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Assessing International Law Norms Regarding Terrorist Crimes at Sea

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Abstract

Maritime terrorism is as old as its history. From ancient times to the first decade of the 21st century, perpetrators of various forms of violence, including kidnapping, sabotage, and direct attacks on targets on the high seas, as well as on the wider marine environment have settled. In most cases, these attacks were carried out by pirates, rebels, and terrorists. Terrorism at sea becomes important when a significant part of the world's trade is carried out by sea. Therefore, maritime security has a strong link with the global economy and global traffic. One of the challenges of dealing with terrorism at sea and the inefficiency of the means to deal with it is contained in the Convention on the Law of the Sea. Therefore, terrorist actions in the seas and combating them are among the issues discussed in international law, especially the international law of the seas, so the first actions in this direction also go back to the era of the League of Nations. After the terrorist attacks of September 11, the concept of security in the seas gained renewed importance. The fear of the possible use of ships for terrorist purposes and attacks, which is only based on the national jurisdiction of the flag state in the high seas, has caused a significant security concern. Compared to land or air terrorist acts, maritime terrorism has its own characteristics, which are different according to the specific purpose.

Keywords: Terrorism, Maritime Terrorism, Maritime Security, Security Council, United Nations.

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Introduction

In terms of historical background, the seas and oceans of the world have not been mainly preferred or related spaces for terrorists to carry out terrorist activities. The main reason for the low number of maritime terrorist attacks in the past was that most terrorist groups and organizations did not have the ability to expand their activities to the seas. Today, with the advancement of technology and as a result the capabilities and equipment at the disposal of terrorist groups, the weakness of terrorists to carry out operations in the seas has been largely eliminated and maritime terrorism has become a threat to the security of the seas (Hastings and Asal, 2015: 13). Assessing existing international law rules concerning the suppression of terrorism at sea and considering their supplementation requires a clear distinction to be made between the different scenarios; Acts of piracy as covered by articles 101 et seq. of the Convention on the Law of the Sea and customary international law; Acts of violence against a ship, its passengers or its crew similar to piracy but not meeting the narrow confines of the established definition of piracy; Acts using a ship as a weapon against navigational safety; Using the sea as a means of providing logistic support for terrorist activities; Using the sea as a platform to launch a strike against a State or to use a ship as a weapon (Kraska, 2017: 49-51).

Unlike many other international crimes, there is no agreed legal definition of maritime terrorism. One reoccurring debate in this regard is the treating of maritime terrorism as piracy by some authors and a rejection of this view by another camp. Moreover, the international law of maritime terrorism suffers from fundamental definitional issues, much like the international law of terrorism. The fundamental question remains: do we really need to treat maritime terrorism as piracy in order to establish an effective international legal framework? This question is linked with another question: is the separate legal regime that has evolved for maritime terrorism in the last four decades effective? The ineffectiveness of the international law of maritime terrorism does not necessarily make the international law of piracy applicable to acts of maritime terrorism.

None of the international legal instruments that are directly or indirectly relevant to maritime terrorism defines the term "maritime terrorism." 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." This is not a generally accepted legal definition of maritime terrorism.[1]

International treaty law as well as customary international law has developed mechanisms to suppress acts of violence at sea, such as piracy or other acts directed against ships, airplanes or platforms. However, it did not explicitly provide for measures taken in response to ships being used as weapons; this situation has changed with the adoption of a Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation in 2005. Designing such measures had to strike a balance between the freedom of navigation and security interests. In the following I will describe assess the relevant law of the sea rules and I will give an overview over the relevant rules of general international law.

Today, terrorism has taken various forms, and one of its types that endangers peace and security in the seas is "Maritime Terrorism". Although the adoption of the 1982 UN Convention on the Law of the Sea has strengthened the maintenance of international peace and security in the seas, this Convention includes no particular rules on prevention and suppression of Maritime Terrorism. The occurrence of the Achille Lauro incident in 1985 showed the existing legal loopholes in confronting security threats caused by terrorist activities in the seas. To address these gaps, the International Maritime Organization (IMO) adopted the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its 2005 protocol.

However, the International Court of Justice has no jurisdiction to try and punish pirates. The piracy on high seas affect the export and import in the Gulf of Aden, the Straits of Malacca, South China Sea,

[1] Christopher C Joyner "Suppression of Terrorism on the High Seas: The 1988 IMO Convention on the Safety of Maritime Navigation" (1989) 19 Isr YB Hum Rts 341 at 348.

South African & the Caribbean; the Indian Ocean, West and East Africa, etc., and other coastal countries where crude oil and consumer goods have been ransacked by the few members of pirates ships (Hodgkinson, 2015: 34).

1. Measures against Illegal Actions at Sea

These rules provide that piracy is to be considered an international crime and endow all States with the right to take enforcement measures for the suppression of piracy, thus restricting the flag State principle. The international rules on piracy should not merely be considered relics of the past. Piracy still constitutes a threat to the safety of navigation and acts of piracy are on the increase. The existing rules for the suppression of piracy are inadequate, as will be seen. Nevertheless, attempts have been made to broaden the application of the rules on piracy so as to cover other forms of violence at sea or to suppress the transport by sea of armaments for terrorists. But here again the various attempts have failed (Caroli, 2014: 107).

This is the reason why specific international agreements deal with the suppression of other forms of violence at sea; the most important of them being the Rome Convention. Even an international treaty dealing with terrorist attacks against shipping of nuclear and radioactive material exists. These instruments follow a different approach from the one governing the rules on piracy. With the view to fill existing security gaps Russia has initiated a Convention for the Suppression of Nuclear Terrorism (Ahmad, 2020: 126-127).

One of the major deficiencies of the international rules concerning the suppression of piracy already codified in the Geneva Convention on the High Seas of 1958 and repeated in the Convention on the Law of the Sea of 1982 (Convention) is their narrow definition of piracy. Only those acts which have been committed illegally for "private ends" by the crew or the passengers of a private ship or a private aircraft on the high seas against another ship or aircraft or against persons or property on board such ship or aircraft are considered acts of piracy (Bowley, 2023, 28-29).

The restriction that only acts of violence committed for private ends may constitute piracy limits the scope of application of those rules considerably. This excludes acts of violence being treated as piracy if these acts are committed in order to destabilize a government or to cause unrest and terror with the view to blackmailing a government or for religious or ethnic grounds – typical attitudes of modern terrorism – being treated as piracy. The same is true for liberation movements, insurgents etc. who have seized a ship for political reasons. The meaning of the word "illegal" in the definition of piracy in article 101 of the Convention is unclear; the legislative history is not enlightening. It is for the courts of the prosecuting States to decide whether the act of violence under consideration was illegal under international law or the national law of the prosecuting States. Another limitation stems from the fact that only acts on the high seas and in the exclusive economic zones may be qualified as pirate acts but not those committed in the coastal waters of a State.

The rationale of this limitation is that it is for the coastal State concerned to fight piracy. But what is the situation if the coastal State concerned is, for whatever reason, not able to control its coastal sea? Counter actions against pirates may be taken in accordance with article 105 of the Convention. According to article 107 of the Convention a pirate ship may be seized only by a warship or a military aircraft or another ship in government service. The courts of the respective States will decide upon the adequate penalties and will also take a decision on the confiscation of the pirate ship and its cargo. What is important is that the right to take enforcement measures against pirates is vested in all States and not only in States which have suffered the particular act of violence (Nelson, 2012: 89-91).

As indicated earlier, under the rules for the suppression of piracy, a warship may not intervene against acts of violence by one ship against another private ship or against the persons or property on board such a ship carried out in the coastal waters of another State.

However, other justifications for appropriate counter-action do exist. A warship witnessing an attack against a merchant ship in the coastal waters of another State carried out by a private ship may intervene under its obligation to render assistance to persons in

distress. Although the respective provision of the Convention (article 98) is intended to cover distress as the consequence of a natural disaster or of a collision at sea, it reflects the existence of a general obligation to safeguard human life at sea and in this respect it is applicable here. This possibility is a limited one, though. It does not embrace in general the mandate to suppress piracy in a particular area (Asal, Hastings & Rethemeyer, 2020: 1112-1114).

According to general international law, rescue action may be taken by a warship to assist a ship under attack in the coastal waters of another State under the principle of humanitarian intervention. Although this approach is currently disputed, it has to be acknowledged that such interference in the sovereignty of the State concerned is less prevalent than in cases where the intervention takes place in the territory of the given State. Moreover, the fact also has to be taken into account that it is the obligation of the coastal State concerned to protect ships against attack from pirates. If the warship of another State intervenes on behalf of a ship carrying the same flag it can at least presume that the coastal State would agree to such action. Nevertheless, the power to intervene in such cases, and in particular the jurisdiction to prosecute the offenders, rests primarily with the coastal State concerned. The right to intervene is, accordingly, a limited one.

International laws and organizations play a very important role to protect and preserve human rights, the environment, international trade, security, and peace, etc globally. Some of such international organizations are UNSC, Interpol, International Criminal Court, International Court of Justice, International Maritime Bureau dealing with piracy have been discussed below. United Nations Security Council (UNSC) is the most important organ of the UN which is meant for international peace and security of all the nations. Does it work in curbing current issues like piracy? If we look into the resolutions passed by the UNSC, it will give sufficient information regarding piracy but what is required is has not been done by the UNSC. The resolutions passed by the UNSC will give sufficient

information regarding piracy but it is not working for the resolutions of these issues relating to piracy (Bueger, 2021).

International Criminal Court is an international criminal tribunal that sits in Hague, Netherland. The ICC has jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity, war crimes, and the crime of aggression. Although the United States, in the past, has agreed with the ad hoc tribunals such as Nuremberg, Japan, Rwanda, and Yugoslavia, and has consistently agreed that a need for permanent international criminal court exits, there has been much resistance to the current International Criminal Court but despite that opposition International criminal court has always been at the top. And After World War II, the United States, the United Kingdom, the Union of Soviet Socialist Republics (USSR) (Russia), and France, under a Charter drafted in London along with other Allies formed an International Military Tribunal (IMT) to prosecute German war criminals (Hafner-Burton 2012).

However, Art.5 of ICC Statute (Rome) gives jurisdiction to ICC to try cases of "Crimes against humanity." It includes all the offenses which are against humanity and Art.7 gives the list of Crimes against humanity but Piracy is not included in it. And this is bizarre in the Rome statute. The international court of Justice (ICJ) has no jurisdiction in piracy matters; it acts as a world court and it has dual jurisdiction i.e., Disputes of a legal nature that are submitted to it by States i.e., contentious jurisdiction and Advisory opinions on legal questions at the request of the organs of the United Nations or specialized agencies authorized to make such a request i.e., advisory jurisdiction. The ICJ does not have jurisdiction. Because Piracy essentially being an issue between individual and state and doesn't fall under the ICJ jurisdiction. International Maritime Bureau is one of the effective organization which is working efficiently as compare to other organizations. In 1992 – The international chamber of commerce's IMB proposes to set up a Piracy Reporting Centre the Object of International Commercial Crime services is to combat all forms of Commercial crime. The main aim of the piracy reporting center is to raise awareness within the shipping industry, which includes the shipmaster, ship-owner, insurance companies, traders,

etc, of the areas of the high risk associated with piratical attacks or specific ports and anchorages associated with armed robberies onboard ships. The Intentional Maritime Organisation has live reports about piracy and produces a monthly report on actual attacks and attempted attacks of piracy at high seas. Another organization is the International Maritime Bureau a specialized department of the International Chamber of Commerce that provides information about piracy at high seas. It disseminates information about piracy but doesn't fight pirates because it is a private body and as such, they have certain limitations because only warships and authorized government ships can fight against pirates (Bowley, 2023: 54-56).

Specific international agreements attempt to fill the gap in the suppression of violence at sea left by the narrow definition of piracy in the Convention on the Law of the Sea and its predecessor, the Geneva Convention on the High Seas. The Rome Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation of 1988 (Rome Convention) together with the associated Protocol of the same date for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf prohibits a broad range of acts of violence directed against ships or shipping. The Rome Convention was, in fact, the result of a diplomatic initiative taken by the Governments of Austria, Egypt and Italy in response to the Achille Lauro incident, which had made it clear that the rules of international law existing then were not appropriate for dealing with maritime terrorism (Halberstam, 1988: 273-275).

The 2005 Protocol to the Rome Convention developed in direct response to 11 September 2001 and which has not yet entered into force yet, attempts to define the offenses to be covered by the Rome Convention more broadly. The 2005 Protocol to the Rome Convention adds a new article, Article 3bis, which states that a person commits an offense within the meaning of the Rome Convention if that person unlawfully and intentionally commits one of the acts listed if it is the purpose of this act to intimidate a population, or to compel a

Government or an international organization to do or to abstain from any act.

The new instrument also makes it an offense to unlawfully and intentionally injure or kill any person in connection with the commission of any of the offenses in the Convention; to attempt to commit an offense; to participate as an accomplice; to organize or direct others to commit an offense; or to contribute to the commission of an offense. The new crimes covered by the Rome Convention mean that it goes beyond fighting terrorism; it may also be used to enforce the Non-Proliferation Treaty. It is this aspect in particular which has been most controversial.

A new article requires Parties to take the necessary measures to enable a legal entity (a company or organization, for example) to be made liable and to face sanctions when a person responsible for the management or control of that legal entity has, in that capacity, committed an offense under the Convention (Klein, 2012: 119-121).

Although the Rome Convention is broad in respect of its territorial scope of application, and has been broadened as far as the offenses covered are concerned by the 2005 Protocol, the sanctions mechanism it provides for is limited. The Rome Convention will be dealt with first.

The obligations of States Parties regarding the suppression of offenses under the Rome Convention may be summarized by referring to the old principle aut dedere aut judiciary already mentioned by H. Grotius, whereby a State has an obligation to surrender an alleged offender to another State having criminal jurisdiction or, alternatively, may prosecute the offender itself. Criminal prosecution is reserved for those States exercising criminal jurisdiction in accordance with the Rome Convention in respect of the offender or the offense. According to the respective provisions of the Rome Convention, the offender must have the nationality of the prosecuting State or the offense must have occurred in the coastal waters of the State claiming the right to prosecute or on board a ship flying the flag of that State. The Rome Convention provides for the possibility of States' being able to establish their criminal jurisdiction for other cases too. The most

important aspect of it is that States may establish criminal jurisdiction in cases where one of their nationals has been injured or killed.

Finally, States are under an obligation to prosecute offenses under the Rome Convention in cases where they do not surrender the alleged offender. This general clause is meant to ensure that such offenders do not find a safe haven. The rules concerning the right to prosecute an offender under the Rome Convention ensure that States other than the ones referred to do not exercise criminal jurisdiction under the Rome Convention.

The 2005 Protocol provides for marginal improvements in that respect only. Article 11 of the Rome Convention covers extradition procedures. A new article, Article 11bis, states that, for the purposes of extradition, none of the offenses should be considered a political offense.

New article 11ter states that the obligation to extradite or afford mutual legal assistance need not apply if the request for extradition is believed to have been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

The inadequacy of this particular aspect of the 2005 Protocol becomes particularly evident if compared with the respective rules on piracy. Prosecution on account of piracy is based upon a broader concept of criminal jurisdiction, namely the principle of universality.

The Rome Convention acknowledges only that several States may have an interest in prosecuting offenses under this agreement. It is also worth reiterating that the deterrent effect the Rome Convention is meant to have is wasted on suicidal offenders. They do not fear prosecution as envisaged by the Rome Convention or other international agreements for the suppression of terrorist attacks which follow the same approach. Those who hijacked the airplanes on 11 September 2001 violated several of such international agreements; this

– as well as the possibility of criminal prosecution - was of no concern to them (Saiful, 2014: 89-92).

There is one further highly relevant difference. The rules of international law concerning the suppression of piracy provide for the possibility of taking direct action to suppress an act of piracy whereas the Rome Convention concentrates on the prosecution of offenders only. This already severely limits the possibilities of taking response action let alone actions of a precautionary nature. The latter gap constituted the most significant deficiency in the Rome Convention. This was not a gap which had been left open unintentionally. On the contrary, article 9 of the Rome Convention clearly states that rules of international law pertaining to the competence of States to exercise investigation or enforcement jurisdiction on board ships not flying their flag are not affected. Accordingly, the Rome Convention can be used neither to take effective response actions against ships under the control of terrorists nor to take preventive actions.

This lacuna is now remedied in part by the 2005 Protocol to the Rome Convention. Article 8 of the Rome Convention covers the responsibilities and roles of the master of the ship, flag State and receiving State in delivering to the authorities of any State Party any person believed to have committed an offense under the Convention, including the furnishing of evidence pertaining to the alleged offense. A new article, Article 8bis, in the 2005 Protocol covers cooperation and procedures to be followed if a State Party desires to board a ship flying the flag of another State Party, outside the territorial water of any State, when the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship is, has been, or is about to be, involved in the commission of an offense under the Convention.

2. Dealing with Terrorist Behaviors in the Maritime Domain

2-1. Reaction to Terrorist Ships

On the high seas, ships are under the sole jurisdiction of their flag State and it is up to the flag State to enforce international law with respect to ships flying its flag. The flag State principle is by no means anachronistic; it is one of the central elements guaranteeing freedom

of navigation. Through this mechanism it is ensured that international law and the national law of a particular State applies to ships on the high seas. Otherwise ships on the high seas would operate in a legal vacuum. Similarly, the flag State principle concentrates enforcement powers which may be taken against a ship in one authority – that of the flag State. Otherwise a ship would be the target of various, possibly conflicting actions. But there is also a quid pro quo. Only if flag States exercise their jurisdiction effectively and thus ensure that ships do not violate the applicable international and national law will other States refrain from taking action against such ships.

Initially, it has been thought that International law is the only instrument that can curb this menace. United Nations Convention on Law of the Sea, 1982, provides the legal framework for setting out a formula where states have jurisdiction over illegal activities at sea, and the states in the Gulf of Aden region are parties to the UNCLOS including Somalia, Yemen, and Kenya.

It is very well defined that all states with warships in the area are parties to the convention, except the US. Piracy provisions under UNCLOS are identical to those in the 1958 Geneva Convention on the High Seas. The USA is not a party to this convention but when it comes to themselves in matters like terrorism; it started actively lobbying for international cooperation. Out of 159 original UNCLOS signatories, 29 have yet to ratify, certain coastal states have not yet expressed their consent to be bound by the convention.

The following states are not parties to the convention (Hodgkinson, 2015: 27).
If a ship has been brought under the control of terrorists with the aim of using it as a weapon, the flag State is under an international obligation to intervene, given the worldwide and unconditional condemnation of terrorism by the Security Council acting under Chapter VII of the UN Charter.

The question is, though, whether the State in question will be in a position to do so or to do so before the threat posed by such a ship materializes. If this is impossible, the flag State concerned not only

has the option but in fact is under an obligation to request assistance from other States.

A different line of argumentation may also be considered. Ships in the hands of terrorists constitute a mortal danger to the citizens of the targeted State and a duty to intervene can be based on the general principle of safeguarding human life. This is not only a principle governing the law of sea but can equally be based upon on the obligation to protect human life under the international regime for the protection of human rights.

This is of relevance also in those cases where the flag State is not able to react but ships of other States are. Interference in the sovereignty of the State whose flag the ship in question is flying can, at least, be justified by the fact that the flag State concerned is under an international obligation to intervene with the view of suppressing terrorism.

The flag State may consent to such intervention. As a result, the intervention would clearly conform to international law. In cases where military intervention against a ship under a foreign flag is the only means of protection against terrorists, the flag State is obliged to give its consent to such intervention. It may even be possible to consider going one step further and arguing that, in cases of a clearly identified terrorist threat to a ship, the consent to intervene, with the aim of ensuring that the terrorist threat does not materialize, may be presumed (Halberstam, 1988: 73-74).

Finally, one further approach may be considered. Only ships flying the flag of a State are, on the high seas, under the exclusive jurisdiction of the flag State. Is that equally true for ships controlled by terrorists and targeted as weapons? It is worth considering whether, since the flag State has lost control of them; such ships should not be treated as ships without nationality.

This would mean that any State would be entitled to arrest and seize such ships, as proven by the case of the Asia. However, it must be borne in mind that article 104 of the Convention provides for the retention of nationality of pirate ships and it would be necessary to establish why and under which circumstances ships taken over by

terrorists or equipped by terrorists to serve as weapons lose their nationality.

The main problem connected with any attempt to reduce the danger which ships in the hands of terrorists may pose to States, their citizens or navigation in general is that of obtaining reliable information early enough to intervene. This information has to pertain to the fact that a particular ship is posing such a threat and against which target. The possibility of States' considering – as is the practice with air traffic approaching the United States of America – requesting ships to communicate details about crew, passengers, cargo and destination to their ports of call well in advance cannot be ruled out.

Although this may constitute an extra burden for shipping, it may be proportionate considering the threat such ships pose. Further, it is possible to imagine that some States may claim maritime zones for interception and intervention, as already claimed by the United States of America for the suppression of trade in narcotic drugs. This is not the place to deal with this practice. Undertaken unilaterally, some may argue that such an approach may result in the erosion of the freedom of navigation.

It is a well-established fact that the freedom of navigation is not an absolute one. Account has to be taken of other established interests of the members of the community of States. The fight against terrorism may be one; however, means of suppressing it have at least to pass the test of proportionality, if they result in a limitation of established freedoms.

2.2. The Approach of International Documents

Security Council resolutions 1368 (2001) and 1373 (2001) also indicate that terrorist attacks of such or similar scale may be considered to pose a threat to international peace and security and that the Security Council may take appropriate action on the basis of Article 39 of the UN Charter. This is of particular relevance for the suppression of terrorism by preventing the freedom of navigation being misused in order to support terrorism.

Already the Preamble of the Convention for the Suppression of the Financing of Terrorism 1999 states that terrorism is a violation of the purposes and the principles of the UN Charter to maintain international peace and security. The UN General Assembly has in several resolutions condemned international terrorism and called upon States to take steps and counteract the financing of terrorism and terrorist organizations. In Security Council resolution 1368 (2001) the international community is called upon to "... redouble their efforts to prevent and suppress terrorist acts including by increasing cooperation".

Security Council resolution 1373 (2001) is more specific. The Security Council decided - acting under Chapter VII of the UN Charter – that all States shall "...2(b) [T]ake the necessary steps to prevent the commission of terrorist acts, including by provision of early warning of other States by exchange of information ...".

The Security Council in the same resolution stated "...2(f) [A]fford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist attacks...". Finally, the Security Council in its resolution 1377 (2001) of 12 November 2001 underlined "... the obligation on States to deny financial and all other forms of support and safe haven to terrorists and those supporting terrorism."

These resolutions, in particular Security Council resolution 1373, form the necessary international law basis for the marine interception operations undertaken by various naval units, including a German naval unit, in the Indian Ocean and off the coast of Somalia. On this basis it is possible to approach and stop ships under foreign flags where there are indications that they may be supporting terrorism, and investigate their documents, cargo and crew.

Owing to their obligation under the Security Council resolution, adopted under Chapter VII of the UN Charter, to suppress terrorism also by eliminating their financial and logistical support, the flag States may not object to an investigation of ships under their flags by warships of other States, as long as the measures taken are proportionate.

In fact, the warships are acting on behalf of these flag States since it is for them to ensure that ships under their flags are at no times used in support of terrorist activities. No explicit consent of the flag State is necessary, as the denial of such consent would be contrary to the obligation under Security Council resolution 1373.

This reasoning is substantiated if a comparison with the legal situation prevailing under the international law of maritime warfare is made. The naval forces of the belligerent parties may search ships of States not involved in the armed conflict to make sure that they are not supporting the activities of the other party. This is all the more applicable if it is considered that the Security Council has condemned terrorism and has made it mandatory to cooperate in its suppression.

In designing a general international framework to combat maritime terrorism, despite the fact that international conventions related to the law of the sea are only one of the tools in this framework to prevent and combat maritime terrorism, the importance of this tool should not be underestimated. It was neglected, because these international conventions are the result of efforts and agreements between various actors in the field of international law, and their provisions are considered to be a clear expression of the collective will of the members of the world community to realize their goals. For this reason, these conventions are among the most reliable tools available in this framework in the fight against maritime terrorism. On the other hand, these documents are born of the conditions and needs and circumstances of the time of their formation, and with the passage of time, the need to change or modify them or even accept newer documents may be felt in order to be able to respond to new issues. The law of international treaties, considering the means of interpretation or modification of these documents, has always opened the way to adapt them to newer needs (Talaie, Javidbakht, 2022: 195).

The 1982 Convention on the Law of the Sea is the most comprehensive and important legal document regarding the law of the sea. At the same time, this convention does not plan an effective

framework to deal with maritime crimes[1] in general. This issue is due to the fact that at the time of the birth of the 1982 Convention on the Law of the Sea, the issue of maritime crimes was not considered one of the urgent and major concerns of the international community, and within the framework of the provisions of this convention, reference was made to the powers necessary to fight maritime crimes in general, and the division of these powers into The jurisdiction of the coastal state and the jurisdiction of the flag owner country seem to be sufficient for prosecuting maritime crimes. 10 Of course, the convention has proposed a relatively effective and efficient legal framework for combating piracy, but this point should not be overlooked that according to many writers and experts, even the regulations for combating piracy within the framework of this convention are limited (Talaie, Javidbakht, 2022:192-193).

However, the existence of provisions to combat piracy in the 1982 Convention on the Law of the Sea has led some writers to suggest that despite the silence of the convention regarding maritime terrorism, the provisions related to combating piracy can be used to combat maritime terrorism also used to this day, there are still extensive debates and opinions about whether maritime terrorism can be prosecuted under the same meaning as piracy in international documents and customary law. Piracy and maritime terrorism are different from each other in terms of the methods used in committing the crime and also in terms of the purposes against which the crime is committed. 11 More importantly, the elements that exist in the definition of the 1982 Convention on the Law of the Sea, such as the

[1] Maritime crime refers to a broad class of criminal and quasi criminal behavior that is connected to recreational and commercial transportation involving ships (excluding aircraft). This includes conventional crimes (e.g., murder), special crimes (e.g., piracy), and other quasi criminal acts involving regulatory and public welfare offences under admiralty law (e.g., trade violations). Admiralty law consists of a body of common law rules, precepts, and practices that govern all transactions having a direct relationship with navigation or commerce on water. Geographically, maritime crime can be divided into: (a) prohibitions involving local, recreational, and commercial sailing on internal waters; (b) illicit activity affecting navigation on the territorial sea; and, (c) illegalities that concern international seafaring on the high seas or foreign waters (see Box 1). This chapter examines maritime crime affecting international commercial seafaring because it involves 80 percent of world trade. Generally, most maritime crime involves the exploitation of legal and legislative weakness in the transportation system (Bichler, 2014: 125-127).

necessity of the presence and intervention of at least two ships In the occurrence of a crime, the need to commit a criminal act in the open sea and outside the jurisdiction of governments, and most importantly, the need to have "private motives" 16 in committing a crime, are not found in maritime terrorist incidents. The first paragraph of Article 121 of the 1982 Convention on the Law of the Sea clearly mentions the necessity of the existence of "private motivation" in the realization of maritime piracy (Talaie, Javidbakht, 2022:197).

Conclusions

Maritime terrorism is a serious threat to global security. A major debate in this regard is the treatment of acts of maritime terrorism as piracy by some scholars and the rejection of this view by others. Moreover, the international law of maritime terrorism suffers from fundamental definitional issues, much like the international law of terrorism. It argues that the international law of piracy is not applicable in the enforcement and prosecution of maritime terrorists on the high seas. International treaties on terrorism and the post-September 11 developments relating to international laws on terrorism have created a workable international legal framework for combating maritime terrorism, despite some bottlenecks.

A perusal of the existing international instruments to be used for the suppression of international terrorism at sea indicates that they are in a state of transition. This is due to different reasons. The most prominent of them is that the community of States has to deal with a new type of organized crime and a new type of offender. International terrorism works within an international network which makes it easy to switch the basis from which operations are launched. Modern forms of communication allow weapons and other necessary supplies to be transported to the targeted State. The criminals, in particular those carrying out such attacks, are not threatened by the fear of subsequently finding no shelter and being prosecuted. The latter, however, has hitherto been the principal mechanism for suppressing terrorist activities.

The Convention on the Law of the Sea and subsequent special international agreements have responded to this new challenge. They should be seen and assessed as a whole. This legal development clearly indicates that international law as such and the procedures for amending it are flexible enough to react to new challenges. What is remarkable is the shift of emphasis to be witnessed in these new regimes namely the focus on precautionary measures.

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