

## ***A Comparative Study of "Piracy" from the Perspective of Just War Theory in Islamic Jurisprudence and International Law***

Mohamadamin Ghandi<sup>1</sup>, Esmail Shahsavandi<sup>2\*</sup>, Mohsen Hassanpour<sup>3</sup>  
Omid Mollakarimi<sup>4</sup>

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### **Abstract**

**Background and Theoretical Foundations:** Throughout history, humanity has always been involved in numerous crises, including war and bloodshed and its undesirable consequences and effects. Establishing peace and resolving conflicts has always been of interest to scholars, and accordingly, two main views have been put forward in this regard under the headings of "the originality of peace" or "just war". Meanwhile, sea bandits or piracy, which have a very old history and are as old as the history of human domination of the sea, have become a serious threat to the security of international trade in recent years, since 2008, due to reasons such as changing the behavioral pattern of pirates who often take hostages and extort money. The crime of piracy is one of the first international crimes with global jurisdiction, and has always been the subject of discussion among scholars of various legal systems. One of the important issues in this regard is how to establish peace or just war with this phenomenon.

**Methodology:** In this research, which uses a descriptive and analytical method, piracy was studied in a comparative manner from the perspective of just war theory in Islamic jurisprudence and international law. The data collection tools in this qualitative research are the use of library resources and texts and electronic

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<sup>1</sup> PhD Candidate, Department of Law, Kish International Branch, Islamic Azad University, Kish, Iran

<sup>2</sup> Assistant Professor of Law, Department of International Trade Law, North Tehran Branch, Islamic Azad University, Tehran, Iran, (corresponding author), Email: [es.shahsavandi@ymail.com](mailto:es.shahsavandi@ymail.com)

<sup>3</sup> Assistant Professor Jurisprudence and Islamic Law, Department of Jurisprudence and Islamic Law, Garmsar Branch, Islamic Azad University, Semnan, Iran.

<sup>4</sup> Assistant Professor of Law, Department of International Law, North Tehran Branch, Islamic Azad University, Tehran, Iran

## *The Comparative analysis of dealing with "sea piracy" ....*

*Mohamadamin Ghandi, Esmaeil Shahsavandi,*

*Omid Mollakarimi , Mohsen Hassanpour*

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journals with a common approach in identifying and critiquing the research conducted.

**Findings:** It shows that the Islamic legal system and international law have presented mostly similar and sometimes different views in this regard, but ultimately both legal systems support the observance of ethical and humanitarian principles.

**Conclusion:** The results show that today, the issue of war as an important issue and challenge can only be accepted when it is accepted as a just challenge in the international arena. Therefore, considering the principles of international law and the actions of pirates, in many cases there are many similarities with the term war in Islamic jurisprudence, and their behavior and actions, which often lead to the deprivation of sea security, can be considered as war, but observing the principles of just war is both essential and of fundamental importance in the Islamic legal system.

**Keywords:** Piracy, Maritime Security, Just War, International Law, Islamic Law, Etiquette of War

### **1. Introduction**

Piracy, as the oldest international crime, has emerged in a new way in the international arena and has involved different countries and has unfortunately caused material and moral damages. The United Nations Security Council, as the main caretaker of international peace and security, has repeatedly (including the issuance of two resolutions in November 2016) emphasized the need to deal with modern piracy.

Although the resolutions issued by this political body are in the form of recommendatory resolutions, they contain significant points such as establishing modern piracy as a threat to international peace and security, the need for international cooperation and the manifestation of the rights of cooperation, the necessity of the communication group, the use of all



Necessary actions and methods and the need to use different regulations are considered.

By examining the elements of the evolved piracy crime and various current mechanisms of the international community, especially Iran, according to the recommended solutions in the resolutions of the Security Council, it can be said that the use of existing capacities, especially international jurisdiction, is much more appropriate than the expectation of establishing a special court.

Although the Council has specified the establishment of a special court, the performance and wording of this institution, especially in comparison with its color, shows the lack of serious determination in this Council. Because confronting this inevitable phenomenon and against international security requires the use of coercive means, including military action and war. Of course, it should be kept in mind that peace and war are two different and completely different states in terms of substance and form in the discourse of governments' approach;

The attitude of governments regarding which one is original and should be compared to other governments is another important issue. The originality of just war or peace represents a classic and modern view of international politics, which the first view (the originality of war) comes from a kind of extreme authoritarianism and interprets politics with the weight of force and blood. On the other hand, the reality is that there are two views among Islamic scholars in dealing with the principle and rule of each of war and peace, each of them has expressed arguments based on the text of the Qur'an and hadiths. Anyway, in order to determine the principle of peace or just war in the Islamic legal system, one should examine the verses and traditions that are about each war or peace.

In addition, it is necessary, first of all, to analyze piracy in accordance with the principles and rules of jurisprudence and clarify which part of jurisprudence these actions can be similar to and in accordance with, and then according to international principles and rules which has criminalized

piracy or sea banditry and given global jurisdiction to it, discussed and evaluated this issue.

Therefore, in this article, we seek to answer this important question, how is the confrontation with "sea piracy" analyzed and evaluated from the point of view of just war in Islamic jurisprudence and international law, and what is the attitude of these two legal systems in this regard? 1- The place of just war in Islam The word Jihad is also used in a meaning other than its term meaning, and any kind of Jihad also includes Jihad with the soul, so the word Jihad has two meanings, the general concept and the specific concept of Jihad, in its general meaning, it will include any kind of Jihad and Jihad with the soul also includes what the Prophet (PBUH) interpreted as Jihad Akbar, and Jihad in a special sense will be exclusive to Jihad against enemies. In this research, the latter section is considered.

Defending life, property, rights of land, and sanctuaries is one of the most basic human rights. All people consider legitimate defense their inalienable right and consider it necessary to stand against aggressors. The religion of Islam has also confirmed this right and legislated Jihad, which has a sacred meaning and concept and is considered one of the great acts of worship.

In this article, a comparative study examines "piracy" from the perspective of just war theory in Islamic jurisprudence and international law. Although piracy is defined in Articles 101 to 107 of the Law of the Sea Convention, which states that "any act of violence or unlawful detention, or any act of plunder committed for personal purposes by the crew or passengers of a private ship or aircraft" (Law of the Sea Convention, 1982), in fact, in wars against pirates, they are considered as an illegal private group, and the law of armed conflict governs relations between states during armed conflicts (and the main purpose of these laws is to reduce the losses, injuries and damages resulting from war). However, as stated in the definition of piracy in Article 101 of the 1982 Convention, pirates are considered as private



groups and are not subject to the law of hostilities. However, in the current world, where the law of hostilities is called humanitarian law, it seems that pirates are considered as human beings who violate national and international laws and regulations, as natural persons who commit an international crime. They have the right to receive humanitarian protection during detention and to use conventional weapons when fighting them based on moral principles, especially Islamic principles.

## **2.Types of war in Islam**

The word Jihad is also used in a meaning other than its term meaning, and any kind of Jihad also includes Jihad with the soul, so the word Jihad has two meanings, the general concept and the specific concept of Jihad, in its general meaning, it will include any kind of Jihad and Jihad with the soul also includes what the Prophet (PBUH) interpreted as Jihad Akbar, and Jihad in a special sense will be exclusive to Jihad against enemies. In this research, the latter section is considered. Defending life, property, rights of land and sanctuaries is one of the most basic human rights. All people consider legitimate defense as their inalienable right and consider it necessary to stand against aggressors. The religion of Islam has also confirmed this right and legislated Jihad, which has a sacred meaning and concept, and considered it one of the great acts of worship. There are dozens of verses in the Holy Qur'an and hundreds of narrations in hadith sources that express the value and virtue of Jihad, the types of limits and its regulations. The Messenger of God (PBUH) said: "The highest vision of Islam is Jihad in the way of God, which only the best Muslims can achieve. not find" (Hindi, 1405: 298). 2- The place of just war in the Covenant of the League of Nations and the Charter of the United Nations In this topic, we will examine the position of just war in the Covenant of the League of Nations and the Charter of the United Nations in two separate speeches.

## **2.The place of just war in the League of Nations**



During the First World War, a new element and factor emerged, which is very important to mention. In its early stages, the war resembled traditional national wars, and at the beginning, it did not seem to have deeply serious effects. He was fighting a fair and just war for the king and his country, but in 1916, the Allies tried hard to put this idea in the minds of the people that war is a means of making the world safe for democracy, or in other words, preparing the world for democracy. Germans on the opposite front. They believed that war is a cultural struggle against barbarism. After the First World War (1914-1918), the President of the United States, Woodrow Wilson, in his 14-point declaration at the Versailles Peace Conference, emphasized the need to form the League of Nations. In fact, after the First World War, the just war doctrine was revived to some extent. Of course, after the First World War, it took some time for the doctrine of just war to come to life again and to become the ideological basis of the restrictions stipulated in the Charter of the United Nations (1919) on the resort to war and the condemnation of aggressive war according to the Kellogg-Brian Agreement dated 1928 (Boscheck). ; Bledsoe, 1376: 496) Even on the day after the first world war, governments were not ready to accept a strict solution. In the Covenant of the League of Nations, the states have only accepted the termination of a part of their traditional competence to go to war. The introduction of this document suffices to state that it is necessary for governments to "accept some obligations to refrain from resorting to war, so only some wars have been explicitly considered as illegitimate wars, and the rest have remained implicitly legitimate." As a result, the effectiveness of this approach has depended on the comprehensive and objective characteristics of the rules of legitimate war and the possibility of complying with them. The main hypothesis is the hypothesis of aggressive war and aggression, which is prohibited by Article 10 of the Covenant. Other hypotheses establish the close relationship between the prohibition of



resorting to force and the commitment to peaceful settlement of international disputes. Any kind of war that is started before the holding of a peaceful dispute arbitration and judicial settlement with review by the Council of the League of Nations according to paragraph 1 of Article (12) is illegitimate, as well as a war against a government that obeys the arbitral or judicial decision. Clause (4) of Article (13) as well as war against a government that respects the recommendations of the unanimous report against the League of Nations Council (Clause 6 of Article (15) is illegitimate). If what is not forbidden is allowed, it is possible to determine a number of assumptions of legitimate war through the opposite concept, the silence of which is considered weaknesses or gaps in the covenant. The opposite concept of imposing the mentioned restrictions is that the League of Nations has implicitly considered resorting to some wars as permissible or legitimate, although it has not chosen such a title for them (Ziaei Begdali, 2018: 26): 1- Legitimate wars in themselves are the major limitations of the principle of the prohibition of war. These wars are the ones whose justification is the defense of a right that international law has put under the exclusive jurisdiction of states (paragraph 8 of Article 15) and also wars that are carried out in the capacity of enforcement. The right of legitimate defense is achieved. 2- Other assumptions are mostly the result of the failure of preventive rituals and means of peaceful settlement that are foreseen in the covenant: A) First of all, a legitimate war is a war against a government that refuses to implement an arbitration or judicial decision or to comply with a unanimous report against the Council (Paragraph 4 of Article 13), considering that the intervention of a third party or the international community is the validity and validity of the right demanded by one of the has acknowledged the surroundings, his recourse to the most severe tools and means, the pressure to force the other vessel to respect his right is justified, in fact, after a bypass, he has returned to the traditional justification of war - enforcement of the right. Also, it is a legitimate war that the Council of the League of Nations has not succeeded in approving a report against it or has only approved it

with a majority and not unanimously. Article (15) paragraph, none of the two parties to the conflict have succeeded in the circumstances. The legal and political point of view cannot be debated and objected, they should put their opinions on the chair, after the expiry of the period allocated for the review of the Council, each of the two sides will regain their full war competence. The division of this situation will happen many times, the "war" - "duel" remains a very real possibility. c) Article 12 is an important rule of thumb, any war can be legitimate if it starts after the expiration of a three-month period after the report of the council with the announcement of the arbitration or judicial decision. On the other hand, some wars are considered legitimate according to general legal principles (1) War between countries that are not members of the League of Nations that have not renounced the right to fight and have recognized the customary rights of that right for them. (2) Defensive war, because legitimate defense is a recognized fundamental and universal right, although the covenant does not refer to it. (3) retaliatory war or in general countermeasures, because the covenant is silent on this matter as well. Among other international documents before the establishment of the United Nations, it is possible to mention the Hague Conventions, which considered the initial war illegitimate in a faint way, but considered it permissible in the defense position, although it did not declare its conditions correctly.

However, the "Brian-Kellogg" agreement dated August 27, 1928, which was published by the French Foreign Minister Brian in the Associated Press newspaper in 1927, came into being. Based on this agreement, which was concluded between the foreign ministers of France and the United States, it is also known as the Treaty for Renunciation General. War was used to resolve disputes between many. This means that the court accepted only legitimate defense and necessary defense and derived the concept of legitimate defense from this agreement. Among the shortcomings of this





agreement was that it did not clarify whether military measures less than war such as retaliatory measures are prohibited or not. In addition, it did not specify any type of mechanism to implement its rules.

### **3.The place of just war in the United Nations Charter**

Regarding the position of just war in the United Nations Charter, after general considerations, we will discuss the exceptions to the principle of resorting to force in the Charter, as well as the position of just war in the United Nations Charter.

3-2-1- General considerations

The United Nations Charter provides a basic distinction between legitimate and illegitimate recourse to coercive force, and in fact somehow revives the old distinction between just and unjust wars. In this international world, where the ruling countries have opposing national interests and ideologies, the distinction contained in the United Nations Charter is as problematic as the old distinction between just and unjust wars. It should be kept in mind that Article 51 of the charter can make a fundamental difference between just and unjust war. Wars that are fought for the sake of independence, national freedom and defense of the country are both legal and just, and on the contrary, wars of occupation are both illegal and unjust. It belongs to the government that is under armed attack, and it is the government that examines how to use this right. In case of an attack, the said government must announce that it has been attacked and also inform the United Nations Security Council about the matter. In terms of international legal procedure, on March 23, 1999, NATO forces attacked Yugoslavia without the permission of the Security Council, of course) at that time This war was interpreted as just and to help Muslims, and the Security Council approved NATO's action with Resolution 1244 as a post facto reference to the above).

Was there really an armed attack by Afghanistan? On March 20, 2003, Iraq was attacked by the United States and the United Kingdom. The main reason for the change in the attitude of the American government to the principle of non-use of force is Mr. John Bolton, the former representative of the United States at the United Nations, clearly stated said that this principle does not

exist in international law. The American government is of the opinion that whenever its vital security interests (vital security) are at risk, there is no obstacle to resorting to force to remove that danger. This term vital security interests has been used many times by US officials and Mr. Bush announced to the Congress in January 2002 that the US government will not allow a potential threat to the United States and will respond to it before the actual danger of the United States. Some people tried to justify it, including Mr. Michael Raisman, who wrote an article in the American Journal of International Law. Despite the refusal of the Court to use the term, the principle of non-recourse to force is a peremptory rule. According to Article 53 of the Vienna Convention on the Law of Treaties, the existing peremptory rule is abrogated only by the creation and formation of a new peremptory rule. The reason that such a rule has not yet been formed is the principle of inviolability of the principle of non-recourse to force. But it seems that the trend is towards an expanded interpretation of Article 51 of the Charter. Article 41 of the responsibility plan of November 2001 of the International Law Commission, which also in the General Assembly in the form of a resolution, emphasizes that in case of violation of a binding rule of international law, other states that have not directly suffered from the said violation must first identify the legal effects of the violation. They should avoid the mandatory rule - secondly, they should not cooperate with the wrongful government. Unfortunately, about forty-five governments ignored this provision in the March attack on Iraq and cooperated with the United States and did not react, and perhaps this is what the Dutch legal advisor said. It is interesting to note that the Charter of the United Nations is not the only source of international law. Nowadays, customary rules are beyond contractual rules, and it is not wrong to say that custom has become the most important source of international law.

### **3.War and jihad against piracy in Islamic jurisprudence**



As it was said, sea piracy is an issue of global concern, which has caused disorder and disruptions in the seas, such as the spread of terrorism weapons and the commission of crimes such as illegal immigration, drug trafficking, and arms trafficking (Mousavi and Jadidi, 1390: 379). For the first time, Iran's legislator has mentioned maritime piracy in the Law on Combating Financing of Terrorism approved in 2014, which was amended in 2017. The amended article (1) of this law states that "providing" or collecting funds or property in any way, whether it has a legal origin or not, or using all or part of the resulting financial resources, such as currency smuggling, obtaining financial and monetary aid, transferring money. .. or carrying out any economic activity of individuals by oneself or another... in order to provide terrorist individuals or terrorist organizations with financing for terrorism and is considered a crime...". One of the actions mentioned in paragraph "6" of clause (b) of article (1) is sea piracy with the meaning that "piracy is the illegal seizure of a ship or the exercise of illegal control over it or endangering the safety of shipping from Through knowingly providing false information or destroying and causing severe damage to the cargo ship and its crew or passengers if with the intention of committing or threatening to commit any violent act such as murder, assassination, violent act resulting in severe physical injury More than one third of the payment is complete.

As stated before, in jurisprudence books, it is not possible to infer a special topic and section related to sea piracy in Islam, but it is possible to examine and explain the rulings of sea piracy by using the jurisprudential title of Moharebeh (Khosh Navis, 1391:121) in order for sea piracy to be considered moharebeh in terms of Iranian jurisprudence and law; In addition to the general conditions related to robbers, such as maturity of mind, discretion, intent, lack of urgency, etc., theft and especially sea piracy must also have certain conditions. These conditions include being armed with sea piracy, being accompanied by violence and overpowering and using force or threats, being accompanied by intimidation and creating fear among the crew, employees and possible passengers, depriving the individual of security, and

finally being associated with disrupting the security of the sea, depriving the sea of security to Certainly, if any of the mentioned conditions are not fulfilled, the actions of pirates cannot be investigated under the title of war, and other criminal titles must be applied to match their actions (Maqami, Rostami, 2017: 257). Of course, it should be kept in mind that if we consider the primary jihad among the types of war in Islam to fight against pirates, its requirements must also be met. Among the requirements related to just war with piracy is proportionality. In this regard, it should be noted that proportionality, as one of the moral principles of resorting to war, means that war should be started if the good resulting from it is greater than the evil. God willing, there should not be any transgression; For this reason, it is recommended to observe many moral principles in Islamic wars; For example, people who lay down weapons and those who have lost the ability to fight or do not have the power to fight in principle; Like the wounded, old men, women and children should not be violated, gardens and crops should not be destroyed, and toxic substances should not be used to poison the waters of the enemy (Haj Esmaili; Habibullahi, 2013: 52).

Another scholar in Chapter 3 of Maritime Law in Islam discusses piracy and its legal, financial, and social consequences. This scholar of Islamic law discusses the factors that encourage piracy and the methods used to combat and reduce maritime robbery, punishment, and the socio-economic and cultural effects of piracy on humanity. Finally, he concludes that "by introducing pirates as the common enemies of all mankind, the jurists called on their fellow Muslims not to tolerate their actions and considered the fight against piracy to be even more worthy than the fight in the way of God (jihad). A pirate who participates in jihad does not mitigate his divine punishments or waive the rights of his victim(Khalilieh HS.,2019).

#### **4.war with pirates in international law**



The United Nations has played a high position in dealing with modern piracy (Mohammadi, 2014: 450). Meanwhile, the role of the Security Council as the main pillar of maintaining international peace and security has been much stronger. Of course, in the meantime, the United Nations General Assembly and some other DIL offices of the aforementioned organization, including the United Nations Office for Combating Crime and Narcotics, have also taken measures. For example, the United Nations General Assembly issued a resolution calling on all governments and relevant bodies to cooperate to prevent and combat piracy and armed robbery at sea, and to take measures to help prevent, report, investigate incidents, and prosecute alleged perpetrators following adopting international law. In line with this position, the Security Council had expressed concern about these events in Somalia since 1991. This is why it is necessary to look down on the actions of the Security Council in this regard. With the beginning of the crisis in Somalia in 1991, the United Nations Security Council issued Resolution 733 in this regard (Beigzadeh, 1402: 47) (after It issued several resolutions, the most important of which are Resolutions 1676, 1772, 1816, 1838, 1846, and 1851. Resolution 1676 of this Council in May 2006 is considered to be the entry into the battle against piracy on the coast of Somalia and the Gulf of Aden. The main content of the United Nations Security Council in the field of piracy can be listed as follows: 1. The expansion of the concept of maritime piracy; 4. The use of all Necessary measures and methods; and 6 the need to use different regulations. The Security Council has considered the actions of pirates on the coast of Somalia and the Gulf of Aden as a threat to international peace and security based on Article 39 of the United Nations Charter. Since the acts of pirates on the coast of Somalia and the Gulf of Aden do not fit into the framework of the concepts mentioned in the 1958 and 1982 conventions, the Security Council has tried to expand the concept of piracy to effectively deal with these thieves, and for this purpose, it has chosen the term piracy and Armed robbery has used. Armed robbery is a familiar phrase in the literature of the International Maritime Organization.



This organization has used this phrase in dealing with thefts committed in sea areas under the government's territory. To deal with the new maritime crisis, the Security Council has emphasized the need for international cooperation many times, including in its recent resolution No. 2317 in November 2016. The council calls on all governments, international organizations, and in general, any institution that can somehow cooperate in confronting and preventing this phenomenon, to take all necessary measures, including equipping ships, financial aid, arresting and prosecuting pirates, even if in (2002: 141.A.RES 57.141) in the territory of the Somali government. In the legitimacy of resorting to force in the territory of the Somali government, it should be said that the Somali government has expressed its official consent to carry out such actions to the Council. Therefore, there is nothing contrary to the principle of non-interference mentioned in Article 7 of the United Nations Charter. The Communication Group on Piracy is an international mechanism established in 2009 to facilitate cooperation in combating modern piracy. This group was formed following Security Council Resolution 1851 (2008). In this way, the council specifies the use of all necessary facilities and methods to deal with these thieves.

This group, which was formed on the initiative of Mrs. Rice, the then Secretary of State of the United States of America (Qassimi, Satishpour, 2018: 228) consists of five essential tasks in the confrontation (Beigzadeh, 2002: 35), the expressions of all the necessary actions And all the necessary practices are well-known expressions in the UN Security Council literature, including the Iraqi occupation of Kuwait. Since the council has not managed to have a military force to date, it uses these expressions in cases where it is unable. In fact, with this phrase, the news of the countries is given a white light at the disposal of the countries, multinational forces, and the international community in general to take any action, including military



action. In many resolutions of the Security Council, according to the seventh chapter of the United Nations Charter, several conventions are referred to to deal with piracy on the coast of Somalia and the Gulf of Aden. Conventions on the Law of the Sea, Rome Convention 1988 and its 2005 Protocol, Palermo Convention, Regional Code of Conduct and Agreements on the Presence of Officials on Ships (Taghizadeh, 1391: 131) in this regard, it can be said without a doubt that the 1974 Convention on the Safety of Life at Sea which seeks to save people's lives regardless of the cause is also worthy of attention (1974: SOLAS). Maritime safety and the 2005 protocol annexed to it are of particular importance in the field of fixed platforms located on the continental shelf. After the Achilles Lareau case, to fill the void of the 1982 Convention on the Law of the Sea, the International Maritime Organization drafted the Convention on the Suppression of Unlawful Acts against Maritime Safety. Piracy does not die, but it can be applied to most incidents of piracy and armed banditry at sea (14. Abhyankar, 2002 p.) Illegal actions against safety in shipping, according to this convention, it is supposed to seize or control ships by using Force or threat to use it with any other form of intimidation, violence against the persons present on the ship's deck, and resorting to tools that cause damage or destruction of the ship. After the incident of September 11, 2001, the suspicion that modern piracy should be brought up under the terrorist topics intensified, and then the 2005 Protocol on fixed platforms located on the continental shelf was added to the Rome Convention of 1988. This protocol includes requirements such as the development of jurisdiction and criminal prosecution of the perpetrators of the crimes mentioned in the 1988 Convention, and the adoption of necessary measures to prevent violence at sea. This council asked the secretary general of the organization to present solutions for the prosecution and punishment of the accused, and Mr. Ban Ki-moon presented his seven solutions as follows within the three-month deadline. The first solution is to promote the assistance of the United Nations to build capacity in the countries of the region to prosecute and punish those who are responsible for committing

piracy and armed banditry in the waters off the coast of Somalia; The second solution is to establish the National Court of Somalia by applying the law of Somalia in the territory of one of the countries in the region, whether with the participation of the United Nations or without it; The third solution is to establish a specialized branch with internal competence of the country or countries in the region without the participation of the United Nations; The fourth solution is to establish a specialized branch with the internal competence of the country or countries in the region and with the participation of the United Nations; The fifth solution: establishing a regional court based on a multilateral agreement between regional governments, with the participation of the United Nations; The sixth solution to establish an international court based on the agreement between regional countries and the United Nations and the seventh solution to establish an international court by the resolution of the Security Council in accordance with the 2011 chapter of the Security Council from the Secretary General to present (the seventh United Nations Charter) these solutions are commended And he cited them in the 2317 resolution.

### **Conclusion**

In this article, a comparative study of "piracy" was examined from the perspective of the theory of just war in Islamic jurisprudence and international law. Considering that pirates are considered a private act based on the definition of Articles 101 to 107 of the Convention on the Law of the Sea, and in fact, in wars against pirates, they are considered as an illegal private group, and the law of armed conflict governs relations between countries during armed conflicts, although the main purpose of these laws is to reduce the losses, injuries and damages caused by war. Pirates are not subject to the law of war because they are private illegal groups that endanger shipping lines and the international trade routes. However, in the current world where the law of war is called humanitarian law, it seems that pirates,



as human beings who violate national and international laws and regulations and as human beings who have committed an international crime, have the right to enjoy humanitarian protection during their arrest. Based on moral principles, especially Islamic principles, it is necessary to use conventional weapons when fighting them.

As well as, Islam not only confirms the general criteria of the Just War theory but also specifies principles that go beyond those mentioned in this theory.

. Islamic military doctrines advise soldiers to be moral and respect emotions and feelings and prevent soldiers from committing immoral behaviors in the harsh conditions of war. The history of these principles in Islam goes back 14 centuries, that is, the beginning of the emergence of Islam, and for this reason, Islam has been ahead of contemporary international law for centuries. Also, what is stated in the United Nations Charter and the theory of just war has been emphasized in Islam for many years.

In connection with the application of punishments related to war against pirates, of course, there are differences of opinion, however, the closest jurisprudence related to the application of military pressure against pirates can be considered war, and of course, in the absence of the mentioned conditions, This theory is rejected, and in this regard, cases such as limited theft or corruption in the world can be proposed. In general, it seems that although the components of just war in the contemporary and modern discourse have differences with the customs of war that Muslims had (which is also different from the mentality and thoughts of early Muslims) and the political approach of Islamic peace and just war has been accepted. Therefore, among the examples of a just war in Islam, non-violence with prisoners, paying attention to women and children and trying not to harm them, not fighting with the sick in war, etc., all these examples are also considered in the international law system. This importance should be taken into consideration in all wars and battles, including war and dealing with pirates.

## References

- Bagheri, Saeed, Sadegh Hekhit, 2012, The theory of just war in the political philosophy of St. Augustine, Fundamental Western Studies of Humanities and Cultural Studies Research Institute, No. 2.
- Barznouni, Mohammad Ali, 1384, Islam; Authenticity of War or Authenticity of Peace, Legal Journal, No. 32.
- Boscek, Boleslav; Bledsoe, Robert L., 1376, Culture of International Law, Tehran: Ganj Danesh.
- Begzadeh, Ibrahim, 1402, International Law, Tehran: Mizan Publishing.
- Taghizadeh, Zakieh, 2013, The evolution of dealing with piracy from the perspective of international law, Tehran Ganj Danesh.
- Jafari Langroudi, Mohammad Jaafar, 1378, Legal Terminology, Tehran: Ganj
- Haj Esmaili, Mohammad Reza; Habib Elahi, Mahdi, 2013, review and theoretical analysis of the ethics of war in the Qur'an and Hadith, Research Journal of Ethics, Volume 5, Number 15.
- Khosh Navis, Abbas, 2013, exploitation of the sea based on the rules of Islamic jurisprudence with a look at the conventions on the law of the seas, Shahid Ashrafi Isfahani Institute of Higher Education.
- Dehkhoda, Ali Akbar, 1377, Dehkhoda dictionary, Tehran: University of Tehran.
- Ziyai Begdali, Mohammad Reza, 2018, Laws of war, Tehran: Athakh publishing company.
- Tousi, Muhammad bin Hasan, Beita, Al-Nahaye fi Majdar al-Fiqh and al-Fatawi. Qom: Quds Mohammadi Publications
- Ameli (Shahid Sani), Zain al-Din bin Ali, 1371, Masalak al-Afham to Tankih Sharia al-Islam. Volume 3, Qom: Islamic Studies Institute.
- Ghasemi, Gholamali, Satishpour, Mohammad, 2018, Actions of the International Community in Countering Modern Piracy, Iranian Journal of International Policy, Year 7, Number 2.





- Kashef al-Ghita, Jafar bin Khizr, 1387, Kashf al-Ghita on the obscurities of Al-Sharia al-Ghara. Volume 4, Qom: Bostan Kitab Institute.
- Kek Din, Nguyen, 1383, General International Law, Tehran: Information Publications.
- Mohammadi, Abdul Hamid, 2016, the concept of just war and the evaluation of American claims based on this concept for attacking Iraq, master's thesis, Payam Noor University.
- Mohammadi, Mehrdad, 2014, Piracy in Somali waters, from the perspective of international law, Law of Nations Quarterly, year 6, number 21.
- Misbah Yazdi, Mohammad Taqi, 1384, War and Jihad in the Qur'an. Qom: Imam Khomeini Educational and Research Institute.
- Mustafavi, Hassan, 1374, research on Al-Kalimat al-Qur'an al-Karim. Volumes 3 and 9, Tehran: Printing and Publishing Organization of the Ministry of Culture and Islamic Guidance.
- Moin, Mohammad, 1390, Farhang Moin, Tehran: Zarin Publications
- Maggi, Amir; Rostami, Javad, 2019, the extension of Muharebeh to piracy from the perspective of Shia jurisprudence and criminal law of Iran, Majles and Strategy Quarterly, year 27, number 101.
- Mousavi, Seyyed Fazlullah; Seyed Mehdi Mousavi, New, Ansieh, 2018, current challenges of international law regarding the exercise of jurisdiction over sea piracy, Law Research Quarterly, year 13, number 32.
- Wallace, Rebecca, 1382, International Law, translator: Seyyed Ghasem Zamani; Mahnaz Behramlou, Tehran: Shahr Danesh.
- Handi, Aladdin Ali al-Muttaqi bin Hosamuddin, 1405, Kenz al-Umal fi Sunan al-Aqwal wa al-Afal, volume 4, Beirut: Al-Rasalah Institute.
- Yekdelepour, Hossein, 2013, the phenomenon of piracy from the perspective of international law, Bandar and Darya Monthly, year 26, number 46.
- Khalilieh HS. Piracy and Its Legal Implications. In: Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought. Cambridge Studies in Islamic Civilization. Cambridge University Press; 2019:170-213.
- Ansarian, M., Tayebi, S., Fathi Bornaji, M., & Ehsanpour, S. R. (2022). Analysis of the Action to Combat to Impunity of Modern piracy from the Perspective of

*The Comparative analysis of dealing with "sea piracy" ....*

*Mohamadamin Ghandi, Esmaeil Shahsavandi,*

*Omid Mollakarimi , Mohsen Hassanpour*

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International Law. *International Journal of Maritime Policy*, 2(5), 1-18. doi: 10.22034/irlsmp.2022.316509.1040

Momeni, M. (2022). Piracy in Guinea Golf: Factors Causing Crime and Ways to Deal with It. *International Journal of Maritime Policy*, 2(7), 107-136. doi: 10.22034/irlsmp.2023.316540.1056

Tabatabaei, A., Savaadkoohi, S., & Arashpour, A. (2021). Socioeconomic Analysis of Piracy in the Northern Indian Ocean and its Solutions from the International Law Viewpoint. *International Journal of Maritime Policy*, 1(4), 97-118. doi: 10.22034/irlsmp.2021.251568.1020

