

Maritime Piracy in the International and in the Hellenic Legal Order

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Abstract

Maritime security is a section with many dimensions which occupied the mankind for centuries, something that is confirmed and by historical information. The main reason is the fact that older as also today the majority of the global transportations are taking place via the sea. The main preference reason for seaways is the lower cost compared with other modes of products and goods transport. One of the most important aspects of maritime security is maritime piracy. Maritime piracy after two centuries of continuous contraction outlines in recent years a worrying increase in various parts of the world, increase which has led to a close cooperation between international organizations, bodies and States in order to face this phenomenon. This cooperation is manifested in a legal level with the formation and implementation of specific law rules, but also in an operational level in order to be implemented the legal texts and in the same time to be ensured the regular flow of goods and services.

Keywords: maritime security, maritime piracy, international law, Hellenic legal order, United Nations Convention on Law of the Sea (UNCLOS)

1. Introduction

Maritime piracy is not a historical memory that comes to people's daily life through films (Note 1). But is a fact, a phenomenon which is manifesting in various regions of the world with alarmingly high rhythms. This reveals from the analogous statistics (Note 2). Maritime piracy occurs in certain sea areas of the world, particularly at Somalia coast, at Malacca strait, at the coast of West Africa, at South America, at the southern Indian Ocean and at the South China Sea (Figure 1 about here). Most of the attacks against commercial ships have been recorded at Somalia coast (Note 3) and at the Straits of Malacca (Note 4) (Figure 2 about here).

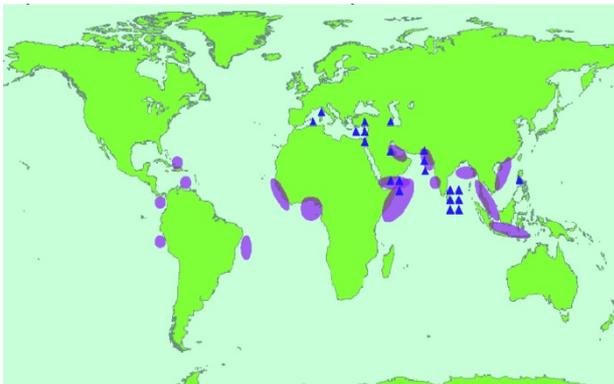


Figure 1. Maritime terrorism incidents and piracy prone areas 1990-2006

Note: Pink shaded areas denote piracy prone areas; blue triangles denote terrorist incidents.

Source: ICC IMB & MIPT



Figure 2. Malakka straits

Source: Hellenic Ministry of Shipping/ Hellenic Coast Guard Headquarter/ Search and Rescue Division/Joint Rescue Coordination Center

The significance of this issue, has led to creation of many preoccupation tanks with the participation of experts in order to develop and to implement the best solutions to combat it. In particular the attacks on ships have as result human lives loss but they also creating problems in the regular trade flow.

As a result of these concerns and more generally of the activities carried out, is remarked the establishment of a legislative framework among international organizations, institutions and Governments in order to combat this phenomenon, but in parallel many States have allocated naval forces in crucial commercial sea areas of the world in order to protect shipping (ships, crews, goods) and the regular flow of maritime transport.

Hellas, State with a strong maritime tradition, as is well known, is the first shipping power in the EU, but is also one of the most important shipping forces worldwide (Note 5). It is given that the adverse developments in the area of maritime piracy occupies Hellas in a high degree as there are direct consequences in ships and crews of them which bear Hellenic flag and they are accepted attacks as also in other ships under different flag in which serve Hellenic seafarers or in ship which are owned by Hellenic nationals.

Consequently, Hellenic state should have taken the appropriate measures which will ensure in the greatest possible extent the safety of Hellenic citizens and the protection of their properties (employers and workers) and consequently to ensure the advantages protection of Hellenic businessman operating in that specific area. In parallel is noted that in accordance with international law but also and in accordance with the Hellenic national legislation ship should be considered as territory of the State which bears the flag (Note 6).

The purpose of this concise study is twofold: examination of the international legal framework that refers to issues related to maritime piracy (definition, arrest, detention of perpetrators, criminal proceedings) which has been drawn up – in the international level, but also to examine the legislative framework that has been developed in recent years in the Hellenic legal order, in order to deal with this phenomenon. A progress which describes the changes in the Hellenic shipping policy concerning this specific area during the last years.

2. Combating the Maritime Piracy in the International Law

2.1 Maritime Piracy Definition

It must be clarified before starting with the definition and analysis of the maritime piracy concept the delimitation in the maximum degree level of the security concept meaning. The security concept is a concept not clearly defined on the contrary with the delineation for example of "international waters" concept which does not create interpretative problems according to the law of the sea as clearly is referred to a sea area beyond the external limits of the territorial zone or exclusive economic zone (EEZ) where this has been established (Note 7).

The concept of security must be approached in the broadest sense of the term. Specifically this includes clearly technical issues such as ships safety, the mild security forms such as the pollution of the seas, the migrants smuggling (Note 8), functional competences exercise such as maritime piracy and terrorism (Note 9). Finally in the above meaning are included issues such as politics, strategy and geostrategic resembling to a broader security types references as security in the Mediterranean, in the Aegean, in the Atlantic etc. (Note 10).

The issue of terrorism at sea is different from maritime piracy and does not need to be linked together. The Convention adopted by the IMO (International Maritime Organization) on the Suppression of illegal acts against the safety of maritime navigation of Rome 1988 (Note 11) includes terrorism but without establishing universal jurisdiction (Note 12).

One of the most important issues on the high seas is maritime piracy. The main international legal text in which is predicted items concerning maritime piracy is the International Convention on the law of the Sea also known as UNCLOS (Note 13) and in particular articles 100-107.

More specifically article 100 refers to the importance of maritime piracy phenomenon suppression, action which has a great importance as refers to the navigation safety/security. It is mentioned that is all States obligation to participate and to cooperate in the field of maritime piracy combat, whether this takes place on the high seas or anywhere else outside the region or of the coastal State jurisdiction.

The conceptual significance of this article refers to the territorial zone importance concerning the national jurisdiction implementation by the State, as a zone in which the coastal State enforces all its competences in order to combat pirate attacks from the Sea (Note 14). Territorial zone is identical with the meaning of security.

The majority of national provisions defining piracy as a crime under international law, but when the States enforce their jurisdiction, they implement their national legislation on the interpretation of maritime piracy crime rather than the relevant provisions of international law.

Concerning the objective existence of this specific crime, this is derived from articles 100-107 of UNCLOS as will be described below. The subjective existence of that crime is regulated primarily by the national legislation (Note 15).

Article 101 of UNCLOS refers to the definition of piracy (Note 16). More specifically as maritime piracy are construed three specific actions:

A.- any illegal acts of violence (without specifying which specific forms of violence constitute piracy) (Note 17) or detention, or any act of depredation, committed for private intents by the crew or the passengers of a private ship or a private aircraft, and directed:

1. against another ship or aircraft, or against persons or property on board of the ship or aircraft on the high seas,
2. against a ship, aircraft, persons or property in a place outside the jurisdiction of any State,

B.-The second action refers to any act of voluntary participation in the operation of a ship or of an aircraft when the perpetrators know the fact from which reveals that the ship or an aircraft is pirate.

C.-The third action refers to any act related to inciting of any acts described previously in subparagraph (a) or (b) (Note 18) or to facilitate them.

In other articles are carried out the following determinations:

Article 102, «Piracy by a warship (Note 19), government ship or government aircraft whose crew has mutinied». In the said article is defined that the acts of piracy as defined in article 101, committed by a warship, government ship or government aircraft whose crew has been mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft (Note 20).

Article 103, «"Definition of a pirate ship or aircraft". Especially a ship or aircraft is considered a pirated ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under control of the persons guilty of that act (Note 21)».

Article 104, «"Retention or loss of the nationality of a pirate ship or aircraft". More specifically a ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived (Note 22)».

The following articles 105-107 are reported in the event of pirate ship or aircraft seizure:

Article 105, «"Seizure of a pirate ship or aircraft ". This article recognizes the right of every State to seize on the high seas or in any other place outside the jurisdiction of any State, a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith (Note 23)».

Article 106, «"Liability for seizure without adequate grounds". Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which possessed by the ship or aircraft for any loss or damage caused by the seizure (Note 24)».

Article 107. «"Ships and aircraft which are entitled to seize on account of piracy". A seizure on account of piracy may be carried not only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect (Note 25)».

From the above reveals that have been established universal jurisdiction in order to be combated the piracy. Universal jurisdiction means that each State is entitled, and in certain cases is obliged to prosecute certain crimes, regardless of the place where they were committed and the nationality of the perpetrator or the victim (Note 26).

2.2 *Modus Operandi - Piracy Causes*

The pirate attacks are categorized in four as follows types:

a.-Armed robberies or not aim in particular on money stealing, personal properties of the crew as also and on ship's equipment.

Usually pirate attacks of this type occur at night in close sea routes where there is a large ships trafficking and have been placed limitations on the course and speed. Attacks can also occur against ships, which anchor outside the ports waiting for their loading turn.

Such attacks require a low level of organization and basically a small fast boat and a few members as crew which usually is constituted by unemployed fishermen or port employees. Armed lightly with axes, knives or and guns will attack in order to steal money, crew's personal properties and anything else that may can be transferred by them as ship's equipment or supplies, fuel, food, cables etc. The movements are quick and they are trying to finish their attack before the crew activation. Usually the enforcement of the violence is proportional to the reaction-resistance that they will face. That is the reason why a lot of ship owners have banned the presence of weapons on board, but at the same time have given instructions to the crew to adhere to the bandits - pirates orders (Note 27).

Attacks in this case can be prevented by measures taken by the ships when they are sailing in such areas as vigilance crew, ample lighting around the ship, etc. (Note 28).

Piracy in this case is linked to the local economic conditions, to the sharp regional disparities, to the economic uncertainty, to the rapid industrialization, to the pirate tradition which exists in people main in Southeast Asia. A typical example is the island of BATAM in Indonesia. The rapid industrialization of the region has attracted a large number of economic migrants, but the low wages in combination with the high living cost and the low employment than the one which was expected led to the criminality development. The proximity of that region to the Singapore Straits led to specific forms of criminality such as piracy, trafficking and smuggling.

Attacks in other areas such as the Sulu Archipelagic Sea between Borneo and Palawan Islands, Mindanao (Malaysia, Indonesia and Philippines), are ought to the poverty of the inhabitants in these islands which are the poorest mattresses of the population.

Hence the failure by the States to police their territorial waters, has led to the development of piracy phenomenon. Specifically States that essentially do not exist such as Somalia or Indonesia which faces intensively corruption problems, political instability and minorities' oppression do not have the will to deal with the situation. For example, in areas where the piracy phenomenon is being development, the fight trying to combat this will not impact on the local populations, as any police endeavors will not be positively faced by them who will face the Central Government with hostility.

B.-Permanent ship piracy – tactic which is more common in the Far East – with aim the converting ships to ships ghosts which brings falsified elements. These ships are going to be used in fraud relating with cargo ships. These operations are more complicated in organization and execution because in addition to the ship permanent occupation often carried out temporary registration and activation of the ship with forged documents and another name. Usually these operations are organized-directed by multinational companies based in Indonesia, Singapore, China and Hong - Kong (Note 29).

Piracy in this case is related with state corruption, the involvement of officials in criminal activities, the possibility for continuously versions of documents to ships, organized criminal groups which are activated in Asian markets where buyers are, as also the weak cooperation between States to deal with this phenomenon.

C.-Ships piracy which aims in cargo theft. In this case the ship is being held by the pirates for several days until to be downloaded-landed its cargo on another ship or to ashore.

Pirates operations in this case is more organized, because is necessary information collection concerning ship choice, is needed planning, eventually funding as also criminal networks activation in order to be channeled the stolen (Note 30). Usually these ships bring Panama or Honduras flag, are staffed by Chinese seamen and operate between Hong – Kong, Bangkok, Taipei and Singapore, chosen loads such as fuels, ores or wood.

In this particular case operations are taking place on the high seas and not near to the coast and involve many risks for the crews. That because pirate groups include seafarers who possess experience in shipping navigation and consequently the crew members of the ship are not needed by them. Usually are directed by multinationals enterprises based in Indonesia, Singapore, China and Hong Kong.

As mentioned before piracy in this case related with state corruption, the involvement of officials in criminal activities, the possibility for continuously versions of documents to ships, organized criminal groups which are activated in Asian markets where buyers exist and also the weak cooperation between States to deal with this phenomenon (Note 31).

D.-Piracies in order pirates to avail themselves economic benefits, ransom (Note 32).

The methodology which mainly is being followed at the coast of Somalia is as follows (Note 33) (Figure 3 about here): pirates use fire automatic weapons and rockets (Rocket Propelled Grenades, RPGs) in order to intimidate,

the crew and to be able to embark on the ship and to ensure its control. When this happened the ship is monitored at the coast and is demanded a ransom for ship and crew release.



Figure 3. Maritime Corridor at the Horn of Africa

Source: <http://asianyachting.com/news/PirateCorridor.htm>

In order pirates to carry out attacks on beaches far away from the coast arriving up to 1.000 nautical miles (n.m.), they follow the practice of ships known as mother ships. These are ships that originate from piracies and are used for the transportation of smaller vessels which are used to carry out the piracies.

In other areas where is noticed piracy, such as in Brazil, are carried out attacks on ships in country ports or at anchorage outside of them. Pirate attacks have been carried out and in the territorial waters of Ecuador, India and Bangladesh.

Malacca Strait from which are transported the half of world trade, has a length of 600 n.m. and the endings of it namely Singapore straits and Phillip channel are offered many opportunities to the pirates for successful attacks (in some areas there is a width of 1.5 n.m.) (Note 34). This is a route of international navigation extremely close – 11 n.m. at the southern part – which is being sailing by ships over 30.000 annually, which are obliged to move slowly and in defined channels and therefore is vulnerable to piracy attacks. Refuge of pirates is an insular complex of 180 Islands in Phillip channel.

The constantly deteriorating situation led the coastal States to take measures in 1992. The fear of economic collapse was intense for Singapore in case where ship owners and charterers decided to leave Malacca strait and to follow other routes South of Indonesia or Australia, which were more time-consuming and expensive but they did not contain loss risks of loads or ships (Note 35).

In the summer of 1992, Singapore and Indonesia established communication lines between their naval forces and also carried out and joint patrols in Singapore straits with possibility of pursuit rights and beyond the limits of their among sea border line.

In December of the same year, Indonesia and Singapore have established a joint maritime operations planning team for patrol in the Straits of Malacca which led in 1993 in a 10-day joint exercise in the area (Note 36). At the same time, in October 1992, was established the Regional Piracy Centre (RPC) in Kuala Lumpur (Note 37).

The above measures together with measures that were taken in the national level reduced significantly piracy in the Straits of Malacca and Singapore. The result was an increase of piracy acts Northern, at South China Sea and particularly in the triangle between Hong Kong, Hainan Island and the Luzon Strait between Taiwan and Philippines. At the end of the decade, most attacks were reported in the archipelagic waters of eastern Indonesia, Malaysia and Philippines.

A careful approach of piracy phenomenon shows that is noted primarily in areas of South developing States (Note 38). The modern form of piracy occurs in regions of Latin America, Caribbean Sea, Africa, Indian Ocean as also in South-East Asia and in the sea of China.

The reasons that the piracy phenomenon occurs mainly in the South developing States (Note 39) are many and are associated with underdevelopments which dominate in those areas and less on other issues.

In particular with regard to Somalia where there is glorification of the phenomenon, State torn apart by a civil war that lasted almost two decades.

In addition, due to the collapse of Somalia State, hundreds of fishing vessels from Italy, Spain, Thailand and from other States overexploited one of the richest biodiversity in the oceans. From a geological point of view the Gulf of Aden has a unique biodiversity that contains many species of fish, coral, seabirds, and invertebrates. Trawlers after depleting the fish stocks in European waters sailed in Somalia waters where fish every year tones of shrimps and lobsters worth many dollars millions. As a result of this the local fishermen see the main source of their income to disappear.

There are testimonies which are confirmed by the United Nations that the dropping of toxic, nuclear, industrial and hospital waste in the territorial waters of Somalia was a procedure which was followed by many Western States for many years. This was revealed by the great Tsunami on 2004. Waves washed ashore on Punt land coast, containers with any kind of toxic waste. Several died and hundreds of people were infected and showed bleeding, skin problems and a range of other diseases. There are also references for the role of the mafia in the region. Mafia which, as is being known, manages a large proportion of waste from Italy, is operating in the region since 1989.

There are also testimonies, that Italian ships uploaded their illegal cargoes at Somalia territorial waters and returned laden with tones of fish. When the inhabitants of the region (majority are fishermen) realized the situation, ascertain the ineffectiveness of Somalia Government in conjunction with its cooperation with many companies which were proceeded in such acts, joined their forces with the local criminal networks and presented the piracy phenomenon.

Yemen faces also internal problems. The internal problems of these countries lead them to host in their territories pirate groups which have been created and their respective shelters. Geography also plays an important role in these areas as the coast of Somalia has 2.000 miles length. There is no retention of coast and consequently the pirates operate uninterrupted.

Due to the proximity of these areas to the Suez Canal, as nearby there are roads with dense maritime traffic is understood why in these areas exist elation of piracy glorification (Note 40).

Poverty which is remarked in those areas, has led to an amicable deal with pirates since many young people face piracy as a professional solution. Also the companies' policy for ransoms' payment which are reduced after negotiations also leads to the intensification of the phenomenon. Companies pay relatively easily the money and thus avoid their ships remain hostages. In addition many times by money payment, ship owner companies endeavor effort to ensure that their vessels in the future will not be the target of piracy attacks. Other problems are legal and political issues which will be analyzed below.

2.3 International Cooperation for Piracy Combating

As have already mentioned piracy consequences are summarized in the following: crime against life and property, threat to the financial internal and international relations of each State but also of mankind as is disturbing the regular and smoothly goods transportation. It is reminded that via maritime transportations are handling the majority of goods and commodities. All these led the international community to take measures in order to combat this phenomenon.

The International Maritime Organisation (IMO) (Note 41) has proceeded in actions which aim in combating of this phenomenon. In these are included a series of local agreements concerning the implementation of measures against piracy as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships (ReCAAP) in Asia States as also proceeds in the publication of aggregate reports containing information on piracy attacks in order to assist shipping shareholders to be prevented of future incidents.

This specific initiative with the participation of many States, as also the corresponding Centre of RECAAP – ISP in cooperation with IMO aim in exchanging information and in combating of this phenomenon in this region.

Also the above mentioned organization has issued a Handbook of Best Management Practises (BMP) (Note 42) which must be followed by the merchant ships in order to be prevented and to be combated as best as could be from piracy incidents. Its legal department further of various texts elaboration related to piracy (Note 43) provides guidance for conducting investigations on piracy (Code Practise for the Investigation of the Crimes Tribunals of Piracy and armed Robbery Against Ships) (Note 44).

IMO also cooperates with EU (Note 45) as also as with the competent service of the UNITED NATIONS in the fight against drugs and crime (UN Office on Drugs and Crime) (Note 46). This service plays an important role in combating international organized crime and in the preparation of legislative initiatives in order to combat with. Also instructions for taking measures in order to be combated piracy phenomenon have been taken by other bodies which are involved in shipping as OCIMF (Note 47).

At the same time has been developed cooperation by all States in the region concerned to combat piracy in Somalia in accordance with the Djibouti Code (Note 48). With that code came into effect the IMO guidelines. Also with the above code is attempting the adoption of the appropriate legislation by States for prosecuting pirates, but also the development of the local coast guard in order to be combated the problem of piracy to the maximum extent possible level.

In 2008 was set up and the contact group on piracy at the coast of Somalia (Contact Group on Piracy off the Coast of Somalia) (Note 49) consisting by 24 countries and 5 international organizations (NATO, EU, African Union, UN Secretariat and IMO). Contact group consists an Ad hoc cooperation between Member States and operators concerned for piracy issue. This group also is consisted by four different teams working on different issues.

To these should be added EUROPOL role (Note 50) which established a detailed analytical working folder (AWF) named Maritime Piracy, where in European level and in cooperation with other relevant bodies such as Interpol is making effort in order to gather intelligence – information and to support Member States in various activities, either by conducting operational meetings or by the establishment of Joint Investigation Teams (Note 51) with the assistance of EUROJUST (Note 52).

In addition have been developed bilateral agreements and memorandums of understanding (MOU) signed between States wishing to transfer the arrested Pirates (USA, UK, EU) in order to exercise prosecution and States which receive them such as Kenya where is exercising criminal proceedings against pirates.

UN in order to combat the piracy phenomenon at the coast of Somalia issued a series of Resolution (Note 53) in order to facilitate international cooperation in tackling piracy.

In October 2008 and after had preceded request by the UN Secretary General was developed NATO operation under the name "Allied Provider" (Note 37). More specifically NATO was authorized by the United Nations Security Council resolutions 1814, 1816 and 1838 issued on 2008 to accompany ships carrying cargoes for World Food Programme headed to Somalia. The above operation started on October 2008 and completed in December 2008. Then followed the operation under the name "ATALANTA" (Note 55). EU operation "ATALANTA" started according to the decision 1846.

From March 2009 NATO deployed a new operation under the name "Allied Protector" (note 56). After its expiration the operation was replaced by a new one under the name "Ocean ' Shied" (Note 57).

The most important Decision is 1851 issued on December 2008 whereby the UN Security Council called Member States and bodies that have the means to participate actively in the fight against piracy and armed robbery off the coast of Somalia with the development of military aircraft and naval forces in order to arrest and to detent pirates, ships and weapons used to carry out offences (Note 58).

Especially for Somalia where there is no State authority to enforce the law and as consequence there is no coast guard the UN security council authorized the forces patrolling in the region after request of the Transitional Federal Government of Somalia (Transitional Federal Government – TFG) (Note 59) to act and within the territorial waters of Somalia. In all decisions the UN Security Council says that they are enforced only in the territorial waters of Somalia and not to any other State. According to my personal view these decisions suffer legally as the offence of piracy does not exist in State territorial waters as is defined in UNCLOS but in this case we are talking for robbery. Decisions issued by the UNITED NATIONS cannot abrogate international conventions.

Finally must be mentioned the exercises/operations under the name Naval Cooperation and Guidance for Shipping (NCAGS) (Note 60) which are carried out several times a year and aim at:

- (a).-in cooperation with merchant shipping masters in times of crisis, based on the inter alliance planning (Note 61),
- b.- in control exercise by the Naval Authorities via NCAGS with sailing instructions, navigation, control and creation of convoys and
- c.- naval forces development and the implementation of appropriate procedures for merchant ships protection.

Hellas had participated in almost all exercises that were developed either via its commercial shipping or by its representatives (Hellenic Navy officers or Hellenic Coast Guard officers). Although several exercises have been carried out, the knowledge that has been gained has not been used in a real basis in order to be combated maritime piracy issues.

2.4 Arrest Detention Pirates Penal Prosecution

The international community has not established a special legal framework covering complex and complicated penal and civil issues relating to piracy combating. Basically the action against piracy is legally based in the United Nations Convention on the law of the Sea (UNCLOS).

Some States permit the recruitment of security guards on ships in order to protect the crew and cargo, tactic which apart from its supporters has many who believe that the existence of guards on board ships may cause more violence on behalf of the pirates, or even to cause legal problems.

According to article 110 of UNCLOS (Note 62), warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96 of the Convention (Note 63) is not justified in boarding it unless there is reasonable ground for suspecting that the ship among others is engaged in piracy (Note 64).

In article 105 of the same Convention is determined that on the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of State which carried out the seizure may decide upon the penalties to be imposed, and may also determined the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

In article 106 (Note 65) is determined the liability for seizure without adequate grounds and in article 107 (Note 66) which ships and aircraft are entitled on account of piracy. More specifically a seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

Problem is placed concerning the limits on the use of force in order to be arrested the pirates (Note 67). Experts don't seem to agree on this issue, while some recommend the doctrine of «progressive response» (Note 68). Based on this doctrine is allowed the use of force even before the attack provided that are kept the humanitarian principles. Although the doctrine is based on the difference between the use of force for self-defense and the use of force in order to be enforced the law, as can be perceived in practice is difficult to separate them.

While the legal framework for the piracy prosecution is clear, only for a few incidents exercised the right of universal jurisdiction. From 1998 to 2007 at 754 cases of piracy in international waters only in 4 exercised the universal jurisdiction. In parallel is observed increase in this right at Kenya (Note 69).

The vast majority of States allocate a legal framework that enables the prosecution to pirates. However, since this process is often practically difficult and sometimes has large costs like many States whose navies patrol in the Horn of Africa prefer to deliver pirates in Kenya or to leave them free. In 2009 UK, USA (Note 70) and EU signed memorandum of cooperation with Kenya (Note 71), which provides that the pirates who will be arrested by them, will be deliver there for trial.

A large percentage of pirates who are arrested by naval forces released as characteristically reveals from the case of the Dutch frigate HNLMS Evertsen. On December 2, 2009 were arrested 13 pirates who were released on December 17, 2009 because could not be found any State to prosecute them. This of course leads pirates to believe that there is no real willingness to prosecute them.

In one case of piracy may many States have jurisdiction as pirates State/s, crew State/s, passengers State/s, the unit which executed the arrest, the owner or owners of the ship, the flag of the vessel, etc.. Since that piracy is an international offence all States have the right to commit the pirates to the court, wherever and whenever they have incorporated into their national legislation the international legislation.

Although that the UN decisions provide authorization for combating piracy within the territorial waters of Somalia as also and in its land territory, there is a matter whether the laws in many States permit the exercise of criminal prosecutions for offences committed in Somalia waters as in this case does not be committed the offence of piracy as defined in UNCLOS.

Independently of the political will to exercise prosecution or not, problems reveal in the field of preliminary investigation by gathering evidence, conducting investigations as also in the trial accomplishment. From the arrest, detention, prosecution, trial, transportation in a State proportionally its legal system must be faced many

issues. A particular problem for instance is the presence of seafarers as witnesses. Seamen often travel and are difficult to be found. Furthermore the military do not have the experience for the collection of appropriate evidence and there is a risk of them to be destroyed if they do not be destroyed, by the pirates in order to be difficult the prove of their guilty in each case.

From the States at the region, Kenya has the most advanced legal and judicial system. Nevertheless, and there are many lacks and peculiarities. There are not modern forensic laboratories, the judicial infrastructure is inadequate as the transport infrastructure, Kenya's penal system does not allow to the accused to have a lawyer but only in case if is accused for murder. UN Office on Drugs and Crime has undertaken to support Kenya's criminal and judicial system but the progress which had been made until now is not significant.

Finally there is very low support for proposals in order to be established a special court to deal with piracy or concerning the competences extension of the existing international criminal court. The experience of the international community by the establishment of other international courts has shown that is needed very long time for the establishment, Parliaments approval, money and staff (Note 72).

3. Combating Piracy in the Hellenic Legal Order

3.1 National Legal Framework in Force

In the Hellenic legal order, the International Convention on the law of the Sea (UNCLOS) has been endorsed by the law 2321/1995 (A' 136), "Ratification of the United Nations Convention on the law of the sea and the agreement relating to the implementation of part XI of the Convention '.

In addition to the above legal regulation, in legislative decree 187/1973 (A' 281), Section A' titled "Substantive provisions", Chapter B', titled "Specific maritime crimes", is a provision in article 215 titled "Piracy". More specifically in the said article are determined the following:

"1. Piracy is taking place by a ship passenger who by physical force or threat against persons, is acting actions of looting on other vessel in the high seas with purpose the appropriation of the things that have been looted.

2. As piracy ship is regarding any ship which is intended by the government of it to be acted for the actions mentioned in the prior paragraph or used for that purpose and continues to be governed under the pirates.

3.- By felony sentence are punished the acts of piracy of the paragraph one of this article, with the same penalty are also punished both the master and governed officers of the piracy ship, with sentence until 10 years (felony) are punished members of piracy crew who knew the destination of the ship".

Concerning the implementation of the said article, is noted that in accordance with article 202 of the same legislative decree which is titled "Local limits" is defined that all provisions of section A' and therefore and that article are implemented in offences that have been committed by nationals or foreigners to national ships namely Hellenic or auxiliary ships (paragraph 1) or in any other case specifically provided by this Code (paragraph 2). Related to this, is article 5 of the Hellenic Penal Law titled "Crimes committed in the domestic" (Note 73).

Certain rules are enforced and in crimes which are carried out on foreign vessels, if they are at the committed time within Hellenic territorial waters (article 202 paragraph 2). It concerns crimes relating to the security navigation in the Hellenic maritime space so to be justified the enforcement of relevant provisions on foreign ships.

In curiosities of this article are the following according to the explanatory statement of this legislative decree (Note 74): article of piracy, is included in crimes that are committed in foreigner and are always punishable according to the Hellenic criminal laws (Note 75) in accordance with article 8 of the Hellenic Penal Code (Note 76) without further to be defined in the code the points of it. In the International Convention «on the high seas» of the year 1958 were contained provisions on maritime piracy (Note 77). The Convention had entered into force on September 30, 1962 and had been ratified by the time of code writing (1973) by 43 Member but not from Hellas. For this purpose was considered appropriate to be introduced provisions in order to be covered any relative gaps in any case of potential ratification (Note 78). The objective substance elements of the piracy crime which is deemed as such this which is carried out on the open seas coincide with the procedures described in articles 15-17.

Therefore, taking into account the article of the national legislation mentioned earlier in connection with the incorporation into national legislation of the United Nations Convention on the law of the sea, the Hellenic law enforcement and judicial authorities can intervene in incidents of piracy carried out on the open seas and concerns either Hellenic or foreign merchant ships.

It should be noted here that in article 110 paragraph 1 of the UNLOS is predicted the right of warships or of other relative vessels of any State to board in commercial vessel of another State in which has been occurred piracy (Note 79).

Finally, in the article 2 of law 3922/2011 [Establishment of Hellenic Coast Guard (HCG) Headquarter (Note 80)], is defined that HCG is the competent authority for combating piracy in areas of its jurisdiction (Note 81).

3.2 Providing Security Services by Armed Guards on Merchant Ships

At IMO level, has been mentioned that is responsibility of the flag State, to determine the appropriate manner for combating piracy incidents and armed robbery and basically governments and shipping industry factors are encouraged to implement the Best Management Practices (BMPs) (Note 82).

However, given the significant escalation of piracy attacks and in order many States to respond to the new data, States as (e.g. Denmark, Norway, Finland, Sweden, Italy, Spain, Cyprus, Portugal, UK), allow the boarding of armed guards in the commercial ships under their flag and sailing the area in the Horn of Africa, while parallel were formed and adopted guidelines without mandatory character for ship owners and Governments in order to face the various issues concerning the boarding of armed guard personnel in the ships.

It should not also be neglected the fact that the shipping industry has accepted occasionally proposals for antipiracy protection by private companies providing security services. There are private companies such as Marine Risk Management and Satellite Protection Services that have proposed the use of airborne armed rapid response teams in order to be faced maritime piracy attacks (Note 83).

The ability to be used violence in order to be protected a ship is a complicated legal issue, which is depended basically by the legal framework of the ship flag, by the legal framework of the State of the nationality of those who are involved and thirdly by the legal framework of ports where the ship will approach.

Concerning the terms which have been placed under UN, IMO, and EU framework on the issue of crew self-defense or boarding of armed forces [private guards or military forces or State security forces (LEAs)] in merchant ships for the ship and the crew protection, Hellas had supported the implementation of Best Management Practices (BMPs) issued by IMO.

Regarding the issue of armed forces boarding in the merchant ships under Hellenic flag in order to be provided protection against attacks by third parties, until the adoption of law 4058/2012 (A' 63) there was not relevant legislation. Also regarding the existence of weapons on ships and their transportation, were implemented the provisions of the Hellenic national legislation [law 2168/1993 (A' 147)] and the ministerial decision with No 3312.1/01/94 issued on 20-07-1994 which was issued after relevant authorization of the above mentioned law according to which were allowed to the Hellenic ships to carry up until four (04) revolvers or pistols for the crew protection, which were used after masters permission in cases of emergency and as long as it lasts.

With the law 4058/2012 amongst other things was attempted by the Hellenic State (Note 84), to face the continuously escalating piracy attacks in Aden sea area, while parallel attempted to be reduced any leaks from the national register due to the retardation of Hellenic legislation comparing to the relevant legislation or practices followed by other maritime Nations for the protection of crews, ships and cargo – goods against piracy.

Especially with that law regulated the providing of security services by private armed guards to merchant ships under Hellenic flag. With that way formed law rules and specific institutional framework, which covers issues related to the circumstances, conditions and procedure for boarding and action of armed forces in merchant ships under Hellenic flag for defense and protection of passengers, ships and cargo from attacks that constitute piracy.

In addition to this law, as was necessary were regulated the preconditions and obligations under according to which is possible the stay or the crossing of commercial vessels under third States flag via the Hellenic territory which have taken similar measures that allow namely the boarding of armed guards.

This law reflects the statutory obligation of the Hellenic State, primarily to protect the crew of the Hellenic merchant ships during the passage from sea areas with high risk of piracy. Hellas as a big shipping force and because of the dominant position which possess in this sector continues to support the international community to take decisive measures for safe seas.

It is noted that Hellas attitude before the form and implementation of that law as was reflected in international meetings, was (Note 85) against of armed forces boarding in the ships in order to be avoided entanglements with pirates, who likely knowing that there are weapons on board and people who handle them to react more violently with possibility life loss (Note 86). Tactic which changed after the increase of piracy cases which led as has mentioned before to the change of the Hellenic shipping policy.

This law is composed of 44 articles of which the first 13 articles concern security services by armed guards on merchant ships (Note 87). The titles of these articles in order to be created an opinion concerning the intentions of the Hellenic State are as follows:

PART A'

Article 1, «Providing security services by armed private guards».

Article 2 «Terms and conditions of license issue».

Article 3, «Power and duration of the authorization».

Article 4, «Special fee for granting authorization».

Article 5, «Seamen's rights».

Article 6, «Guard and arms use».

Article 7, «Masters obligations of a Hellenic ship».

Article 8, «Masters obligations of a foreign ship».

Article 9, «General prohibition».

Article 10, «Sanctions».

Article 11, «Companies of providing security services».

Article 12, «Authorizing provisions».

Article 13, «Provisions implementation».

4. Conclusions

Seas and oceans have always composed a privileged place where could be developed many criminal activities. This to a large degree is self-evident as in sea areas State sovereignty is non-existent.

But the international community is trying to deal with this phenomenon as best as it can. This effort has been written in an important legal document, the UN Convention on the law of the sea of 1982. This is the most important legal weapon available to the international community in conjunction with the legal provisions which have been developed in the national jurisdictions also for its combat.

The maritime piracy occurrence causes in various regions of the world, due mainly to social and economic circumstances which have been created. Circumstances that characterize areas of development south which are in a status under development. It must not be forgotten the fact that the economic crisis in Southeast Asia after 1997 has gradually led to an increase of maritime piracy cases. Many States do not provide or do not have to provide relevant resources to the policing of their territorial zones in order to combat the phenomenon of maritime piracy. But in parallel they do not attain and economic development of their regions, through of which with the improvement of the economic environment could achieve the limitation of the specific phenomenon.

States, in which dominates the corruption, separatism, intensive social inequalities, poverty obviously will not be able to deal with this phenomenon. On the other hand, States which have collapsed as Somalia (Note 88), is self-evident that need considerable economic assistance and support from the international financial community after resolving their internal problems regularly, to move gradually in a minimum basic State organization which will allow, in some degree, the combating of maritime piracy phenomenon.

In any case remains challenge the combating of maritime piracy in a precautionary level and on the basis of an international legal framework, as this phenomenon detain almost all States because is associated with an economic activity which concerns all. In this context, activities have been developed by various international maritime organizations and not only. Also have been available and naval forces in specific areas, but the results so far are not the expected. The reason is that the sea areas for surveillance are enormous and the naval forces are not enough. Hence the maintenance cost of them is huge.

It is necessary an integrated proposal for development at the regional level, which will totally approach the issue of piracy. Something like that has not taken place and is normal, as EU and the USA are facing serious economic crisis and do not have the necessary resources to assist in activities such as maritime piracy. The role of NATO, which anyway is looking for a role, may be crucial in maritime piracy tackling. But in order to act effectively are needed resources. And the States is requested if they have availability and financial opportunities to offer in this area.

Given the fact of economic crisis which afflicting mankind today and especially economic organizations such as EU and USA, I do not think that neither at prevention level, but also at repression humanity level could be expected something considerable to deal with this phenomenon. In that should be added and the weaknesses of regional States to solve their internal social and economic problems. Problems that led to the appearance of a phenomenon, which for many years States and humanity knew via films but which will continue to exist.

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Notes

Note 1. For a brief comprehensive historical analysis concerning maritime piracy phenomenon see Chelmis G. (2000). *Modern Maritime Piracy*, 14 and next (in Hellenic).

Note 2. Retrieved July, 13, 2012 from <http://www.bluemountaingroup.co.uk/maritime-security/piracy-statistics.asp>

Note 3. Indicatively in 2010, pirate attacks against ships of all flags in this sea area amounted to 210, while the total profit for the 1500 pirates who active in the region amounts to approximately \$ 150 million. The "human cost" of piracy in 2010 was 4185 seafarers suffered by armed attack, 1090 were interned as prisoners and 516 were used as human chains. With regard to ships under Hellenic flag from 2008 until today in a total of 15 attacks, only two had as result the occupation of ships by pirates and then the ransom payment for their release, without loss of life or injury of Hellenic seaman or of any other passenger on them [see preamble report of law 4058/2012 (A' 63) «Providing security services by armed guards on merchant ships and other provisions»].

Note 4. See International Maritime Bureau (IMB) Piracy Reporting Center (PRC). Retrieved July 10, 2012, from www.icc-ccs.org/index.php.

Note 5. Information concerning Hellenic Merchant Shipping retrieved July 12, 2012 from http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p_param=A1104.

Note 6. See Korontzis, Tr. (2011)''a''. PhD dissertation titled *The stationary role of Hellenic Coast Cuard*. Public Administration Department, Law Sector, library of Panteion University of Social and Political Sciences, Athens, 215-255 (in Hellenic).

Note 7. See analytically for these specific concepts, Asonitis G (1995). *The United Nations Convention on the Law of the Sea*. Athens: Papazisis, 66 and next, 98 and next (in Hellenic).

Note 8. See also for the concepts of soft security and substantial security, Tsaltas, Gr (2006). *The definition of maritime piracy via the Convention of Montego Bay (1982)* in Perrakis, St. & Tsaltas, Gr. (2006). *Security and maritime piracy on the high seas*. Athens: I. Sideris, 52-53 (in Hellenic).

Note 9. See law 1789/1988 (A' 133), «Ratifying European Convention on the Suppression of terrorism» as was replaced by the law 3251/2004 (A' 127), «European arrest warrant, modification of law 2928/2001 for criminal organizations and other provisions». See also Mposi, M. (2004). *Anti-terrorist legislation, Hellas and international environment*. Athens-Komotini: Ant. Sakkoulas (in Hellenic).

Note 10. See Perrakis, St. (2006). *Security on the high seas: an introductory legal approach*, 31-32 in Perrakis, St. & Tsaltas, Gr., op.cit. (in Hellenic)

Note 11. As far as concern Hellas relative is law 2108/1992 (A' 204).

Note 12. The need for forming of the said Convention revealed mainly after Achile Lauro vase in 1985 in order to regulate matters which until this time had not been predicted in legal texts.

Note 13. United Convention of Law at Sea. This Convention has not been ratified so far by Turkey, Israel and Venezuela. Retrieved July 09, 2012 from http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm,

Note 14. See Doris, E. (1995). *Public fields, shore and Beach, Marine Environment Pollution*. Volume B', Issue A'. Athens: P. Sakkoulas, 189 and next (in Hellenic).

Note 15. See Marouda Nt. (2006). *Piracy in international crime*, 38-39 in Perrakis, St. & Tsaltas, Gr. *Security items on the high seas*, op.cit. (in Hellenic).

Note 16. See Asonitis, G., op.cit. 132-133 (in Hellenic).

Note 17. See Vamboukos, Ath. (1985). *The modern law of the sea*. Athens-Komotini: Ant. Sakkoulas, 296 (in Hellenic).

Note 18. See Tsaltas Gr. (1982), op.cit. 53-54 (in Hellenic).

Note 19. For the definition of naval war ship relevant is article 29 of UNCLOS. Asonitis, G., op.cit. 81 (in Hellenic).

Note 20. See Asonitis G., ibid, 133 (in Hellenic).

Note 21. See Asonitis G., ibid, 133 (in Hellenic).

Note 22. See Asonitis G., ibid, 133 (in Hellenic).

Note 23. See Asonitis G., ibid, 134 (in Hellenic).

Note 24. See Asonitis G., ibid, 134 (in Hellenic).

Note 25. See Asonitis G., ibid, 134 (in Hellenic).

Note 26. See Marouda, D., op.cit. 45-49 and especially footnote 23 p. 46 (in Hellenic).

Note 27. See South Sea Piracy. Dead men tell no lies. *The economist*, 16-12-1999.

Note 28. See Korontzis Tr., (2011)'b'. Security and ports. The contribution of the ISPS Code in combating of illicit actions. *Nautiki, Epitheorisi*, 578, 65-81 (in Hellenic).

Note 29. See Chelmis, G., op.cit, 14 and next (in Hellenic).

Note 30. See Grissim, J. (1996). Phantom Ships: Piracy's unfortunately it Twist in Asia. *Marine Watch*. 1, pg 1.

Note 31. See Chelmis, G., op.cit. (in Hellenic).

Note 32. See Security Inquire Report (April 2010). *International Piracy and armed Robbery at Sea*. Office of the Inspector of Transport Security. Published by: Department of Infrastructure, Transport, Regional Development and Local Government, Australian Government, Department of Infrastructure and Transport. Retrieved July 14, 2012 from http://www.infrastructure.gov.au/transport/security/oits/files/IPARS_SecurityInquiryReport.pdf.

Note 33. See Mpouras, G. (2011). Piracy in the Gulf of Aden. *Limeniki Rota*, 7, 30-40 (in Hellenic).

Note 34. See Nellas, I. (2011-2012). Which is the best strategy for combating the modern piracy. *Nautiki Epitheorisi*, 579, 72-75 (in Hellenic).

Note 35. See Stuart W. Smead. *A Thesis On Modern Day Piracy*. Retrieved July 14, 2012 from <http://southernlatitudes.webs.com/moderndaypiracy.html>.

Note 36. See Dr. Stanley B. Weeks (1998). *Sea Lines of Communication (SLOC) Security and Access*. In Michael Stankiewicz, ed. *Maritime Shipping in Northeast Asia: Law of the Sea, Sea Lanes and security, IGCC Policy Paper No 33*, Institute on Global Conflict and Co-operation, University of California, February 1998, at 55.

Note 37. It was founded by the International Maritime Bureau (IMB), with the support of the business world, the International Maritime Organization of the United Nations and the Governments of the region, for intelligence gathering and as link of law enforcement agencies of States East of Sri Lanka and up to far East. Retrieved June 30, 2012 from <http://www.recaap.org/>. In the same site is available more information.

Note 38. See Korontzis, Tr. (2002). Postgraduate dissertation titled *Implementation of new colonist system in the black continent. The role of Multinational Enterprises*. Postgraduate Studies, «EU and states under development» carried out by the 2nd European Chair JEAN MONNET, department of International and European Studies/ Panteion University of Social and Political Sciences and Institute of International Relations – Athens (Hellas), library of Panteion University of Political and Social Sciences (in Hellenic).

Note 39. See Tsaltas, Gr. op.cit. 25 and next (in Hellenic).

Note 40. Interesting views are contained in *Maritime Interdiction Operations Journal*, November 2011, 4th Issue, issued by the Maritime Interdiction Operational Training Center (MIOTC).

Note 41. Retrieved June 28, 2012 from <http://www.imo.org/Pages/home.aspx>. In the same site is available more information.

Note 42. Retrieved June 28, 2012, from http://www.cusnc.navy.mil/marlo/Guidance/BMP4_web.pdf. In the same site is available more information.

Note 43. See MSC.1/Circ. 1302/ 16-04-2009, MSC.1/Circ. 1332/16-06-2009, MSC.1/Circ.1334/23-06-2009, MSC.1/Circ. 1333/26-06-2009, SN.1/Circ.281/03-08-2009, MSC.1/Circ.1335/29-09-2009, MSC.1/Circ.1390/09-12-2010.

Note 44. IMO resolution A. 922 (22)/29-11-2001.

Note 45. Important legal text constitutes COMMISSION RECOMMENDATION of 11 March 2010 on measures for self-protection and the prevention of piracy and armed robbery against ships (L 67/13). With this recommendation, EU notes the existence of circular MSC. 1/Circ IMO 1334, with which are provided measures for the prevention and combating by the ships of such illicit actions. These were noticed to the institutions of the Hellenic shipping community by the document with No. 4425.1/02/2010 issued on 13-05-2010 by the MMMAIP/DEDAPLE.

Note 46. Retrieved June 19, 2012 from <http://www.unodc.org/unodc/en/piracy/index.html?ref=menuaside>. In the same site is available more information.

Note 47. See OCIMF (OIL COMPANIES INTERNATIONAL MARINE FORUM): Piracy - The East Africa/Somalia Situation - Practical Measures to Avoid, Deter or Delay Piracy Attacks. Retrieved July 28, 2012 from <http://www.fco.gov.uk/en/global-issues/piracy/ocimf>

Note 48. Retrieved July 13, 2012 from http://www.imo.org/OurWork/Security/PiracyArmedRobbery/Presentations_Piracy/IMO-PIU.pdf

Note 49. Retrieved July 13, 2012 from <http://www.thecgps.org/main.do?action=main>

Note 50. Concerning EUROPOL and its role see Korontzis, Tr. (2012)''c''. The contribution of EUROPOL and FRONTEX in combating the phenomenon of illegal immigration in Hellas. *Review of European Studies*, 4 (1), 188-202, <http://dx.doi:10.5539/res.v4n1p188> As far as concern maritime piracy the relative Analytical Work File (AWF) is named Maritime Piracy and is included in the Serious Organized Crime area (SOC).

Note 51. Retrieved July 12, 2012, from <http://eurojust.europa.eu/Pages/home.aspx>. In the same site is available more information.

Note 52. See Kapplinghaus Jórgen. *JOINT INVESTIGATION TEAMS: BASIC IDEAS, RELEVANT LEGAL INSTRUMENTS AND FIRST EXPERIENCES IN EUROPE*. 134TH INTERNATIONAL TRAINING COURSE VISITING EXPERTS' PAPERS Retrieved July 12, 2012 from http://www.unafei.or.jp/english/pdf/RS_No73/No73_07VE_Kapplinghaus2.pdf. and from <https://www.europol.europa.eu/content/page/joint-investigation-teams-989>. The basic legislation is EU Council, 15970/1/11, rev 1, 04-11-2011, titled «Joint Investigation Team Manual».

Note 53. Security Council, UN Resolution 1416 (2008), 1814 (2008), 1816 (2008), 1838 (2008), 1846 (2008), 1851 (2008), 1897 (2009).

Note 54. Retrieved July 13, 2012 from http://www.manp.nato.int/operations/allied_provider/index.htm. In the same site is available more information.

Note 55. See Papaioannou, An. (2009). Commodore HENA, First Force Commander of EU NAVFOR ATALANTA, *Facing New Challenges: Piracy*. Retrieved July 01, 2012 from http://www.geetha.mil.gr/index.asp?a_id=2956. Conference «ATHENA 09», Athens 10/2009. More specifically «Athena 09» Crisis Management International Conference was the 12th annual “Athena” conference organized by the Hellenic National Defense General Staff (HNDGS) under the auspices – since 2008- of the Hellenic Ministry of National Defense. «Athena 09» took place in Athens from September 30th until October 3rd 2009 at Metropolitan Hotel.

Note 56. Retrieved July 12, 2012 from http://www.manp.nato.int/operations/allied_provider/web_copy_op_allied_protector.pdf. In the same site is available more information.

Note 57. Retrieved July 11, 2012 from http://www.manw.nato.int/page_operation_ocean_shield.aspx. In the same site is available more information.

Note 58. UN SEC Res. 1851: 7. Calls on Member States to assist the TFG, at its request and with notification to the Secretary-General, to strengthen its operational capacity to bring to justice those who are using Somali territory to plan, facilitate or undertake criminal acts of piracy and armed robbery at sea, and stresses that any measures undertaken pursuant to this paragraph shall be consistent with applicable international human rights law;

Note 59. Transitional Federal Government (TFG) is the recognized in international level Government of the Somalia State. It was established as one of the Federal Institutions (TFIs) of Government as was determined in the Transitional Federal Charter (TFC) adopted on November 2004 by the Transitional Federal Parliament (TFP).

Note 60. Many NCAGS exercises have been carried out such as Loyal Mariner 2008, Loyal Midas 09, Bold Master 08 etc.

Note 61. Relevant is the ATP Handbook – 2 (B) VOL II, titled «NAVAL co-operation AND GUIDANCE FOR SHIPPING (NCAGS), GUIDE TO OWNERS, OPERATORS, MASTERS AND OFFICERS, December 2006». Retrieved July 11, 2012 from <http://www.ncags.com/upload/ATP-02%28B%29v02.pdf>. In the same site is available more information.

Note 62. See Asonitis, G., op.cit. 136-137 (in Hellenic).

Note 63. See Asonitis, G., ibid, 130 (in Hellenic).

Note 64. In the same article is described how the checks are carried out when allowance is paid etc.

Note 65. See Asonitis, G. op.cit. 134 (in Hellenic).

Note 66. See Asonitis, G., ivid, 134 (in Hellenic).

Note 67. See Clark K. Karen (Jan-June 2009). Maritime Piracy: Nature, Impact and Legal Frameworks for Prosecution, *International Journal of Criminal Justice Sciences*, 4(1). Retrieved June 11, 2012, from <http://www.sascv.org/ijcjs/clark.html>.

Note 68. See O’Connell, D. P. (1975). *The Influence of Law on Sea Power* (Annapolis, Naval Institute Press, 1975); *The International Law of the Sea*. New York-Oxford: Clarendon Press, 1982. Retrieved from <http://books.google.nl/books?id=MGzoAAAIAAJ&printsec=frontcover&dq=inauthor:%22Daniel+Patrick+O’Connell%22&hl=el&sa=X&ei=vI8AULX6JqLC0QWksayFBw&ved=0CDAQ6AEwAA#v=onepage&q&f=false>

Note 69. See Kontorovich Eugene & Steven Art (December 6, 2009). Study *The Limits of Judicial Altruism : An Empirical Examination of Universal Jurisdiction for Piracy*. Retrieved July 12, 2012 from <http://ssrn.com/abstract=1519518>

Note 70. It is noted that on November 2010 from U.S. Court were found guilty five young Somali for attack against the US naval warship under the name Nicholas open of Somalia coast. Somali face even penalty of lifelong imprisonment. This is the first conviction for piracy in the US for two centuries. The Prosecutor argued that the five perpetrators attacked to the ship because they believed that it was a commercial ship. Three of them

started fire against the ship, but when from the ship replied with machine guns Somali forced to flee with their small vessel. When they were caught, according to an interpreter they stated that their purpose was to seize the ship and to ask for ransom between 10.000 and 40.000 dollars. The most recent conviction in US for maritime piracy was dating back to 1819 (case on which is based the existing legislation).

Note 71. See Otto, L. (2012). *The Articulation of Maritime Piracy in Kenya's Foreign Policy*. Retrieved July 13, 2012 from <http://www.africaportal.org/articles/2012/02/24/articulation-maritime-piracy-kenyas-foreign-policy>, also Kenya and the pest of piracy a prospective partner for peace, Institute for Security Study. Retrieved June 30, 2012, from <http://www.issafrica.org/uploads/22Feb12Kenya.pdf>.

Note 72. See Gopalan, S., & Switzer, S. (2009). *Pirates of the Aden: A Tale of Law's Impotence*. Working Paper Series. Retrieved May 14, 2009, from <http://eprints.nuim.ie/2434/>.

Note 73. In the said article is determined: « 1. The Hellenic penal laws are implemented to all offences which are committed in the territory of the State, even from foreigners. 2. Ships or aircraft are considered as Hellenic territory wherever situated, unless in accordance with international law is subjected under foreign law».

Note 74. The Hellenic Code of Public Maritime Law as is being in force today (1988), op.cit., 168-169 (in Hellenic).

Note 75. See Korontzis, Tr (2011)''a''. PhD dissertation, op. cit.

Note 76. In article 8, titled "crimes committed in foreign are always punishable under Hellenic laws", are defined the following: Hellenic penal laws are implemented to nationals and foreigners regardless of the laws of the committing place, for the following acts which were committed in foreign: a) high treason and country betrayal against the Hellenic State b) crimes concerning military service and military service obligation (specific part, section H') c) offence that was committed as Hellenic State officials d) Act against Hellenic official during service performance or in connection with the service e) perjury in pending procedure to the Hellenic authorities f) piracy g) offences relating to coins (special part, section Θ') h) slavery action or trafficking in human beings with purpose the debauchery i) narcotic drugs illicit trade j) illegal trafficking and trade of indecent publications k) any other offence for which special provisions or international conventions which have been signed and have been ratified by the Hellenic State predict the implementation of the Hellenic penal laws.

In article 7 of the Hellenic Penal Code titled "Crimes of aliens in foreign" is defined that:

1. Hellenic penal laws are implemented and against foreign for act committed in foreign and which is characterized by them as felony or misdemeanor, if this action is directed against Hellenic citizen and if is an offence and according to the laws of the State where the offence committed or was committed in a State without state organization.

2. The provisions of paragraphs 3 and 4 of the preceding article are also implemented here».

In articles 7 and 8 of the Hellenic Penal Code are defined the universal jurisdiction of the Hellenic Penal Courts for criminal offences including and piracy offence while in article 6 titled «Crimes of nationals in foreign» are defined the following: Hellenic penal laws are implemented and for action which is characterized by them as a felony or misdemeanor and was committed in foreign by national, if this action is an offence and according to the laws of the State in which the offence was committed or was committed in a country without state organization.

1.-The penal prosecution is exercised and against in an alien who during the perpetration of the action was national. Also is exercised and against whom who acquired the Hellenic citizenship after the action performance.

2.-In the misdemeanor, for the provisions implementation of paragraphs 1 and 2, is required an official complaint by the sufferer or request by the State Government where the misdemeanor was committed.

3.-Faults which are committed in abroad are punishable only in cases which specifically are determined by the law».

Note 77. Refers to the Geneva Convention on April 29, 1958 for the law of the Sea, Convention earlier of UNCLOS (1982) which finally replaced it. More specifically according to article 311 titled "Relation with other conventions and international agreements",-1. This Convention prevail, between the member States, of the Conventions Geneva April 29, 1958 for the law of the sea».

Note 78. Hellas never ratified the Convention.

Note 79. See Asonitis, G., op.cit. 136-137 (in Hellenic). In addition concerning the naval operation under the name «ATALANTA», according to the document with No 1009.9/13 ΑΣ/32 issued on 08-01-2009 by the Hellenic Permanent Delegation of West Europe Union (DEE) was carried out lifting of the national limitation concerning the Hellenic contribution to the European force, allowing to the Hellenic frigate to make consensual inspections.

Note 80. See. Korontzis, Tr. (2012)''b''. The Hellenic Ministry of Mercantile Marine, as an autonomous administrative governmental institution in the period 1971-2011. A descriptive and critical approach. *International Journal of Business and Social Science*, 3(8), 61-75.

Korontzis, Tr. (2012)''a''. The role of the Hellenic Coast Guard in the Hellenic internal security and in combating the phenomenon of organized crime. *International Review of Social Sciences and Humanities*, 3(1), 210-227.

Korontzis, Tr. (2009). Administrative governmental reforms. The case of Ministry of Mercantile Marine, the Aegean and Island Policy (YENANP-YENANII). *Dioikitiki Enimerosi* (quarterly journal of administrative inspection), 52, 31-57 (in Hellenic).

Korontzis, Tr. (2005). Ministry of Mercantile Marine and Hellenic Coast Guard. A critical approach of Mercantile Marine ministry organizations – administrative reform proposals», *Dioikitiki Enimerosi* (quarterly journal of administrative inspection), 32, 93-112 (in Hellenic).

Note 81. Ministry of Shipping as competent ministry for regulation, formatting – combating of issues relevant to the Hellenic shipping has issued directives through circulars to the Maritime and Nautical communities as also to seamen's syndicates in order to preserve in the maximum extent level, crews, ships and cargoes.

Indicatively are reported the following documents: 4425.1/04/03-12-2008, 4425.1/05/24-12-2008, 4425.1/01/09-02-2009, 4425.1/03/12-08-2009, 4425.1/01/2010, 4425.1 etc.. At the same time has established a special Crisis management team according to the decision with No 3221.03/05/08 issued on 03-12-2008 by the Minister of MMAIP, staffed with officers of various divisions, in order to coordinate issues concerning information flow and management in cases where displaced piracy in ships under Hellenic flag or in ships with other flag which are owned by Hellenic citizens. On the same subject, the Deputy Chief Commandant of Hellenic Coast Guard in that time with the document with No 62/08 issued on 29-12-08 (FES YENANP/Office of Second Chief Commandant) had provided instructions for dealing with piracy incidents and armed robbery against merchant ships.

At the same time via the website www.yen.gr, are provided useful information to those who are interested to be informed for various measures, information and instructions relating to piracy.

Note 82. See op.cit. note 41.

Note 83. See op.cit. note 27.

Note 84. See «Technical update by representatives of Hellenic Coast Guard Headquarters officers to the maritime journals on the Draft Law of the Ministry of Citizen Protection for providing services by private armed guards in merchant ships». Retrieved July 13, 2012 from <http://www.hcg.gr/node/1787>, («Public consultation on the draft law of the Ministry of Citizen Protection, for the provision of security services by private armed guards in merchant ships»). Retrieved July 12, 2012 from <http://www.hcg.gr/node/1922>, «Approved by the Cabinet of the draft law “providing services by private armed guards in merchant ships and other provisions”». Retrieved July 14, 2012 from <http://www.hcg.gr/node/2212>, Citizen Protection Minister Speech, Christos Papoutsis, during the second reading of the law draft «providing services by private armed guards in merchant ships» in the Standing Committee for Public Administration, Public Order and Justice. Retrieved June 30, 2012 from www.hcg.gr/node/2265, and «Hellenic Coast Guard National Union of Officers (PEALS) to the minister of

Citizen Protection on the law draft «providing services by private armed guards in merchant ship and other provisions». Retrieved June 29, 2012, from http://pealsblog.blogspot.nl/2012/02/blog-post_23.html (in Hellenic).

Note 85. See indicatively meetings of Planning Board for Ocean Shipping (PBOS) plenary, now [Transport Group (Ocean Shipping)], as well as minutes of the meetings which are kept in the Ministry of Shipping/Hellenic Coast Guard Headquarters/ Civil Defense Division – Civil Emergency Planning- Maritime State Transportation /Department B´ (NATO Planning) for the period 2008-2010 such as document with No 6221.2/09/2008 issued on 03-09-2008 by the above mentioned division with title: "Handling instructions on agenda issues of NATO Planning Board for Ocean Shipping (PBOS) plenary meeting in Brussels on 10-11/09/2008» (in Hellenic).

Note 86. See FES MMMAIP/DNPA/Third Department with No 3139.A. 20.20.15/08 issued on 02-12-2008 (in Hellenic).

Note 87. See Explanatory and Other Accompanying Reports, Practical Report of the Commission, Report of the Scientific Committee of the Hellenic Parliament, Relevant Plenary Meetings concerning law 4058/2012. Retrieved July 28, 2012, from http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=e70e53fd-b089-4c28-a30f-9ee1c61d8798 (in Hellenic).

Note 88. See «Somalia urged to unite behind stable government» Retrieved June 24, 2012, from <http://www.guardian.co.uk/world/2012/feb/23/somalia-urged-unite-stable-government>