

REPUBLIC OF TURKEY
ANKARA UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
DEPARTMENT OF MARITIME TRANSPORTATION
LAW AND POLITICS

**INTERNATIONAL MARITIME PIRACY AS A THREAT TO THE WORLD
SECURITY: INTERNATIONAL LEGAL MECHANISMS OF COMBAT AND
COUNTERACTION WITH THE UKRAINIAN EXPERTISE**

Master's Thesis

DMYTRO LAZEBNYI

Ankara, 2021

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I state that all the information in my master's thesis titled " International Maritime Piracy As A Threat To The World Security: International Legal Mechanisms Of Combat And Counteraction With The Ukrainian Expertise (Ankara.2021)", which I prepared under the supervision of Prof. Dr. Hakan KARAN, was collected and presented in accordance with academic rules and ethical behavior principles, I fully indicated the information I received from other sources in the text and in the bibliography, I declare that I have acted in accordance with the ethical rules, and I will accept any legal consequences in case the contrary arises.

**Date: 02/08/2021
Dmytro Lazebnyi**

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ABBREVIATIONS

- CFSP** : The Common foreign and security policy of the EU
- CSDP** : The Common Security and Defense Policy
- EC** : The European Commission
- ECOSOC** : United Nations Economic and Social Council
- ed** : edited / edition
- EUTM** : EU training mission
- CIS** : Commonwealth of Independent States
- ILS** : The International Law of the Sea
- IMO** : International Maritime Organization
- IMCO** : Inter-Governmental Maritime Consultative Organization
- ISM** : The International Safety Management Code
- ISPS** : International Ship and Port Facility Security
- Iss** : Issue
- ITUC** : The International Trade Union Confederation
- OAS** : The Organization of American States
- p** : page
- TFG** : Transitional Federal Government
- UNCLOS** : United Nations Conventions on the Law of the Sea
- USCG** : United States Coast Guard

SAARC : The Association for regional cooperation of South Asia

SUA : The Convention for the Suppression of Unlawful Acts against the Safety
of Maritime Navigation

SUA Protocol: The Protocol for the Suppression of Unlawful Acts against the Safety of
Stationary Platforms Located on the Continental Shelf

Vol : Volume

WMD : Weapons of mass destruction

INTRODUCTION

The problem of combating crimes at sea has recently become very relevant. International cooperation plays an important role in reducing piracy. Statistics are also disappointing for Ukraine since dozens of ships with Ukrainian sailors have been seized in recent years. Among the most resonant seizures - the ships «Faina» (with a cargo of weapons), «Arina», «Lehman timber», «Lugela» and «Beluga Fortune». Actually, for our country the problem of maritime piracy arose on a large scale in 2005 with the seizure of the «Panagia» vessel with a fully Ukrainian crew. A special group of employees of the staff of the National Security and Defense Council of Ukraine, which was engaged in the release of the ship, faced a significant number of problems, the main of which were due to the imperfection of international legal norms and interaction of special services and law enforcement agencies of foreign States.

Ukraine is the second (after the Philippines) in the world in terms of the number of victims of pirate attacks: Every fifth crew member captured by sea terrorists is our compatriot. This is stated in the report of the Verkhovna Rada Commissioner for Human Rights “*On the state of observance and protection of seafarers’ rights in Ukraine*”. The main problems of representatives of this profession in the document are called pirate attacks, lack of social protection, and employment issues.

For Ukraine the problem is simply colossal. About 65 thousand Ukrainian sailors work on thousands of vessels flying the flags of different countries of the world. According to statistics, Ukrainian sailors occupy the fifth place in the world among the crews of merchant ships and the second place in terms of the number of hostages that fall into the hands of sea pirates every year.

Today, piracy poses a real danger to navigation and, above all, to the right of everyone to life, freedom and personal integrity. The above mentioned data on pirate attacks strongly prove that the measures used to combat these crimes, including in the legal sphere, are not yet effective enough. The problem of piracy remains one of the most pressing aspects affecting commercial navigation in certain areas of the world's oceans and even the state of regional security.

The general issues related to the emergence of piracy, the use of naval forces to combat pirates, and the international legal framework for combating piracy were studied by so many academics. However, many scholars do not object to the need to study maritime piracy as a significant threat to international security. The experience of international cooperation, accumulated over the recent history of Ukrainian statehood, requires scientific generalization and systematization to increase effectiveness of combating various manifestations of international organized crime.

Also, the practice of countries in the field of international maritime law is increasingly conflicting with the convention norms of private maritime international law, which is associated with the intensification of various activities of countries and globalization of international relations in general. It is the study of these changes in the international legal procedure for limiting the liability of the ship owner that today constitutes the key problems of the development of private international maritime law, which are of great theoretical and practical importance.

The purpose of the study is an international legal analysis of maritime piracy as a threat to world security, finding out the prerequisites for activating international cooperation of States in countering any manifestations of maritime piracy, identifying the main ways of the cooperation of States, and improving ways to solve this problem.

Taking into account the purpose of the research, the following tasks have been set in this work:

- to investigate the origin and evolution of the concept of «pirate»;
- to analyse the international legal basis for determining international maritime piracy;
- to reveal modern characteristic features of maritime piracy and their impact on global security;
- to determine legal aspects of the problem of maritime piracy in international law;
- to evaluate organizational and legal measures to combat maritime piracy and problems of their implementation;
- to study relevant problems of countering piracy at the present stage;
- to outline prospects for the development of an international legal mechanism for countering maritime piracy;
- to investigate the implementation of international legal provisions that regulate countering international maritime piracy in Ukrainian legislation.

The object of this research is a set of international legal relations related to combating maritime piracy including other acts of violence at sea. Accordingly, its subject is the system of principles and norms of international maritime private law, national legal norms regulating relations in the field of combating piracy including various acts of violence at sea.

The methodology of the study is considered as a system of general scientific, as well as special scientific methods, using of which provides reliable solution of the tasks of the research. In the course of study, a broad range of research methods were used, in particular, methods of dialectical-materialistic philosophy, formal logic, system, structural and functional analysis. Also the general methods of scientific cognition of the phenomena of the objective world were applied. The special role in the study is played by special legal methods as formal legal analysis and comparative legal method, which were used in the analysis of contractual and legal regulation of international relations in the field of combating maritime piracy.

Utilizing the formal legal method, the content of international legal acts was analysed, as well as the specifics of its implementation in the national legislation of Ukraine. The historical method was used to study formation of a mechanism for combating maritime piracy. Implementation of the comparative legal method, the peculiarities of international legal regulation of relations in the field of cooperation with different countries in the process of combating maritime piracy were established. Grounding on the method of system analysis and forecasting, the recommendations and proposals for a mechanism for combating maritime piracy were developed.

The scientific novelty of the obtained research results follows from the determined scientific objective and is disclosed in the following provisions:

- the study of periodization of the origin and evolution of the concept of «pirate» has been carried out;

- the process of international legal regulation of combating maritime piracy has been clarified and it has been established that the leading role in these processes is assigned to international organizations of the UN system;

- the current mechanism for regulating the international legal combating maritime piracy in Ukraine and abroad has been defined and proposals have been elaborated to improve the international legal mechanism for combating piracy and maritime terrorism;

- a comprehensive analysis of the legal mechanisms and tools of international organizations to combat maritime piracy have been carried out, as well as their nature has been identified and their effectiveness has been evaluated;

- the need to develop a set of national regulatory legal acts aimed at detailing the functions of special executive authorities in the field of maritime navigation protection has been revealed;

- the study of the legal and institutional framework for the implementation of UN regulations and standards in the field of combating maritime piracy has been further developed;

- the impact of the globalization process on maritime piracy has been clarified;

- the analysis of trends in international cooperation in the field of combating maritime piracy and prospects for its development has been carried out.

I. THEORETICAL AND METHODOLOGICAL FOUNDATIONS OF THE DEFINITION OF INTERNATIONAL MARITIME PIRACY

A) THE EMERGENCE AND EVOLUTION OF THE CONCEPT OF «PIRATE»

The legal doctrine recognizes the concept of pirate according to which among many offenses there is a separate category of international crimes and crimes of an international nature that pose a great public danger. Duly definition of the scope of these crimes and distinguishing them from each other contribute to the finding of effective forms and methods for combating them. The concept of an international crime and crimes of an international nature allow to recognize as such only those acts that are most dangerous for international relations.

Considering this problem, first of all it is necessary to answer the question of whether it is legitimate to talk about an international approach to combating criminal act at a time when crimes occur within one particular State and are subject to the jurisdiction of this State. It should be noted that combating crime in a particular State is not international in the literal sense of the word, because the jurisdiction of one country and the competence of its military and police authorities are recognized on its territory. Taking into account the fact that in all cases the principle of jurisdiction of a particular State applies to a crime, the international fight against crime should be understood as cooperation of States in combating certain types of crimes that pose a significant global public danger.

History shows that the development of cooperation between States in this area has taken lots of time. At first, the simplest forms were used, for example, reaching an

agreement on the extradition of the person who committed the crime, or regarding other actions related to a particular crime. Later, there emerged a need to exchange information, and the volume of this information was constantly expanding. If earlier such information concerned individual criminals and crimes, then gradually it was filled with new content, covering almost all areas of the fight against crime, applying data on the causes, trends, regarding the development of crime, etc. So, at a certain stage, there is an emerging need to exchange experience between law enforcement agencies of different countries in the fight against criminals.

The study of historiographical and scientific foundations shows that cooperation between States in this area develops at three levels. First, it is a cooperation at the bilateral level, which has its roots in ancient times. In modern conditions, it has not only lost its significance, but its role is constantly growing. Bilateral agreements allow us to consider the nature of relations between particular States, their interests on each specific problem. In this regard, bilateral agreements on such issues as extradition of criminals, and transfer of criminals to serve their prison time in the country they are citizens of have become the most widespread.

According to Ukrainian Government, there are several dozens such agreements in the contractual practice of our State today. These are mainly agreements on juridical assistance regarding criminal and civil cases. As far as the criminal sphere is concerned, these agreements regulate the procedure for interaction between the judicial and investigative bodies of the two countries in the process of criminal prosecution of persons located outside the State where they have committed crimes. Interstate and intergovernmental bilateral agreements are usually accompanied by interdepartmental ones, which specify cooperation of individual agencies.

In addition to bilateral cooperation, the States also cooperate at the regional level, which can be explained by the coincidence of interests and the nature of relations between the countries of a particular region. The practice of international cooperation of law enforcement agencies shows that significant work on this issue is being carried out in the Council of Europe. The high level of cooperation in the European region is evidenced by the conventions on the extradition of criminals; the legal assistance in criminal cases; the recognition of sentences in criminal cases; the transfer of criminal proceedings; offenses in relation to cultural property; the «laundering», detection of various criminal activities.

The Convention on the Transfer of Convicted Persons of 1983¹ by the member States of the Council of Europe is of particular interest. Ukraine also acceded to this Convention in 1995.²

Cooperation in this area is also developing rapidly within the Commonwealth of Independent States. Its relevance is particularly evident both in connection with the increase in crime in the CIS Countries and because of the openness of borders, which deprives States of the opportunity to successfully fight crime alone. In August 1992, all CIS member States, as well as Georgia, signed an agreement on relations between the Ministries of Internal Affairs in the field of information exchange. In January 1993, in Minsk, the Commonwealth countries (except Azerbaijan) signed the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters³. Many articles of this Convention are devoted to the provision of legal assistance in criminal cases. They

¹ European Convention on the Transfer of Convicted Persons of 21/03/1983, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/112/signatures>

² On Ukraine's Accession to the European Convention on the Transfer of Convicted Persons: Law of Ukraine No. 337/95-BP of September 22, 1995. 31. Article 248.

³ Ukrainian Criminal Code of 20 April 2001. *Vedomosti of the Verkhovna Rada of Ukraine*, 2001, Vol. 25-26, p. 131.

require cooperation on such issues as the extradition of criminals, the implementation of criminal prosecution, the consideration of cases under the jurisdiction of Courts of two or more States, the transfer of items used in the commission of a crime, the exchange of information about convictions and convictions, etc⁴.

In the course of developing cooperation between States, it quickly turned out that it was impossible to limit ourselves to bilateral and regional agreements. It became clear that some types of crimes affect the interests of the entire international community, which created prerequisites for the development of cooperation between States in this area at a universal level. As a result, the process of concluding multilateral agreements has begun, and if during the time of the League of Nations dozens of States participated in them, then during the period of UN activity their number exceeded one hundred. In this regard, the fight against crime through multilateral agreements is of particular importance.

The historical process shows that with the development of trade, navigation, and relations between States, the scope of cooperation in combating specific types of crimes affecting common interests has also expanded. For example, the fight against maritime piracy has long been widespread, which was recognized by States as an international crime, and pirates were declared enemies of humanity. Although the piracy is stereotypically a phenomenon of the past, known from adventure novels, it has not disappeared. This is why the United Nations Convention on the Law of the Sea (UNCLOS)⁵, and a number of other multilateral agreements include provisions on

⁴ Agreement on Interaction of Ministries of Internal Affairs of Independent States (CIS countries) in the field of combating crime 1992 // Legal bases of international activity of the Ministry of Internal Affairs of Ukraine (36. international legal documents): 2 Vol. - K., 1997.- V. II.

⁵ Convention of the United Nations Organization on the Law of the Sea of 1982 (UNCLOS): http://www.un.org/ru/documents/decl_conv/conventions/pdf/lawsea.pdf (accessed on 15/06/2020)

combating piracy. A striking example of the need to combat this type of international crime is the seizure on September 25, 2008 of the ship «Faina», whose crew included 17 Ukrainian citizens.

Another international crime that poses a great public danger is a slave trade. It should be noted that the first act to abolish the negro slave trade was passed at the Congress of Vienna in 1815⁶, and in 1841 five States signed a treaty prohibiting the transportation of negro slaves to America⁷. In addition, the treaty was supplemented by documents adopted at the Berlin conference in 1885 (on the Congo River)⁸ and at the Brussels conference in 1890⁹ - on the fight against the slave trade. In these documents, the slave trade was already considered a crime.

This problem is still relevant today. At the UN, it was again the subject of consideration by the Special Committee on slavery, established by the United Nations Economic and Social Council (ECOSOC). It was recognized that slavery, although in hidden forms, still exists. In this regard, the Geneva Conference on combating slavery was convened in 1956, where an additional convention was adopted regarding combating slavery, the trade of slaves, institutions and customs similar to slavery¹⁰. Under the

⁶ The Congress of Vienna, <https://courses.lumenlearning.com/boundless-worldhistory/chapter/the-congress-of-vienna/> (accessed on 15/06/2020)

⁷ Sorrell, C. E. / Berry, D. R.: "This 1841 Rebellion at Sea Freed More than 100 Enslaved People", JAN 28, 2021, <https://www.history.com/news/creole-most-successful-slave-rebellion-1841> (accessed on 15/02/2021).

⁸ The Berlin Conference, <https://courses.lumenlearning.com/boundless-worldhistory/chapter/the-berlin-conference/> (accessed on 18/02/2021)

⁹ Slave trade and importation into Africa of firearms, ammunition, and spirituous liquors (General act of Brussels), <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000001-0134.pdf> (accessed on 19/02/2021)

¹⁰ «Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 and done at Geneva on 7 September 1956. Entry into force: 30 April 1957, in accordance with article 13», https://www.ohchr.org/en/professional_interest/pages/supplementaryconventionabolitionofslavery.aspx (accessed on 15/02/2021)

Convention, States have taken responsibility to punish those guilty of crimes such as the transport of slaves, the imposition of a person into slavery or servitude, stigmatization by burning or otherwise, etc¹¹.

The next direction was cooperation between States in the fight against pornography. In this regard, the Paris Convention for the Suppression of the Distribution of Pornographic Publications of 1910¹² and the International Convention for the Suppression of the Circulation and Trade of Pornographic Publications of 1923¹³ are of interest. Under these Conventions, the States have committed themselves to prosecute those responsible for the sale, manufacture, storage, importation and export of pornographic publications¹⁴.

Within the framework of the League of Nations, and even before the establishment of this organization, the States began to combat the phenomenon of trafficking in women and children. In this process, the 1949 Convention Against Trafficking in Persons and Exploitation of Prostitutes by Third Parties¹⁵ became an important document. Under this Convention, which replaced all previously concluded agreements on the matter under review, the States have undertaken to qualify as a crime pandering, inducement or

¹¹ On the abolition of slavery, the slave trade and institutions and customs similar to slavery: an additional convention of September 7, 195, https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XVIII-4&chapter=18&Temp=mtdsg3&clang=_en (accessed on 03/09/2020)

¹² Agreement for the Suppression of the Circulation of Obscene Publications, https://en.wikipedia.org/wiki/Agreement_for_the_Suppression_of_the_Circulation_of_Obscene_Publications#:~:text=The%20Agreement%20for%20the%20Suppression,treaty%20has%2057%20state%20parties (accessed on 25/01/2021)

¹³ International Convention on the Suppression of Circulation of Pornographic Publications and Trade of 1923, Collection of Existing Treaties, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VIII-3&chapter=8&clang=_en (accessed on 03/09/2020)

¹⁴ *ibid.*

¹⁵ *ibid.*

molesting for the purpose of prostitution, exploitation of prostitution, maintenance of brothels, renting or leasing premises for this purpose, etc.¹⁶

The International Convention against Counterfeiting of Banknotes of 1929¹⁷ is also of interest. Its conclusion was the result of an increase in the danger to States due to the spread of this threatening phenomenon. Under the Convention, the States have undertaken to prosecute those who forge or falsify banknotes, distribute counterfeit marks, participate in the manufacture of appliances or other items intended for forgery or falsification. The Convention obliges parties to prosecute counterfeiters regardless of which country's banknotes they produce or forge¹⁸.

Nowadays countries have organized more diverse cooperation regarding the fight against crime, it has become meaningful and consistent within the UN. The UN Charter has created a fundamentally new legal framework for international cooperation in this area, proclaiming the desire of the nations of the UN to confirm faith in human rights,. The UN «Convention on the Prevention and Punishment of the Crime of Genocide» of 1948¹⁹ is indicative of this. The impetus for the development of this Convention was given by the UN General Assembly, which in 1946, in its Resolution 96 (I), declared that

¹⁶ «Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others Approved by General Assembly resolution 317 (IV) of 2 December 1949 Entry into force: 25 July 1951, in accordance with article 24», <https://www.ohchr.org/en/professionalinterest/pages/trafficinpersons.aspx> (accessed on 12/11/2020)

¹⁷ International Convention for the Fight Against Counterfeiting of Monetary Signs of 20 April 1929, *Collection of Existing Contracts, Agreements and Conventions Concluded by the USSR with Foreign States*, Moscow 1933, p. 102.

¹⁸ *ibid.*

¹⁹ «Convention on the Prevention and Punishment of the Crime of Genocide. Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III)» of 9 December 1948. Entry into force: 12 January 1951, in accordance with article XIII, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf (accessed on 03/09/2020)

genocide is a crime that violates the norms of international law and contradicts the spirit and goals of the UN.

Based on the experience of the II World War and as a reaction to crimes of Hitlerism, the Convention qualifies as acts constituting genocide as murdering persons of ethnic, racial or religious group; that can cause harm to body or mental distress to persons of such a group; intentionally creating for any group such living conditions as are created to completely or partially destroy it physically; measures that are designed to prevent the birth of children in such group; handing over children from one group to another. According to the Convention, genocide is considered as an international crime. The State Parties undertook to take the necessary measures to punish those responsible for committing genocide, inciting it, attempting to commit it or complicit in genocide²⁰.

The International Convention on the Elimination of All Forms of Racial Discrimination of 1965²¹ is also on the same list. It should be noted that the preparation of the Convention was preceded by the adoption of resolutions by the UN General Assembly, including the Declaration on the Elimination of All Forms of Racial Discrimination of 1963²². Under the Convention, any spreading ideas grounding on racial superiority, incitement to racial discrimination, all acts of violence or incitement to such acts directed against any race or group of persons of a different colour or ethnic origin,

²⁰ *ibid.*

²¹ «International Convention on the Elimination of All Forms of Racial Discrimination. Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX)» of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19, <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx> (accessed on 03/09/2020)

²² United Nations Declaration on the Elimination of All Forms of Racial Discrimination (1963). (Proclaimed by the General Assembly, resolution 1904 (XVIII), A/RES/18/1904, 20 November 1963), [https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/2UnitedNationsDeclarationontheEliminationofAllFormsofRacialDiscrimination\(1963\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/2UnitedNationsDeclarationontheEliminationofAllFormsofRacialDiscrimination(1963).aspx) (accessed on 15/06/2020)

and the provision of any assistance for the conduct of racist activities, including its financing, is considered a crime punishable by law²³.

An irreconcilable struggle against the policy of apartheid unfolded within the UN, which resulted in the adoption in 1973 of the «Convention on the Suppression and Punishment of the Crime of Apartheid»²⁴. The document qualifies apartheid as a crime against humanity. Those who commit the crime of apartheid are subject to international criminal liability. The State Parties took steps to prosecute and bring to responsibility persons responsible or accused of committing acts that, according to the Convention, qualify as a crime of apartheid²⁵.

The «Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment», approved by the UN in 1984²⁶, can serve as an illustration of the further efforts of the States in this area. The Convention provides a clear understanding of such acts and treats them as crimes for which the State-parties are obliged to bring those responsible to justice²⁷.

It should be noted that the international practice of recent decades shows that a significant number of new types of crimes have appeared. They influence the interests of the States in various spheres. How diverse these areas are can be seen in the following

²³ International Convention on the Elimination of All Forms of Racial Discrimination. Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19, <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx> (accessed on 03/09/2020)

²⁴ Convention on the Suppression of the Crime of Apartheid and Punishment for It of 1973, *International Protection of Human Rights and Freedoms*, Moscow: Yuridicheskaya Literatura 1990.

²⁵ *ibid.*

²⁶ «Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46» of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1), <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx> (accessed on 15/09/2020)

²⁷ *Ibid.*

examples. In 1973, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, was opened for signing in New York²⁸. In 1979, the UN General Assembly adopted the Convention against Hostage-taking²⁹. The Convention on the Physical Protection of Nuclear Material was opened for signature in Vienna in 1980³⁰. A conference held in Rome (Italy) approved Convention for Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) in 1988³¹ and the Protocol for the Suppression of Unlawful Acts against the Safety of Stationary Platforms Located on the Continental Shelf (SUA Protocol)³².

In 1989, the General Assembly adopted the Convention against the Recruitment, Use, Financing and Training of Mercenaries³³. A number of multilateral conventions

²⁸ «Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents 1973. Annexed to General Assembly resolution 3166 (XVIII)» of 14 December 1973. Entered into force on 20 February 1977, https://legal.un.org/ilc/texts/instruments/english/conventions/9_4_1973.pdf (accessed on 15/06/2020)

²⁹ «International Convention Against the Taking of Hostages New York», 17 December 1979, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-5&chapter=18 (accessed on 16/06/2020)

³⁰ «Convention on the Physical Protection of Nuclear Material. Adopted at Vienna» on 26 October 1979, and opened for signature at Vienna and New York on 3 March 1980, <https://www.refworld.org/docid/3dd8fbec4.html#:~:text=Refworld%20%7C%20Convention%20on%20the%20Physical%20Protection%20of%20Nuclear%20Material&text=Adopted%20at%20Vienna%20on%2026,York%20on%203%20March%201980> (accessed on 18/02/2021)

³¹ «Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf». Adopted 10 March 1988; Entry into force 1 March 1992; 2005 Protocols: Adopted 14 October 2005; Entry into force 28 July 2010, <https://www.imo.org/en/About/Conventions/Pages/SUA-Treaties.aspx#:~:text=In%20March%201988%20a%20conference,committing%20unlawful%20acts%20against%20ships>. (accessed on 19/02/2021)

³² «Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf. Amendments to the Convention for the Suppression of Unlawful Acts (SUA) Against the Safety of Maritime Navigation, 1988 and its related Protocol, were adopted by the Diplomatic Conference on the Revision of the SUA Treaties held from 10 to 14 October 2005: Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; and Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf», <https://www.refworld.org/docid/3dda0fff4.html> (accessed on 11/03/2021)

³³ «International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Adopted and opened for signature and ratification by General Assembly resolution 44/34» of 4 December 1989. Entry into force: 20 October 2001, in accordance with Article 19, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Mercenaries.aspx> (accessed on 11/03/2021)

aimed at ensuring the safety of civil aviation were also concluded. All these documents refer to the inadmissibility of actions that are crimes subject to criminal prosecution and punishment.

At the same time, the importance of combating those types of crimes that are not new, but have come to the fore in their nature and mainly in their scale, in view of the efforts made by States to stop them, has not diminished in any way. These include, first of all, the fight against drugs and terrorism.

Even at the beginning of the XXth century the problem of international crimes was studied, in particular, by Korkunov, List, Martens³⁴ and other scientists. Such crimes included the intention of some States to enslave others and world domination, an attack without a declaration of war and a sufficient pretext.

Many lawyers expressed their own opinions on the definition of international crimes. Thus Romashkin stated that these crimes were aimed at the foundations of international relations³⁵. Lazarev noted that they encroached on the independence of each nation and peaceful relations between them³⁶. Levin considered such crimes as encroachments on the freedom of the peoples of the world, the interests of all progressive humanity, the foundations of international communication, the rights and interests of all

³⁴ Popko, V.: "Postnyurnberg Development of the Concept International Crime». file:///E:/%D0%9A%D0%9B%D0%AE%D0%A7/462-%D0%A2%D0%B5%D0%BA%D1%81%D1%82%20%D1%81%D1%82%D0%B0%D1%82%D1%82%D1%96-676-1-10-20210327.pdf (accessed on 15/02/2021)

³⁵ Romashkin, P. S.: "Crimes against Peace and Humanity", <http://vuzlib.org/books>. (accessed on 10/02/2021)

³⁶ Lazarev, M. I.: "Imperialist Military Bases in Foreign Territories and International Law", http://www.pravo.vuzlib.org/book_z1533_page_6.html. (accessed on 10/02/2021).

States³⁷. Trainin called international crimes against humanity³⁸. Modzhorian pointed out that they were encroachments on the very existence of the State and nation³⁹.

A little later, investigating the problems of combating international crimes, Reshetov concluded that such crimes were complex delicts committed by legislative, executive and judicial authorities, and the subject of responsibility by the State⁴⁰. Panov expressed his view that international crimes are recognized as encroaching on the principles and norms of international law, which are crucial for providing for peace.⁴¹

The list of these crimes was proposed by the Statute of the Nuremberg International Military Tribunal in 1945⁴². In Article 6 Three such groups of crimes against humanity are classified as international:

«- crimes against peace: planning, preparing, unleashing or waging a war of aggression in violation of international treaties, agreements or assurances, or participating in a joint plan or conspiracy aimed at performing any of the above actions;

³⁷ Levin, D. B.: «Responsibility of States in Modern International Law», http://www.pravo.vuzlib.org/book_z1533_page_6.html. (accessed on 10/02/2021).

³⁸ Trainin, A. N.: “Protection of Peace and Criminal Law”, http://www.pravo.vuzlib.org/book_z1533_page_6.html. (accessed on 10/02/2021)

³⁹ Modjoryan, L. A.: “Subjects of International Legal Responsibility”, *Sov. State and Right*. 1969. №. 12. p. 123.

⁴⁰ Reshetov, Y. A.: *Fight against International Crimes against Peace and Security*. Moscow: International Relations 1983, p. ?.

⁴¹ Kuzmenko, V. N.: “Legal Regulation of the Fight against Piracy as a Crime of an International Nature Threatening the Safety of Navigation”, *Economic and Legal Aspects of the Development of Transport Systems*, Odesa, 2003, № 5, p. 76 (“Legal”).

⁴² Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis («London Agreement»). «This document, commonly known as the Charter of the Nürnberg Tribunal (or Nuremberg Tribunal) formed an integral part of the Agreement for the establishment of an international military tribunal(q.v.), which was signed in London on 8 August 1945. Source: The Charter and Judgment of the Nürnberg Tribunal: History and Analysis Appendix II. United Nations General Assembly - International Law Commission, New York, 1949» (A/CN.4/5, 3 March 1949), <https://www.refworld.org/docid/3ae6b39614.html> (accessed on 11/03/2021)

- war crimes, namely: violation of the laws or customs of war, including murder, torture or enslavement or other purpose of the civilian population of the occupied territory, murder or torture of prisoners of war or persons at sea, murder of hostages, robbery of public or private property, senseless destruction of cities and villages, ruining that is not justified by military necessity, and other crimes;
- crimes against humanity, namely murder, extermination, enslavement, exile and other atrocities committed against the civilian population before or during the war, or persecution for political, racial or religious reasons for the purpose of committing or in connection with any crime that falls under the jurisdiction of the tribunal, regardless of whether these actions were a violation of the internal law of the country where they were committed or not»⁴³.

This classification of international crimes was of great importance as the first document of international criminal law aimed at ensuring the safety of humanity. As time passed, the classification became more complex. In particular, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide also classified genocide as such crimes. It defines actions or intention of destroying, in whole or in part, any national, ethnic, racial or religious group as such. It should be noted that international crimes are heterogeneous in their nature, degree of danger and content. This explains the existence of different approaches to the list and classification of such acts.

Galenska was one of the first to fully investigate crimes that infringe on the international legal order, and in respect of which international agreements were concluded between States at that time⁴⁴. Such crimes included slavery, slave trade, similar institutions and customs; trafficking in women and children; coin forgery; distribution of

⁴³ *Ibid.*

⁴⁴ Galenskaya, L. N: *International Fight against Crime*, Moscow: Mezhdunar 1972, p. ?.

pornographic publications; illegal trade and drug use; «pirated» radio broadcasting; piracy; breaking or damaging an underwater cable; collisions of sea vessels and failure to provide assistance at sea; crimes committed on board an aircraft.

A little later Karpets systematized and identified four groups of international crimes⁴⁵.

The first crimes that harm peaceful cooperation and normal implementation of interstate relations. Among them, the author refers to terrorism and similar crimes, such as the seizure of planes, illegal radio broadcasting, etc.

The second group encompasses crimes that harm international economic, socio-cultural development. These include crimes that harm the environment, crimes against the national and cultural heritage of peoples in a wide variety of forms, smuggling and illegal emigration, distribution and trade of drugs, forgery of money and securities, and some others.

The third group include crimes that cause damage to a person, private, State property, and moral values. These include human trafficking, piracy, distribution of pornography and some other crimes, in regard of which there are international conventions and agreements.

The fourth is other crimes of an international nature. These include crimes committed on board an aircraft, breaking or damaging an underwater cable, colliding with sea vessels, and failure to provide assistance at sea.

⁴⁵ Karpets, I. I.: *Crimes of an International Character*, Moscow: Legal Literature 1979, p. ?.

Recently, the list of crimes of an international nature has been updated. Panov, in particular, suggest that with the constant growth of international crime and disappointing forecasts of experts in this field, the list of crimes of an international nature cannot be exhaustive. The author does not rule out possible changes in their qualitative and quantitative characteristics in the context of increasing instability of interstate relations⁴⁶. So, depending on the object of criminal encroachment, the degree of international danger and other signs of Panov divides international criminal offenses into the following main groups:

- Crimes against the international relations stability, for example world terrorism; hostage-taking; seizure of a plane and other aircraft and other crimes on board of a plane or at airports; nuclear material theft; recruitment, use, financing and training of mercenaries, as well as taking part in military operations; illegal radio and television broadcasting; war propaganda.

- Acts that harm economic, social and cultural development of States such as coin fraud; legalization of criminal profits; illegal trade of drugs and psychotropic substances; irregular migration.

- Encroachment on fundamental rights such as slave trade; trafficking in people; prostitution by third parties; spreading of pornography; torture, inhuman treatment, as well as those provided for in the draft Code of crimes against the peace and humanity safety, «*systemic and massive violations of human rights*», enforced disappearances, etc.

⁴⁶ Panov, V. P.: *International Criminal Law: a Tutorial*, Moscow: Infra-M 1997, p. ?.

- Crimes committed in the open sea such as piracy (sea robbery); rupture or damage of an underwater cables; crashing of ships; pollution of the sea with harmful materials; illegal fisheries.

- International war crimes using prohibited tools of warfare; «illegal wearing or abuse of Red Cross and Red Crescent signs»; looting; mistreatment of prisoners of war; negligent performance of duties in relation to wounded and sick prisoners of war, committing actions aimed at harming other prisoners of war, etc.⁴⁷

So, among the crimes of an international nature, some researchers in the sphere of international law distinguish piracy and maritime terrorism. Piracy originated in ancient times as from when the people began to travel by sea and trade. In the ancient era, it became a real scourge of the Mediterranean Sea, because few captain even a merchant ship neglected the opportunity to rob a colleague - there was almost no difference between a merchant and a pirate. Because of the sea robbers in the second century, even for a short time, the sea trade between the West and the East completely stopped. Especially numerous and cruel were the African pirates and sea robbers from the British Isles⁴⁸.

In 1293, a real naval battle took place in the English Channel between 60 (!) pirate ships («Union of five ports») and a squadron of two dozen French, Flemish and Genoese ships. By the way, navigation on the English Channel was dangerous until the end of the XVII century. Later, on the northern coast of Africa - in Tunisia, Algeria and Morocco - there were real pirate centers, and in the XVII century on the island of Madagascar there really was a pirate republic Libertation. It even had its own constitution. For a time,

⁴⁷ Kuzmenko, 76.

⁴⁸ Pirates of the XXI Century, https://zn.ua/ukr/SOCIUM/pirati_xxi_stolittya.html. (accessed on 22/02/2021).

African pirates, who were called pirates, were even paid great tribute by England and France for the right of free navigation of merchant ships.⁴⁹

Some countries accepted pirates into their service - they issued a license for sea robbery, the so-called privateer patent. This practice was especially popular during England's feud with Spain. For example the famous one-eyed Admiral Nelson - after all, the person to whom the monument was erected in London was a pirate in the service of Her Majesty! Our north-eastern neighbors, the Russians, also did not shy away from sea robbers. During the Livonian war in the Baltic, Ivan the Terrible even ordered the formation of a pirate flotilla⁵⁰.

Pirates have overgrown with a lot of myths - thanks to the efforts of writers and directors, they are primarily associated with gangs of robbers who drunk rum and, led by a gloomy one-eyed subject on a wooden leg, in a triangular hat and with a parrot on his shoulder, famously board caravels loaded with Inca and Mayan gold. By the way, a skull with bones crossed on a black background has never been displayed on a pirate flag - this is also an invention of writers to romanticize their characters. Sea villains preferred the proletarian red pennant or went to fiction - they went under the flag of some State. Runaway convicts and criminals who were sentenced to death, were by the way, very pious - often their banners were decorated with the image of a certain saint, on whose patronage they relied in the treacherous sea waters. Popular themes on pirate flags were also various mermaids, still-lives with sabers, bottles, pistols...

⁴⁹ Blagodelsky S. V.: "International Legal Means of Combating Pirate Actions at Sea" *Maritime Law: Actual Issues of Theory and Practice*, Odesa 2005, p. 63.

⁵⁰ Pirates of the XXI Century, https://zn.ua/ukr/SOCIUM/pirati_xxi_stolittya.html. (accessed on 22/02/2021)

Maritime piracy has never disappeared. This concept is legally fixed. Modern international maritime law refers to piracy as maritime robbery or violent acts committed on the high seas for robbery. This category also includes ships that attack ships of neutral countries during the war, and also ships carrying slaves under the flag of a certain State without its permission and simply without a flag.⁵¹

In the XX century, a new, «State» type of piracy emerged, which was resorted to by aggressor States and which is not usually advertised. It existed until the end of the Cold War. There are many examples. Germany was engaged in naval attacks during the first World War. German and Italian fascist submarines sank ships traveling with cargo of food and weapons to Republican Spain during the establishment of the regime of General Franco in 1936-1939⁵². The United States sank North Korean ships during the 1950-1953 war without any questions, and mercilessly sank the ships of the People's Republic of China⁵³. However, experts disagree - pirate attacks often cannot be distinguished from military operations⁵⁴.

Sea transport serve the of international trade. Hundreds of billions of dollars' worth of goods are transported by sea every year. So, Japan and the United Kingdom transport almost one hundred percent of cargo in this way, the United States - 90 percent⁵⁵. The development of maritime transport is affected by the complete dependence of producing countries on the supply of fuel and raw materials from overseas.

⁵¹ Kurbatsky, S. A.: "International (Maritime) Terrorism and Pirate Actions at Sea: Legal Interpretation", in *Actual Problems of Politics*, Odesa 2003, № 18, p. 198.

⁵² Pirates of the XXI Century, https://zn.ua/ukr/SOCIUM/pirati_xxi_stolittya.html. (accessed on 22/02/2021)

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

If in the Middle Ages piracy flourished in the Caribbean - as they then said, «Filibuster» sea, on the roads connecting the Old World with America, then at the beginning of the XXI century, sea pirates chose the routes connecting Europe with Asia. More than 50 thousand ships pass through them every year. Currently, two-thirds of attacks occur in the Asia-Pacific region⁵⁶.

According to the International Maritime Organization (IMO), the waters of Southeast Asia and the coasts of East Africa (especially Somalia) and Brazil are the most dangerous for navigation. Somalia has practically no central government for several years, and piracy is openly practiced by everyone who is not lazy. Maritime authorities have even issued a special order that categorically does not recommend ships to approach the coast of Somalia closer than a hundred kilometres⁵⁷. Border guards and the coast guard in Asia are also «indulged» in piracy. A hundred attacks on ships in the South China Sea were investigated. It turned out that Chinese law enforcement agencies were involved in half of the cases. In Brazil, pirates have chosen the vicinity of Rio de Janeiro⁵⁸.

The dubious title of “*the most pirated country in the world*” has been held by Indonesia for several years. The main reasons that forced the fishermen in several generations to put down their nets and take up arms were the difficult economic situation in the country and general political instability. The emergence of the legion of pirates was also facilitated by the unique geographical location of Indonesia, where the rugged coastline, many small islands and reefs provide robbers with a reliable shelter⁵⁹.

⁵⁶ Kurbatsky, 198.

⁵⁷ *Ibid.*

⁵⁸ Blagodelsky, 63.

⁵⁹ Blazhievskaya, M. V.: “Implementation of the Norms of International Maritime Law in the Legal System of Ukraine: Questions of Theory and Practice”, in *Maritime Law: Actual Issues of Theory and Practice*, Odesa 2005, p. 182.

And the Mallack Strait is «considered the most dangerous place for navigation in the world». Between the Mallaka Peninsula and Sumatra, it connects the Andaman and South China Seas. More than six hundred ships pass through it every day. Many of them did not reach their destination⁶⁰.

Law enforcement agencies are particularly concerned that modern pirates are armed not with some ancient machetes, but with good old Kalashnikov and grenade launchers. Robbers have modern high-speed motorboats, use satellite means of communication and surveillance.

Thus, the analysis of special literature and the main practical problems of interstate legal assistance shows that international cooperation in the fight against crime is a long-term process. Today it is defined as the activity of competent authorities provided for by international treaties or carried out under the conditions of simultaneous application of the norms of international and domestic law regarding the conduct of procedural and investigative actions in order to obtain evidence, ensure compensation for damage caused by a crime, or bring to justice the person who committed the crime.

Historical and legal analysis of international cooperation in the fight against crime allows us to determine the most effective forms of combating international criminals, especially in the context of Ukraine's European integration. Given the fact that this process is becoming increasingly developed, its study is the subject of further scientific research.

⁶⁰ Pirates of the XXI Century, https://zn.ua/ukr/SOCIUM/pirati_xxi_stolittya.html. (accessed on 22/02/2021)

B) DEFINITION OF INTERNATIONAL MARITIME PIRACY AND ITS INTERNATIONAL LEGAL BASES

The first wave of international terrorism, the beginning of which western analysts date back to 1968, swept through many countries of the world with numerous terrorist attacks mainly on airlines and airliners. After government and commercial airlines took appropriate security measures to protect civil aviation aircraft from terrorist attacks, they switched to ground targets such as airports, diplomatic missions, individual representatives of large businesses and the political establishment, which also did not go unnoticed by the security services of most countries. The narrowing of the counterterrorism ring on the ground and in the air, especially after a series of unprecedented kamikaze attacks in September 2001 on the WTC buildings in New York and Pentagon in Washington, is forcing terrorists to look for new, less secure targets to attack. According to many foreign observers, at present and in the near future, international terrorism will focus its sabotage activities, probably, on more accessible maritime chains, commercial water communications, ocean transport and passenger vessels.⁶¹ The real capabilities of naval terrorists, both at the tactical and strategic levels, pose a multilateral, comprehensive threat to security on an international scale.

The process of developing the definition of «international terrorism» (from Latin terror - fear, fearfulness⁶²), as one of the types of crimes of an international nature, has passed certain historical stages. The concept of «international terrorism» has been the

⁶¹ Kurbatsky, 198.

⁶² Dodonov, V. N. / Panov V. P., Rumyantsev O. G.: *International Law: Dictionary-Reference* / Moscow 1997, p. 135.

subject of research by many authors - specialists in the field of law. For example, among foreign lawyers, this problem was investigated by:⁶³

- Wilkinson (divided terrorism into revolutionary; sub-revolutionary; repressive)⁶⁴;

- Dispo (proposed 4 types of terrorism: terrorism of the State of the left; terrorism of the State of the right; terrorism of the right opposition; terrorism of the left opposition)⁶⁵;

- Deniker (separated three types of terrorism; domestic; transnational; international)⁶⁶;

- Borodin / Modzhorian / Savitsky (also separated such types of terrorism as international and national)⁶⁷.

This problem was also considered by historians and political scientists, but in many ways the concepts they worked out were not legal, but rather political in nature. As a result, the analysis of the interpretation and understanding of the concept of «international terrorism» by subjects of international law (States), is of the greatest importance in the study of this problem.

The first multilateral efforts of States in this direction date back to the 20 - 30th of the last century. During the international conferences on the unification of criminal

⁶³ Lebid, G. V.: "Terms: Terror, Terrorism, Piracy, privateering - in Reference and Legal Literature of Different Years", *Economic and Legal Aspects of the Development of Transport Systems*, Odesa 2003, № 4, p. 72.

⁶⁴ *Ibid.*

⁶⁵ Modjoryan, 123.

⁶⁶ *Ibid.*

⁶⁷ Lazarev, http://www.pravo.vuzlib.org/book_z1533_page_6.html.

legislation, there was formulated and adopted (in the form of recommendations to State-parties) a definition of terrorism, which was understood as the use of some means capable of terrorizing the population in order to destroy any social organization⁶⁸.

A new stage in this area was the completion in 1937 of the «Convention on the Prevention and Punishment of Terrorism»⁶⁹, as well as the «Convention on the Establishment of the International Criminal Court»⁷⁰, under the auspices of the «League of Nations». Although neither Convention has entered into force, many of its provisions have formed the basis for the formation of such existing principles and norms of international cooperation in the fight against terrorism as the inevitability of punishment of criminals, universal jurisdiction, etc.⁷¹

So far, the international community has not been lucky enough to work out the generally accepted definition of “international terrorism”, despite the fact that attempts to classify acts that fall under the definition of “international terrorism” have been made repeatedly. Thus, the resolution adopted by the 42nd session of the UN General Assembly on December 7, 1987 emphasizes that “*the effectiveness of the fight against terrorism can be achieved by establishing a generally recognized definition of international terrorism*»; *it raised the issue of «convening an international conference on international terrorism, as stipulated in agenda No. 126-a»*⁷².

The definition of “international terrorism” refers to certain international universal agreements, such as the «Convention on the Prevention and Punishment of Crimes

⁶⁸ Kolosov, Y. M.: *International Law: Textbook*, Moscow 1994. p. 389.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*, 72.

⁷² Districts of General Assembly of the UN, A/C.6/42/SR. 29.23.XI, 1987, p. 4.

against Internationally Protected Persons», including Diplomatic Agents of 1973⁷³; the «International Convention against Taking of Hostages» of 1979⁷⁴; and the «Convention on Physical Protection of Nuclear Materials» of 1980⁷⁵. At the regional level, terrorism issues were considered within the framework of the CSCE, the EU, the Council of Europe, the Association for Regional Cooperation of South Asia (SAARC), the Organization of American States (OAS), etc. The documents that are produced on a regional basis include the final documents of the CSCE meetings in Helsinki, Madrid, Vienna, Paris, resolutions and decisions adopted by EU countries; the OAS «Convention on the Prevention and Punishment of Acts of Terrorism»⁷⁶ that take the form of crimes against persons and related extortion, when such acts are international in nature, 1971; the European «Convention on the Suppression of Terrorism» of 1977⁷⁷, developed by the Council of Europe; the SAARC «Regional Convention on the Suppression of Terrorism», 1987⁷⁸; the Declaration of the meeting of Ministers of the «eight» in Ottawa on combating terrorism of December 12, 1995,⁷⁹ etc.

However, there is a common approach to understand key elements of the phenomenon, such as illegal violence, usually with weapons, the desire to intimidate the general population, innocent victims and other acts that violate the interests of more than one State. International terrorism at sea, as well as international terrorism on land and in

⁷³ Grigoryan, V. L. / Dmitriev, V. I.: *Piracy, Robbery and Terrorism at Sea*, Moscow: IKC Akademkniga 2004, p. ?.

⁷⁴ Modjoryan, L. A.: *Terrorism at Sea, The Fight of States for the Safety of Maritime Navigation*, Moscow: Intern. Relationships 1991, p. ? (*Terrorism at Sea*).

⁷⁵ Zharinov, N.: «Actual Problems of Combating Terrorism at Sea in the Interests of Economic Security of the State», *Mor*, 2006, № 5, p. 55.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ Kaspruk, V.: «The War on Terrorism: Perhaps Its Rules Need to Be Changed?», *Mirror of the Week*, 2006, № 37, p. 5.

⁷⁹ Diplomatic Bulletin. 1996, № I, p. 19.

the air, is directed against foreign objects, individuals who are citizens of foreign States, and their property. Its main danger is that it threatens the security of navigation, ignores the generally recognized principle of freedom of the seas and often poses a threat to peace, being therefore the most serious crime of an international nature.

Over the past decade, the scale of piracy has increased significantly. The number of robberies of commercial vessels has tripled during this time. In 2000 alone, it increased by 40% compared to 1999. About 2/3 of all reported incidents of this kind occur in the Asia-Pacific region, for example, in 1999, 113 out of 285 attacks on ships occurred in ports and territorial waters of Indonesia, including the Strait of Malacca, and in 2000, according to the International Maritime Bureau (IMO - International Maritime Bureau) in Paris, which is the maritime criminal service of the World Trade Organization (WTO), this ratio has increased even more. Indonesia was recognized as the most susceptible to piracy in the world. From January to September 2000, the IMO pirate registration center (in the Malaysian capital Kuala Lumpur) detected 30 acts of maritime robbery in the Strait of Malacca alone, which indicates a significant increase in this type of criminal activity at sea compared to previous years (one incident in 1998 and two in 1999)⁸⁰. Much the same pattern was observed in maritime communications in Southeast Asia, due to the economic crisis that began in Thailand in 1997, which led to an economic downturn in the region, political instability and a sharp increase in unemployment in Indonesia. Last year, 335 criminal actions against merchant ships were registered in the region.⁸¹

⁸⁰ *Ibid.*

⁸¹ *Ibid.*, 72.

The methods of action of modern pirates range from classic boarding and seizing merchant ships on the high seas to more frequent (72 %) attacks on ships standing against the wall in ports or anchored in the territorial waters of a particular country, with the purpose of robbery. The International Bureau of navigation distinguishes, in particular, three types of piracy⁸²:

- the most typical attacks of small vessels of former local fishermen on a larger vessel, when pirates take away money and valuables from the crew;

- seizure of tankers and large merchant ships for the purpose of “confiscation” of all cargo (by reloading goods or draining fuel to another vessel). Such attacks are more serious in nature and are organized by gangster groups that pre-monitor the routes of ships, including using the Internet;

- “expropriation” not only of the cargo, but also of the ship itself (most often accompanied by the elimination of the entire crew) by a special pirate ship with a pre-repainted, renamed and replaced flag with a more convenient one (for example, Panama or Belize). These “ghost ships” can also be used to smuggle drugs or other illegal cargo, and sometimes under the guise of ordinary chartered transport, the cargo of which then disappears without a trace (in such cases, the action is usually organized by a large international criminal syndicate).⁸³

In general, “piracy” should be understood as an illegal act committed outside of State jurisdiction. A similar definition of piracy was given back in 1930 by the Harvard Research Center in the draft convention for the suppression of piracy, and the provisions

⁸² *Ibid.*

⁸³ *Ibid.*

of this draft were included in some articles of the Geneva Convention on the High Seas of 1958⁸⁴ and the UNCLOS.

The concept of “piracy” used to encompass a fairly significant range of all kinds of illegal acts at sea, but now the main qualification feature of a pirate act is the commission of such an act that “occurs for personal purposes”, that is “without the intention to prove one's right”⁸⁵. The pirate himself is often referred to as *hostis humani generis* - an enemy of the human race. Back in 1668, the English merchant and diplomat Jenkinson, who has repeatedly visited the Russian State, confirmed that “*all pirates and sea robbers are outlawed by all peoples, that is, they are not subject to the protection of rulers and laws. Everyone should be empowered to fight them as rebels and traitors, in order to suppress and eradicate them*”⁸⁶.

In 1981, when piracy in the Gulf of Thailand reached its highest point, of the 455 ships (about 15 thousand people) heading to the coast of Thailand, 77% were attacked. Even though it became known about all events of this kind, the available statistics are impressive: 571 people were killed, 599 women were raped, 243 people were abducted⁸⁷.

Illegal acts committed at sea, which are intended to “compel or intimidate the government or society for purely political purposes”, do not fall under the concept of “piracy”. In this case, it is worth considering that we are dealing with a manifestation of “international terrorism”, as mentioned above⁸⁸. Such actions take on an international character, because they usually occur outside national borders or are directed against

⁸⁴ Convention on the Discovery of the Sea of 1958, http://www.un.org/ru/documents/decl_conv/conventions/pdf/hsea.pdf (accessed on 15/06/2020)

⁸⁵ *New Webster's Dictionary of the English Language*, Delhi 1988, p. 655.

⁸⁶ *America Latina la Extension del Mar Territorial, Regimen Juridico*, Montevideo, 1971, p. 157.

⁸⁷ Perels, F.: *Modern Maritime International Law*, St. Petersburg 1884, p. 243.

⁸⁸ *Ibid.*

foreign objects on the territory of a State. Koretsky as the head of the delegation of the Ukrainian SSR to the Geneva Conference on the Law of the Sea Academician, noting that the provisions of the draft of International Law Commission on piracy are an anachronism, rightly said that illegal violent acts of warships on the high seas, organized or supported by various States, “*are clear aggression, they should be the subject of concern of the Security Council*”⁸⁹.

According to Article 101 of the «United Nations Convention on the Law of the Sea», «piracy» should be understood as:

(a) any wrongful act of violence, delay or any robbery committed for personal purposes by the crew or passengers of a private vessel or private aircraft and directed at:

(i) on the high seas against another vessel or aircraft or against persons or property on board;

(ii) against a vessel or aircraft, persons or property in a place outside the jurisdiction of any State⁹⁰;

(b) any act of voluntary participation in the use of a vessel or aircraft made with knowledge of the circumstances whereby the vessel or aircraft is a pirate vessel or aircraft;

(c) any act that constitutes incitement or deliberate assistance to the Act provided for in subparagraph «a» or «b»⁹¹.

⁸⁹ Stib J.: “Ensuring the Rule of Law on the Sea and on the Coast”, in *Materials of Internet Conference on the Law of the Sea, Institute of intern. Legal Research*; US Department of Defense, Vol. VII, Newport Publ. 1998, p. 143.

⁹⁰ An example of such unlawful acts is the seizure in 1961 by a criminal group in the Caribbean of the Portuguese cruise ship Santa Maria with 600 passengers on board, during which the ship was looted, one crew member was killed and 8 injured: «Conference des Nations Unies sur le Droit de la Mer», Documents, V.IV, p. 36.

⁹¹ As an example, on 31 January 1983, four crew members of the Panamanian freighter «Estern How» mutinied and caused damage to property, the whaleboat and the bridge. They were quickly surrounded

In addition, the pirate actions as specified in Article 102 of the UNCLOS, may be committed by a warship, State-owned vessel or aircraft. In this case the crew of which has mutinied and seized control of this ship, ship or aircraft, are equal to actions performed by a private ship or aircraft.⁹²

The concept of piracy has been widely interpreted in the national legislation of many coastal States. Some States declare pirated and punishable as pirated acts which, in international law, are not considered acts of piracy. So, for example, in France, the crew of an armed ship, that sails in peacetime with improperly prepared ship documents becomes a pirate due to a violation of the established procedure, even if no act of violence is committed⁹³.

Until the end of the Cold War, maritime terrorism and piracy encompassed increasingly new territories of the globe. Terrorist attacks are now more violent, causing significant material and human losses and causing serious damage to maritime trade and transport navigation, as well as to the naval ships controlling it and the coast guard of a number of countries. According to Western statistics, about 90% of terrorist attacks at sea took place in the waters adjacent to developing countries, whose government structures (including law enforcement, intelligence and diplomatic) are ineffective in the fight against terrorism and are increasingly fused with international organized crime.

and neutralized by other crew members: Brian, A. G.: *Violence at Sea*, 3rd ed., New York: Parrit, 1993, p. 304.

⁹² Stib, 122.

⁹³ «Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1)». <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx> (accessed on 15/09/2020)

II. INTERNATIONAL MARITIME PIRACY AS A THREAT TO GLOBAL SECURITY: INTERNATIONAL LEGAL MECHANISMS AND MEANS OF COMBATING IT

A) MODERN FEATURES OF MARITIME PIRACY AND THEIR IMPACT ON GLOBAL SECURITY

In recent years, the problem of piracy has been particularly pronounced again. The phenomenon, which until recently, according to many experts, lost its acute character and was limited to certain areas of the world's oceans, mainly in Southeast Asia, has acquired a global dimension. Increasingly, information about the criminal actions of pirates, ships and sailors who became their victims is taking the front pages of the world's leading media, and the discussion and definition of measures to combat piracy has reached the level of many interstate forums with the participation of top officials. According to IMO, during 1 January and 30 September 2009 alone, the number of acts of piracy and attacks on ships or attempts to commit them reached more than 300, compared with 121 such cases in the first half of 2008.

Among the most dangerous areas are the seas of East Africa (160 cases), the South China Sea, South Africa, West Africa, the Indian Ocean, the Arabian Sea and the Persian Gulf. The real danger to international navigation was the actions of pirates off the coast of Somalia. If earlier most of the attacks took place in the Gulf of Aden and in the Southern Red Sea, recently, according to the International Maritime Bureau, their number has increased near the southern part of the Somali coast. In addition, such attacks often occur further and further from the shore, using the mother ship. All this increases the cost of international transport, increases the risk and threat to the life and well-being of

seafarers, and negatively affects stability and security in the respective regions and certain countries.

According to expert estimates, Ukraine is among the top five States possessing the largest quantity of merchant fleet sailors⁹⁴. The problems of fighting piracy, preventing the seizure of ships, protecting sailors, releasing those captured by pirates, and social rehabilitation of victims of this crime have long gone beyond just foreign policy activity, and have also acquired the features of a domestic political problem. The problem is doubled by the fact that most of the about 70 thousand Ukrainian sailors are on ships under the flag of other States.

By the calculations of scrupulous economists, the losses from attacks by sea robbers are simply huge - 16 billion a year, and this figure is constantly growing. More than a hundred large pirate groups are engaged in blood fishing today⁹⁵. In recent years, pirates have attacked ships in at least 62 countries around the world in the waters adjacent to 56 countries. Russian ships have repeatedly become victims of pirates. Ukrainian vessels have so far been spared such a fate, but cases have been recorded when pirates attacked ships where Ukrainian sailors served. So, a British ship with a Ukrainian crew fell into the hands of Somali robbers. For the release of people, the villains demanded 1 million dollars. Taking hostages by pirates for ransom is a very common practice. Repeatedly, people whose ships were attacked witnessed several rival gangs trying to take over them.⁹⁶

⁹⁴ Muravsky, A.: "With Ocean Shield Ukraine Will Spend 89 Million Hryvnias on the Fight against Sea Pirates, *Day* 2013, № 64, p. 24.

⁹⁵ Tsyryfa, Y.: "Ocean Shield: Ukrainian Participation in Combating Piracy", *Viche*, 2013, № 17, p. 8.

⁹⁶ Blagodelsky, 63.

One of the most high-profile pirate attacks occurred in November 1998. In the Taiwan Strait, pirates disguised as customs officers made their way aboard the Chinese cargo ship “Chung Song”, which was carrying slag for blast furnaces in Malaysia. They brutally dealt with the crew - beheaded all 23 crew members, and threw the bodies overboard. The attackers sold the ship to a Singapore businessman for 300 thousand dollars. The pirates, who were no different in cruelty from their medieval predecessors, were caught and executed in China⁹⁷.

Most often, pirates rob cargo ships, tankers, container ships and fishing vessels. Several times a year, hoping for a big catch, pirates also attack the pleasure yachts of the rich. Last year, a tragedy occurred that shocked the whole of America - pirates killed the winner of the America's Cup, the famous yachtsman Peter Blake, on the Amazon. Blake has won a bunch of prestigious international prizes for winning sailing. There are no exact statistics on attacks on private yachts, as it is believed that the missing crews could simply have died during the storm⁹⁸.

It becomes more often that pirates work on a tip-off and under an order. They know in advance the victim's route, cargo, tonnage, number of guards or crew. Recently, pirate attacks on ships carrying a variety of chemical cargo and fuel have increased dramatically. In October last year, pirates attacked a Malaysian oil tanker in the Malacca Strait, drove the entire crew into one room and pumped several thousand tons of diesel fuel to their speedboats, after which they disappeared. Shipowners estimate losses at 600 thousand dollars.⁹⁹

⁹⁷ Tsyrf, 8.

⁹⁸ Muravsky, 24.

⁹⁹ Lebid, 79.

Captured ships, as a rule, change their “biography” - that are repainted, get new names, registered under a different flag and in ports of other countries. Then the ship is sold and put back on the voyage. According to law enforcement officers, piracy is firmly fused with organized criminals. The activities of pirate gangs in Asia are controlled by Chinese criminal groups, the so-called triads¹⁰⁰.

Pirate ships also account for the lion’s share of smuggling and drug trafficking operations. In South America, for example, piracy revived in the 70s, when Colombian drug lords sharply increased the supply of cocaine to the United States¹⁰¹.

In the Philippines, piracy has a political connotation - the militants of the separatist group “Abu Sayyaf” use sea looting to extract funds for their liberation struggle. However, the terrorist attacks in the United States on September 11 played a cruel joke with rebel pirates - their organization was included in the list of terrorist ones, multimillion dollar awards were declared for the heads of the leaders and a ruthless war was launched against them¹⁰².

The need for an urgent fight against piracy is understood by everyone, because the losses from their activities are huge. If in the Middle Ages caravans of ships were protected from pirate attacks by combat convoys, today it is already unprofitable, and the scale of transportation is too large. Japan, the regional leader, is particularly active in helping the countries of Southeast Asia that have unwittingly become a stronghold of

¹⁰⁰ *Ibid.*

¹⁰¹ Gold, E.: «Piracy: The Scourge Continues», *Seaways*, 2009, № 3, p. 23.

¹⁰² Yakymlyak, S.: “Pirates of the XXI Century”, *Army of Ukraine*, 2006, № 7, p. 46.

piracy. First of all, it is interested, since it is the largest maritime power, and the island location makes the country dependent on maritime communications¹⁰³.

The United States also started fighting pirates. A training center for specialists in combating sea robbers is already operating in California. The center trains anti-piracy units for the navies of Indonesia, the Philippines and Thailand. These States constantly conduct naval exercises, practice maneuvers to combat sea robbers¹⁰⁴. In 1992, the International Maritime Bureau in Malaysia established a regional anti-piracy centre¹⁰⁵. Later it was renamed The Analytical Center on piracy. The task of the center is to search for missing vessels and return cargo to owners, collect and analyze information about pirates on a global scale, notify ships of pirate attacks, and help injured crews.¹⁰⁶

A number of countries are seriously discussing the possibility of participating in the fight against piracy of the Navy. However, the fight against sea robbers is very complicated by the lack of various interstate agreements. For example, warships are not allowed to invade the territorial waters of other States, even to pursue pirates. The disputed area in terms of jurisdiction is the South China Sea¹⁰⁷.

With the growth of transnational economic ties, our young State is gradually beginning to face new manifestations of organized crime, which, having an international character, are an increasing social danger that poses a threat not only to the established

¹⁰³ Collins, R. / Hassan, D.: “Applications and Shortcomings of the Law of the Sea in Combating Piracy: A South East Asian Perspective” *Journal of Maritime Law and Commerce*, Jan 2009. p. 95.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ Blagodelsky, 63.

¹⁰⁷ Gold, 23.

orders of an individual State, but also to the entire civilized world community, undermining its political, economic, socio-cultural and moral security and stability.

One of these manifestations is maritime piracy, which, at first glance, is a less common crime than corruption, smuggling, drug trafficking, laundering of funds acquired by criminal means, official crimes, etc. Unfortunately, this seems so only at first glance, because, according to international experience and analysis of recent cases of piracy, the modern form of sea robbery has changed quite a lot: It begins to include new trends in the development of international organized crime - the smuggling of drugs, weapons (including weapons of mass destruction), transplant organs and human anatomical materials; international organized crime (especially in the field of human trafficking and “kidnapping”) and terrorism, which, according to Western European lawyers, form “new risks”, which quite significantly threatens international security and law and order¹⁰⁸.

Geographically, the most dangerous are the waters of the Caribbean Sea, Costa Rica, Brazil, Colombia, the Gulf of Guinea, the territorial waters of Nigeria, Angola and Somalia), Southeast Asia, Asia-Pacific territories. The Asia-Pacific region is particularly notable, where more than 2/3 of the world’s acts of piracy occurred in the 1990s. Interestingly, after 17 incidents of piracy against Russian ships in 1992, a group of Russian Navy warships was even deployed in mid-1993 to protect navigation¹⁰⁹.

Today, almost 80 percent of international commercial transportation is carried out by sea. For this purpose, about 46 thousand vessels and 80 thousand port complexes of the world are involved. And almost for 30 billion dollars the global transportation system

¹⁰⁸ Bantyshev, O. F. / Fetysenko, K. G.: *Smuggling Committed by Organized Criminal Groups and Related Crimes*, Moscow: Akademkniga Publ. 1999, p. 3.

¹⁰⁹ *Ibid.*

annually suffers losses due to pirate attacks on ships. Over the past 10-15 years, the «pirate forces» have significantly stepped up their activities. So, if in 1991 100 cases of attacks by sea pirates on ships were recorded, then in 1999 - 300, in 2000 - 471, in 2003 - 282¹¹⁰.

According to the International Anti-Piracy Centre, there were 355 pirate attacks in Kuala Lumpur, Malaysia, in 2004. In the first six months of 2005, 23 cases were registered near the coast of Somalia alone, including an attack on the cargo ship “Panagia” with a Ukrainian crew. Moreover, such a tenacious phenomenon as piracy is beginning to gain independent, international features, acquiring threatening proportions. Foreign experts consider the problem of piracy to be serious and sufficient for direct impact on global security and one that requires adequate development of the level of regional cooperation in this area¹¹¹.

Thus, in one of the reports of the interdepartmental working group of the US government, it is noted that piracy poses a danger to key trade maritime communications, and this contributes to the emergence and increase of tensions between coastal States¹¹².

As you know, maritime piracy (its objective side) is carried out using an armed or unarmed vessel to:

- 1) capture of a sea or river vessel;
- 2) use of violence against the ship's crew or passengers;

¹¹⁰ Yakymlyak, 46.

¹¹¹ *Ibid.*

¹¹² Grygoryan, V. L. / Dmitriiv, V. I.: *Piracy, Robbery and Terrorism at Sea*, Moscow: Akademkniga Publ. 2004, p. 135.

3) robbery of the ship's crew or passengers;

4) other violent actions against the crew or passengers of a particular ship¹¹³.

As for the objective side, in the disposition of Article 446 of the Criminal Code of Ukraine, we meet with the phrase «other hostile actions», which, we believe, should be replaced by «other criminal or terrorist actions».

In turn, piracy is a sea robbery; fishing, occupation¹¹⁴. That is, we can talk about the material, self-serving side of the subjective side of piracy, which is carried out due to the commission of illegal, and therefore criminal actions. Sometimes sea robbers commit attacks on ships for so-called terrorist purposes, but this is also carried out solely for the purpose of financial support for their existence or “on the orders” of terrorist organizations or movements.

As for the commission of hostile actions, such actions are carried out mainly by privateers, which include: a person who has received government permission to seize enemy vessels; a sea robber; a private vessel that acted against enemy vessels¹¹⁵. Thus, in addition to piracy, there is another form of sea robbery - privateering - an attack by armed private (sometimes commercial) vessels of a belligerent State with the permission of its government on merchant ships of an enemy State or neutral countries in order to capture or sink them¹¹⁶. Therefore, it is necessary to clearly separate piracy from privateering,

¹¹³ Yatsenko, S. S. (ed.): *Scientific and Practical Commentary of the Criminal Code of Ukraine*, 4th ed., Moscow: A. S. K. 2005, p. 361.

¹¹⁴ Busel, V. T. (ed.): *Large Explanatory Dictionary of the Modern Ukrainian Language* (with addit. and annexes), Kyev, Irpin: VTF «Perun» 2005, p. 1728.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

replacing the phrase “other hostile actions” with “other criminal or terrorist actions” in the disposition of Article 446 of the Criminal Code.

There is also a question about the correctness of the word “reward” in the hypothesis of Article 446 of the Ukrainian Criminal Code of “Piracy”¹¹⁷. After all, in the Large Explanatory Dictionary of the modern Ukrainian language, the word «reward» is interpreted as “... a payment for work, a reward for some merits.” With this in mind, it is necessary to consider whether piracy is labour or merit, for which a reward or fee should be given. Of course, not. Therefore, we propose to make appropriate changes to the hypothesis of Article 446 of the Criminal Code of «Piracy» by removing the word «reward» from the article, constructing part of the hypothesis as follows: “...*for the purpose of obtaining material or other personal benefits.*” A profit is something that gives good consequences in something, some benefit, etc.¹¹⁸ We believe that this word will be more correct and accurate when it comes to the good (for pirates) consequences of a material nature that they receive when “successfully” complete a sea robbery or plunder.

It should be noted that a mandatory sign of this criminal act (piracy) is the place of its commission. After all, acts of piracy may be committed on the high seas or outside the jurisdiction of any state. In this case, it is not legally relevant that the territory of a ship that is located on the high seas is *de jure equal* to the territory of the State of its flag¹¹⁹.

¹¹⁷ *Ibid.*

¹¹⁸ Busel, 130.

¹¹⁹ Yatsenko, 115.

Otherwise, the crime must be qualified according to the specific circumstances of the case as banditry or robbery, plunder, intentional destruction of property¹²⁰. This point of view should be used when considering the qualification of pirate attacks on islands or coastal areas.

As for the qualification of an “armed vessel”, an armed pirate vessel should be understood as any vessel of a non-military or State nature, that is, a vessel that does not stand in the service of a certain State; there are no identification marks and flag on it, on the deck there are weapons are installed (stationary machine guns, grenade launchers, cannons, MANPADS (man-portable air defense system), surface-to-ground missiles, etc.) and its crew or persons with authority over it have shown the intention to perform any of the actions defined in the UNCLOS as pirate.

According to Part 2 of Article 446 of the Ukrainian Criminal Code, the mental attitude of the guilty person to the death of people or other serious consequences is characterized by negligence. Premeditated murder of a person or causing him grievous bodily harm while committing pirate actions must additionally be qualified under Articles 115 (premeditated murder) or 121 (premeditated grievous bodily harm) of the Ukrainian Criminal Code. After all, in relation to the result of these consequences, the subjective side is characterized by carelessness in one form or another.

Unfortunately, the problem of combating piracy does not bypass our State either. The latest «fresh» example of this is the capture of two Ukrainian citizens who were part of the crew of a foreign ship off the coast of West Africa, in the waters of the Atlantic

¹²⁰ Regulation on the General Security Service of the State Maritime Transport Administration of Ukraine of May 16, 1992.

Ocean¹²¹. This is not an isolated case when citizens of our State suffer and even die from pirate attacks. Therefore, we believe that we should respond more effectively and develop more advanced methods to combat pirate attacks, which can already be safely called the “sea plague of the 21st century”.

As for the fight against piracy, which is already beginning to be international in nature, many pirate groups have an international composition; they are funded both by some States and from the budgets of numerous terrorist organizations, therefore, a rather interesting method of «prevention» could be offered. This method was developed in 1992 by the Piracy Research Center, a special body that collects information about attacks on ships, which was established under the International Maritime Bureau. This center collects and promptly analyzes information from ship captains who were attacked by pirates, as well as about the goals and circumstances of attacks at the time or immediately after they were committed. According to the 14-year experience of the Piracy Research Center, this method of combating sea robbers is quite effective, because it is actually the best way to obtain witness statements, which greatly facilitates the investigation of such crimes: as soon as the «Center» receives information about a pirate attack on a ship, the nearest law enforcement agency or Coast Guard is immediately reported - this gives them the opportunity to almost instantly send their units to the scene.¹²²

In turn, the Center for piracy research, having such data, carries out a kind of monitoring of pirate attacks, which is reflected in the preparation of forecasts and drawing up maps of the most likely and dangerous places of pirate attacks.

¹²¹ *Ibid.*

¹²² *Lebid*, 79.

The issue of using the capabilities of the International Association «Blackseafor», created on the basis of the relevant agreement of the Black Sea countries, including Ukraine, in the fight against piracy at sea remains relevant. However, to ensure the functioning of the maritime security system in the sea and river transport of Ukraine in April 2004, the Ukrainian Ministry of Transport and Communications established the State enterprise “Maritime Security Agency”. Today, it is implementing a set of measures aimed at combating the manifestations of maritime crimes. One of its points is the mutual exchange of information on security in the Black Sea with the «Anti-Terrorist center of the Security Service of Ukraine», the rapid response centers of the Ministry of Foreign Affairs, the Ministry of Emergency Situations, the State Border Guard Service, and the Transport Security Department of the Ministry of Transport and Communications of Ukraine.

According to the analysis, the main problems in the fight against piracy are as follows:

- financial problems of most Third World coastal States;
- the weak ability of the these States to influence the situation and the inability to constantly block piracy areas with an insufficient number of ships, boats and aircraft - it is patrolling that remains one of the most effective measures in the fight against piracy today;
- inconsistency and imperfection of legal norms and acts regulating the fight against piracy.

Ukraine cannot yet be classified as a State suffering from piracy, but this does not change the fact that the threat of pirate attacks is steadily increasing and more and more

Ukrainian citizens - crew members of foreign ships suffer from them every day.

Therefore, it seems possible to offer:

- the amendment of Part 1 of Article 446 of the Ukrainian Criminal Code, by replacing the phrase “other hostile actions” and “other criminal or terrorist actions” in the disposition of Article 446, as well as by removing the word “reward” from the hypothesis of this article, constructing part of the hypothesis as follows: «... *for the purpose of obtaining material or other personal benefits*»;
- the development of more advanced measures to improve the security of the national navigation, taking into account the accumulated experience¹²³, namely the regulations on the General Security Service of the State Administration of Maritime Transport, for example, to implement measures to organize and implement the protection of public order on ships, improve the State of maritime safety; provide escort and protection of ships with valuable cargo and vessels located in areas of spread of maritime piracy and terrorism; drawing up and implementing plans to ensure the safety of ships, port facilities, passenger terminals, ship repair plants; prevent theft and damage to personal property of passengers, ship members, cargo and other material values¹²⁴; more effectively use international experience in domestic practice to make appropriate changes and additions to the legislation¹²⁵; to introduce the “prevention” method into

¹²³ On Measures to Improve the Safety of Navigation: Resolution of the Cabinet of Ministers of Ukraine No. 250 of 16.05.1992. Resolutions of the Government of Ukraine. 1992, No. 5, p. 128.

¹²⁴ Regulation on the General Security Service of the State Maritime Transport Administration of Ukraine of May 16, 1992.

¹²⁵ «Convention on Combating Unlawful Acts against the Safety of Maritime Navigation» of 10 March 1988: ratified by Ukraine on December 17, 1993

the practice of combating piracy, having resolved at the governmental level the issue of cooperation with the Center for Piracy Research; to resolve the issue of organizing proper patrolling of potentially dangerous areas of water areas.¹²⁶

Thus, it could be realized that successful counteraction and combating piracy in the current environment is not possible without the coordination of the international community and the development of regional cooperation. In addition, countering piracy is becoming very relevant because of its potential connection with international terrorism. As it can be seen, the most ancient problems of humanity now arise with new threats, despite all their exoticism, and turn out to be the most tenacious and potentially threatening.

B) LEGAL ASPECTS OF THE PROBLEM OF MARITIME PIRACY IN INTERNATIONAL LAW

The current legal regime of combating piracy is based on the relevant provisions of Articles 100-111 of the UNCLOS. Those rules define the crime of piracy and set out detailed rights and obligations of State-parties to the Convention, including the right of prosecution, arrest and jurisdiction. It should be noted that despite the millennial existence of such a phenomenon as piracy, the existence of a significant regulatory framework developed during this time, both in customary law and in interstate treaty practice to combat it, the provisions of the UNCLOS in some cases turned out to be inadequate to modern needs and realities. On the other hand, this should not be unexpected, given that the articles of the UNCLOS actually incorporated the relevant provisions on piracy of the 1958 High Seas Convention, which in turn, as a number of experts rightly note, became

¹²⁶ Lebid, 79.

the embodiment of the project prepared in the 30s of the last century by the Harvard Research Group. The above does not in any way decrease the significance and value of the current provisions of the UNCLOS, the need to ensure their proper and full implementation, in particular in terms of the mechanism for «effective prosecution and punishment of those responsible for piracy crimes»¹²⁷, as one of the steps towards enhancing international cooperation in this area.

Without going into detailed comments on the provisions on piracy of the UNCLOS, it should be noted that the definition of the relevant crime provides for four main «elements such as illegal acts of violence, detention or robbery»; «committed for private purposes; involving two ships (or aircraft); on the high seas»¹²⁸. Each of these elements has been repeatedly analyzed quite deeply by experts and specialists in the law of the sea. Therefore, those points that are particularly important for ensuring an effective fight against piracy in modern conditions are considered.

The provisions of the UNCLOS on determining the crime of piracy restrict its commission on the high seas. Although pirate attacks are increasingly occurring far from the coast, still most cases, according to IMO, today take place in the territorial waters and exclusive economic zone of States. It is quite obvious that the definition, which was developed even before the emergence of such a concept as an exclusive economic zone and in the conditions of a much narrower territorial sea, after the virtually unchanged transfer to the UNCLOS, significantly limits the qualification of relevant criminal acts. In this regard, in accordance with the opinion of many experts that in the current

¹²⁷ *Ibid.*

¹²⁸ UNCLOS, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

conditions, to define the crime of piracy, it is also necessary to use Article 58(2) of the UNCLOS, which provides for the application of Articles 88-115 and other relevant norms of international law in the exclusive economic zone, if they do not contradict (are not incompatible) Part V of the UNCLOS. However, the lack of unambiguous interpretation on this issue limits the effectiveness of the relevant provisions.

The qualification requirement for the high seas also adds to the differences in the interpretation of the scope and content of States' obligations to cooperate in combating piracy under Article 100 of the UNCLOS. A number of experts take a narrow approach, emphasizing the formal lack of obligations for States to cooperate in combating acts of piracy that occurred in the territorial sea¹²⁹.

It is unlikely that such an approach can be acceptable in modern society. The corresponding obligations exist for a State on the basis of other norms of international law, based on the universal nature of the crime of piracy, the principle of preventing the use of its own territory in violation of the sovereign rights and obligations of other States (namely, this is how the State's obligations to protect the safety and well-being of those seafarers who are its citizens can be considered), the general principle of cooperation between States, in particular, given the global nature of the threat of piracy. Although the list of arguments in favor of a state with relevant obligations can be significantly expanded, the current provisions of UNCLOS do not ensure proper and effective international cooperation in the fight against piracy, which is also complicated by the close connection with the issue of sovereignty.

¹²⁹ *Ibid.*

According to the convention-based definition, the crime of piracy must be committed for private purposes. It is generally accepted that this condition excludes from the qualification of pirate actions attacks on ships for political purposes, such as in the framework of the struggle for independence (which does not mean that such actions do not remain illegal on other grounds). The well-known case of the capture of the Achille Lauro vessel in 1985 confirms this approach. Discussions around attempts to expand the interpretation of private purposes have actually ended so far in vain, as well as attempts to adapt cases of maritime terrorism to the definition of piracy crimes. The latter is generally considered correct, given the fundamental difference in the nature and content of the crimes of piracy and terrorism¹³⁰.

At the same time, recently there has been an active rhetoric in various forums designed to promote the fight against piracy, including the UN and IMO, about poverty, lack of effective public administration, low economic development, as the reasons for the sharp increase in piracy activities in certain areas, in particular off the coast of Somalia. Social or economic goals will be less important in determining the legality of certain actions, but their importance may increase in resolving issues of qualification as pirate or other, and, accordingly, establishing jurisdiction and prosecuting those responsible for their commission. Now this question has a more theoretical significance. But it is not difficult to imagine a situation where a person accused of piracy will put forward a thesis about committing an attack on a ship in order to protect the «living resources of an exclusive economic zone», say, off the coast of Somalia, in conditions when the central

¹³⁰ Bantyshev, O. F.: “Legal and Organizational Measures to Combat Piracy”, http://mndc.naiu.kiev.ua/Gurnal/14text/g14_15.htm (accessed on 16/06/2020)

government is not able to provide this, and fishing is the main activity and source of food for the coastal population¹³¹.

The provisions of the UNCLOS concerning the detention or arrest of a pirate ship and the prosecution of persons accused of piracy provide (Article 105) for the relevant rights and jurisdiction of any State on the high seas¹³². The fight against piracy was the basis for the creation of the concept of universal jurisdiction¹³³, which in modern time extends to the most important crimes, such as genocide, slavery, violation of the rules and customs of war, as well as humanitarian law, crimes against humanity. However, the practical application of the relevant provisions, in addition to restrictions on the high seas, is also complicated by reference to the national legislation of a State that has seized a pirate ship or is prosecuting persons accused of piracy. Legislation to prevent and punish piracy differs in many States, not to mention the lack of a unified approach and rules for disposing of captured ships and cargo.

In addition, the UNCLOS requires that the seizure of a pirate ship be carried out exclusively by warships or other clearly marked and authorized government vessels. Obviously, the relevant provisions also need to be improved, given that private structures and organizations are now increasingly involved in many tasks in the field of security, human life and cargo protection that were previously unique to States. At the same time, as practice shows, the involvement of such private structures is all the more common, the more dangerous situation in the relevant region¹³⁴.

¹³¹ Kubyak, K.: "Terrorist Actions on the Seas and Oceans as a Threat to International Security", *Arsen@L XXI*, 2005, № 1-4, p. 19.

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Ibid.*

The complexity of proving the crime of piracy, the length of relevant procedures, and other factors have led to the fact that today there are few cases of prosecution and punishment of persons guilty of piracy. The States involved in the military operation often try to avoid capturing pirates or release them.

When considering the problems of the anti-piracy regime provided for in the UNCLOS, it is also worth mentioning the provisions of “hot pursuit”. Such pursuit stops when a pirate ship enters the territorial sea of another State. In many areas of the world’s oceans, where the territorial seas of States are located at a small distance from each other, such as in Southeast Asia, this restriction makes pursuit almost hopeless. In the absence of proper central governance, such as in Somalia, the territorial sea, as well as the coast of such States itself, is also becoming a natural hiding place for ships and persons involved in piracy crimes.

As the analysis shows, the very provisions of the UNCLOS in modern conditions do not always provide an appropriate legal regime for combating piracy. A partial solution to the problems outlined above can be found by applying the SUA. The SUA was developed after the aforementioned case of the seizure of the Achille Lauro vessel in order to codify the «norms of international law in relation to those crimes at sea that did not fall under the provisions» of the UNCLOS. Although it is generally accepted to be included in the list of international legal instruments in the field of combating terrorism, nothing denies the possibility of its application in the case of crimes related to piracy. Moreover, the text of the SUA does not refer to both terrorism and piracy, but contains a separate definition of crimes that fall under its scope.

This approach is also considered reasonable, taking into account the judicial practice that is being formed on the relevant issues. Thus, in 2008, the U.S. Court of

Appeals (9th district) in the case *USA v. Shi* noted that the SUA, which was developed to counter international terrorism, can be applied to ordinary crimes. Jurisdiction was established on the basis of the doctrine of universal jurisdiction over the crimes of piracy. Although the court used the definition of piracy in the case *1820 USA v. Smith*¹³⁵, which is somewhat different from the definition in the UNCLOS (the United States is not yet a State-party to the UN Convention 1982), and also allowed, according to experts, a number of other ambiguous interpretations, in the current conditions of a sharp increase in the threat of piracy, this approach deserves attention as one of the possible ways to improve the effectiveness of measures to combat piracy, in particular in terms of ensuring proper prosecution and punishment for the commission of relevant crimes.

In the definition of an offence under the SUA, there is no element as to the motive for its commission. This simplifies the corresponding qualification. The geographical boundaries provided for in the SUA are also wider than in the UNCLOS. To qualify criminal acts, it is sufficient that «the vessel intends to leave the territorial sea of the State», regardless of where exactly the crime occurred, and in certain circumstances and even in the absence of these intentions, if the perpetrator is located on the territory of a State-party other than the one to which coast the relevant territorial sea is adjacent. Despite a significant expansion of the list of actions that can be considered criminal under the SUA and the SUA Protocol, its provisions left unresolved a number of legal problems regarding the proper qualification of illegal actions at sea. This, according to many

¹³⁵ Muravsky, 24.

experts, concerned primarily actions to mine ports, or the use of the ship itself as a weapon¹³⁶.

In this regard, in 2005, additional protocols¹³⁷ were adopted to the SUA, which significantly expanded the scope of its application, defining criminal, in particular, the actions mentioned above, as well as establishing clear procedures for boarding a ship. The 2005 protocols can be considered a significant advance in improving the relevant legal regime, but their development was clearly influenced by the priority requirements for improving the mechanisms for combating terrorism. This is what most likely explains the restoration of the objective element among the definitions of certain crimes, namely: intimidation of the population, or forcing a government or an international organization to commit or refrain from certain actions¹³⁸.

The anti-terrorist dimension of the SUA was also reflected in the narrowing of the approach to jurisdiction in comparison with the UNCLOS. It is not based on the doctrine of universal jurisdiction, but rather implies the need to establish a link between the State and the crime in order to establish jurisdiction. Although this is supposedly compensated for by clearer rules on cooperation, as well as an unambiguous consolidation of the principle of “prosecute or extradite”, in practice, significant complications and duration of prosecution could be expected. Given that most illegal actions against maritime navigation take place off the coast of States that cannot provide proper control in the relevant areas, against flag ships and seafarers-citizens of those States with limited real opportunities to prosecute and punish those responsible, the mentioned requirements for

¹³⁶ Muravsky, 24.

¹³⁷ Collins / Hassan, 95.

¹³⁸ *Ibid.*

establishing jurisdiction in many cases will not contribute to the quick and proper administration of justice. It should also be noted in this regard that, as in the case of the UNCLOS, the provisions of the SUA refer to the norms of national legislation regarding specific procedures and the application of sanctions. It is possible that some maritime criminals may try to avoid responsibility altogether by requesting extradition to a State that has jurisdiction, but where there are no rules in national legislation regarding the prosecution and punishment of relevant crimes.

It is clear that faced with a sharp increase in the number of pirate attacks off the coast of Somalia and realizing the imperfection of the existing international legal regime in this area, the world community was forced to look for additional ways to ensure a quick solution to at least the most pressing legal problems that hindered the efforts of States to prevent and combat piracy. One of these ways was the adoption of a number of UN Security Council resolutions based on Section VII of the UN Charter.

The provisions of these UN Security Council resolutions have significantly expanded the powers of the states off the coast of Somalia, including their naval forces. Thus, according to Resolution No. 1816 of June 2, 2008¹³⁹, the use of force against pirates is allowed not only on the high seas, but also in the territorial sea of Somalia. It should be noted, however, that the UN Security Council approved this resolution with the consent of the Government of Somalia (Transitional Federal Government), as there is a separate reference in the text of the resolution¹⁴⁰. In addition, such permission applies only to those

¹³⁹ Sereda, G. G.: "On the Issue of International Legal Regulation of Criminal Jurisdiction in Relation to Piracy and Other Crimes Committed at Sea", *Problems of Criminal Law, Procedure and Criminalistics: Materials of the Scientific and Practical Conference* (October 9, 2009 Odesa), Odesa 2009, p. 622.

¹⁴⁰ Poroskov, N.: "Al-Qaeda in the Color of the Sea Wave: the Annual Losses of the World Economy from Sea Pirates Amount to 16 Billion Dollars", *Zagranitsa*, 2006, № 28, p. 5.

States that cooperate with the Transitional Federal Government in the fight against piracy, and which the Transitional Federal Government has previously notified the UN Secretary-General about. The use of force is allowed not only to combat piracy, but also armed robbery at sea, which further expands the scope of the Security Council resolution and, if necessary, can serve as a justification for the application of relevant conventions in the field of combating crime and threats to the safety of maritime navigation.

On December 16, 2008, the UN Security Council went even further - allowing the use of force in the fight against piracy on the land territory of Somalia¹⁴¹. The provisions of UN Security Council Resolution No. 1851 (2008) significantly expand the boundaries of permitted “hot pursuit”, which can be carried out off the coast of Somalia from the high seas through the territorial sea and on land.

The aforementioned permission to conduct anti-piracy operations on sovereign territory is an unprecedented decision of the UN Security Council, since it actually goes beyond the current customary and conventional international legal regime in this area. At the same time, the efforts of States to combat piracy, where we are witnessing the first naval operation of the European Union and the first use of Chinese naval forces outside the South China Sea region¹⁴².

Currently, there is a rather low level of application of the above-mentioned powers. Almost the only recent example of a ground operation in Somalia - the release of hostages held by pirates by French special forces-took place in April 2008, even before the formal adoption of the relevant UN Security Council resolution. According to

¹⁴¹ “Marine Terrorism”, *Mosk. International Law Magazine*, 2001, № 2, p. 383.

¹⁴² *Ibid*, 79.

available information, the first case of using the expanded powers granted by the UN Security Council in the fight against piracy was the operation to free a ship flying the flag of Antigua from pirate captivity by the Danish Special Forces. As noted with reference to the representative of the EU Navy, on February 5, 2010, after receiving a signal, a Danish warship began to pursue the ship captured by pirates, approached it, landed special forces on board and released the sailors who were locked in one of the premises¹⁴³.

Among the reasons for the low level in the use of additional «power based» authorities by the Naval Forces, many experts rightly note the difficulties with the subsequent prosecution, conviction and punishment of captured pirates¹⁴⁴. The current practice of States on these issues differs significantly. The return of pirates to Somalia for conviction cannot be acceptable either because of the lack of an effective functioning Government or because of the inability to ensure a fair trial and proper treatment. In this regard, there are even statements about the possible contradiction of such actions to the obligation under many international instruments not to return (non-refoulement) persons to States where they may be subjected to bullying, torture or other types of ill-treatment.

First, the United Kingdom, and then a number of other States, preferred to conduct prosecution in a third country¹⁴⁵. To this end, relevant Memoranda of Understanding were concluded with Kenya on the transfer and conviction of captured pirates¹⁴⁶. According to

¹⁴³ Kubyak, 19.

¹⁴⁴ Zharinov, 55.

¹⁴⁵ Bruntalsky, P. A.: “The Second September 11 Will Happen in the Ocean”, *Defense and Security*, 30 Dec. 2005 - 10 Jan. 2006, 150, p. 6.

¹⁴⁶ “International Problems of Combating Maritime Piracy”, *Criminal Law*, 2001, № 4, p. 105.

the UN, as of October 31, 2009, 100 people suspected of piracy were being tried in a Kenyan court and 10 people had already served their sentences¹⁴⁷.

Additional difficulties in this matter lie in the need to ensure proper procedural requirements when detaining persons accused of piracy, collecting appropriate evidence. Given that under international law pirates are criminals and not combatants, they should be subject to appropriate human rights norms and standards, in particular with regard to treatment and fair investigation. There are no answers to these questions in the mentioned UN Security Council resolutions. There are no unambiguous solutions based on treaty (convention) and customary norms of international law. Obviously, in these cases, it is necessary to look for new non-standard approaches that take into account both the need to comply with relevant norms in the field of criminal proceedings and the protection of human rights, and the importance of effective and rapid measures to prevent or combat the crime of piracy in the specific real conditions of the world's oceans¹⁴⁸. One such approach could be to increase the use of law enforcement personnel on warships. However, given the multinational nature of the participants in operations and measures to combat piracy, when a ship registered under the flag of one State belongs to the owner from another, sailors - from different third States, warships - from the fourth, also operate under the auspices of international organizations, and pirates themselves - from the fifth, or even stateless persons, the effectiveness and legal validity of such mechanisms requires additional study.

¹⁴⁷ Marine Law: "Proceedings of the International Scientific and Technical Conference Modern Navigation and Maritime Education", Odesa 2004, №. 2, p. 113.

¹⁴⁸ "Problems of Combating Piracy at the Turn of the Century", Law and Politics, Moscow 2000, № 4, p. 13.

Despite the adoption of a number of UN Security Council resolutions and instructional documents from other international organizations, the status, rights and obligations of private organizations, which are increasingly hired by shipowners to protect themselves from pirates, remain virtually unresolved in the future. In some cases, members of such private organizations themselves, especially in the case of weapons, may be accused of violating legal requirements or international norms, and not necessarily in repelling pirates¹⁴⁹.

A significant drawback of the relevant UN Security Council resolutions is their local orientation. While the additional powers provided for in the UN Security Council resolutions to combat piracy interfere with sensitive issues of territorial sovereignty, at the insistence of a number of developing States, in the waters off the coast of which piracy crimes often occur, provisions were included in the resolutions that clearly state that the relevant additional powers apply only in the case of Somalia, «do not affect the rights and obligations of States under international law in relation to any other situations and cannot be considered to create a norm of customary law»¹⁵⁰. In fact, in all other regions of the world's oceans, where more than half of the cases that can be classified as pirated are reported, the full range of problems outlined above in the analysis of convention-based regimes to combat piracy and illegal acts against maritime navigation remains relevant.

According to international experience and analysis of recent cases of piracy, the modern form of sea robbery has changed quite a lot: It begins to include new trends in the development of international organized crime - the smuggling of drugs, weapons

¹⁴⁹ Savelyev, N. V.: "International Maritime Community Joins Forces in the Fight against Crime at Sea", *Marine Herald of Russia*, 2008, № 9-10, p. 12 ("International") and "World Maritime Society Unites Efforts in the Fight against Crime at Sea", *Law and Security*, 2004, № 2, p.11.

¹⁵⁰ *Ibid.*

(including weapons of mass destruction), transplant organs and human anatomical materials; international organized crime (especially in the field of human trafficking and «kidnapping») and terrorism - which, according to Western European lawyers, form «new risks» that quite significantly threaten international security and international law and order¹⁵¹.

Modern «gentlemen of fortune» may not be as exotic as their predecessors of the XVII-XIX centuries, but they are much more pragmatic: They have surprisingly high-speed transport and powerful weapons in their arsenal. This is surprising and raises doubts that the leaders of African tribes or Asian clans alone can organize complex attacks on large ships.

Piracy has existed since ancient times - when people began to travel by sea and trade. Because of the sea robbers in the second century, for a while, the sea trade between the West and the East completely stopped. Especially numerous and cruel were the African pirates and sea robbers from the British Isles. In the 17th century, the island of Madagascar actually had a pirate republic Libertatia, which even had its own constitution. There was a time when African pirates were paid great tribute by England and France for the right to free navigation. Moreover, some countries accepted pirates into the service - they issued a license for sea robbery. The most striking example of a pirate alliance with Governments was the legendary one-eyed Admiral Nelson. The pirate admiral served Her Majesty well, for which the British erected a monument to him in London¹⁵².

¹⁵¹ Sereda, 622.

¹⁵² Smirnov, S. N.: “Criminal Law Problems of Prevention of Terrorism, Piracy on Water Transport”, *Maritime Law: Actual Issues of Theory and Practice*, Odesa, 2005, № 2, p. 30 (“Criminal”).

Now, in the XXI century, sea transport continues to serve of international trade. And where there is profit, there is crime. If in the Middle Ages piracy flourished in the Caribbean Sea - on the roads connecting the Old World with America, today sea robbers have chosen routes connecting Europe with Asia. They annually pass more than 50 thousand ships. Consequently, the Asia-Pacific region accounts for two-thirds of attacks¹⁵³.

According to the IMO, the most dangerous waters for navigation are the waters of Southeast Asia, as well as the coasts of East Africa (especially Somalia) and Brazil¹⁵⁴. It was these two regions that turned out to be «unlucky» for Ukrainian sailors.

Somalia has not had a serious central government for more than 10 years. This is a State that practically does not exist. It has long since broken up into the possessions of local «princes». One of these «principalities» is called «Puntland» (the name was borrowed from the ancient semi-fairy-tale country of Punt, from which Egyptian Pharaohs and Phoenician Kings carried gold and slaves). Today, the pirate day “Puntland” is several hundred square kilometers of land scorched by the merciless sun, where poor but energetic people live, who have a desire to «live beautifully». On January 14, 2002, the crew of 18 people of the cargo ship «Princess Sarah», which included 8 Ukrainians, fell into the clutches of such «life lovers». Due to an engine malfunction, the ship was forced to anchor, for which it paid the price. For the release of hostages, the pirates demanded a ransom of 200 thousand dollars. Already on January 26, the hostages were released, and Ukrainian citizens returned home on February 5. There is no exact

¹⁵³ Smirnov, S. N.: “Practical Problems of Training and Improving Qualification of Specialists in the Fight against Piracy, Terrorism on Water Transport in the Open Sea”, *Actual Problems of Politics*, Odesa, 2003, № 18, p. 109.

¹⁵⁴ Shalan, F.: “On the Concept of Piracy in Modern Maritime Law”, *Legal State*, Kiev, 1997, № 8, p. 302.

information about the cargo of the ship, its owner and how they agreed with the pirates (whether any ransom was paid). This is not surprising, the companies engaged in sea transportation are not interested in disclosing the truth - this affects their image, and not only that. Often, ship owners do not buy off pirates, but prefer “greater power”: They negotiate with ships of the Navy of different countries. So, in the area of the attack on the «Princess» was sent the French military frigate “Floreal”¹⁵⁵.

The International Bureau of Shipping does not recommend that masters approach the coast of Somalia closer than 100 nautical miles due to the activity of pirates. But sailors sometimes behave safely. One of the most recent attacks near Somalia occurred on February 22 this year. The Russians were not lucky this time - pirates attacked their tanker Monneron, loaded with gasoline. The media learned about the attack only in March (again, the owners tried not to disclose the unpleasant incident). The sailors from the Monneron were lucky: Their ship was fast, and they themselves were brave. The pirates chased the ship for an hour (the Russian sailors did not dock at the request to stop), firing machine guns and grenade launchers at it, and then despaired. None of the crew members were injured, and the tanker remained almost unharmed¹⁵⁶.

On March 28, 2002, in the Guinean territorial waters (off the west coast of Africa), a pirate attack was carried out on the tanker «Shidnyi» under the Ukrainian flag, which belonged to the State enterprise “Odesa Sea port”. A slow-moving Ukrainian ship was detained by armed men. Seven pirates boarded the ship and, under the threat of physical violence, began to demand 15 thousand US dollars from the crew members. The crew

¹⁵⁵ Collins / Hassan, 95.

¹⁵⁶ Muravsky, 24.

was forced to collect all the funds that were on the ship - almost 13 thousand of US dollars. None of the crew members were injured¹⁵⁷.

But off the coast of Brazil, Ukrainians suffered losses - one sailor was killed, another was wounded. Pirates attacked the tanker of JSC «Chernomortehflot» «Mechanic Karasiov», chartered by the company «Manchester shipping & trading s.a.» on February 7, when the ship was anchored in the waters of the State of Sao Paulo. Only thanks to the decisive rebuff of the ship's crew (18 people, 12 of whom were citizens of Ukraine), the sea robbers did not manage to take possession of the ship. They ran away.¹⁵⁸

The title of “the most pirated country in the world” is owned by Indonesia. The main reason that the original fishermen put aside their nets and took up arms is the difficult economic situation in the country with general political instability. The unique geographical location of Indonesia, with its many (several thousand) small islands and reefs, also contributed to the appearance of legions of sea robbers¹⁵⁹.

The Strait of Malacca is considered the most dangerous place for navigation in the world. Between the Malacca Peninsula and Sumatra, it connects the Andaman and South China Seas. More than 600 vessels pass through it every day. Many of them did not reach their destination¹⁶⁰.

According to the calculations of scrupulous economists, the losses from attacks by sea robbers are simply huge - 16 billion a year, and this figure is constantly growing.

¹⁵⁷ Bantyshev, http://mndc.naiu.kiev.ua/Gurnal/14text/g14_15.htm.

¹⁵⁸ Blagodelsky, 63.

¹⁵⁹ Blazhievskya, 182.

¹⁶⁰ Budakov, M.: “Maritime Piracy: What to Do to the World Community and Ukraine?”, http://www.ukrudprom.com/digest/Morske_pratstvo_shcho_robity_svtovomu_spytovaristvu_ta_Ukrain.html (accessed on 16./06./2020).

Hundreds of powerful pirate groups are engaged in blood business today. In recent years, pirates have attacked ships from more than 60 countries around the world in the waters of almost the same number of States¹⁶¹.

One of the most high-profile cases of pirate attacks occurred in November 1998. In the Taiwan Strait, robbers disguised as customs officers got on board the Chinese cargo ship “Chung Song”, carrying slag for blast furnaces in Malaysia. They brutally dealt with the crew - beheaded all 23 crew members, and threw the bodies overboard. Pirates sold the ship to a Singapore businessman for 300 thousand dollars. The «Black Rogers», who were as cruel as their medieval predecessors, were caught - they were executed in China¹⁶².

Pirates mainly rob cargo ships, tankers, container ships and fishing vessels. However, hoping for a big catch, they sometimes attack the pleasure yachts of the rich. On December 6, 2001, a tragedy occurred that shocked America - pirates killed the winner of the America’s Cup, the famous 53-year-old yachtsman Peter Blake, on the Amazon. Blake has won a bunch of prestigious international prizes for winning sailing. The legendary skipper after the death of Jacques-Yves Cousteau was also the captain of the ship «Calypso-2»¹⁶³.

Recently, pirates are increasingly “working on a tip-off” and on order. They know in advance the victim's route, cargo, tonnage, number of guards or crew. Piracy is closely linked to organized crime. Thus, the activities of pirate gangs in Asia are controlled by

¹⁶¹ Zharinov, 55.

¹⁶² Kubyak, 19.

¹⁶³ Lebid, 79.

Chinese criminal groups - triads¹⁶⁴. In the Philippines, piracy has a political connotation - the militants of the separatist group “Abu Sayyaf” use sea looting to extract funds for the liberation struggle¹⁶⁵. The September 11 terrorist attacks in the United States played a cruel joke on rebel Pirates - their organization was listed as a «terrorist» group and a ruthless war against them was launched¹⁶⁶.

Even such «peaceful» European States as Portugal, the Netherlands, Albania and Malta are included in the list of countries in territorial waters where robberies have been committed in recent years¹⁶⁷.

The world community is trying to counteract rampant piracy in the XXI century. The fight against pirates was led by the United States. In California was created a training center for training specialists for anti-piracy units for the Navy of Indonesia, the Philippines and Thailand¹⁶⁸. In 1992, the International Maritime Bureau (in Malaysia) established a Regional Anti-Piracy Center (now called the Piracy Reporting Centre). The task of the Center is to search for missing vessels and return cargo to owners, collect and analyze information about pirates on a global scale, notify ships of pirate attacks, and help injured crews¹⁶⁹.

¹⁶⁴ Kuzmenko, V. N.: “Problems of Protecting Navigation from Piracy and Terrorism”, *Actual Problems of Politics*, Odesa, 2003, № 18, p. 188.

¹⁶⁵ Budakov, http://www.ukrudprom.com/digest/Morske_pratstvo_shcho_roboti_svtovomu_sptovaristvu_ta_Ukran.

¹⁶⁶ Smirnov, “Criminal”, 30.

¹⁶⁷ Sereda, 622.

¹⁶⁸ Collins / Hassan, 95.

¹⁶⁹ Dubner, B.: “Recent Developments in the International Law of the Sea”, *Int’l L.*, 1999. № 33, p. 627.

For a more successful fight against piracy, it is intended to use navies. However, at the moment, various interstate agreements do not allow warships to sail into the territorial waters of other States. Even for chasing pirates.

C) ORGANIZATIONAL AND LEGAL MEASURES TO COMBAT MARITIME PIRACY AND PROBLEMS OF THEIR IMPLEMENTATION

The situation with the seizure of the Liberian vessel Panagia with a Ukrainian crew on board in the territorial waters of Somalia on October 18, 2005 demonstrated another of the most important problems that Ukraine is currently facing - the protection of its own citizens abroad¹⁷⁰. The case of the seizure of Panagia is the first test for Ukrainian State bodies in this context, but, unfortunately, far from the last. This is confirmed at least by the fact that the expanses of the world's oceans are plowed not even by hundreds, but by thousands of Ukrainian crews on ships of any country in the world. It so happened that the extremely difficult socio-economic situation for sailors in their native country, the collapse of the Black Sea Shipping Company forced Ukrainians to seek income on ships flying the flags of other countries. That is why our citizens have become the object of illegal encroachments, which, unfortunately, so often happen at sea.¹⁷¹

Since that time, the issue of studying the legal foundations of the fight against piracy and developing an algorithm for actions of the competent governmental authorities in case of pirate capture of Ukrainian citizens abroad in the future has become relevant

¹⁷⁰ Gold, 23.

¹⁷¹ Lebid, 72.

for Ukrainian legal science and law enforcement practice. The absence of these developments in Ukraine was evident immediately from the moment when the State leadership decided to protect under any circumstances Ukrainian sailors who were captured by pirates: there was not enough information about the legality of the military actions of Ukrainian governmental bodies on the territory of another State, the practice of combating piracy was unknown, the actions of the governmental bodies of Ukraine were uncoordinated. The first steps towards urgent study of the situation and taking response measures were as follows: Creation of a working group consisting of heads of ministries and departments under the chairmanship of Secretary of the National Security and Defense Council of Ukraine, generalization of the practice of recent pirate seizures in the world and practical ways to solve these situations. On the basis of the staff of the National Security and Defense Council, an operational headquarters was created to resolve the situation, whose representatives participated in negotiations with pirates, contacted international organizations and special services of foreign countries.¹⁷²

The above analysis revealed a number of facts that are terrible for the practice of navigation, incomprehensible from the point of view of international law and the need to maintain international security. So, for example, shipowners are not always interested in the return of sailors and ships, since in many cases it is much more profitable for them to get insurance for the ship, cargo and crew than to directly and for a long time engage in a gruelling process of negotiations with pirates, both from a moral and material point of view. The complexity of the situation is that insurance agreements cannot provide for such an insured event as the seizure of a ship by pirates. The insurance company, in case

¹⁷² Blazhievskaya, 182.

of piracy, seeks to immediately dissociate itself from resolving the situation, and even more so from paying money to pirates, wanting not to tarnish its own reputation.

Another example. Immediately after the appeal of the Ukrainian governmental authorities for assistance in the process of freeing the ship to the International Maritime Bureau, its Director said that he has rather limited means to influence this situation, and the experience with the seizure of ships off the coast of Somalia showed that hostages have to pay a ransom and negotiations are usually conducted by the owners of the ship¹⁷³. During the stay of representatives of the operational headquarters for the release of sailors - employees of the staff of the Ukrainian National Security and Defense Council in London (where the Company-Commercial Manager of the vessel is located), it turned out that according to existing practice, Governmental bodies do not interfere in resolving the situation with piracy and do not take measures for the release of sailors. The situation is resolved exclusively through negotiations with pirates, which are conducted on behalf of the ship's owners, and ends in all cases with the payment of a ransom. At the same time, representatives of the shipowner who negotiate and transfer money on the territory of certain countries (including the UK) are actually subject to the legislation on the financing of terrorism and can be brought to criminal responsibility. The very fact of a pirate attack is not regarded by the international community as a terrorist oriented act, and, consequently, there are no special procedures for cooperation between countries in this case. Only after the attempt to capture the American passenger liner Seabourn Spirit on November 5, 2005, with almost 600 tourists on board (Panagia was currently in captivity), the world community and the United States began to actively promote the idea of

¹⁷³ Blagodelsky, 63.

recognizing piracy as an act of terrorist orientation. However, the latest international legal instruments adopted by the relevant UN organizations have not implemented this idea, and moreover, the process of creating international legal procedures to combat piracy has not moved forward by a single step.

These and other facts clearly indicate the need to create a mechanism in the State to resolve such situations in the future, establish procedures for interstate interaction and initiate in Ukraine the process of improvement of the system of current international maritime law¹⁷⁴.

Foreign experts consider the problem of piracy to be serious and sufficient for direct impact on global security and one that requires adequate development of the level of regional cooperation in this area¹⁷⁵. Thus, in one of the reports of the interdepartmental working group of the US Government, it is «noted that piracy is a threat to the most important trade maritime communications in the world and creates obstacles to the development of free trade due to the inevitable increase in insurance rates, which contributes to the emergence and increase of tensions between coastal States»¹⁷⁶.

The experts distinguish between economic piracy of shipping as politically motivated (terrorism); «yachting», for example, in Hong Kong; and other (for example, in relation to refugees in the 70s and 80s from Vietnam through the Gulf of Thailand)¹⁷⁷.

By the US Government, direct financial losses from piracy on the high seas are estimated at an average of 450 million dollars annually¹⁷⁸. According to statistics, almost

¹⁷⁴ Zharinov, 55.

¹⁷⁵ *Ibid.*

¹⁷⁶ Grigoryan, 8.

¹⁷⁷ «Marine Terrorism», Mosk. International Law Magazine, 2001, № 2, p. 383.

¹⁷⁸ *Ibid.*

all types of vessels are attacked: tankers (25 %), dry cargo ships (23 %), fishing vessels (16 %), baltic (11 %), container ships (11 %), yachts and other vessels (12 %) ¹⁷⁹.

The report of the Piracy Report Center of the International Maritime Bureau indicates the intensification of pirate activity in recent years ¹⁸⁰. If in 1999 300 cases of piracy were registered in the world, which is 3 times more than in 1991, then in 2000 there were already recorded 469, in 2001 - 263. At the same time, according to experts, only every third case of piracy becomes known ¹⁸¹. There is a tendency to increase the brutality of pirates and, accordingly, the number of dead. So, if in 1994 none of the ship's crew members were killed, then in 1995 - 1996 - 26, in 1997 - 51 ¹⁸².

Geographically, the most dangerous are the territories of South and Central America, the West and East coasts of Africa, the regions of Southeast Asia and the Asia-Pacific region. In China, Somalia, the Philippines, and Sierra Leone, piracy has some hidden support from the authorities. For example:

- in China - due to the unofficial regional expansion of the country and desire of the authorities to assert China's territorial sovereignty in disputed areas rich in mineral resources;

- in the Philippines - not least because of the poor earnings of naval officers engaged in racketeering;

¹⁷⁹ "Problems of Combating Piracy at the Turn of the Century", 13.

¹⁸⁰ "Sea Pirates Broke the Record of Attacks", http://www.bbc.co.uk/ukrainian/news/2011/01/110118_piracy_increase_it.shtml?print=1 (accessed on 25/01/2021).

¹⁸¹ "Pirate Attacks: Down off Africa, up in Asian Waters", <http://www.ekantipur.com/2010/10/18/top-story/pirate-attacks-down-off-africa-up-in-asian-waters/323766.html> (accessed on 14/01/2021).

¹⁸² Lloyd's List, World Watch. 2005, № 59.

- in Somalia, where there has been virtually no central government since 1991, the coast guard is openly indulged in piracy, so merchant ships are forced to stay no closer than 50 miles from the country's coast;

- in the mid-90s fishermen in Sierra Leone, Senegal, Guinea-Bissau, Spain, Portugal and South Korea repeatedly went on strike because of pirate attacks near the coast of this country.¹⁸³

The Asia-Pacific region is particularly notable, where more than 2/3 of the world's acts of piracy occurred in the 1990s. Interestingly, after 17 incidents of piracy against Russian ships in 1992, a group of Russian Navy warships was even deployed in mid-1993 to protect navigation¹⁸⁴.

One of the most famous cases of piracy was the seizure of the merchant ship «Anna Sierra» by 30 pirates in September 1995 while moving from Thailand to the Philippines. The ship was carrying 12 thousand tons of sugar with a total value of 5 million US dollars. The crew was left at sea on lifeboats 60 miles from Vietnam and picked up by Vietnamese fishing vessels 3 hours later. The ship «Anna Sierra» was discovered on October 8 in the Chinese port of Beihai under the name «Arctic Sea», allegedly registered in Honduras. The ship's crew of 12 people with Indonesian and Malaysian passports was released almost unpunished by the Chinese authorities¹⁸⁵.

According to the analysis, the main problems in the fight against piracy are as follows:

¹⁸³ Modjoryan, *Terrorism at Sea*, 17.

¹⁸⁴ *Ibid.*

¹⁸⁵ Lloyd's List, World watch. 2005. № 59.

- resource (financial) difficulties of most Third World coastal States;
- the inability of the governments of these countries to influence the situation¹⁸⁶;
- the impossibility of constantly blocking piracy areas with the available number of ships, boats and aircraft (patrolling today remains one of the most effective measures in the fight against piracy);
- provision by coastal States and shipping companies of false statistical and other information on attacks on ships;
- inconsistency of legal norms and acts defining the regime of coastal areas, etc.

In the South China and East China Seas, especially in the area of the island of Senkaku pirate activity is conducted mainly due to the fact that under the guise of fighting drug smuggling, the Chinese NCIS was engaged in robbery, passing off this fact as the work of pirates. As an example, the case of a delay at sea and bringing the Singapore ship “Hye Mieko” to one of the Chinese ports by the Chinese customs service could be cited¹⁸⁷. The entire cargo of the ship (cigarettes) was seized under the guise of smuggling and sold¹⁸⁸.

During 1992-1994, about 90 attacks on ships were carried out in the South China Sea, according to Hong Kong authorities, 47 of them by ships and boats of the Chinese Coast Guard, Customs Service and Navy¹⁸⁹. In general, in the 90s, according to statistics,

¹⁸⁶ *Ibid.*

¹⁸⁷ “Dynamics of Pirate Attacks”, <http://umservice.net/index.php?action=downloadHYPERLINK> (accessed on 21/10/2020).

¹⁸⁸ Bruntalsky, 6.

¹⁸⁹ “Dynamics of pirate attacks”, <http://umservice.net/index.php?action=downloadHYPERLINK>.

an average of 20-25 incidents (including the use of weapons) related to unresolved territorial issues occurred annually in the South China Sea¹⁹⁰.

The decrease in the number of pirate attacks at sea in the mid-1990s was primarily due to the strengthening of international cooperation in the fight against maritime piracy, coordination of coast guard and naval forces, exchange of information and other activities. Thus, in 1992, direct links were established between the leadership of the Indonesian Navy and Singapore, a Joint Committee on naval cooperation and a Joint operational planning group were established. Joint patrols of ships and boats of the Coast Guard, Maritime Police, Customs Service and Navy of Malaysia, Singapore, Indonesia and the Philippines were introduced in the gulf zone, as well as an agreement was signed on the possibility of pursuing pirates in the territorial waters of another State¹⁹¹. In the waters of Indonesia, 26 ships and boats, 10 aircraft of the coast guard and the Indonesian Navy are involved in patrolling daily¹⁹². In 1993, a «hotline» of communication between China and Japan was established¹⁹³. The Philippine Navy has allocated a special radio frequency on which affected vessels can seek help from ships of the Philippine Navy and Coast Guard¹⁹⁴. As a result of joint efforts, «the number of pirate attacks in the Strait of Malacca has decreased by up to 8 times»¹⁹⁵.

¹⁹⁰ “Piracy off Somalia High on the Agenda as IMO Maritime Safety Committee Meets”, <http://www.imo.org> (accessed on 12/01/2021).

¹⁹¹ “Pirate Attacks: Down off Africa, up in Asian Waters”, <http://www.ekantipur.com/2010/10/18/top-story/pirate-attacks-down-off-africa-up-in-asian-waters/323766.html>

¹⁹² *Ibid.*

¹⁹³ “Pirates Take Record 1, 181 Hosts in 2010”, <http://news.yahoo.com/s/ap/piracy> (accessed on 14/01/2021).

¹⁹⁴ “Sea Pirates Broke the Record of Attacks”, http://www.bbc.co.uk/ukrainian/news/2011/01/110118piracy_increase_it.shtml?print=1.

¹⁹⁵ “International Law and the Fight against Terrorism at Sea”, *Vlast: Criminolog. Association* 2002, p. ?.

The most significant anti-piracy initiatives in the Asia-Pacific region come from Japan, which is the region's largest shipping country. Back in October 1987, the Japan Institute for Defense Studies proposed the concept of «Ocean Peacekeeping», which also covers the fight against piracy. Japan has repeatedly offered ships of the coastal defense forces and the Navy for joint patrolling in the zones of international straits. One of the most powerful, well-equipped in the world and with significant anti-piracy potential is considered to be the Japanese Department of Maritime Protection. There are about 115 patrol ships of large autonomy (including those equipped with helicopters), 47 medium-sized ones, and 103 patrol boats of the coastal service in service. There are also more than 45 patrol aircraft and 41 helicopters¹⁹⁶.

The United States undoubtedly retains its traditional influence on all security processes in the regions. The US efforts, as a world leader in countering terrorism, are also noted in the fight against piracy, which is certainly facilitated by the advanced presence of the US Navy. So, a few years ago, the American 7th Fleet, together with Indian ships, began joint patrolling of the northwestern part of the Strait of Malacca and the Andaman Sea¹⁹⁷.

Significant patrol forces involved in the fight against piracy were withdrawn from the navies of Indonesia, Taiwan, Thailand and the Philippines. Intensive measures are being taken to modernize and strengthen the Coast Guard, Marine Police and Navy of these countries.

Key emerging anti-piracy initiatives are aimed at the following:

¹⁹⁶ “International Problems of Combating Maritime Piracy”, 105.

¹⁹⁷ Savelyev, “International”, 12.

- Dealing with contradictions legislation regarding piracy, expanding the number of countries that have approved the 1988 Convention on countering illegal acts at sea;

- It is possible and necessary to deepen activities within a wider range of international organizations and institutions, including those listed above, with the leading role of the United Nations International Maritime Organization at the world level;

- Assistance and help to shipowners and shipping companies based on the Analytical Center on piracy of the International Maritime Bureau;

- Expansion of bilateral and multilateral cooperation with the organization of joint patrolling by the Joint Forces, creation of a unified information surveillance system, assistance in training personnel of the coast guard and naval forces, conducting joint exercises, information exchange and technical cooperation.

Thus, the problem of piracy today remains one of the most urgent, which significantly affects commercial navigation in certain areas of the world's oceans and even the state of regional security. Successful counteraction and combating piracy in modern conditions is not possible without the coordination of efforts of the international community and development of regional cooperation. In addition, countering piracy is becoming very relevant due to its potentially possible relationship with international terrorism. The most ancient problems of humanity now arise with new threats, despite all their exoticism, and turn out to be the most tenacious. This circumstance, however, rather indicates the need to take drastic measures and allocate large resources to develop a long-

term program. Moreover, the joint efforts of States, as practice shows, can affect the status of affairs in this area.

III. PROBLEMS OF FORMING AN INTERNATIONAL LEGAL MECHANISM FOR COUNTERING MARITIME PIRACY

A) RECENT PROBLEMS OF COUNTERING PIRACY

Maritime piracy today is a real threat to the international security of all countries of the world, because 90% of world trade (23% of world GDP) is provided by sea transportation¹⁹⁸. The global economy losses from Somali piracy are estimated at 18 billion dollars annually¹⁹⁹.

Ukraine, as a partner and active participant in NATO peacekeeping operations, whose citizens and ships have repeatedly been victims of sea robberies, has not stayed away from the problem of piracy and is already working with the international community to resolve this issue. Therefore, the study of the problem of maritime piracy, which tends to increase recently, is relevant today.

“Ocean Shield” is a NATO naval operation that began in August 2009, following the completion of two previous operations, the “Allaid Provider”, “Protector”, to counter piracy in the regions of Horn of Africa, the Gulf of Aden, and the coast of Somalia²⁰⁰. The purpose of this operation is to facilitate international efforts to combat maritime piracy together with the national governments of the countries of the region.

¹⁹⁸ Kubiak, K.: *Pryemoc na Oceanach, Wspyfcyenne Piractwo i Terroryzm Morski*, Warsaw: TRIOi Centrum Europejskie National 2009, p. ?.

¹⁹⁹ NATO and Ukraine Navy Together in Fight Against Piracy, <https://worldmaritimeneeds.com/archives/96626/nato-and-ukraine-navy-together-in-fight-against-piracy/> (accessed on 14/11/2020).

²⁰⁰ NATO and Ukraine sign agreement on participation in Operation Ocean Shield in the margins of Maritime Commanders Conference, <http://www.mc.nato.int/PressReleases/> (accessed on 05/01/2021).

By a decision of March 19, 2012, the North Atlantic Council of NATO extended the mandate of the naval operation until the end of 2014²⁰¹. The NATO operation operates in full compliance with the UN Security Council resolution on combating Somali pirates (November 2011), which calls on all national governments and regional organizations to make efforts to combat pirates off the coast of Somalia²⁰². The operation continues to work closely with other naval forces, including those led by the United States, the EU and national actors, which actively oppose maritime piracy in the region.

The political leadership of the operation is carried out by the North Atlantic Council of NATO, and the actual management is performed by the NATO military command and the Supreme Commander-in-chief of the Joint Armed Forces in Europe, who delegated the powers of the operational command to the Naval Command in Northwood (United Kingdom). All allied countries are directly or indirectly involved in the conduct of a naval operation through NATO structures or general funding. They also provide NATO Standing Maritime Groups (SNMG) with ships and naval patrol aircraft on a rotating basis. Since 2009, the NATO Naval forces (SNMG 1 and SNMG 2) have repeatedly replaced each other in accordance with the operational needs of the North Atlantic alliance and various problems at sea. The composition and number of ships involved in the operation changed²⁰³. NATO naval forces are stationed near the Horn of Africa, patrolling the Gulf of Aden, the western Indian Ocean up to the Strait of Hormuz²⁰⁴.

²⁰¹ NATO Counter-Piracy Ukrainian Frigate Trains with Chinese Frigate. www.mc.nato.int/.../NATO-Counter-Piracy-Ukrainian-Frigate-Trains-with-Chinese-Frigate.aspx (accessed on 05/01/2021)

²⁰² *Ibid.*

²⁰³ NATO official website. <http://www.nato.int/cps/en/natolive/index.htm> (accessed on 05/01/2021)

²⁰⁴ *Ibid.*

At the present stage, the first permanent naval group of NATO (SNMG 1), led by Commodore Henning Amudsen (Norwegian Navy), is involved in operation “Ocean Shield”. The following warships are represented: “Fridtjof Nansen” (Norwegian Navy), “De Werth” (US Navy), “Esburn Snare” (Danish Navy) and “Hetman Sahaidachny” (Ukrainian Navy)²⁰⁵.

Taking into account the high level of cooperation between Ukraine and the NATO, including the active participation of the Ukrainian military in NATO peacekeeping operations, as early as June 8, 2011 the presidential administration of Ukraine has approved the proposals of the Ministry of Defense to attract national military assets to Operation “Ocean Shield” under the auspices of NATO²⁰⁶.

In 2013, thanks to the fruitful work of the NATO-Ukraine Commission, an understanding was reached and a formal agreement was signed at the level of defense ministers by Lebedev and Anders Fogh Rasmussen, on the participation of our State in operation «Ocean Shield».

So, Ukraine became the first NATO partner country to join this naval operation and remains the only partner country that took part in all operations under the auspices of NATO. Today, the Ukrainian military is part of the multinational KFOR force in Kosovo,

²⁰⁵ NATO and Ukraine Navy Together in Fight Against Piracy, <https://worldmaritimenews.com/archives/96626/nato-and-ukraine-navy-together-in-fight-against-piracy/> (accessed on 14/11/2020)

²⁰⁶ Mission of Ukraine to NATO // Official Site of the Ministry of Foreign Affairs of Ukraine, <http://nato.mfa.gov.ua/ua/press-center/news/16328-fregat-getyman-sagajdachnij-perehopiv-pidozrile-sudno-v-adensykij-zatoci> (accessed on 21/10/2020)

the International Security Assistance Force in the Islamic Republic of Afghanistan and participates in the NATO anti-terrorist operation “Active efforts”²⁰⁷.

Ukraine has made a significant contribution to ensuring the safety of navigation in the Horn of Africa region as part of operation “Ocean Shield”. Combat missions are assigned to the flagship of the Navy of the Armed Forces of Ukraine - the frigate “Hetman Sahaidachny” with a KA27 carrier-based helicopter and a special purpose group on board. According to the alliance's rotational standards, ships of this class must be in combat gear for four to six months as part of the operation. So, the campaign of the Ukrainian ship will last 162 days²⁰⁸.

In accordance with the agreements reached, the Ukrainian military will patrol sea territories to prevent pirate attacks, escort civilian and merchant ships, and intercept suspicious ships. The NATO shipping center provides complete and reliable information on maritime transport in the region, notifies of potential threats and promotes the preventive activities of the NATO naval forces. The latter have the right to land on the ship to check the presence of pirates on board.

To prevent an attack, capture, or abduction, NATO forces can use force or threat by force. The detained pirates are immediately handed over to national law enforcement agencies. In addition, NATO is responsible for providing information on best practices for preventing pirate attacks (BMP 4).

²⁰⁷ “Ukraine’s Participation in NATO Peacekeeping Operations”, Official Site of the Ministry of Defense of Ukraine. http://www.mil.gov.ua/index.php?lang=ua&part=international_cooperation&sub=Participation_NATO_operations (accessed on 25/01/2021)

²⁰⁸ “Sea Pirates Broke the Record of Attacks”, http://www.bbc.co.uk/ukrainian/news/2011/01/110118piracy_increase_it.shtml?print=1 (accessed on 25/01/2021)

The operational plan of “Ocean Shield” determined that the Ukrainian contingent will perform specific tasks in a certain area of the Gulf of Aden - 220 miles east of the port of Djibouti²⁰⁹. All expenses related to the preparation and performance of tactical combat tasks of the operation by the Ukrainian military are borne by Ukraine. In general, the total cost of measures aimed at combating maritime piracy is 7-12 billion US dollars annually²¹⁰.

The cost of the stay of the Ukrainian military as part of the multinational forces of the alliance in the Horn of Africa area will reach 90 million UAH²¹¹. In accordance with the provisions of the annual national program of cooperation between Ukraine and NATO for 2013 (approved by Presidential Decree No. 371/2013 of July 5, 2013), ensuring funding for the participation of units of the Armed Forces of Ukraine in the NATO operation «Ocean Shield» is entrusted to the Ministry of Finance and Economic Development and Trade of Ukraine²¹².

According to the official agreement between Ukraine and NATO, the latter has no obligations to pay, compensate for losses or compensate for participation in the anti-piracy operation. Ukraine had the opportunity to take part in the multinational naval exercises SEABREEZE-2012, thanks to which the flagship “Hetman Sahaidachny” was

²⁰⁹ “Mission of Ukraine to NATO”, Official Site of the Ministry of Foreign Affairs of Ukraine, <http://nato.mfa.gov.ua/ua/press-center/news/16328-fregat-getyman-sagajdachnij-perehopiv-pidozrile-sudno-v-adensykij-zatoci> (accessed on 21/10/2020)

²¹⁰ Muravsky, 24.

²¹¹ “NATO and Ukraine Navy Together in Fight Against Piracy”, <https://worldmaritimeneews.com/archives/96626/nato-and-ukraine-navy-together-in-fight-against-piracy/> (accessed on 14/11/2020).

²¹² “Mission of Ukraine to NATO”, Official Site of the Ministry of Foreign Affairs of Ukraine, <http://nato.mfa.gov.ua/ua/press-center/news/16328-fregat-getyman-sagajdachnij-perehopiv-pidozrile-sudno-v-adensykij-zatoci> (accessed on 21/10/2020).

involved in the practical performing of tactical procedures for implementing anti-piracy measures²¹³.

As part of operation “Ocean Shield”, the Ukrainian frigate took part in joint exercises with the Chinese frigate “Plan Heng Shui”, during which the tasks of rescuing victims of the pirate attack were successfully completed. During the first patrol in the Gulf of Aden, the Ukrainian military provided first aid to the captain of a foreign vessel, and during the second patrol, the frigate «Hetman Sahaidachny» detained a suspicious vessel and carried out its control inspection²¹⁴.

Since joining the naval operation, the Ukrainian military contingent, along with others, has successfully performed the tasks assigned to it, as evidenced by a 40% decrease in the number of pirate attacks since 2009²¹⁵. Over the past four years, pirates have carried out 1,045 attacks on ships in the area of operation “Ocean Shield”. Since January 2013, 9 pirate attacks and 2 vessels have been recorded in the Horn of Africa area, for comparison with the same period in 2012 - 75 attacks, 14 vessels were captured and 250 people were taken hostage, and in 2010, at the peak of pirate activity, 445 attacks were carried out, 53 vessels were captured²¹⁶.

The Ukrainian Navy took part in a conference on maritime issues held on November 21, 2013 in London (Great Britain)²¹⁷. As a result of the talks, a memorandum of understanding was signed between NATO and Ukraine on the latter’s participation in the fight against pirates within the framework of operation “Ocean Shield”. Assessing the

²¹³ *Ibid.*

²¹⁴ Tsyrf, 8.

²¹⁵ NATO Official Website, <http://www.nato.int/cps/en/natolive/index.htm> (accessed on 05/01/2021).

²¹⁶ Tsyrf, 8.

²¹⁷ “NATO Counter-Piracy Ukrainian Frigate Trains with Chinese Frigate”, www.mc.nato.int/.../NATO-Counter-Piracy-Ukrainian-Frigate-Trains-with-Chinese-Frigate.aspx (accessed on 05/01/2021)

current situation in the region, some results were summed up and the leading role of the Ukrainian frigate, which successfully performs the tasks assigned to it, was emphasized. Ukraine's participation in this Conference was the final stage in formalizing the operational contribution of the Ukrainian Navy to the joint fight against pirate activities near the Horn of Africa, and also serves as a confirmation of the success of the efforts of both sides and testifies to the high level of partnership between Ukraine and NATO.

In the period from October 12, 2013 to January 2, 2014, the Ukrainian national contingent guaranteed the safety of navigation in certain areas of the Gulf of Aden. While participating in the operation, the ship spent 47 days at sea directly patrolling in dangerous areas. In total, six patrols were conducted, 14 friendly approaches to local fishermen, and 10 vessels were examined that aroused suspicion of pirate activities.

During the period of participation in the operation, the crew of the Ka-27 PS helicopter performed about 100 flights to conduct aerial reconnaissance of the surface situation. 8 high-speed boats were stopped, which did not respond to the ship's requests and continued their movement. The helicopter squad also provided flights of personnel between ships at sea, while taking off and landing on four foreign ships.

The involvement of the Ukrainian naval forces in operation «Ocean Shield» shows a high level of trust on the part of the Alliance, Ukraine's readiness to continue the traditions of peacekeeping activities within NATO and thereby make an important contribution to ensuring, maintaining and strengthening international security.

On January 3, 2014, the national contingent consisting of the crew of the frigate of the Naval Forces of the Armed Forces of Ukraine “Hetman Sahaidachny”, a special

purpose unit and a helicopter detachment joined the operation of the European Union “Atalanta”²¹⁸.

Ukraine gets a unique opportunity to improve military management and modernize the means to conduct such operations along with foreign naval forces on a high-quality equipment, foreign language proficiency, efficiency in performing tactical combat tasks, which is a valuable experience that the Ukrainian military receives during such operations. Moreover, today the expansion of cooperation is hoped for between Ukraine and NATO in the framework of operation «Ocean Shield» thanks to the information support of the operation's campaign involving the primary National contact point of Ukraine in Sevastopol, which is currently cooperating with NATO and fulfilling the tasks of operation active efforts.

From an economic point of view, Ukraine has its own national interests in both the Gulf of Aden and the Horn of Africa related to civil and commercial shipping, so the success of Operation Ocean Shield directly affects the satisfaction of these interests. Ukraine's participation as the first partner country in all NATO peacekeeping operations, including anti-piracy ones, will raise the level of bilateral relations to a higher level, deepen mutual understanding and partnership, and confirm Ukraine's readiness to integrate with the international community in the name of strengthening international security. Given that operation “Ocean Shield” will last until the end of 2014, further research on this topic will be appropriate, including certain issues of Ukraine's participation in the NATO anti-terrorist operation «Active Efforts».

²¹⁸ *Ibid.*

B) PROSPECTS FOR THE DEVELOPMENT OF THE INTERNATIONAL LEGAL MECHANISM FOR COUNTERING MARITIME PIRACY

Piracy at the sea as a threat to security of different countries still is a pressing and, unfortunately, unresolved issue. Highly developed countries transport almost 100% of their cargo in this way. Geographically, the most the areas of Southeast Asia and the coast of East Africa and especially Somalia pose the greatest danger. It is the Somali piracy that is currently a threat to safety of European countries. Using the surprise factor pirates seize trade vessels on the high seas or in the waters of ports, and the purpose of such illegal actions is not to seize the cargo of ships, but the crew and get a ransom.

The EU has elaborated a program to combat piracy - Common Security and Defense Policy (CFSP), which in turn is a key component of the EU's Common Foreign and Security Policy (CFSP)²¹⁹. In accordance with the UN Security Council resolution of 2008²²⁰ and following the meeting of the EU Council of Ministers on 10 November 2008²²¹, the EU Naval Forces (EU NAVFOR) conducted the first EU naval operation NAVFOR “ATALANTA” in the history of the European Union²²². On March 23, 2012, the EU Council of Ministers extended the operation's mandate until December 2014²²³.

The main objectives of the operation are to prevent and combat piracy; «protection of commercial and civilian vessels performing tasks under the World Food Program; take the necessary

²¹⁹ “Ocean Shield: Military Delegations of Ukraine and NATO Hold Talks on Board Hetman Sahaidachnyi Frigate”, <http://un.mfa.gov.ua/en/press-center/news-from-ukraine/617/> (accessed on 12/ 01/2021).

²²⁰ Official Website of the NATO Naval Command, <http://www.mc.nato.int/Pages/home.aspx> (accessed on 12/01/2021).

²²¹ “Piracy off Somalia High on the Agenda as IMO Maritime Safety Committee Meets”, <http://www.imo.org>,

²²² Report of the Secretary-General Pursuant to Security Council Resolution 1846 (2008), 13 November 2009, NS 2009. 590, para. 46.

²²³ “Sea Pirates Broke the Record of Attacks”, http://www.bbc.co.uk/ukrainian/news/2011/01/110118piracy_increase_it.shtml?print=1 (accessed on 25/01/2021)

measures, including the use of force, to prevent attempted piracy or armed robbery; arrest, hold and transfer of persons who have committed or are suspected of committing acts of piracy or armed robbery, etc. The area of operation covers the southern Red Sea, the Gulf of Aden and part of the Indian Ocean, including the Seychelles. The area of action includes Somali coastal territories, as well as the territorial and inland waters of Somalia, amounting to approximately 3.7 million sq.km»²²⁴.

Non-EU member States also take part in operation EU NAVFOR «ATALANTA»: Norway, Croatia, Montenegro, Serbia, and Ukraine. 1,200 employees are constantly involved in the operation. The naval service is conducted by warships, the participants in the operation cooperate with both NATO Navy and national vessels of India, Japan, China, and Russia, which oppose pirates.

Emphasizing its role in the fight against maritime piracy, on 16 July 2012 the EU Council of Ministers decided to launch a new EUCAP operation «NESTOR»²²⁵, the main purpose of which is to assist the states of the Indian Ocean and the Horn of Africa in strengthening the naval capabilities effective fight against piracy in the territorial waters of Kenya, Djibouti, Somalia, Seychelles. Such assistance is also provided to Tanzania. The budget of the operation is 22.8 million euro²²⁶.

The EU's Third Military Mission in Somalia (EUTM Somalia) is a training mission to assist the Government and government agencies of Somalia in improving the training of the Somali Armed Forces.

The development and implementation of comprehensive anti-piracy programs in Somalia is about the effective implementation of the EU Strategic Policy Framework for

²²⁴ *Ibid.*

²²⁵ *Ibid.*

²²⁶ *Ibid.*

the Horn of Africa, adopted by the EU Council on 1-4 November 2011. The EU's priorities in the Horn of Africa are to reduce security threats from the region, support economic growth and regional economic cooperation; creating a reliable and accountable political structure; assistance in resolving and preventing conflicts.

In order to implement the EU's strategic anti-piracy policy, a Special Representative has been appointed in the Horn of Africa, focusing exclusively on Somalia, as systemic political and legal instability in the country has been a major cause of «Somali piracy»²²⁷. However, despite active EU action to combat maritime piracy, piracy continues to threaten shipping in the region, world trade, undermine the economies of neighbouring countries (from Somalia) and lead to additional material costs²²⁸.

C) IMPLEMENTATION OF INTERNATIONAL LEGAL PROVISIONS ON COMBATING INTERNATIONAL MARITIME PIRACY IN UKRAINIAN LAW

Consolidation of the efforts of the international community is relevant today not only in terms of addressing issues of economic, social, scientific, technical, cultural and legal content, which relate, in particular, to the field of international legal policy. Taking into account the processes of globalization, crime has long turned into a phenomenon that ignores the State-legal categories of “sovereignty” and “inviolability”, while encroaching on universal values that have become integral features of civilization. Transparency of State borders, simplification of information exchange, and unprecedented growth in

²²⁷ “Ukraine’s Participation in NATO Peacekeeping Operations”, Official Site of the Ministry of Defense of Ukraine, http://www.mil.gov.ua/index.php?lang=ua&part=international_cooperation&sub=Participation_NATO_operations (accessed on 25/01/2021)

²²⁸ “Piracy off Somalia High on the Agenda as IMO Maritime Safety Committee Meets”, <http://www.imo.org>.

international trade and investment have made it impossible for Governments to use levers that previously made it possible to successfully counteract international criminals. In these circumstances, special attention should be paid to countering the manifestations of transnational crime, such as terrorism, piracy, human trafficking, illegal arms trafficking, organized crime and corruption, etc.

The definition of piracy and methods of combating it are contained in the UNCLOS. According to this instrument, all States «are required to cooperate to the maximum extent possible in stopping piracy on the high seas or in any other place outside the jurisdiction of any country». The serious nature of the problem is confirmed by the creation of a Center for combating piracy by the International Chamber of Commerce in 1991. A training center for specialists in combating sea robbers is already operating in California. The center trains anti-piracy units for the navies of Indonesia, the Philippines and Thailand. These countries constantly conduct naval exercises to combat sea robbers.²²⁹

At the end of 2005, representatives of Japan, Singapore, Cambodia and Laos signed the Regional Agreement on Cooperation in Countering Piracy and Armed Attacks on Ships in Asia²³⁰. It is expected to be joined by China, South Korea, India, Sri Lanka and Bangladesh.

However, there are some doubts about China. It is talked about the actual connivance of pirates by the official authorities of the People's Republic of China, who are thus trying to prove their jurisdiction over part of the disputed islands of the Spratly archipelago. Proof of this is the fact that in 1994 a Philippine warship delayed a Chinese

²²⁹ Convention for the Fight against Illegal Acts Directed against the Safety of Maritime Navigation, 1988, United Nations: *Treaty Series*, 1992, p. 249.

²³⁰ Muravsky, 24.

ship with military personnel on board, suspected of attacking ships in Subic Bay. A few years ago, a Philippine warship fought two pirate ships under Chinese flags, and later another Chinese ship was detained in the same region, the crew of which tried to attack a Philippine merchant ship²³¹.

So far, only one case is known in the world when the official authorities managed to fight back a captured ship from pirates. This happened in November 1999, when the Indian corvette “Prahar” used force in the Arab sea to free the cargo ship “Alondra Rainbow”, which had been previously captured by pirates. After 12 days, the corvette, with the help of two reconnaissance aircraft and Indian patrol boats, neutralized the pirates and returned the stolen ship to its owner²³².

Among the measures taken by the States to fight piracy and acts of terrorism, including maritime terrorism, the UN General Assembly Declaration on Measures to Eliminate International Terrorism of 1994 deserves attention²³³. The Declaration, based on the concept of security peace, the principle of refraining from the threat of use or use of force in international relations, declares terrorism a serious violation of the goals and principles of the UN. Article 5 of this document contains a reference to the obligation to arrest, hand over to the court or extradite criminals who have committed terrorist acts.²³⁴

The UN Security Council Special Resolution 1269 on Terrorism of 19 October 1999 contains an condemnation of all acts of terrorism, as well as a call on States to

²³¹ International Maritime Bureau (IMB): Piracy and Armed Robbery against Ship: Report for the Period 1 January - 30 June 2009, p. 10.

²³² “Mission of Ukraine to NATO”, Official Site of the Ministry of Foreign Affairs of Ukraine, <http://nato.mfa.gov.ua/ua/press-center/news/16328-fregat-getyman-sagajdachnij-perehopiv-pidozrile-sudno-v-adensykij-zatoci> (accessed on 21/10/2020)

²³³ “Pirates Take Record 1, 181 Hosts in 2010”, <http://news.yahoo.com/s/ap/piracy> (accessed on 14/01/2021)

²³⁴ Kuzmenko, “Legal”, 76.

prevent and stop preparing and financing any acts of terrorism on their territory²³⁵. On September 12, 2001, the UN Security Council adopted Resolution 1368, which recognized terrorist actions as a threat to international peace and security, and called, although not obliged, the States to start efforts to bring to justice the executors, organizers and sponsors of these terrorist attacks.²³⁶

In the context of the international legal instruments under consideration in the field of combating illegal acts committed at sea, special attention should be paid to the US initiative in the sphere of non-proliferation of weapons of mass destruction and their delivery systems (NPDI)²³⁷. The NPDI shall involve all States participating in the non-proliferation regime and having the capacity and intent to take effective measures to prevent the flow of such items by sea.

Participants in the NPDI propose specific interception principles aimed at creating a more coordinated and effective framework that complies with national legislation and is within the relevant international legal framework, including the UN Security Council, to prevent and counteract transportation of weapons of mass destruction (WMD). The participants of NPDI call all States concerned about this threat to international peace.

Protection from maritime piracy and terrorism is extremely time-consuming and complex. But in case of threat of piracy and terrorism, the international community must take effective and adequate measures in accordance with the norms and principles of international law. Thus, the main approaches developed for the legal regulation of combating piracy and terrorism at sea are based on the UNCLOS, which contains certain

²³⁵ *Ibid.*

²³⁶ Bruntalsky, 6.

²³⁷ *Ibid.*

grounds for interfering with the navigation of a foreign ship on the high seas, as well as on the general principles of combating terrorism established by the General Assembly (UN General Assembly Resolution 56/88 «Measures to Eliminate International Terrorism», etc.) and the UN Security Council, and special measures developed by IMO.²³⁸

Enhancing cooperation on ensuring the safety of navigation and combating piracy is one of the main activities of States, the international community, etc. Undoubtedly, national legal science is aware of the works of scientists that relate to the consideration of issues related to combating international delicts, but it seems that many more points remain insufficiently studied or are generally outside the scope of scientific research. In particular, this applies to the fight against international piracy. The implementation of international conventions that define possible grounds for criminal liability for criminal acts at sea (including piracy) in the criminal legislation of Ukraine has hardly been investigated²³⁹. This circumstance serves as an eloquent confirmation of the need to strengthen scientific research in the field of combating piracy, overcoming the problems of legal, organizational, technical and other support for this activity, which is implemented within the framework of international criminal law policy; regulation of criminal jurisdiction, which will ultimately contribute to solving a number of problems of theoretical and applied content.

²³⁸ Kuzmenko, "Legal", 76.

²³⁹ Khavronyuk, M. I.: *Criminal Legislation of Ukraine and Other States of Continental Europe: Comparative Analysis, Problems of Harmonization: Monograph*, Kiev: Legal Adviser 2006, p. ?.

In a speech at the general debate of the 64th session of the UN General Assembly on September 24, 2009 the president of Ukraine called the global fight against piracy an issue of exceptional importance for our State:

“We appreciate all the efforts of the UN and the International Maritime Organization. However, and unfortunately, modern measures are insufficient. Almost 70 thousand Ukrainian citizens are employed on foreign-flagged vessels. Any changes in the situation in the waters of the world's oceans directly affect us. In the last seven years alone, pirates attacked 18 ships carrying Ukrainian citizens. In the last nine months alone, 35 Ukrainian sailors have become hostages. The problem has lost its local character. It is extremely dangerous and threatening for everyone”²⁴⁰.

No one will deny the fact that recently the activities of criminal groups related to attacks on sea merchant ships for ransom, theft of property, seizure of ships, etc., have significantly intensified. The number of pirate attacks, their spatial prevalence, combination with moderate tactics, a high degree of organization, the use of modern weapons and readiness to cause socially dangerous consequences - these and other points reveal the content of this delict of an international nature. According to the International Maritime Bureau, the number of attacks at sea has tripled. Annual losses from maritime crimes on a global scale amount to about 16 billion US dollars. The main explanation for this trend can be considered the fact that the world economy is critically dependent on sea transport²⁴¹.

After the end of the Cold War, the United States and Great Britain halved their permanent presence in the world's oceans, while Russia almost completely. Significant

²⁴⁰ Sereda, 622.

²⁴¹ Poroskov, 5.

areas of the water area were out of the zone of constant control. Administrative control over the vast island territories by their independent States has been weakened - they do not have the ability to maintain the necessary forces at sea, and sometimes they do not have the political will. Most of the world's merchant ships are registered in Panama, Honduras and Liberia, countries that do not have the naval forces necessary to combat maritime piracy. According to the Lloyd's Insurance Fund²⁴², 89 thousand passenger and cargo vessels with a tonnage of more than 100 tons are registered in the world, including about 55 thousand vessels with a tonnage of more than 500 tons. The total tonnage of the world merchant fleet is 64 million tons.

During the period from 1991 to 1997, the courts of 62 States suffered from sea robbery in the waters adjacent to the territories of 56 States of the world. The dynamics of the analyzed type of criminal business is characterized by the following indicators: In 1992 - 106 episodes of piracy were registered, in 1999 - 300, in 2000 - 471, in 2003 - 282, in 2004 - 329, in 2007 - 263 and in 2008 - 293 cases of pirate attacks²⁴³. If during 1992 in these crimes were killed 3 crew members, then during 2000 - 72 people were already killed and 99 injured. The decrease in the number of pirate seizures of sea vessels is compensated by the excessive brutality of pirates: In 2004, they used weapons in more than 100 cases²⁴⁴.

As for the regional features and geography of these criminal operations, 189 attacks occurred in Southeast Asia and the Far East, 93 - in the surrounding waters of Africa and the Red Sea, 87 - in the Indian Ocean, and 72 - in America. In total, 79% of

²⁴² *Ibid.*

²⁴³ Bantyshev, http://mndc.naiu.kiev.ua/Gurnal/14text/g14_15.htm.

²⁴⁴ *Ibid.*

acts of maritime piracy are registered in six regions: The coasts of Indonesia, Bangladesh, Nigeria, India, the Strait of Malacca and the Gulf of Aden. The Asia-Pacific region is particularly notable, where more than two-thirds of the world's piracy attacks occurred in the 1990s. Unfortunately, cases of pirate seizures of ship crews, whose members are citizens of Ukraine, also add to these statistics. What is worth only the capture and subsequent retention of the ship «Faina» with heavy weapons on board²⁴⁵.

New dangerous trends have emerged in this type of organized criminal business. IMB experts note a decrease in attacks on merchant ships and their cargo, a clear distribution of the goals of the attack: obtaining a ransom for the captured crew and cargo or seizing small vessels - tugs and barges. The number of attacks on tankers has increased by almost a quarter, and the likelihood of environmental disasters has also increased.

In view of the above, the efforts of the international community to counter crimes against the safety of maritime transport should be given as much attention as possible to ensure that they have the desired effect. A special feature of the legal regulation of interstate cooperation in the fight against piracy should be considered the absence of a special international treaty, which is unacceptable. The issues of combating piracy must be addressed in conjunction with other problems of the use of the high seas.

Currently, the legal bases for combating piracy are the Geneva Convention on the High Seas of 1958; SUA; and UNCLOS. That is, piracy is classified as the so-called «convention-based elements» of crimes provided for in the documents of the same name, obliging parties to introduce the relevant norms in their national criminal law and, accordingly, if they commit them, to pass sentences in view of the national law on

²⁴⁵ Blazhievskaya, 182.

criminal liability. According to these documents, piracy is any illegal act of violence, detention or robbery committed for personal purposes by the crew or passengers of a private vessel or aircraft and directed - on the high seas or in another place beyond jurisdiction of any of the States against another vessel or aircraft or against persons and property on board.

Within the framework of IMO, on 10 March 1988, the SUA was drafted and adopted, simultaneously and in connection with it the SUA Protocol was adopted. The preamble to the SUA states that such acts threaten the safety of people and property, seriously disrupting maritime communications and diminishing the faith of the peoples of travelling by sea.

According to Article 3, anyone who commits a crime if he or she illegally and intentionally:

- 1) seizes a ship or performs control of it by using force, threatening to use it, or other form of intimidation;
- 2) puts a device or substance on board the ship that may destroy the ship, cause damage to it, threaten or may threaten its safe navigation;
- 3) destroys marine navigation equipment, causes serious damage to it or creates serious obstacles to its operation, if this may threaten the safe navigation of the ship;

- 4) causes injury to any person or kills him or her regarding committing or trying to commit any of the specified crimes²⁴⁶.

Recent events have demonstrated the imperfection of the international legal mechanism for preventing and combating maritime piracy. One of the important issues that needs to be discussed in this context is the international legal regulation of criminal jurisdiction in relation to crimes committed at sea. The introduction of an effective jurisdiction regime, ensuring the inevitability of criminal punishment for such crimes, is a prerequisite for effective international cooperation in the fight against piracy, which is a challenge to global security.

According to the general rule set out in Article 27 of the UNCLOS, «the criminal jurisdiction of a coastal State should most often not be exercised on board a foreign ship passing through a territorial sea in order to arrest a person or conduct an investigation in connection with any crime committed on board a ship during its passage, except in the cases stipulated in the article under consideration»²⁴⁷. On the high seas, the principle of exclusive jurisdiction of the flag State applies, which was defined together with the principle of navigation freedom as the legal international custom and was inserted in the Geneva Convention on the High Seas of 1958 and in the UNCLOS. This principle has a number of exceptions, in particular, it concerns the fight against piracy. The Article 105 of the UNCLOS provides that on the high seas or in any other place beyond the territory of any country, each of them may seize a pirate ship or pirate aircraft or a ship or aircraft seized as a result of pirate actions and under the authority of pirates, arrest persons and seize property located on the ship or aircraft. The

²⁴⁶ Artsybasov I. N. / Lukashuk, I. N. / Ashavskiy, B. M. [et al.]: *Course of International Law*, Vol. 3, Moscow 1992, p. 56.

²⁴⁷ *Ibid.*

judicial institutions of the State that carried out this seizure may decide on the application of punishment. This rule legally established the traditional right of States to exercise universal criminal jurisdiction in cases of piracy as criminal acts of non-national origin²⁴⁸.

Piracy refers to those delicts whose legal qualification depends on the jurisdictional place of commission of the criminal act. Acts that are completely identical in nature are distinguished depending on whether they are committed within or beyond the jurisdiction of a State. «Accordingly, acts of armed robbery against ships committed within the maritime territory of a State are not legally piracy, and universal jurisdiction does not apply to them»²⁴⁹. Meanwhile, the legislative constructions of norms of the criminal codes of individual States, which provide for liability for piracy, do not take into account this feature. Thus, the Criminal Code of Russia classifies piracy as crimes against public safety (Article 227 of the Criminal Code of the Russian Federation). It is defined as an attack on a sea or river vessel with the aim of seizing someone else's property, committed with the use of violence or the threat of its use. This definition does not follow from the provisions of the Geneva Convention on the High Seas and the UNCLOS and, in particular, does not take into account that the said attack on a sea or river vessel committed, for example, in the internal waters of Russia, cannot be qualified as piracy under international law.

The UN General Assembly discusses «piracy and armed robbery of vessels in its Annual Resolutions on Oceans and the Law of the Sea. Having found out that acts of piracy and armed robbery at sea in the coastal waters of Somalia worsen the situation that is a danger to international peace and security in the region, the Security Council»,

²⁴⁸ Sereda, 622.

²⁴⁹ Khavronyuk, p. 28.

referring to Chapter VII of the UN Charter, adopted a number of important decisions, including those directly related to the problem of jurisdiction²⁵⁰. In view of the situation and the lack of possibilities of the Transitional Federal Government (TFG) to stop pirates or patrol and ensure the security of international maritime routes near the coast or in the territorial waters of Somalia, by Resolution 1846 (2008), adopted on December 2, 2008²⁵¹, the Security Council decided that within 12 months from the date of adoption of this resolution, States and organizations that interact with TFG in combating piracy and armed robberies at sea near the coast of Somalia may: «(a) come into territorial waters of Somalia to put an end to piracy and robbery at sea in accordance with how it is allowed to do so on the high seas in relation to pirates in following rules of international law; and (b) use within the territorial waters of Somalia, in accordance with how it is allowed to do so on the high seas in relation to acts of piracy following norms of international law, all necessary actions to combat piracy and armed robbery at sea (paragraph 10)»²⁵². At the same time, the Resolution is not considered as establishing the norms of customary international law.

There is no doubt that there is a need to develop a common approach to counteracting crimes at sea, their investigation and bringing those responsible to justice. In this regard, adoption of a multilateral international agreement that would regulate the issue of maritime criminal jurisdiction is of particular importance.

In compliance with the international agreements assumed, the Ukrainian Parliament included Article 446 «Piracy» (Section XX «Crimes against the peace, security of mankind and the international legal order») in the Ukrainian Criminal Code.

²⁵⁰ *Ibid.*

²⁵¹ Kubiak, p. 78.

²⁵² *Ibid.*

The Criminal Code of Ukraine is currently the only criminal code that distinguishes «international law and order» as an independent object of protection. Other criminal codes deal primarily with crimes against the peace and security of mankind, etc.

A comparison of the wording of the Geneva Convention on the High Seas and the UNCLOS and the Ukrainian criminal law prohibitions shows that, on the one hand, Article 446 of the Ukrainian Criminal Code expands the composition of piracy, since it also provides for river piracy along with sea piracy. On the other hand, Article 446 does not cover cases of air piracy. Article 278 of the Ukrainian Criminal Code may fill this gap by qualifying such behaviour as theft or seizure of railway rolling stock, air, sea or river vessel; or the same actions committed by prior agreement by a group of persons or combined with violence that is not dangerous to the life or health of the victim; or the same actions committed by an organized group or combined with violence dangerous to the life or health of the victim, or resulting in the death of people or other serious consequences (Parts 2 and 3 of the Article 278 of the Ukrainian Criminal Code).

It seems that the wording used in the construction of Article 446 of the Ukrainian Criminal Code is not perfect from the point of view of its content, as well as legislative technique, which has already been drawn to in the legal literature. So, it is necessary to more clearly separate piracy from another form of sea robbery - privateering, and therefore the phrase «hostile actions» should be replaced with “other criminal or terrorist actions”²⁵³.

Analysing this criminal law norm from the point of view of the means used by pirates to seize “another sea or river vessel”, it is worth remembering that criminals are

²⁵³ Bantyshev, http://mndc.naiu.kiev.ua/Gurnal/14text/g14_15.htm.

not limited exclusively to its sea or river type. For illegal purposes, aircraft may also be involved, such as airplanes, helicopters, hang gliders, airships and other aerial vehicles. However, there are opposing positions on this issue. Thus, some believe that “the seizure of a sea or river vessel with the subsequent use of violence against its crew or passengers, their robbery, etc., if such actions are committed using not a sea or river vessel, but, say, a helicopter or seaplane, can be qualified as the seizure of a sea or river vessel under Article 278 of the criminal code”²⁵⁴. It appears, however, that there are reasons to point out that such a view is unacceptable due to certain points. The current criminal law does not limit the means of seizure exclusively by sea or river vessels, since it notes the use of “armed or unarmed vessels”, which may well include air vessels. In this sense, the norm corresponds to international anti-piracy instruments, according to which “any illegal act of violence, detention or robbery committed for personal purposes by the crew or passengers of a private vessel or aircraft... is recognized as piracy”²⁵⁵. A ship or aircraft is considered pirated if their use is provided for by the persons who own them to perform any actions that are pirated. That is, in practice, various situations can occur that should receive a qualitatively different criminal law assessment. If aircraft are used to seize a sea or river vessel, use violence, robbery or other hostile actions against the crew or passengers of such a vessel, and all this is aimed at obtaining material remuneration, and these actions occur outside the jurisdiction of any State, they should be qualified under Article 446 of the Ukrainian Criminal Code as «piracy». Air piracy, carried out without such a qualifying feature as the purpose of committing these actions, directed not against

²⁵⁴ Melnyk, M. I. / Havronyuk, M. I. (ed.): *Scientific and Practical Commentary of the Criminal Code of Ukraine*, 5th ed., Kiev: Yurydychna dumka 2008, p. ?.

²⁵⁵ Lukashuk, I. I. / Naumov, M.: *International Criminal Law: Textbook*, Moscow: Spark publ. 1999, p. 179.

the safety of international navigation, but against the safety of movement and operation of transport, as already noted, is subject to the signs of a crime enshrined in Article 278 of the same Code.

It is clear that it is very difficult to reveal all the points that relate to international cooperation of States in countering the facts of piracy in the world's oceans and the problems that the international community faces in this process. Therefore, we consider it necessary to strengthen further comprehensive scientific research and develop practical recommendations, the ultimate goal of which would be to reduce the number of analyzed cases of armed robbery at sea.

CONCLUSION

The study concentrates on the international cooperation of States in the fight against piracy with the conclusion as follows.

First, according to Article 101 of the UNCLOS, piracy is an illegal act of violence (coercion) against ships or aircraft on the high seas or in areas beyond the zones of jurisdiction of any State. The law of the sea gives a warship of any State the possibility to counteract piracy on the high seas. If an act of piracy is committed within an area covered by the sovereignty of a State, for example in archipelago waters, then other States have no authority to take any measures against pirates as in straits used for international navigation, If they are located in the zone of territorial waters of States, the so-called right of innocent passage does not make it possible to fight piracy. The same right does not imply the possibility of assisting ships attacked by pirates and detaining pirates using weapons. A warship is only required to inform the authorities of the coastal State about the incident. Pirates take advantage of this circumstance, often changing the areas of their activities and coastal waters of States, often even hiding from persecution in foreign territorial waters.

Thus, maritime piracy is an international crime that has an economic basis and encroaches on free world trade, freedom of movement and fundamental human rights. Maritime piracy is not terrorism in its classical sense, and therefore global world anti-terrorist documents cannot serve as a legal basis for combating this phenomenon. The basis of anti-piracy activity should be developing by the international community of certain mechanisms taking into account the specifics of this phenomenon: as a separate convention (for example, proposed by Ukraine to the UN at the end of October 2010 Comprehensive Convention for Combating Piracy Acts at Sea) or amendments and

additions to existing documents (for example, the UN Convention on Combating Illegal Acts against the Safety of Maritime Navigation).

Second, piracy, a phenomenon that seemed to remain in the Middle Ages, reminded of itself in our time, has raised a number of significant legal problems in the field of preventing, countering, suppressing and punishing for this crime. The conditions of the XXth century, the recent development of international, in particular, law of the sea, require new approaches in the international legal regime to combat piracy. Obviously, there is a need to improve the relevant articles of the UNCLOS, both by introducing separate amendments and, possibly, by developing an additional comprehensive multilateral document that would complement the relevant convention-based regime.

Third, in October 1992 the International Maritime Bureau of the International Chamber of Commerce, with the support of the IMO in Malaysia, established a Regional Center on Piracy in Kuala Lumpur, which was later renamed as Piracy Reporting Center. It collects and analyzes information on a global scale, searches for missing vessels, seeks to punish criminals and return cargo to owners, performs round-the-clock notification of ships about pirate attacks, and organizes assistance to wrecked vessels. With the assistance of this regional center, commercial fleet vessels were equipped with a satellite location detection system «ShipLoc».

Fourth, the most significant initiatives in the fight against piracy come from Japan as a regional leader, which is the largest shipping State in the region and depends on sea use (the State of maritime communications). The United States undoubtedly retains its traditional influence on all security processes in the regions. In addition, significant patrol forces that can be used to combat piracy are part of the Naval Forces of Indonesia, Taiwan, Thailand and the Philippines.

Fifth, international legal norms on piracy originally emerged and developed as customary law. Pirates have long been classified by international law as *hostis humani generis* - enemies of all mankind, which gave the right to take a pirate's life and sink a ship. Such strict measures did not prevent piracy from surviving to this day and remaining a common crime. The special danger of modern piracy is that it is becoming a trade of international criminal organizations.

Sixth, the proposals to codify the norms on the crime of piracy and combat it arose from the beginning of the XIXth century, but were implemented much later - in the Convention on the High Seas of 1958 and in the UNCLOS. Piracy is "any illegal act of violence, delay or robbery committed for personal purposes by the crew or passengers of a private vessel or private aircraft and directed: on the high seas against any other vessel or aircraft". More than a thousand pirated acts are registered annually in the world, the losses from which reach 16 billion dollars a year. Some regions in the world are officially recognized as dangerous precisely because of pirates. For example, the sea route from Australia to Southeast Asia is patrolled by special units of boats to combat pirates. A similar service operates in the archipelago waters of the Philippines. The attacks on ships in the South China Sea are not uncommon. Piracy is also voluntary participation in the use of a pirate ship, as well as incitement, deliberate assistance in the implementation of actions qualified as piracy.

Seventh, the convention-based definition of piracy implies two conclusions that are extremely important for its qualification. First, piracy cannot be carried out by order of a public authority based on the powers granted by the State; piracy cannot be performed by military or other government vessels, except in cases where "the crew has mutinied and seized power over this vessel or aircraft." Piracy may only be committed for personal

purposes. Otherwise, the committed act should be qualified as privateering. Secondly, piracy cannot be carried out within the State territory. If such actions have taken place, they cannot be qualified under international law as piracy, but they can be qualified under national law. Actions committed by the crew or passengers, even on the high seas, but on board their own ship, cannot be classified as pirated - such actions do not go beyond the jurisdiction of the flag State. At the same time, acts committed within the exclusive economic zone should be classified as piracy, since it is not the territory of a coastal State.

Eighth, the fight against piracy is the responsibility of all States. It should be mentioned that on the high seas or in any other place which is not under the jurisdiction of a State, each State may seize a pirate ship, pirate plane or vessel captured by means of pirate actions and under the authority of pirates, arrest persons and seize property located on that ship or aircraft. The judicial institutions of the State that has committed this seizure may issue sentencing orders and determine what measures should be taken against such ships, aircraft or property, at the same time not violating the rights of bona fide third parties. The capture of a pirate ship can only be done by a warship.

Ninth, It should however be recognized that the development, approval and entry into force of a new multilateral document is an extremely long process, which, as experience shows, can take years, if not decades. Without rejecting this approach, consideration should be given to other steps that could be taken expeditiously, and in the near future give additional impetus to measures to combat piracy, as well as to strengthen the relevant international legal regime. First of all, we are talking about moving from a local to a global approach to combating piracy within the framework of the UN Security Council. The crime that occurs in different parts of the world, in its scale, threatens the international transport system, and therefore world trade and, accordingly, global

security, not to mention the immediate threat to seafarers and navigation, the destabilization of the internal political situation in many countries due to the impact of pirate activities in the waters off their coast, a close connection with international organized crime and terrorism, requires coordinated efforts and reaction from the entire world community. In this regard, it would be advisable to consider the definition of piracy by the UN Security Council as a threat to international peace and security. With the help of UN Security Council resolutions, the issues of cooperation between States in the prosecution of organizers and sponsors of pirate activities, as well as those individuals and organizations that provide shelter to persons guilty of the crime of piracy, could be more clearly resolved at this stage. The latter is particularly important, given that a significant number of pirate attacks occur off the coast of States that are unable to provide effective governance in the relevant territory. In addition, some measures that have proven effective in countering piracy off the coast of Somalia could be extended to other regions.

Tenth, without ensuring proper prosecution and punishment of those responsible for piracy, it is impossible to talk about an effective fight against this phenomenon. The key elements in this are compliance with international human rights standards, creating conditions for a fair trial, and developing a clear mechanism to prevent the avoidance of justice by both direct participants in pirate attacks and individuals and organizations that provide them with assistance, funding or protection. It is quite obvious that in the face of a sharp increase in the number of pirate attacks, international cooperation should consider additional mechanisms for applying the universal jurisdiction enshrined in the UNCLOS. Relevant initiatives should include measures to strengthen legal cooperation between States, create new international jurisdictional bodies and expand the competence of

existing ones. In this regard, the proposal made during the meetings of the Contact Group on combating piracy to establish an international anti-piracy tribunal deserves careful study. Such a tribunal could be established on the basis of a resolution of Security Council of UN and located in the region of greatest piracy activity.

Eleventh, the fight against piracy may only be effective when it is based on a clear international legal regime that provides effective tools for identifying the crime and those responsible for its organization and commission; preventing the receipt and use of benefits from this criminal activity; forceful counteraction to pirate activities, including, if necessary, in a preventive manner; proper prosecution and punishment. As the analysis shows, despite its thousand-year history, the international legal regime against piracy in many of its elements requires improvement, considering the new challenges that have arisen in this sphere in the XXIth century.

Twelfth, the international mutual work in the fight against maritime piracy continues to develop, and it is necessary to take into account that:

- modern maritime piracy is a world-wide in nature, and it has to be dealt with using common approach, all applicable forms, techniques and ways of cooperating of the States within and beyond the framework of various agencies;
- the main organizations that coordinate activities of combating illegal acts at sea are key international and regional agencies, primarily the IMO;
- the methods of modern work on ensuring maritime security are very large-scale. They involve the implementation of a set of measures at each stage of implementation, starting with the prevention of illegal actions and ending with the suppression of the pirates' actions.

Accordingly, it needs to be realized that successful counteraction and combating piracy in the current environment is not possible without coordination of activities of international community and development of regional cooperation. In addition, countering piracy is becoming very relevant because of its potential connection with international terrorism. As we can see, the most ancient problems of humanity now arise with new threats, despite all their exoticism, and turn out to be the most tenacious and potentially threatening.

RESUME

Thus, the problem of piracy and maritime terrorism today is undoubtedly one of the most pressing, which significantly affects shipping in certain areas of the oceans and even - the State of regional security. Successful counteraction and fight against such acts of violence in modern conditions is impossible without coordination of efforts of the international community and development of regional cooperation.

Therefore, only the joint efforts of States, can influence the State of affairs in this area. International cooperation in the fight against this category of crimes is based on the UNCLOS, as a general document governing the international use of maritime space, as well as special international treaties, the most important of which is the SUA.

The modern world in the XXIst century needs States to recognize the value of harmonizing legal and institutional efforts and to begin the process of developing and implementing an appropriate international safeguard mechanism, recognizing each individual threat to economic, trade and public security posed by maritime piracy.

Thus, it can be stated that the efforts made in the last decade by State carriers, their customers, as well as international organizations, have led to a significant reduction in the effectiveness of pirates and threats from them in general. The use of the whole complex helped to improve the situation measures aimed at improving the safety of navigation, and therefore it seems appropriate to continue to combine existing methods of combating piracy, to vary them depending on the specific situation in a given period of time.

Taking into account these aspects of this problem, among the most effective preventive forms of combating piracy, in our opinion, are:

- 1) development and adoption of an international agreement under the auspices of the UN to establish a system of patrol, escort and response for maritime safety;
- 2) on the basis of this agreement, the establishment of an interstate system of military patrol of the high seas, escort of ships in dangerous areas and prompt response to acts of piracy.

ACADEMIC SOURCES

A) PRIMARY SOURCES

1- Convention Based Regimes

Agreement for the Suppression of the Circulation of Obscene Publications.
https://en.wikipedia.org/wiki/Agreement_for_the_Suppression_of_the_Circulation_of_Obscene_Publications#:~:text=The%20Agreement%20for%20the%20Suppression,treaty%20has%2057%20state%20parties. (accessed on 25/01/2021).

Agreement on Interaction of Ministries of Internal Affairs of Independent States in the Field of Combating Crime of 1992, https://zakon.rada.gov.ua/laws/show/997_245#Text (accessed on 15/09/2020).

Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis («London Agreement»). This document, commonly known as the Charter of the Nürnberg Tribunal (or Nuremberg Tribunal) formed an integral part of the Agreement for the establishment of an international military tribunal(q.v.), which was signed in London on 8 August 1945. Source: The Charter and Judgment of the Nürnberg Tribunal: History and Analysis Appendix II. United Nations General Assembly - International Law Commission, New York, 1949 (A/CN.4/5, 3 March 1949), <https://www.refworld.org/docid/3ae6b39614.html> (accessed on 11/03/2021).

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in

accordance with article 27 (1), <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx> (accessed on 15/09/2020).

Convention for the Fight against Illegal Acts Directed against the Safety of Maritime Navigation, 1988, United Nations: Treaty Series, 1992, p. 249.

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others Approved by General Assembly resolution 317 (IV) of 2 December 1949 Entry into force: 25 July 1951, in accordance with article 24, <https://www.ohchr.org/en/professionalinterest/pages/trafficingpersons.aspx> (accessed on 12/11/2020).

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf. Adopted 10 March 1988; Entry into force 1 March 1992; 2005 Protocols: Adopted 14 October 2005; Entry into force 28 July 2010, <https://www.imo.org/en/About/Conventions/Pages/SUA-Treaties.aspx>
#:~:text=In%20March%201988%20a%20conference,committing%20unlawful%20acts%20against%20ships. (accessed on 19/02/2021).

Convention of the United Nations Organization on the Law of the Sea of 1982 (UNCLOS), http://www.un.org/ru/documents/decl_conv/conventions/pdf/lawsea.pdf (accessed on 15/06/2020).

Convention on the Discovery of the Sea of 1958, http://www.un.org/ru/documents/decl_conv/conventions/pdf/hsea.pdf (accessed on 15/06/2020).

Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 26 October 1979, and opened for signature at Vienna and New York on 3 March 1980,

<https://www.refworld.org/docid/3dd8fbec4.html#:~:text=Refworld%20%7C%20Convention%20on%20the%20Physical%20Protection%20of%20Nuclear%20Material&text=Adopted%20at%20Vienna%20on%2026, York%20on%203%20March%201980.>
(accessed on 18/02/2021).

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents 1973, annexed to General Assembly Resolution 3166 (XVIII) of 14 December 1973, entered into force on 20 February 1977, https://legal.un.org/ilc/texts/instruments/english/conventions/9_4_1973.pdf (accessed on 15/06/2020).

Convention on the Prevention and Punishment of the Crime of Genocide., approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948, entry into force: 12 January 1951, in accordance with article XIII, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf (accessed on 03/09/2020).

Convention on the Suppression of the Crime of Apartheid and Punishment for It of 1973, International Protection of Human Rights and Freedoms, Moscow: Yuridicheskaya Literatura 1990.

European Convention on the Transfer of Convicted Persons of 21/03/1983 - Treaty open for signature by the member States and the non-member States which have participated in its elaboration and for accession by other non-member States, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/112/signatures>

International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted and opened for signature and ratification by General Assembly resolution 44/34 of 4 December 1989. Entry into force: 20 October 2001, in accordance with article 19, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Mercenaries.aspx> (accessed on 11/03/2021).

International Convention Against the Taking of Hostages New York, 17 December 1979, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-5&chapter=18 (accessed on 16/06/2020).

International Convention for the Fight Against Counterfeiting of Monetary Signs of 20 April 1929, Collection of Existing Contracts, Agreements and Conventions Concluded by the USSR with Foreign States, Moscow 1933, p. 102.

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ABSTRACT

The paper considers the problem of the emergence and spread of maritime piracy in the modern world and ways to combat this negative phenomenon. The processes of actualization of maritime piracy in the modern period and its negative impact on the international legal order are studied.

The problem of formation and development of the international legal framework for combating piracy is studied, the practical organizational measures taken by the world community to combat this phenomenon are analyzed.

The analysis of the problems of maritime piracy as a threat to international security is analyzed, the international legal and organizational forms of cooperation in combating this crime and the measures taken by the world community to minimize and eliminate it are analyzed, and ways to solve the problem are proposed.

Attention is paid to the role of Ukraine in combating maritime piracy, as the state that suffers most from it. Conclusions were made on possible further actions of Ukraine to protect its own citizens from pirate attacks.

Key words: Maritime Piracy, Causes of Piracy, International Law, Naval Operation, Cooperation, International Offenses.

ÖZET

Makale, modern dünyada deniz haydutluğunun ortaya çıkması ve yayılması sorununu ve bu olumsuz fenomenle mücadele yollarını ele almaktadır. Bu çalışmada modern dönemde deniz haydutluğunun gerçekleşme süreçleri ve uluslararası hukuk düzenine olan olumsuz etkileri incelenmiştir.

Deniz haydutluğu ile mücadele için uluslararası yasal çerçevenin oluşturulması ve geliştirilmesi sorunu incelenmekte olup, dünya topluluğu tarafından bu fenomenle mücadele etmek için alınan pratik örgütsel önlemler analiz edilmektedir.

Uluslararası güvenliğe bir tehdit olarak deniz haydutluğundan doğan sorunlarının analizi incelenmektedir ayrıca, bu suçla mücadelede uluslararası yasal ve örgütsel iş birliği biçimleri ve dünya toplumunun bunu en aza indirmek ve ortadan kaldırmak için aldığı önlemler analiz edilmekte olup çözüm yolları incelenmektedir.

Deniz haydutluğundan en çok zarar gören devlet olarak Ukrayna'nın deniz haydutluğuyla mücadeledeki rolü dikkat çekmektedir. Bu çalışmada, Ukrayna'nın kendi vatandaşlarını deniz haydutluğu saldırılarından korumak için olası diğer eylemleri hakkında analizler yapılmıştır.

Anahtar Kelime: Deniz Haydutluğu, Deniz Haydutluğu Sebepleri, Uluslararası Hukuk, Deniz Harekatı, İş Birliği, Uluslararası Suçlar.