A new decade for social changes
Protection of human rights. Aspects regarding maritime piracy

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Abstract. Maritime piracy represents a strange reality in a world that considers itself evolved, without primitivism and medieval cruelty. However, the obsolescence of these iniquities often stops the cruel reality to come to surface, namely the fact that the danger and ferocity of these acts could generate unpredictable evolutions able to affect more and more areas of the Planetary Ocean. The implementation of comprehensive international legislation in this area and the allocation of necessary forces and means to combat this scourge are becoming increasingly acute if we take into account the fact that the methods and, especially, the means of carrying out maritime piracy and armed robbery at sea are more and more performing, since pirates and sea robbers have been endowed with the latest communications equipment, ultra-fast ships, efficient weapons, but also a strong power to penetrate, through corruption, the prevention and control systems.

Keywords. maritime piracy, International Maritime Bureau, Somalia, Nigeria, Coast Guard

1. Introduction

Maritime piracy has been around since ancient times, practically since people started to sail at sea. The target of pirates has always been the cargo carried by ships, and sometimes even the ships, as well as the personal belongings and money of the passengers and crew.

The acts of maritime piracy take place in international waters, outside the jurisdiction of any state and usually outside areas where the security of ships is monitored and where patrols with military ships are carried out. (Reinhard 2005)

Maritime piracy has been around since ancient times, practically since people started to sail at sea. The target of pirates was the cargo carried by ships and sometimes even the ships, but also the personal belongings and money of the passengers and crew. If in ancient times, the Mediterranean Sea was a pirates’ paradise, in the Middle Ages, with the discovery of America, piracy established its centre of gravity in the Atlantic area and, mainly, in the Caribbean Sea. It did not mean though, that the other traditional pirate centres - on the north coast of Africa or the English Channel - ceased to exist. They continued to be perpetuated until the seventeenth and eighteenth centuries, but the extent of their actions decreased, so that by the end of the seventeenth century, piracy in the English Channel had disappeared. (Hâldan, 2010)
Until recently, piracy has been relatively seldom approached in contemporary media. The practice, however, has raised international awareness in recent years (especially Somali piracy off the coast of Africa). In response, an international coalition has been set up to fight pirates off the coast of Somalia. The coalition enjoyed a high level of success, and piracy was diminished. However, the practice has nowadays spread to other major waterways around the world, from Southeast Asia and the Mediterranean to West Africa and Central America. Such a practice can cause real threats to sea voyages. The defence of the high seas requires a considerable contribution of resources, both financially and in terms of equipment. Moreover, these maritime security efforts can be fully successful only if there is also international cooperation. (Gibson 2019)

Modern pirates tend to attack cargo ships and fishing vessels, which carry goods that can be easily sold on the black market, and therefore rarely turn their attention to cruise ships. Smaller pirate gangs, that don’t have the necessary resources to capture the transported cargo, often embark on ships in order to steal substantial amounts of cash intended for payroll and port charges. Moreover, the most recent and frequent trend is the abduction of crew members that are to be exchanged for ransom money.

To realize the scale of danger generated by maritime piracy, we must point out that the losses caused by piracy attacks amount annually to almost $20 billion.

Another effect is the increase of insurance policies for ships and their cargo carried through dangerous areas.

The Gulf of Guinea continues to be the most dangerous area for ships, with 32% of incidents worldwide and all sailors killed, injured or abducted in the first half of 2021.

Last year, 40% of the reported international piracy incidents took place in the Gulf of Guinea. More precisely, 72 merchant ships were attacked between the seashores of the Ivory Coast and Cameroon, and 79 sailors were abducted. The International Maritime Bureau (BMI) states that the official figures represent only about half of the incidents that usually take place, given that some crews don’t inform local authorities about these facts.

In the first 6 months of 2021, the IMB’s Piracy Reporting Centre (PRC) referred to 61 ships on board, 4 attempted attacks, 2 attacks with fire weapons and one ship hijacked. The overall decrease in reported incidents didn’t diminish however the violence against crews (50 abductees, 3 hostages, 3 people threatened, 2 attacked, one injured and one killed).

The BMI report for the first quarter of this year has showed a decrease in acts of piracy and armed robbery against merchant ships, compared to the first three months of last year. Thus, in the first quarter of 2019, BMI received information of about 38 incidents of piracy and armed robbery at sea, down by 28 incidents compared to the same period of 2018, when 66 incidents were recorded. Of the 38 incidents, in 27 cases the pirates boarded the merchant ships, in 7 cases they opened fire on them, and in another 4 cases there were only attempts to attack the merchant ships. No ship was seized. These BMI statistics are encouraging, but the reference period is far too short to anticipate this year’s trends.

The number of abductions in the Gulf of Guinea in the last quarter is the lowest since the second quarter of 2019, but pirates continue to attack all types of ships across the region.

The IMB warns that some fishing vessels have been reconverted by pirates in the Gulf of Guinea and are being used as mother ships to launch attacks on other merchant ships. In the Straits of Malacca, there were 16 incidents in the first 6 months of 2021, compared to 11 in the same period of 2020. These attacks are considered opportunistic. In 7 of the incidents, the perpetrators were armed with knives. In three separate incidents, the sailors were threatened, attacked or injured.
Compared to the first half of 2019 and 2020, Callao Anchorage in Peru recorded a double number of incidents. There were 4 incidents in the second quarter of 2021 with 3 knife attacks and two separate episodes in which crews were taken hostages and attacked. IMB advises that precautions should be taken even by ships anchored in Manila, Philippines where 4 incidents were reported in the second quarter of 2021.

Nigeria has been a hotbed of piracy for the past decade. However, in the first quarter of 2019, Nigeria recorded a decrease in piracy incidents. Thus, in the first quarter of this year, Nigeria reported 14 incidents, compared to 22 in the same period of 2018. Despite this decline, navigable waters in Nigeria remain risky for commercial vessels, especially the port of Lagos, where four incidents were reported. (Defence and Security Monitor 2019)

Piracy is defined by the United Nations Convention on the Law of the Sea (UNCLOS), also known as the 1982 Montego Bay Convention, as follows:

“Piracy means one of the following acts:

a) any act of violence, seizure and any act of looting committed by the crew of a ship or aircraft against private or directed people or property:
- against another ship or aircraft or against people on board the ship in high seas;
- against a ship, its people or property, in an area which is not under the jurisdiction of any State;

b) any act of voluntary participation in the use of a ship or aircraft, the authors knowing that the ship is a pirate ship;

c) any act of incitement or facilitation intended to commit the acts specified in paragraphs (a) and (b)” (United Nations Convention on the Law of the Sea, 1982)

This is not the only definition of maritime piracy, but it is the only one legislated and applicable in international law.

An interesting definition is that of the International Maritime Bureau of the International Chamber of Commerce, which defines maritime piracy as “an act of boarding any vessel or attempting to board any vessel with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of the act”.

2. Causes that favour maritime piracy

Maritime piracy and armed robbery at sea are associated with poverty, most cases occurring in poor areas of the world such as Africa or Southeast Asia, especially where piracy is “a real and deadly danger” (Garamone 2005).

Other causes of maritime piracy and armed robbery at sea are tradition and opportunity. In Southeast Asia, and especially in Indonesia and the Philippines, there is a culture of robbery and piracy. Basically, what happens on land, also happens at sea - robberies that reveal a certain national culture, pejoratively speaking, especially when the victim’s opposition can end in cruel assassinations.

With 17,500 and respectively, 7,000 islands, Indonesia and the Philippines are ideal for a significant increase in piracy, especially after the withdrawal of US and USSR bases from the area, following the end of the Cold War (Subic Bay-Philippines and Cam Ranh-Vietnam). (Kane and Passicouset 2000)

The fact that ships sail under the flag of convenience facilitates the work of pirates. Thus, on the night of September 27, 1998, the Tenyu motor ship of the Japanese company Tonan Shipping, which was under Panamanian flag, after leaving the island of Sumatra heading for
South Korea, disappeared in the Straits of Malacca with the entire cargo, consisting of thousands of aluminium ingots worth over two million euros.

After three months of research, the ghost ship was found in the Chinese port of Zhaug Jiagang where it had been named Sanei I.

The ship was carrying 3,000 tons of palm oil and had the necessary legal documents registered in the state of Honduras. On board, 16 Indonesian sailors had replaced the 13 crew members of the original Tenyu crew who allegedly had been killed.

In the practice of some states, there are different approaches of the issues related to maritime piracy and armed robbery, in the sense that some states punish severely the deed, but do nothing to prevent it.

An important element is the physical characteristics of the coasts and seas.

Robbery and piracy are mainly practiced where the movement of targets can be easily seen, near the coasts, in the mandatory crossing points and, especially, in areas where ships are forced to sail slowly due to navigation difficulties. However, this last issue has been solved by the pirates, by using very fast attack ships.

The military fleets of the pirated states don’t have the capacity to effectively fight this scourge because their endowment is very poor compared to that of pirates, and the large networks practicing piracy have enormous financial resources which allow them to outperform the naval forces in the area.

Unlike Somali pirates, those in the Gulf of Guinea usually don’t seize ships because they have nowhere to hide them. In exchange, armed with AK-47s and knives, they board the merchant ships, take hostages from the crew members, and return ashore, where they hide the hostages and demand ransom. Although piracy in the Gulf of Guinea is being carried out by pirates from most of the Riparian countries, the problem of piracy in this area is primarily a Nigerian issue. Nigerian pirates use the canals of the Niger Delta to move, launch attacks, hide from authorities and hold captive, crew members.

The fundamental causes of the difficulties in combating piracy in the region are: inefficiency of government structures, poor endowment and training of state force structures, especially the coast guard, a deficient and corrupt legal system and, last but not least, an inefficient system of regional cooperation, affected by the national problems mentioned above. In this regard, the General Director of NIMASA (Nigerian Maritime Administration and Safety Agency), Dr. Dakuku Peterside, has consistently argued that a tougher legal framework is needed, a more vigorous and continuous military naval presence at sea, as well as a more efficient system for collecting and exchanging information, both at national and regional level.

In addition to the causes above mentioned, the proliferation of piracy in Nigeria is also caused by connections with oil-terrorist groups operating in the Niger Delta. Unemployment in the area is over 20%, and the theft of oil products is “in full swing”. Many of the pirates used to be members of oil-terrorist groups, during which time they learnt how to handle weapons, to plan and execute a terrorist act. Petro-terrorist groups say they want to capitalize on stolen oil products to fund their ethnic groups, before Abuja politicians “fill their own pockets”. In order to increase their profit, some members of the oil-terrorist groups also carry out piracy activities.

One thing that seems rather strange is the involvement of the naval forces, the coast guard, the police and the port administrations in illicit pirate business, compromise and corruption becoming a general rule. An example to this regard is that of former Philippine President Josef Espada, who was involved in sponsoring acts of piracy and robbery as well as illegal gambling, Jueteng. (Litzellmann 2003)
Another favourable factor is the approval, by some states, of the illegal registration of stolen ships, the so-called “ghost ships”.

To get an idea of the size of the phenomenon, it is important to point out that the famous insurance company Lloyd’s has estimated the significant number of over 20,000 pirates existing in the China Sea.

3. Case study

Somali pirates would approach and seize oil tankers a few years ago, others, cargoes and then, they would demand ransoms of millions of dollars. Now, thanks to concerted naval and air actions by the international community (including the EU) and stricter security measures put in place by shipowners and crews, Somali pirates have been forced to return to land. But, as it is often the case with crime, the problem has not really been eliminated. It appeared in another, more vulnerable location. For pirates, the “hunt” is now taking place in the Gulf of Guinea, which crosses West Africa from Senegal to Angola, nearly 4,000 miles offshore. Although far from Romania, piracy in the Gulf of Guinea is also affecting our country. In early March, a statement from the Free Navigators’ Union (March 3) announced that the “Histria Ivory” Malta-flagged ship had been attacked by pirates 20 miles from the port of Lome. The Romanian Ministry of Foreign Affairs confirmed that three Romanian seamen had been abducted by pirates, the rest of the crew managing to reach in a timely manner, the safe space used in case of pirate attacks. (Defence and Security Monitor 2019)

According to the BMI’s half-yearly report, 73% of all abductions at sea and 92% of hostage-taking operations took place in the Gulf of Guinea. Two merchant ships carrying chemicals were also hijacked during the same period, as well as a tugboat that was later used in another attack. The pirate attacks took place at an average shore distance of about 65 nautical miles.

The Democratic Republic of Somalia collapsed in 1991, after the civil war led to the dissolution of its navy. With its coast unprotected, foreign fishing vessels ruled Somalia’s waters and fished the oceans to capacity, leaving no fish for the locals. As a result, many fishermen turned to piracy. According to the International Maritime Bureau (IBM), 142 pirate attacks worldwide happened in 2011. 94 of these cases were off the coast of Somalia alone. At that time, Somali piracy was estimated to cost other countries about 8.3 billion in 2010.

Local fishermen, with the support of military groups, took up arms to defend their livelihood. They started to attack all ships, including merchant ships, armaments and oil tankers that sailed through Somalia and beyond the Gulf of Aden, the Maldives and the Indian Ocean. What started out as a defence against illegal maritime activities, has become a lucrative business for wealthy pirates.

Somali fishermen and civil war militants led the attacks. They were organized into various gangs, and their attacks involved fishing trawlers called skiffs which launched rapid attack boats to capture the cargo. They also involved other merchant ships using rifles and grenade launchers. They captured ships, took hostages and demanded millions of dollars in ransom. When pirates were caught by international naval forces, they threw their weapons onboard to get rid of evidence, making it difficult to be prosecuted in international courts. Most of the pirates, who were arrested and charged in Kenya, were acquitted for lack of sufficient evidence. On April 18, 2009, the Dutch sailors released two dozen of Yemeni hostages from Somali pirates. The pirates got away with no consequences. In 2007, the pirates killed a Chinese sailor when their ransom demands were not met. They were also suspected to have killed four Americans in 2010 and charged with torture and use of hostages as a shield.
SOMALI PIERS RECEIVED CONSIDERABLE SUPPORT FROM THE SOMALI POPULATION, MAINLY DUE TO THE RESTORATION OF FISH SUPPLY AND THE ECONOMIC BOOST GIVEN BY THE RANSOM MONEY, TO LOCAL COMMUNITIES. WITH EACH "SUCCESSFUL OPERATION", THE PIRATES WOULD RECEIVE MORE FUNDING FROM TERRORIST ORGANIZATIONS IN SOMALIA, YEMEN AND AFGHANISTAN. THESE ORGANIZATIONS INCLUDE THE TERRORIST GROUPS AL-SHABAB, AL-QUEDA AND WAHHABI. LOCAL INVESTORS ALSO INVESTED IN VARIOUS PIRATE GANGS.

PROFITS FROM PIRATE ATTACKS HAVE RISEN FROM AN ESTIMATED TOTAL OF MORE THAN $250 MILLION IN 2011 TO AN AVERAGE OF $9 BILLION ANNUALLY. SHIPPING COMPANIES ARE SPENDING A FORTUNE ON HIRING ARMED GUARDS AND USING LONGER SHIPPING ROUTES.

INTERNATIONAL EFFORTS LED BY THE NORTH ATLANTIC TREATY ORGANIZATION (NATO), THE UNITED STATES OF AMERICA (USA), THE EUROPEAN UNION (EU), RUSSIA AND INDIA MADE SIGNIFICANT PROGRESS IN ELIMINATING PIRACY. NATO LAUNCHED THE OPERATION OPEN SHIELD TO DEFEND INTERNATIONAL WATERS AGAINST SOMALI PIRATES, WHILE AMERICA BECAME AGGRESSIVELY INVOLVED AFTER THE HIJACKING OF AN AMERICAN SHIP AND THE CAPTURING OF ITS CAPTAIN PHILIPS. WARSHIPS AND NAVAL FORCES SET OUT TO DIRECTLY ENGAGE THE PIRATES. THE SOMALI GOVERNMENT HAS INCREASED ITS EFFORTS TO ATTACK PIRATE BASES ON LAND. SUCH MEASURES HAVE LED TO A DECREASE IN PIRACY, SO THAT IN 2012 THERE WAS ONLY ONE ATTACK, AND NONE IN THE NEXT FIVE YEARS. MOST PIRATES ARE NOW BELIEVED TO BE INVOLVED IN ARMS SMUGGLING AND TERRORIST GROUPS, AND THEIR COMPLETE ELIMINATION LARGELY DEPENDS ON SOMALIA’S POLITICAL STABILITY. (GIBSON 2019)

4. THE FIGHT AGAINST PIRACY

PIRACY MUST BE TREATED LIKE ANY OTHER CRIME AND, JUST LIKE EFFORTS TO REDUCE CRIME IN GENERAL, ENDING PIRACY IN THE HIGH SEAS WILL MEAN GLOBALLY IMPROVING THE SOCIO-ECONOMIC SITUATION OF PEOPLE, ESPECIALLY IN COASTAL COUNTRIES THAT ARE HOTBEDS OF PIRACY. THESE EFFORTS NEED TO BE ENHANCED, ESPECIALLY IN SOUTHEAST ASIA, WHICH REGISTERED ALMOST THREE-QUARTERS OF ALL PIRATE ATTACKS (COSMA ANA-MARIA, 2021). FOR COUNTRIES ON THE WEST COAST OF AFRICA, ESTABLISHING STABLE GOVERNMENTS WILL BE AS CRITICAL TO COMBATING PIRACY AS A TOUGH COASTAL POLICY. TODAY’S SHIPS ARE INCREASINGLY USING ANTI-PIRACY MECHANISMS, SUCH AS RAZOR WIRE, ELECTRIC FENCES, HIGH-PRESSURE WATER HOSES, AND EVEN HI-TECH CREATIONS SUCH AS “SOUND WEAPONS”. THIS NEW TECHNOLOGY IS PRODUCED BY BAE SYSTEMS AND IS A NON-LETHAL LASER CANNON THAT CAN BE USED AGAINST TARGETS MOVING MORE THAN A MILE AWAY, WHICH WILL TAKE BY SURPRISE POTENTIAL PIRATES.

WHEN IT COMES TO MARITIME SECURITY, THE CONCEPT CAN BE DISCUSSED IN A VARIETY OF CONTEXTS. IN GENERAL, MARITIME SECURITY REFERS TO THE TERRITORIAL PROTECTION OF STATES AND MARITIME TERRITORIES, AND IS AFFECTED BY A WIDE RANGE OF ILLEGAL ACTIVITIES, SUCH AS TRAFFICKING IN ARMS, DRUGS, HUMAN BEINGS, ILLEGAL, UNREPORTED OR UNREGULATED FISHING, AND POLLUTION.

TWO MARITIME REGIONS ARE SIGNIFICANTLY AFFECTED BY MARITIME PIRACY: THE GULF OF ADEN IN EAST AFRICA AND THE GULF OF GUINEA IN THE WESTERN PART OF THE CONTINENT. THE MOST COMMON FORM OF MODERN PIRACY IN BOTH GULFS IS THE HIJACKING OF SHIPS, WITH A FOCUS ON ABDUCTING CREW MEMBERS AND DEMANDING A RANSOM. IN ADDITION TO NATIONAL AND REGIONAL EFFECTS, PIRACY IS ONE OF THE MOST SIGNIFICANT THREATS TO GLOBAL ECONOMY. GIVEN THE FACT THAT OVER 90% OF THE IMPORTS AND EXPORTS TO AND FROM THIS CONTINENT ARE MADE BY SEA, THE DAMAGE TO THE SECURITY OF THE MAIN SEA ROUTES IN THESE AREAS ENTAILS ADDITIONAL COSTS.

THUS, IN ORDER TO PROTECT TERRITORIAL WATERS, TRADE ROUTES AND EXCLUSIVE ECONOMIC ZONES, AND TO ENSURE THE EXPLOITATION OF MARINE RESOURCES, SIGNIFICANT LAW ENFORCEMENT, INTELLIGENCE CAPABILITIES AND PROCEDURES OR AGREEMENTS ARE NEEDED FOR APPROPRIATE MEASURES TO
be implemented in order to limit and stop acts of piracy. (Bejan, A. M., 2013) The authorities of the states affected by this phenomenon, the regional actors and the international community must also be actively involved and demonstrate political will in the fight against piracy.

According to the BMI’s half-yearly report, 73% of all abductions at sea and 92% of hostage-taking operations took place in the Gulf of Guinea. Two merchant ships carrying chemicals were also hijacked during the same period, as well as a tugboat that was later used in another attack. The pirate attacks took place at an average shore distance of about 65 nautical miles.

Piracy is a unique and serious threat to global economy, as most international trade is carried out through shipping. Consequently, a strong international strategy to deal with this scourge should be implemented. To do this, international cooperation must simply go beyond arresting and prosecuting pirates and look deeper at the underlying causes of poverty that could lead many individuals to a life of maritime crime. These acts are consequences of poor governance, corruption and lack of education that perpetuates cyclical poverty. Unless these issues are resolved, piracy is unlikely to be reduced in the high seas.

Although there is unanimity among shipping companies according to which piracy at sea cannot be completely eradicated despite concerted efforts by all stakeholders, they should acknowledge that the threat can still be minimized.

The governments of West African countries are trying to limit piracy as much as possible, by better coordinating the exchange of information and their operational forces. But given that West African piracy comes mostly from a single country, regional coordination is just “a drop in the ocean”.

Shipping companies complain that the Nigerian government is failing to ensure the safety of shipping in its territorial waters. In reality, the Nigerian naval forces act admirably in some cases, but with substantial effort, because of a very poor equipment and a sporadic presence at sea caused by the small number of trained people. Some shipowners speculate that the pirates are “hand in hand” with military officials, giving examples of incidents in which pirates managed to flee before the arrival of Nigerian naval forces or that the pirates know exactly how many crew members are on board. (Defence and Security Monitor 2019)

It can also be stated that Nigeria has not made any progress in the legislative field either. More precisely, the country didn’t classify piracy as a specific criminal offense. Pirates captured by Nigerian ships are often released. About 300 people have been prosecuted in Somalia for piracy. However, the UN Office on Drugs and Crime (UNODC) stated that it was not aware of any decision to convict anyone detained in Nigeria for piracy.

BIMCO, the largest international shipowners’ association, supports the Somali version. The association issued a statement in January this year, calling on EU, US and Chinese military forces to temporarily deploy their ships to the Gulf of Guinea. Shipowners also want to be able to provide security teams on board the ships they own. For the time being, this is impossible, given that Nigeria doesn’t allow the presence of such teams on board of merchant ships, but only the presence of Nigerian naval officers “who know the area and the action methods of the pirates”. Under these conditions, several shipowners said that “the Nigerian authorities have transformed security into a business”.

Other shipowners believe that Nigeria is much stronger than Somalia and should be obliged to provide maritime security in its territorial waters. The same owners argue that the Gulf of Guinea, unlike the Straits of Malacca or the Gulf of Aden, is not a strategic point for international trade. To this reasoning, we should add the fact that there are other security constraints on the Nigerian government with a much greater security effect, such as: terrorism-
jihadism in the northeast, armed robberies in the north-western area and violent clashes between farmers and shepherds in the central area. (Defence and Security Monitor 2019)

In addition to the measures that can be taken by the international community, similar to those in Somalia, there is also a need to increase the responsibility of shipowners.

Even if the shipping companies, the military forces of the states in the region and the international community did more, piracy would still not be completely eradicated. The only way to eradicate piracy is by identifying the causes (on land) that generate it and by acting on them.

In West Africa, this means enforcing the law in the Niger Delta, fighting corruption and creating jobs.

In Somalia, pirates will continue to look for opportunities offered by unprotected ships as long as chaos reigns on land. All this suggests that it will be difficult to eradicate piracy for many years to come, but governments and shipowners should not try different alternatives to stop piracy.

References