and Galan,2020: 198), have been implemented or suggested as potential solutions.

2. Definition, types and components of piracy

Before the United Nation Convention on the Law of the Sea 1982 (UNCLOS), most countries defined and criminalized piracy in their national laws. Although UNCLOS provides a definition of piracy, it must be mentioned that some countries have not ratified this convention and some of them defined it in a different way in their national laws. To create a standard to record and obtain accurate statistics of piracy, also, some engaged international organizations have defined this crime in some cases in their own way.

Consisting of 320 articles and 9 appendices, although UNCLOS is so comprehensive that some have called it “the constitution of the seas” (Pornouri and Habibi, 2007: 64) just 7 articles of this convention are dedicated to piracy. So, although UNCLOS is the last international document in the field of the law of the sea and modern piracy is considered as one of the factors that threaten international peace and security, the provided definition and international rules for combating piracy, have flaws and limitations that cause the ineffectiveness of the anti-piracy system, in some cases. Article 101 of UNCLOS defined piracy as:

“(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) 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).

As a legal element of the crime of piracy, Therefore, according to Article 101 of UNCLOS, the actus reus of this crime includes behaviors such as illegal seizure accompanied by violence, any predatory act, any voluntary participation in guiding a ship or aircraft with knowledge of the facts that indicate piracy, inciting and facilitating the perpetrator and the mens rea of piracy is deliberate intention to commit piracy. Therefore, the subject of the crime of piracy is the perpetrator's objective behavior against persons, ship and aircraft; so, unintentional actions such as maritime accidents leading to the killing of people or the destruction of ships and their cargo are not included in the definition of piracy.

In another word, the purpose of piracy is to seize any vessel (civil or state), persons or goods in the open sea. In fact, the purpose of piracy is capturing the floating cargo; so, after capturing, they usually release the ship and the crew but, in some cases, they kill the crew and seize or sink the ship.

Based on the nature and extent of risks and the type of attacks, the Maritime Safety Committee (MSC) of IMO has divided piracy into three categories: (Dua.2019: 110)

- 1- A low-level armed attacks carried out by unorganized pirates with relatively light weapons, such as piracy in India
- 2- Middle-level armed attack and aggression carried out by fairly organized pirates, such as piracy in Bangladesh.
- 3- Armed hijacking, which is the most common type of piracy in the last decade and includes cases such as unloading the cargo, changing the name and selling



the ship, and is carried out by well-organized pirates, such as piracy in the Gulf of Aden and Somalia (Palmer, 2013: 69).

Digital piracy including online piracy involves illegal copying of copyrighted materials. The term “piracy,” which has been used for many years, now means “an act of copying and distributing intellectual property without authorization of the right holder (Sanjeev, 2019: 16).

3. Limitations to combat impunity of piracy in UNCLOS

At first it must be mentioned that the not only definition of piracy in Article 101 of UNCLOS is not comprehensive, but also it has some flaws. Also, one can say that the definition of piracy in UNCLOS is based on Personal goals which would considerably narrowed the scope of the rules. So by this purposeful limiting piracy to personal goals, actions resulting from political purposes, cases of terrorist acts, acts of the rebels against the state ships to overthrow their government and acts carried out by warships or other recognized government vessels are excluded from piracy in UNCLOS. Some critics also believe that because of these exclusions, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), includes political goals in the definition of illegal acts against maritime security (Lehr, 2006: 30).

The concept of the open sea, which was proposed by Grotius, gradually broke the concept of the closed sea, which was partly due to the control of piracy. For years, pirates patrolling the high seas to attack merchant ships. Therefore, all existing rules of suppressing and punishing the piracy have discussed this issue in the high seas. (Lehr, 2006: 33) According to Article 105 of UNCLOS, states can seize a pirate ship in the high seas or anywhere else outside their territorial and punish that ship based on their national laws.

As a result of freedom of navigation, this issue became an international issue. Because the issue of fighting against pirates is not related to few, but all states using the seas, UNCLOS greatly expanded the scope of the territorial sea. In the years after World War II, many states increased the width of their territorial seas, and in some cases, their claims included straits used by international transportation.

By creating a special regime for international straits, the convention adjusts these claims and clarified that these straits are open for free navigation. Although the sovereign rights of coastal states were limited by the right of innocent passage in waterways that was part of their territorial sea, they assumed the sole responsibility of maintaining public order in this straits. The Convention also created a wider range, called Exclusive Economic Zone (EEZ), which has a specific legal system. This area is neither a part of the territorial waters nor a part of the open sea (Churchill and Lowe 1991, pp. 102-115).

Some believe that according to Article 58(2) of UNCLOS, the provisions related to piracy are fully implemented in this zone; i.e., all states are allowed to arrest and prosecute pirates in their EEZ based on UNCLOS or their national laws. But others believe that according to Article 58(3) of UNCLOS, states should have respect for the rights of coastal states in the EEZ to fulfill their rights on the high seas. (Marley, 2010: 61). Notwithstanding the ambiguities rooted in the concept of the EEZ, there is a growing belief that piracy is a matter of universal concerns that has caused irregularities and disturbances such as maritime terrorism, illegal immigration and drug and weapon smuggling. For this reason, if the naval forces, that have an important contribution in fighting these irregularities, are prohibited from carrying out their duties in EEZs, especially the EEZ of the states that cannot or will not fight, piracy will grow more and more.

Not limited to open seas, considering the scope or area of modern piracy, the SC, passed five separate resolutions regarding piracy in Somalia in 2008; (Alexander and Richardson, 2008: 66) which authorizes the use of military force to eliminate the threats against international security. These resolutions have expanded the powers of multinational naval forces beyond what is permitted under customary international law. According to Resolution 1816, states could take relevant measures against pirates, even in the waters under the sovereignty of Somalia.

In addition, based on Resolution 1851, the SC authorized military actions, even in the territory of Somalia to suppress pirates. The SC emphasis that these decisions were taken only in the specific case of Somalia and do not create any precedent in customary international law. These actions are with the consent of Somalia, because this country alone cannot solve the problem of piracy (Marely, 2010: 64).



The SC also added that these military actions must be in accordance with international humanitarian law. In order to root out any wrongdoing, including piracy, it should be kept in mind that elimination of poverty and unemployment and strengthening the culture of peace and human rights, are necessary. "Assisting the international community, the social and economic conditions in Somalia should also be improved with the, and on the other hand, the principle of universal jurisdiction should also be considered" (beheshti zade and Others, 2022: 288).

About the crime of piracy, another issue that has not been addressed in UNCLOS is the issue of the right to Reserve Hot Pursuit (RHP). Article 111 of UNCLOS, accept the customary right to hot pursue pirates from territorial waters to the high seas. Not effectively controlled, since the territorial waters would become a hiding place for pirates, the right of reverse hot pursuit is actually the right of the ships of one state to chase the pirates from the high seas to the territorial sea of another state. Increasing the width of the territorial sea from 3 miles to 12 miles, makes the open sea narrower, But due to the weakness of some states in exercising jurisdiction over this area which is prohibited from trespass, the pirates got more freedom of action and a greater chance of impunity. In this regard, in the specific case of Somalia, SC has clearly expanded the scope of the reverse hot pursuit right and allow pirates to be pursued from the high seas to the territorial waters and finally to the territory of Somalia.

Furthermore, According to Convention on the High Seas (1958) and UNCLOS, each party is obliged to cooperate in the fight against piracy so, if states do not take any action or their actions are insufficient and ineffective, there is no other mechanism to act for other states. (Tanaka, 2019: 49) According to Convention on the High Seas (article 14), states are undertaking to do any necessary measures against piracy so, if a state does not fulfill their obligations or failed to do so, it would be liable for the damages caused by its negligence under customary rules of international law.

4. Modern piracy as a terrorist crime

Knowing there is no similar or accepted definition of terrorism in Statutory or customary international law, First of all, the terrorism must be defined in a

comprehensive and accurate manner. As a basic document in treaty-based international law, The International Convention for the Suppression of the Financing of Terrorism (1999), by defining this concept from the perspective of the convention exactly like other similar conventions, did not provide a comprehensive definition of Terrorism. In customary international law, also, there is no accepted definition of Terrorism.

Anyway, the modern piracy in its special characteristics and the intimidation it brings, referred also to as maritime terrorism. Especially, the Rome Convention of 1988, whose main purpose was to combat terrorist acts at sea, never explicitly mentioned piracy, but most of its provisions can be applied to piracy as well (Marley, 2010: 75). This point of view strengthens the possibility that modern piracy should no longer be considered as piracy in its traditional concept and should be referred to as maritime terrorism.

However, since states are very sensitive to this type of insecurity and always consider themselves as victims of terrorism, it is necessary to prepare themselves to suppress this phenomenon by more sensitivity and considering it as a terrorist act and criminalizing it in their national laws. In this regard, it is necessary to mention that the SC, in one of its resolutions on piracy crisis, (Husainpoor, 2015: 138) obliges all states to criminalize piracy and suppress it in their national laws. Again, the SC re-emphasized the necessity of developing the national laws to criminalize the phenomenon of piracy.

It must also be considered that some writer believes that in the absence of an accepted definition of terrorism, and since it has not been determined that the pirates are supported by terrorist groups or that pirates support them, it is better to consider, prosecute and combat modern piracy as traditional piracy (Burnett, 2003: 91) In support of their reasoning, they adduce to the absence of a clear and precise framework for terrorist acts. They also emphasis on distinguishing point of piracy of terrorism, which is the political goal of terrorists that in many cases, does not manifest openly and may hide behind financial goals (Hodgkinson, 2015:18).



5. The SC rule-making role on Modern piracy

The collapse of the Somali government in the early 1990s and the increasing attacks on ships on the coast of Somalia and the Gulf of Aden have caused problems for the international community. (sterio ,2017: 59) Following the problems caused by pirates on commercial and non-commercial ships carrying humanitarian aid to the people of Somalia, the SC issued several resolutions based on the UN Charter, chapter VII and developed limited international law rules on piracy especially by granting permission to enter into Somalian territorial waters consistent with the permissible actions of the high seas. Since the resolutions were adopted based on the permission of the interim government of Somalia, SC has repeatedly declared these unusual rights and obligations with them will create a new customary rule (Burnett,2003: 94).

In addition, despite some execution problems, unprecedented powers, especially the rights to pursue, arrest and prosecute pirates, to states and governmental and non-governmental organizations in the fight against piracy granted by SC, is a way to establish new rules beyond existing international laws to fight piracy (forooghi nia,2012: 64).

The constant approach of SC, demonstrate the harmful role of piracy in line with maritime terrorism. Since SC Resolution 733 (1991), the SC has regularly referred to chapter VII regarding the situation in Somalia as a threat to international peace and security. SC Resolution 1851 (2008) also, was the first resolution of the SC, encouraging countries to initiate agreements with Somalia's neighboring countries in order to prosecute pirates (Joyner, 2017: 159).

The issuance of two resolutions in November 2016, six resolutions in 2018 and a total of 23 resolutions until 2018 have shown the major concern of the SC and the international community about piracy (Kazemi and heidari,2021: 122).

In sum, although the resolutions issued by this political body are in the form of advisory resolutions, but they include significant points such as establishing piracy as a threat to international peace and security, the need for international cooperation and the manifestation of the rights of cooperation (ghasemi, Setayeshpour,2020: 89).

6. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988).

The convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SAU) is enacted in 1988 and entered into force in 1992. As mentioned in introduction of convention, this convention with having in mind the purposes and principles of the UN Charter concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States. recognizing in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Deeply concerned about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings, Deeply concerned about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings, recognizing that unlawful acts against the safety of maritime navigation jeopardize the safety of persons and property, seriously affect the operation of maritime services, and undermine the confidence of the peoples of the world in the safety of maritime navigation, considering that the occurrence of such acts is a matter of grave concern to the international community as a whole, being convinced of the urgent need to develop international co-operation between States in devising and adopting effective and practical measures for the prevention of all unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators, recalling resolution 40/61 of the General Assembly of the United Nations of 9 December 1985 which, inter alia, urges all States unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security.



Similar to the system related to international aviation, as the first treaty of this kind, The SAU convention and its related protocol, establish a legal system to Suppress illegal actions against international maritime security and combat international terrorism in maritime areas and beyond the jurisdiction of states. (Tanaka, 2019: 169) This convention includes 22 articles and an attached protocol to prevent illegal actions against the security of fixed platforms located on the continental shelf. The provisions of the convention include 5 parts, which are; Introduction, the ships subject to the provisions of this convention and the scope of the convention (Articles 4, 2, 1), the crimes covered by the convention (Article 3), the prosecution and extradition system (Articles 5 to 15) and the dispute resolution method and final articles (Articles 16 to 22).

7. The crime of modern piracy and the jurisdiction of the ICC

The jurisdiction of the ICC includes the most severe and heinous crimes that have always been the concern of the international community. According to Article 5 of the Statute of the ICC, the Court has jurisdiction over four crimes, including genocide, crimes against humanity, war crimes, and aggression. Some believe, since the crime of piracy is not under the jurisdiction of the ICC, according to the desire and decision of the state parties, as well as the continuation of the current alarming situation regarding piracy, this crime can be included among the crimes under the jurisdiction of the Court (Albanese, 2006: 73).

They adduce to reasons such, the crime of piracy is considered to be the first crime that has been covered by universal jurisdiction due to its excessive heinousness and ugliness and because pirate attacks are against all human beings and human society. (Chalk, 2008: 56) In addition, they said, piracy, similar to other crimes under the jurisdiction of the Court, is recognized as a crime that affects the entire international community. Also, piracy has disrupted international trade and made international waterways unsafe and create the risk of environmental disasters. Another believes that Piracy has also disrupted humanitarian aid, food and medical programs for nations and the United Nations, delaying long-term delivery of aid to, for example, victims of famine in Somalia (Kazemi and Heidari, 2021: 127).

Based on the characteristics of piracy, it can be said that although piracy are not comparable to genocide, which involves mass killings involving hundreds or even thousands of people But, With considering three factors of the occurrence of an attack against the civilian population, the extent or organization of the attack and the knowledge of the attack, it can be assumed as an example of a crime against humanity (Saed, 2008: 179).

As an example, in case of piracy in Somalia, In terms of extent, piracy affected 3.7 million square meters in terms of geographical area, hundreds of people were injured and killed and thousands of people were captured (Sterio,2017: 63). Also, In terms of the organization, although piracy was not an organized crime in the beginning and was done sporadically, But over time, according to UN report (2012) piracy has become an organized crime under the authority of two groups of pirate networks. Undoubtedly, piracy is an organized crime in most parts of the world. Approximately 1,200 pirates have been prosecuted in various parts of the world. (Joyner, 2017: 83) Therefore, piracy can reach the threshold of a crime against humanity in terms of extent and organization.

Attacked civilian population includes the ship's staff and its passengers and does not include the military forces. On the other hand, it is true that the crime against humanity must be done with support of states, or the perpetrators of this crime are basically state officials or military commanders, and although pirates have personal goals, the critical point here is that the goals and interests of Pirates can serve militia groups or groups originating from a state which is unable to suppress the pirates group. Therefore, in terms of international crimes, we cannot be satisfied with global policies. In the terms of knowledge, this element is assumed in the actions of pirates. In addition, some of the pirate actions are covered with examples of crimes against humanity in Article 7 of Rome statutes, such murder, and imprisonment, deprivation of physical freedom, rape and torture.

This is why some believe that by amending the Statute of the ICC or through an optional additional protocol to the Rome Statute, it will be possible to combat piracy in the ICC. Moreover, piracy, like other crimes within the jurisdiction of the ICC, is fully compatible with the Court's supplementary jurisdiction regime. In other words, the ICC will exercise its jurisdiction if the competent government is unwilling or unable to prosecute the crime (Khaleghi,2011: 65).



Therefore, the additional jurisdiction of the ICC, can also solve the problem of impunity for pirates in the case of piracy. The Court can establish its jurisdiction over piracy cases that states refuse to prosecute for various reasons such as high costs, lack of access to evidence, or some other factors (Elleman and Others, 2017: 113).

However, in addition to expand the jurisdiction of the ICC by amending the Rome Statute or the Additional Protocol to combat impunity for piracy, if piracy considered as a crime against international peace and security, it can be investigated by the SC and be referred to the ICC issuing a resolution (Naghizadeh, 2019: 109). In addition, crimes such as piracy, can be brought up by the prosecutor of the court for consideration in the court. Another solution that exists for this purpose is to refer the investigation of this crime by countries that are members of the court and have criminalized international crimes in the national arena. These state parties can react appropriately to these crimes domestically or by the approval of the UN, refer it to the ICC (Forughinia, 2012: 87).

The ICC has also made changes compared to its past, and although it does not have jurisdiction over these international crimes, according to its statute, and even at the Kampala Summit in 2010, the addition of these crimes to the statute of the court was not successful, but now the court It works more flexibly and has imperceptibly expanded its competence. (Elleman and Others, 2017: 202) Therefore, it is possible to combat piracy through the referral of the SC and other recently mentioned methods through the court, and the problem of impunity for the crime of piracy can be solved effectively.

8. Modern piracy at the ICC versus national courts

Prosecuting serious crimes that have affected the international community in domestic courts most of time is problematic. First of all, domestic courts do not have sufficient legal capacity and experience to deal with international crimes. In this case, some states do not have appropriate laws to prosecute piracy, because the relevant provisions of the UNCLOS or SAU are not appearing, or even worse the piracy is not criminalized in their national laws. In addition, even if they have

sufficient laws in this field, some states such as Somalia, because of institutional or organizational problems like an insufficient number of judges or legal system employees are not able to arrest or prosecute pirates. So, it seems that international courts like ICC has more ability, experience, legal capacity and resources to prosecute piracy has more chance to combat impunity for piracy by precise definitions, judges, prosecutors and other related persons to proceedings in court with more experience and ability (Chalk,2008: 63).

Second, domestic courts are not able to guarantee and observe the principle of impartiality and principles of fair trial as much as international courts like ICC. With this explanation, one of the prominent features of modern criminal law and the realization of criminal justice is formulated and strict observance of the rule of law in the shadow of human rights. Since states are very sensitive to the trial of their nationals, these sensitivities may affect the outcome. In addition, in most cases, the proceedings in domestic courts cannot protect the rights of the accused (Banker,2003: 39).

Therefore, the general consensus came into this conclusion that international courts are less susceptible to political interference and violations of impartiality than domestic courts and have a greater ability to ensure a fair trial by establishing special rules and regulations. In addition, due to differences in the laws and regulations of countries regarding the type and amount of punishment, international courts like ICC can be effective in standardizing the way pirates are treated, prosecuted and punished (Khaleghi, 2011: 69).

For this reason, a defensible suggestion to solve the existing problems regarding the impunity of the perpetrators is covering piracy under the jurisdiction of the ICC as an international crime. In this case, there is no need to form a new and special court to deal with this crime, which will involve a lot of costs. In particular, if states want piracy cases to be heard in regional courts, the court can establish its special piracy branch in any region it deems necessary. Therefore, this important feature can result in a lot of savings in terms of finances, because it is no longer necessary for witnesses and defendants to travel a long distance to appear at the headquarters of the court, The Hague, Netherlands. In addition, the court can share its experiences and capabilities with judges and the local judicial system and increase their capacity and legal ability to deal with piracy cases (Pourbafarani,2017: 94).



9. Conclusion

The emergence of modern piracy requires effective measures to face with. If the national law of the countries is applied, the goal of combat to impunity for piracy will not be fully achieved; because national laws are highly diverse, fulfill completely different conditions regarding this crime or even do not mention it at all.

Since misinformation hinders the analysis necessary to understand the extent of piracy, it would be difficult to prosecute it for states and international organizations. Therefore, it is important that private companies and states establish effective and consistent methods for reporting piracy to international organizations. However, hiding pirate attacks and crimes at sea is a significant and ongoing issue with a variety of reasons includes a history of frequent pirate attacks may lead to a lack of security for private companies, so ship owners sometimes feel that it is better not to report the incident at all. Submitting a report can also lead to delays in shipping costs, as coastal states may want to conduct investigations that can take days or weeks.

As a result, it can be said that to combat to the impunity of modern piracy, the most effective solution can be the prosecuting this crime by the ICC. In fact, when the Statute of the ICC was being negotiated, the drafters consider piracy by placing it within the jurisdiction of the Court. Especially in the text that was prepared in 1994 by the International Law Commission at the request of the United Nations and considered 12 crimes from about 9 different international documents and treaties as serious international crimes. This statement of the International Law Committee in 1994 included various crimes, including terrorism, hijacking, hostage taking, drug trafficking, etc. But some delegations of countries believed that the jurisdiction of the court should be limited to the main crimes of aggression, genocide, crimes against humanity and war crimes. Therefore, after many negotiations, in the final text of the Rome Statute, the jurisdiction of the court was limited to the four main crimes.

However, since a significant number of governments still insisted that the Court's jurisdiction should include other crimes such as terrorism, which also includes crimes against maritime security, therefore, even if the jurisdiction of the court includes only 4 crimes, this does not mean that it is not permissible to expand the

number of these crimes. Although piracy can be added to the crimes within the jurisdiction of the ICC by amending the Rome Statute, it is better to do so through an optional additional protocol to the Rome Statute. Because an additional protocol will be valid only for the states that sign it voluntarily, and there will be no need for the approval of the other parties to statutes.

Such a protocol should establish a special branch within the court to deal exclusively with piracy cases. This special branch should prosecute piracy cases fast and precise and in a fair and impartial manner. Also, the additional protocol can determine the location of the court or other related issues. In addition, it will separate and distinguish this process from other crimes under the jurisdiction of the Court and will eliminate the fear that the inclusion of piracy in the crimes under the jurisdiction of the ICC will distract the Court from its main mission of combating very serious crimes. Although it has already been proven that piracy itself is of the same intensity and affects the entire international community.

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