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Criminal law aspects of piracy at sea according to the UNCLOS with reference to the Croatian legal system[1]

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ABSTRACT

Piracy is traditionally one of the oldest forms of violation of international law and a global threat to maritime traffic. It is a serious international offense against which criminal protection is ensured in the domestic legal system, relying on the postulates of international maritime law, and in particular the Convention on the Law of the Sea. In this paper, the authors deal with the legal analysis of the incrimination of piracy at the international and national levels. In relation to the Republic of Croatia, the authors present recent regulations regarding this international criminal offense in the domestic legal system. This paper aims to point out the fundamental problems caused by the existing regulations regarding this international crime, especially when it comes to jurisdiction over piracy, universal jurisdiction, taking over criminal prosecution, etc.

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1 Introduction

Piracy is an ancient phenomenon and its history dates back hundreds of years. It poses a threat to maritime safety. According to the World Trade Organization, about 90% of world trade takes place by ship. The law of piracy previously existed in the form of customary law and practice. It was not until the 20th century that its codification began. The recent relevant legal source at the supranational level governing piracy is the United Nations Convention on the Law of the Sea ("UNCLOS"). It finds its foothold in the regulation of piracy in the Harvard Draft Pirate Convention of 1932 (Harvard Research in International Law: 1932, 739) and the 1958 High Seas Convention.

Etymologically speaking, the word piracy, comes from the Greek word peirates – pirate, peria – attack, and means a pirate who acts in his own interest as opposed to a buccaneer (corsair) who does so with the authority of the state authorities (Anić, 1999: 994). Piracy is, therefore, a criminal phenomenon that, changing only its forms, has been present on the world's seas and oceans since ancient times. Unlike maritime piracy, corsairing (Horvatić, 2002: 97) is violence at sea under the authority of one state. Corsairs or their ships were persons and their private ships who were authorized on the basis of a sovereign's power to take part in armed actions against other (enemy) ships. In return, the loot won would be divided equally between the state that authorized them and the corsairs ship. Thus, pirates acted in their own interests, and corsairs were in the service of a particular state or government. In fact, there was a difference between official kidnapping at sea approved and controlled by the state – corsairing, and unauthorized acts of violence and robbery – piracy.

Under international sea law, absolute piracy differs from relative piracy, that is, piracy from armed robbery. This distinction is made with respect to the place of commission of this act. If piracy occurs on the high seas or in a place that does not fall under the jurisdiction of any state, we are talking about absolute piracy, while relative piracy

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occurs in the territorial sea or inland waters that are subject to the criminal law of the state (Grabovac, 2012: 462).

The problem of piracy is present in many parts of the world, but the first association with piracy is certainly the sea around Somalia in an area called the Horn of Africa, especially in the Gulf of Aden. Somali pirates have expanded their operations to the areas of Kenya, Tanzania, the Seychelles, Madagascar, Mozambique, the Indian Ocean and the Arabian Sea, the west coast of India and the western Maldives. In addition to these areas, the areas of Indonesia and Malaysia, the west coast of Africa, especially the Gulf of Guinea, and the area of the Niger Delta are also dangerous. Today, however, piracy activities are emphasized in maritime areas with intensive maritime traffic, which jeopardizes the safety of navigation by these activities. The impulses of such attacks can be quite different. Thus, for example, they can be classified into political, economic and opiate trafficking. Areas exposed to piracy attacks today can be geographically identified in several major dangerous navigable areas. In them, ships can expect pirate attacks. These areas are called Hot Spots (Pospišil, 2012: 66).

2 Substantive legal content of piracy according to relevant international sources

The definition of piracy has baffled the academic community since the begining of efforts to codify it. Harvard researchers drafting the 1932 Pirate Convention tried to define piracy by differentiating its definition according to international law and national laws. This distinction was based on the place where the act was committed, given that international piracy was committed outside the territorial jurisdiction of the nation states, while in national law piracy was committed within the territorial jurisdiction of the state. They further pointed out that under domestic law, piracy was a crime, but under international law it was not. Their reasoning was based on the fact that international law differed from national law because it did not apply to physical persons as perpetrators of criminal offenses under the jurisdiction of their State. Thus, maritime piracy was not envisaged as a criminal offense under international law, but only as a special basis for state jurisdiction (Rubin, 2007: 229-245).

The definition of piracy in UNCLOS is inspired by the 1932 Harvard Draft and the 1958 Convention on the High Seas. UNCLOS is therefore a fundamental international source dealing with the issue of piracy and its suppression and has been ratified by 167 countries. The Republic of Croatia, which has ratified UNCLOS by succession and accession.

The substantive content of piracy from UNCLOS includes several illegal activities (Art. 101 UNCLOS):

(a) any unlawful act of violence or detention or any robbery, carried out for personal purposes by the crew or passengers of a private ship or private aircraft and directed at:
   i) on the high seas against another ship or aircraft or against persons or goods on board,
   ii) against a ship or aircraft, person or property in a place which does not fall under the jurisdiction of any State;
(b) any act of voluntary participation in the use of a ship or aircraft, if the perpetrator is aware of the facts which give that ship or aircraft the significance of a pirate ship or aircraft;
(c) any act the purpose of which is to encourage or intentionally facilitate an act described in subparagraphs (a) or (b).

Thus, the key elements of piracy are that it is an illegal act of violence or detention or robbery, that it is done for private purposes, that takes place on the high seas and that it involves two ships. The qualification of piracy as an illegal act is important given that an act of violence or detention may be lawful under the applicable law of the flag State either on the alleged pirate ship or on the alleged victim ship, and cannot then be defined as pirated. A hypothetical example would be in the case where two yachts meet at sea and a person from one yacht (state flag A) approaches another yacht and asks for some water. The commander of yacht B (state flag B) initially calls that person on board, but then threatens him with a knife. If person from yacht A reacts with force in self-defense against person B, violence has occurred. However, this act of violence cannot ultimately be considered an unlawful act of violence because it was lawful in self-defense. In such circumstances, this act of violence would not necessarily constitute an act of piracy because it was not illegal. This part of the first element suggests that a pirate act does not necessarily involve violence. The term violence is broad enough to encompass any unlawful act of force, and therefore does not have to be of a certain severity or result in a certain level of bodily injury or harm. The second part of this requirement consists in the existence of detention and / or robbery. For example, in a situation where the crew does not resist and the pirates do not resort to physical violence, but the crew is nevertheless kept locked in the cabin of the ship, this first element of Article 101 of UNCLOS is fulfilled. Similarly, if there is no violence or detention, but the pirates simply board and remove items from the vessel (i.e., robbery as an act of conduct), the requirement for the first element is also met.

Regarding the commission of piracy for personal purposes, the question of *animus furandi* acts arose. In other words, there were controversies over the question of whether piracy precludes acts committed under state auspices or requires an element of greed, thus excluding politically motivated acts (Paige, 2013: 134; Honniball, 2015; Seshan, 2008: 341; Chalk, Smallman, Burger: 2009). The International Law Commission has made it clear that *animus furandi* is not necessary, because piracy can be committed out of hatred or revenge, and not just for private gain (International Law Commission, 1957). Moreover,

according to the UNCLOS definition of piracy, an act of piracy must be committed for private purposes. Thus, this element points to a lack of argument about the state's authority to commit the offense. On the other hand, some researchers argue that *animus furandi* as opposed to a political motive is an essential element of the act of piracy (Moriss, 2001: 337; Kontorovich, 2004: 183). According to this argument, if there is greed then it would suggest that the act was committed out of selfish motives. In that case, considering *mens rea* would help determine whether or not the act is politically motivated. Therefore, failure to consider greed would result in the disqualification of acts committed for political or ideological reasons to be considered piracy (Sterio, 2017). There are two views on the question of what constitute private goals. The most widely accepted view is that the term "private goals" means all goals that are not sanctioned or ordered by the state. If that act was not ordered by the state for a sovereign purpose, it is considered that the act is for private purposes. Thus, the simple theft or seizure of a ransom ship by a rebel or a political opposition group to, for example, put pressure on a particular state to take a particular course of action has private purposes and is therefore considered an act of piracy. According to this approach, there can only be public and private goals; there are no non-state, political goals that are not at the same time private goals. The minority position defines private goals more narrowly as primarily motivated by financial gain. According to this view, individuals or members of a non-governmental organization cannot commit piracy if their actions are politically motivated (e.g., environmental protest or overthrow of the government) (Maritime Crime, 2020: 117).

The second element of the UNCLOS definition of piracy requires the commission of a pirate offense on the high seas, as the act of piracy is closely linked to the concept of universal jurisdiction (Munivrana, 2006: 189-235). Interestingly, both the adjacent zone and the exclusive economic zone are considered to be the high seas in relation to the place of piracy under Articles 33 and 58 of UNCLOS (Paige, 2013: 134). However, in relation to the high seas as a place of crime, some argue that this requirement disqualifies many cases of maritime violence from the scope of the definition, especially those under state jurisdiction, such as acts of piracy occurring in the territorial seas of Somalia. The international community could not carry out anti-piracy operations off the Somali coast, within the territorial sea, unless the Somali interim federal government agreed to such operations (Treves, 2009: 399-414). For this reason, some researchers have argued that the requirement for piracy on the high seas serves as a deterrent to implementation strategies because anti-piracy actions cannot be launched within a country's territorial sea without proper permits (Bento, 2011: 399; Garmon, 2002: 258). However, from the point of view of international law, the requirement for the existence of offenses on the high seas is sine que non, as it coincides with the concept of sovereign equality and territorial integrity or political independence of states as enshrined in the United Nations Charter (Mazyar, 2020). In relation to the concept of the high seas, in accordance with the Convention on the High Seas, the high seas meant all parts of the sea that do not belong to the territorial sea or internal sea waters of a state. However, this definition is now completely obsolete, so UNCLOS under the high seas means that all parts of the sea "that are not included in the economic zone, territorial sea, or internal sea waters of a state, or in the archipelago waters of an archipelago state." Therefore, the question arose as to whether acts of violence and robbery committed in the economic zone were considered acts of piracy. However, Article 58 (1) of the UNCLOS explicitly states that in the economic zone all States enjoy the right to freedom of navigation, overflight and installation of cables and other lawful uses of the sea in connection therewith, and therefore illegal acts violence and robbery committed in the economic belt (Pospišil, 2012: 61).

Furthermore, a pirate attack must involve two ships. This element of the crime of piracy requires that two vessels be involved: a pirate and a victim. In situations involving only one vessel, for example when passengers or crew within a vessel illegally take control of that vessel, the conduct shall not be considered a piracy act under Article 101 of UNCLOS. However, such conduct is likely to be a criminal offense under the provisions of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation ("the SUA Convention") and its protocols. However, the SUA Convention and its protocols are binding only on those States Parties to them. At the same time, it is important to be very clear about whether any particular act in such a situation can be defined as piracy in international law, because, *inter alia*, piracy is under universal jurisdiction as part of the customary international law of all states. However, most offenses are subject only to prosecution or extradition and only between those states that have ratified the relevant treaties (Maritime crime, 2020: 118).

Acts of piracy committed by a warship or a state ship or a state aircraft whose crew has rebelled and taken control of the ship or aircraft are equated with acts committed by a private ship or aircraft. Furthermore, a ship or aircraft is considered to be pirated if the persons in whose power it actually is intended to use it to commit one of the acts of piracy. The same applies if a ship or aircraft has been used to commit those acts for as long as it is in the power of the persons guilty of that act. Also, a ship or aircraft may retain its nationality even though it has become a pirate ship or aircraft as determined by each nation state in its legal regulations. Although at first sight the requirement for the existence of two ships for the existence of piracy does not seem justified, the general rule set out in Article 92 of UNCLOS that a ship on the high seas is under the exclusive jurisdiction of the flag State should be borne in mind. Consequently, any act committed against a vessel sailing on the high seas should be qualified in accordance with domestic law and not international law (Wallner, Kokoszkiewicz, 2019: 32).

Furthermore, piracy includes an act of voluntary participation that requires the participation of pirates arrested on a pirate ship. In this form of committing piracy, the knowledge of the facts that designate that ship or aircraft as a pirate ship or aircraft is disputed. Moreover, UNCLOS does not provide a specific definition of voluntary participation in the context of piracy, nor does it detail what acts constitute the use of a ship. Therefore, the analysis of whether a person had knowledge of the facts that make a ship a pirate ship will largely depend on the way in which the relevant national criminal law defines the level of criminal responsibility that is most similar to knowledge. In our legal system, knowledge is analogous to direct intent, that is, the highest degree of awareness of the existence of an act. In addition, there are different ways of proving voluntary participation in the work of a pirate ship. The element that the accused voluntarily participated in the pirate ship operation may include evidence that the suspect possessed knowledge that he was used to commit the pirate act and that he remains under the supervision of the perpetrators or that the person with dominant control intends to use it to commit the pirate act. In some circumstances, it will not be justified to prosecute all persons found on a pirate ship on the grounds that they are all pirates. However, any act of participation by each of the pirates, whether by shooting or holding a gun, throwing out goods, maneuvering a ship, taking care of supplies, or binoculars on guard, would be sufficient. Similarly, if a person voluntarily participated in a ship operation but without knowing that the ship was or intended to be used for the purpose of committing piracy, that person need not be held liable. This is because if a person voluntarily participated in a ship operation with the intent to commit another illegal act, such as arms smuggling, narcotics or human trafficking, then he or she could not be held accountable for the crime of piracy (Maritime crime, 2020: 119-120).

The third form of piracy under UNCLOS relates to inciting or facilitating an actual pirate attack and / or encouraging or enabling a pirate ship to go to sea with the intention of seeking an opportunity to commit piracy. This form of offense differs significantly from the offense referred to in Article 101 (a) and (b) of UNCLOS in that the person committing the offense referred to in Article 101 (c) does not necessarily have to be on a pirate ship on the high seas, rather, it can encourage and / or facilitate the process of pulling a pirate ship and pirate out to sea without actually going out to sea on its own. In that case, the question of universal jurisdiction over such a participant arises. This means that an authorized vessel of State A may not use universal jurisdiction to enter the territory or territorial sea of State B without its consent for the purpose of arresting the suspect. The only possibility is an extradition request sent by State A to State B in order to bring the suspect to State A and try him there. At the same time, this does not mean that universal jurisdiction has no role in relation to the offense under Article 101 (c) of UNCLOS in which a suspect cannot be prosecuted in the territorial seas of States. In this situation, universal jurisdiction is still tied to the crime itself. This means that if a suspect comes into the hands of State A through another proceeding, for example if that suspect was arrested while attempting to enter State A or was arrested by State C on the basis of a warrant issued by State A and extradited to that State, State A can still prosecute suspected of an offense under Article 101 (c) of UNCLOS. Consequently, where universal jurisdiction is available, it allows any state to prosecute the alleged perpetrator without requiring a specific jurisdiction (based on territory, citizenship, etc.). However, it should also be noted that universal jurisdiction does not allow one state to simply disregard the territorial jurisdiction of other states for the purpose of arresting a suspect who is physically within the territorial jurisdiction of another state at the relevant time (Maritime crime, 2020: 121).One unresolved issue regarding piracy is the attempt. Will the perpetrators be punished for attempting this crime, for example if the pirates try to board a private ship without authorization but are prevented from doing so by bad weather.

2.1 Universal jurisdiction over piracy and some procedural issues

The Harvard draft that led to the enactment of UNCLOS did not consider piracy an international crime. The compilers of the Harvard draft clarified that the definition of piracy that they developed should be treated only as the foundation of universal jurisdiction over pirates and does not mean making piracy an international crime. They stressed that the purpose of the code is "... not to unify different national laws on piracy, nor to provide uniform measures for punishing pirates, but to define this extraordinary basis of state jurisdiction ..." (Harvard Research in International Law, 1932). Thus, all states have jurisdiction over pirates, which they may or may not use to arrest and prosecute pirates. It is argued that this universal jurisdiction differs from the usual universal jurisdiction for war crimes and crimes against humanity based on heinous crimes (Oliver, 1962: 805-845; Paige, 2013). In fact, universal jurisdiction over piracy simply provides jurisdiction to states in areas outside their territorial jurisdiction. However, the nature of the act has nothing to do with the exercise of universal jurisdiction as in the case of war crimes and crimes against humanity. In other words, piracy does not fall into the category of international criminal law because the jurisdiction and the basis of that jurisdiction are different (Paige, 2013).

Thus, some argue that the definition of piracy under UNCLOS and any other convention dealing with war crimes or crimes against humanity does not provide any description of the crime of piracy (Mazyar, 2020). For example, if we take into account the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, from Art. 1. it is evident that genocide is

a crime of international law for which states undertake to prevent and punish. Furthermore, Article 2 defines genocide, and Article 4 states that whoever is responsible for the act of genocide will be punished. On the other hand, if we take into account Art. 101 of UNCLOS, it is evident that it only defines what constitutes an act of piracy. However, it is not stated that such acts are punishable, nor what to do after the arrest of a pirate. Moreover, Article 105 of UNCLOS empowers the courts of the State of capture to decide on the sentence to be imposed and to determine what to do with the captured ship and the property on board. The reason for this goes back to the authors of the draft Harvard Convention on which the Convention of the High Seas and UNCLOS are based, which did not envisage piracy as an international crime. In fact, piracy was used as a basis for extending the jurisdiction of states outside their territory, in turn, allowing for apprehension and prosecution. The actual prosecution was to be conducted under the domestic laws of the states arresting such suspects (Geiss, Petrig, 2011). Consequently, the United Nations General Assembly called on Member States to take "... appropriate steps under their national law to facilitate the apprehension and prosecution of those alleged to have committed piracy ...". Member States are further invited to adopt appropriate national legislation to assist "... law enforcement authorities in the prevention, reporting and investigation of incidents, by bringing alleged perpetrators to justice under international law ..." (General Assembly resolution 64/71, 2010). Some states have developed and adopted appropriate national legislation under Article 101 of UNCLOS. For example, the national legislation of the United States of America not only prescribes piracy as a criminal offense, but also punishes piracy with life imprisonment (Samuel, Menefee, 1990: 152-160; Rubin, 1990: 129-138; Kontorovich, 2009: 149-204; Kimball, 2010: 615-622). On the other hand, many states to date do not criminalize piracy in their national laws. For example, the Indian domestic criminal justice regime does not define maritime piracy.

Analyzing the provisions of UNCLOS, we can say that the problem in the jurisdiction, ie taking over the prosecution, lies in the extensive provision that stipulates that any state may on the high seas or in any other place that does not fall under the jurisdiction of any state and seize a pirate ship or aircraft or a ship or aircraft hijacked by piracy and in the power of pirates and to arrest persons and seize property on them. The courts of the executing State may decide on the penalties to be imposed and on the taking of measures against ships, aircraft or property, without prejudice to the rights of third parties acting in good faith. While on the one hand this provision is an exception to the rule that on the high seas each state exercises power only over its citizens and the ships of its flag, but only punishment is done on the basis of the internal law of the state concerned, on the other hand whereas UNCLOS does not impose an obligation on states to prosecute or extradite perpetrators of pirated crimes. Thus, certain authors point out that in order to effectively combat piracy, it is necessary to revise the provisions of UNCLOS, which leave the possibility and not the obligation to punish piracy (Grabovac, 2012: 466). It is even suggested that the fulfillment of this obligation be ensured by the establishment of an *ad hoc* tribunal by the United Nations to decide on punishment and compensation (Dubner, Greene, 2010: 452, 463). On the other hand, there is an interpretation that the provision of Art. 100 of UNCLOS, which stipulates that "all States shall cooperate as much as possible in combating piracy on the high seas…" is understood as an obligation to cooperate and reflects the importance of anti-piracy activities and coordination for international cooperation (Maritime crime, 2020: 114).

Another criticized provision states that seizures for piracy cannot be carried out by merchant ships, but only by warships or military aircraft, or other ships or aircraft bearing external insignia that clearly indicate that they are in government service and authorized to do so. States are exceptionally allowed to intervene and inspect the high seas and foreign ships, if piracy as defined by international law is suspected. This provision has also been criticized, especially given that many landlocked countries do not have warships, but whose territorial waters are monitored by the navies and coastguards of most other countries and very rarely leave them, so it happens that piracy remain unprocessed. In addition, only a few countries in the world have navies that sail all seas and oceans, but not all of them engage in combating piracy in all parts of the high seas because they do not consider it their legal obligation. On the other hand, if a State seizes a ship or aircraft on suspicion of having committed an act of piracy and the seizure turns out to have been carried out without valid reasons, the State seizing the ship or aircraft shall be liable to the State to which the ship or aircraft belongs. In the same way, the obligation to prosecute piracy by the state that seized the pirate ship or aircraft should be prescribed, because it is the UNCLOS provision on the possibility and not the obligation to prosecute pirates that could mean that states do not always have to sanction piracy. States could tactically for economic or political reasons or for fear of terrorist attacks, thus avoiding or delaying the imposition of appropriate penalties (Grabovac, 2012: 465).

Another contentious issue in prosecuting piracy is the issue of extradition. Pirates as perpetrators of crimes appear as citizens of different countries of the world. The specificity in relation to this criminal offense is that it is not aimed at violating the interests of any state in particular, but towards all ships regardless of their nationality. The situation is complicated if we take into account that nowadays the owner of a ship is usually a citizen of one country, that the ship flies the flag of another country, that the shipowner is from a third country, that the crew can be from different countries, that cargo owners are also citizens of different states, etc. Thus, it is obvious that the interests of different states are represented on the ship itself, which is why no state has a special and direct

interest in the arrest and trial of pirates (Sterio, 2010: 1451). If a State that has an obligation to seize a pirate ship would arrest pirates, then the obligation to extradite would exist only in the case of a bilateral agreement between the state that seized the pirate ship and the state of which the pirates are nationals. Since the extradition of arrested pirates is not covered by UNCLOS, there have been some bilateral agreements between states on the prosecution of arrested pirates. Thus, in 2008 and 2009, Kenya signed a Memorandum of Understanding with the United States and the United Kingdom (Gathii, 2010: 101-140; Hodgkinson, 2011: 303; Scharf, Taylor, 2017: 77-89), according to which Kenya will receive and prosecute Somali pirates captured by both countries. The Republic of Seychelles concluded a similar agreement with the European Union in 2009 to prosecute pirates arrested in the Seychelles' exclusive economic zone, territorial sea, archipelago waters and inland waters. A similar agreement on the prosecution of pirates was concluded by Mauritius and the European Union in 2011. These agreements were created as a result of compliance with Western human rights standards, with the European Union taking care that extradition or prosecution agreements are not implemented with countries that provide for the death penalty as a criminal sanction.

On the other hand, if taking over the prosecution were the obligation of the state of the attacked shipowner, there would be certain difficulties in exercising the criminal jurisdiction for piracy. This is because many ships sail under the flags of convenience, so those states often refuse to prosecute arrested pirates. In addition, there is the fact that sailors who are sometimes even attacked refuse to testify to avoid traveling to countries like the Seychelles or Mauritius to participate in the proceedings. Furthermore, if the prosecution were taken over by the State of which the ship is the actual owner of the ship, then there would be problems in prosecuting this criminal offense. This is because the actual owner of the ship does not have to be the injured party at all because he can rent the boat to a third party and not be present on the ship when the crime is committed. This would mean that the State of which the person who chartered the ship on which the piracy was committed would be competent to try pirates.

Given that the territory of Somalia is most exposed to piracy, the UN Security Council has issued several resolutions since 2008 to combat piracy in this dangerous area (Ćorić, 2012: 54). The reason for this is the somewhat deficient UNCLOS provisions according to which only warships and state ships and military aircraft have the authority to seize pirate ships, and which authorize these ships to seize pirate ships but only on the high seas. Thus, by UN Security Council Resolution 1816 of 2 June 2008, warships of all flags were temporarily authorized with the consent of the Transitional Federal Government of Somalia to enter its territorial sea and there to combat attacks and armed robberies of merchant ships. In October 2008, by Resolution 1838, the Security Council called on Member States to take an active part in the fight on the high seas and in the territory of Somalia, especially those with warships and military aircraft. Emphasizing the importance of sanctioning arrested pirates, Resolution 1846 of 20 November 2008 emphasizes the obligation of States parties to the SUA Convention to effectively prosecute perpetrators or alleged perpetrators. A series of resolutions extend the authorization of military forces and emphasize the importance of effective prosecution of pirates (Resolution 2500, 2019).

Following the example of activities aimed at the territory of Somalia, there are certain proposals to extend the right to prosecute in the territorial sea of a third country, ie after a pirate ship enters the territorial sea of its own or third country (Doby, 2010: 573-574).

3 Criminal aspect of piracy in the legal system of the Republic of Croatia

3.1 Preliminary review of some comparative legislation

Implementation of piracy from Art. 101 of UNCLOS into national legislations is not a harmonized and uniform procedure which is evident from the solutions of some legislative systems. In addition, the incorporation of piracy offenses into national law could require some ancillary legislative reform. For example, legislation that specifically extends the jurisdiction of the police and courts to the high seas or to international waters in general if there is no exclusive jurisdiction of the economic zone capable of covering piracy offenses. Also, for the purpose of incorporating piracy into national criminal law, it may be necessary to define certain terms such as the term pirate ship.

As examples, we will analyze the legal system of Kenya, Australia and Canada, which in different ways prescribe piracy as a criminal offense, and the legal system of neighboring Bosnia and Herzegovina and Italy.

The first example is Kenya, whose Criminal Code, before being amended by the Merchant Shipping Act 2009, criminalized piracy as the act of any person who commits a pirate act jure gentium in territorial waters or on the high seas. The revision of this provision led to the adoption of a standard method according to which piracy is defined by the same terms as in Article 101 of UNCLOS (Art 369 (1) Kenyan Merchant Shipping Act). Furthermore, in Art. 371 of the Kenyan Merchant Shipping Act states that any person who commits any act of piracy and any person who in territorial waters commits any act of armed robbery against ships, shall be punished by life imprisonment.

The inclusion of piracy-related offenses in Australian criminal law shows a number of features. First, acts that are fully embedded in the definition of "piracy" in Article 10 of UNCLOS are divided into two separate offenses: piracy defined in terms that reflect, but not exactly, the same

as in Article 101 of UNCLOS, and a separate criminal offense of operating a pirate ship. Another aspect of this approach to the inclusion of piracy offenses in national law, which can also be found in Canadian law, is to define the offense of piracy to include piracy in national waters under the jurisdiction of that state. In this case, the offense in national waters is described as applicable in the Australian "coastal sea" which is defined as: (a) the territorial sea of Australia; and (b) the land on the land side of the Australian Territorial Sea and not within the borders of a State or territory; and includes the airspace above these seas. In relation to this definition, as a place of committing piracy, the concept of the coastal sea of Australia is implemented in the definition of piracy. In addition, for piracy as prescribed in Art. 101 of UNCLOS prescribes life imprisonment, while voluntary participation in the work of a pirate ship is punishable by up to 15 years in prison (Art 51, 52 Crimes Act (1914)).

The Canadian approach set out in section 74 of the Criminal Code provides that the crime of piracy may be committed both within and outside Canadian territorial jurisdiction. This is one way to make piracy-like acts committed in Canadian national waters a criminal offense without the need to create a specific criminal offense for national waters. This formulation is not contrary to international law, as it is a priority for the coastal state to define and prohibit piracy in its national waters (Art 74 (1), 75 Criminal Code (1985)).

Furthermore, due to natural conditions, the sea of Bosnia and Herzegovina belongs to the closed seas. The 1968 agreement between the former SFRY and Italy left Bosnia and Herzegovina without access to the high seas. Although the port of Neum has satisfactory natural conditions, it is not considered the best option for the development of an industrial port. The reason for this can be seen in the construction of tourist facilities, poor transport connections, closed sea and poor circulation of sea currents (Vidan et.al.). In addition, Bosnia and Herzegovina has disputed the construction of the current Peljesac Bridge, which would prevent it from accessing the high seas, which would mean that the Bosnian ship could not find itself in the situation of becoming a victim ship or prosecuting pirates. It should be emphasized that Bosnia and Herzegovina does not even have a navy that could seize a pirate ship if it is on the high seas. However, for the purpose of implementing UNCLOS, there is incrimination within Bosnia and Herzegovina criminal law that provides criminal protection against piracy. Thus in Chapter XVII. The Criminal Code of Bosnia and Herzegovina places the criminal offense of piracy (piracy) in criminal offenses against humanity and values protected by international law. According to the CC Bosnia and Herzegovina, the criminal offense of piracy is committed by a crew member or a passenger on a ship or aircraft, other than a military and public ship or aircraft, who intends to obtain property or non-property gain or cause damage to others, on the high seas or in the territory which is not under the authority of any State commits unlawful violence or any other coercion against another ship or aircraft or against persons or things on board. This basic form of criminal offense is punishable by imprisonment from one to ten years. Considering the perpetrator, we can say that this is the so-called a special offense, delictum proprium because it can only be committed by a crew member or a passenger. The second form of the offense exists if the acts referred to in paragraph 1 resulted in the death of one or more persons, the destruction of a ship or aircraft, or other great destruction, with a penalty of imprisonment of at least five years. The most serious form exists if, in committing this offense, the perpetrator intentionally killed one or more persons, for whom a prison sentence of at least ten years or a long-term prison sentence is prescribed (Art 196 Criminal Code).

Finally, analyzing the Italian legal system, we see that piracy is regulated in the Code of Navigation (*Codice della navigazione*) as a tort against the ownership of a ship, aircraft or cargo, punishable by the master or officer of a national or foreign ship who commits acts of hijacking against a domestic or foreign of a ship or cargo or, for the purpose of robbery, commits violence against a person on board a domestic or foreign ship, with a prison sentence of ten to twenty years (Art. 1135 italian Code of Navigation).

3.2 Piracy in the legal system of the Republic of Croatia

Piracy in the form of a criminal offense in the Republic of Croatia was evaluated, given that the adoption of the new Criminal Code (hereinafter: CC/11) abolished it completely. Piracy as a criminal offense was prescribed by the previous Criminal Code (hereinafter: CC / 97) in Art. 180. as sea and air banditry. The act was regulated as a delictum proprium consisting of a crew member of a ship or aircraft or a passenger on a ship or aircraft other than a public ship or aircraft, who, in order to obtain any benefit for himself or others, violence or any other coercion against another ship or aircraft, persons or things on board shall not fall under the authority of any State. A prison sentence of at least one year was prescribed. In the case of committing an act with the intent to kill one or more persons, the perpetrator was sentenced to at least ten years in prison or long-term imprisonment. The third form provided for the death of one or more persons, or the destruction of a ship or aircraft, or the causing of other large-scale property damage by the acts of this criminal offense, for which the form was prescribed imprisonment for at least five years. The new or valid CC/11 abolished this incrimination, but certain protection against piracy is provided by the Law on Security Protection of Ships and Ports (hereinafter. LSPSP) in such a way as to ensure the embarkation of armed escorts on ships suspected of being pirated, but no sanctions are prescribed to punish pirate ships, or the obligation to prosecute piracy ". Thus, the LSPSP prescribes that the security protection of ships flying the flag of Croatian

statehood is ensured by assessing the risk of piracy and obtaining a decision from the Ministry of Maritime Affairs, Transport and Infrastructure to embark armed escorts on ships sailing in high seas. risks of pirate attacks. In addition to risk assessment, the company is required to define and implement measures to protect against piracy and armed robbery according to the risk assessment and recommendations of the International Maritime Organization; develop and implement procedures in the ship security plan for protection against piracy and armed robbery; conduct exercises to train the crew to carry out these measures; cooperate with international protection forces in high-risk areas and report to the Ministry on any pirate attack on a ship and armed robbery (Art 34 LSPSP).

4 Conclusion

Despite writers who have challenged the character of piracy as a criminal offense, piracy is a serious crime with an international character. It includes several illegal acts that in most national criminal laws we find as general criminal offenses against life and limb, against property, etc. The specificity of this offense is reflected in the place of its commission, more precisely on the high seas or in a place not under the jurisdiction of any state. In this direction, there are efforts to extend universal jurisdiction to the territorial seas of the countries where pirates operate, following the example of Somalia. This is due to the fact that according to relevant international sources, there is no obligation of any state to prosecute piracy, and many piracy acts remain unprocessed, which ultimately leads to legal uncertainty. In relation to the Republic of Croatia, piracy as a criminal offense is no longer part of Croatian criminal law, but the blanket regulation – the Law on Security Protection of Seagoing Ships and Ports – ensures the protection of Croatian state ships through measures provided by this law.

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