MARINE PIRACY IN SOMALIA – PAST, PRESENT AND FUTURE

Student **Michał GORNOWICZ**[1]

Abstract

The interestingness of marine piracy issue in Somalia is caused by the fact that firstly, piracy problem is often shown and discussed in mass media and secondly because it is still an unsolved trouble. Finally pirates attacks in Somalia have a great influence on late delivery of cargo ships' goods. Somalia is said to be the easiest and the most attractive region for pirates attacks. In fact, it is the truth because Somalia is an example of state with inner destabilization and without legal authority which would be able to face the problem. In this paper following topics will be touched: analysis of Convention on the High Seas from Geneva adopted on the 29th April 1958 (definition of piracy); genesis and history of piracy in Somalia; scale of danger from pirates side in Somalia; postulates of changes in article 100 of United Nation Convention of the Law of the Sea adopted on the 10th of December 1982; attitude of international community towards piracy in Somalia; International missions in Somalia; Somalia nowadays (statistics); prospects for the future...

1. Situation in Somalia – background

The interestingness of marine piracy issue is caused by the fact that firstly, piracy problem is often shown and discussed in mass media and secondly, it is still an unsolved problem. Finally, pirate attacks have a great influence on late delivery of cargo ships' goods and global state of economy.

Somalia is said to be one of the easiest and most attractive regions for pirates' attacks. Transitional Federal Government acting on the area of Somalia has only minimal influence and control on events taking place inner the state. Situation on the Aden Gulf is a great example of state with inner instability and destruction. All security problems mainly arise from inefficient government which till these days – as I mentioned before - has only a provisional status. There is no doubt that having Transitional Government is not a good prospect for solving such an important and dangerous problem as marine piracy. Practically, they are having a real control in Somalia. Somalia is a ruined state in an economic and an political way. Pirates' attacks in Somalia are becoming more and more lucrative each year because Aden Gulf is situated on the main shipping transit on the crux of all major regional shipping lanes.

2. Marine piracy definition

There are a lot of similarities in piracy definitions (latin equivalent is pirata what means assaulting on the sea) existing since the ancient times and since the beginning of marine trade. An attempts of searching and finding one legal definition of piracy lasted for centuries. First trial of defining piracy in the modern international law was raised on the forum of League of Nations meeting in 1926. In 1932 Harvard Project drew an answer to the question: how big influence does piracy have on the nations' law? They considered that each state can execute jurisdiction over the piracy ship having the right to occupy such a ship with all the goods being there. Certainly, it contributed to finding the final legal version of piracy which arose from the Convention on the High Seas signed in Geneva on the 29th April 1958. The article 15th defines piracy as an act of robbery or criminal violence at sea. The term – according to the provision mentioned above – can include acts not only on high sea but also on land, in the air, or in other major bodies of water or on a shore.

---

[1] Michał Gornowicz **-** University of Warmia and Mazury in Olsztyn, Poland, michal.gornowicz@wp.pl

However, the greatest amount of pirates attacks take place on the sea. One important comment of critics should be indicated during making an analysis of this article. Wide doctrine points that legislator has omitted piracy not repressing attacks due to political reasons as a big opportunity for pirates to use it in the wrong way. It results from not being familiar with all legal acts regulating wide matter of piracy. Privateering (pirates assaulting because of political reasons) is regulated in a different legal act- Paris Declaration signed in 1856 which puts into practice banning for such kind of offence. It was and it is still really needed because such attacks appear quite often. In modern piracy it is common and daily to kidnap commercial ships or cargos with all the crew on the board, offering release all of them expecting instead freedom and total independence of their state. It is a more complicated and longer process in comparison to kidnapping of a ship only for robbery reason.

3. History of piracy in Somalia

In my opinion, the most attaching and interesting example of marine piracy is Somalia because it is still an actual topic which is not solved till these days. The beginning of marine piracy in Somalia is dated to the 90's when fishing communities on the coast of Putland (the main homeland of marine piracy) started to organize patrols to prevent and deter illegal fishing and the discharge of toxic wastes. Successfully, occupying undesirable boats brought them lavished income. It is vital to point that impulse for marine piracy growing was the fact that till now there is no legal authority in Somalia, which would be able to struggle against piracy in a successful way and pirates acting on the Aden Gulf can feel unpunished not being repressed by state's authority.

4. Sirius Star case

Although in 2008 there were only 7 pirates' attacks noticed in Somalia, there is no doubt that this year can be named as a gold one. It causes the fact that on the 17th of November 2008 there was the most spectacular attack on MV Sirius Star tanker (from Saudi Arabia) which was kidnapped by pirates being over controlled. There were over 2 millions of petrol barrels worth 100 mln $. Finally, the crew of this ship was released on 9th of January after paying the kidnappers 3 mln $. A great role was played by international negotiators then, because in the beginning of talks with pirates they demanded 25 mln $.

5. Legal regulations of marine piracy

There are two main legal, international sources of law which regulate marine piracy. The first one, mentioned above - Geneva Convention from 1958 and United Nations Convention on the Law of the Sea (UNCLOS) signed on December 10th 1982 in Monte Bay. Worth highlighting is the fact that one of the main topics contained in both provisions includes regulation of the problem of piracy. Signatories states obligate themselves all together to:
1) cooperate against piracy,
2) find acceptable definition of piracy in two conventions' approved by all members,
3) create efficient rules of acting against the ships and plains.
Article 100 of UNCLOS is fulfilling the first rule mentioned above and provides that: "All states should cooperate to the fullest extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state." As we can see cited article 100 is constructed almost in the same way as article 14 of Convention on the High Seas from 1958 because the main similarity refers to wide issue of cooperation between states to struggle against piracy in the same name and interest of security on the seas and oceans all over the world. There is one reasonable question about the limits of the "fullest extend" not to breach the provisions of human rights. How to treat pirates after kidnapping all of them? In my point of view all human rights should be respected but they should be reintegrated so that they will never repeat such a cruel act of pirate

assaults. Secondly, article 15th of Geneva Convention and article 101 of Convention on the Law of the Sea include definition of piracy which was mentioned above. A not understandable major defect is why regulator qualified piracy attacks in 101 only on the high sea totally forgetting about the other parts of the sea for example territorial waters where piracy attacks appear as frequently as on high sea. It is vital to point that 5 premises must be preceded by qualifying it as pirates' attack:

1) prohibited action must be commited,
2) on the high seas or in the area where there is no state's jurisdiction,
3) commited by the crew or passengers of private ship,
4) commited for private interest,
5) commited against other ship (at least 2 ships are needed)

Thirdly provisions from Geneva Convention (article 19) and Convention on the High Seas (article 105) formulate the rules of procedures with ship or plain where there is suspicion of piracy illegal act.

One of the main ways of facing piracy problem contains article 111 of UNCLOS which cannot be skipped because it concerns a very important issue which is the right to hot pursuit: "It is possible to initiate pursuit of a foreign ship if the competent authorities of the coasted state have a good reason to believe that the ship has breached the laws and regulations of that country. " On the other hand an analyses of this article leaves a lot of questions and doubts, for example – what does legislator mean by using expression "good reason" and what does it mean in practice. Under which circumstances such pursuit can be arranged? The answer seems to be simple: under circumstance of the situation when human's health or life is in danger.

There is no doubt that states which have a great interest in combating piracy have to put in practice theories accepted by them, based on penalizing piracy and executing the written law. However, it is slightly possible to put it into practice in such state as Somalia without legal authority and political system.

Despite arranging a lot of actions by international community, it is important to point that most of them are inefficient without any hope for reaching the final destination. Continuing such procedure, it will be slightly possible that piracy problem in Somalia can be fully solved soon. This process needs a lot of patience and consistency in acting. Moreover, no legal and official authority in Somalia surely does not help combating Somalian pirates as fast as possible.

Undoubtedly, wide framework of piracy repression under international law, in particular article 100-107 and 110 contained in UCLOS give enough possibilities and variants of acting for international community to solve piracy problem which certainly has status of global not local trouble.

6. Prospects for the future

International Community must play a bigger role in building matured democracy and reconstructing totally ruined state. It is necessary to rebuild the Somalian economy, security and governance in order to achieve peace in this region, and thus in the world. A lot of journalists report that the Somalian problem lasts too long. In my point of view in fact they are right but on the other hand they cannot understand one vital matter which has a big influence on inner situation in Somalia. Complexity of piracy seems to be greater and greater because the longer it lasts the more difficult is to combat it.

Anyway, it is warranted to notice that in the face of fragile stability in Somalia international organizations are trying to prevent from piracy attacks. Therefore National Treaty Organizations (NATO) started to provide escorts to the United Nations (UN) World Food Program starting operation called: "Operation Ocean Shield" which is based and focused on protecting the ships of Operation Allied Provider, which are transporting relief, supplies as part of the World Food Program's mission in the region. Such initiation also helps to strengthen the navies and the coast guards of regional states to assist in countering pirates' attacks.

Europe is not indifferent on events taking place in Somalia. European Union (EU) has also launched an operation called European Naval Force Somalia – Operation ATALANTA (EU NAVFOR - ATALANTA) which main aim is to improve maritime security off the coast of Somalia and in the Indian Ocean.

What are prospects for the future in Somalia? Paradoxically, it seems to be optimistic. Statistics clearly confirm this fact. In 2005 there were 45 pirates' attacks. In comparison, in 2011 there were 40 pirates' attacks noted. Nowadays, in 2013 the amount of piracy attacks is decreasing mainly thanks to ATALANTA operation which is playing a major role in solving piracy problem. According to the commander of marine operation last year there were 21 pirates caught. On the other hand not all assaults are taken into account in the statistics. However, despite good results noted recently, surely the problem cannot be ignored. There are still at least 3 active groups of pirates. According to European sources of information since the beginning of 2013 there was only one, unsuccessful attack taken place on Somalian coast. As I mentioned before all observers of acting in Somalia and especially civil citizens in on Aden Gulf should wait in calm and patience for ending these operations which will be fully finished when firstly, fully independent, not corrupted and well educated authority will be elected what will affect on ending of pirates assaulting on commercial ships transporting valuable goods. To my mind, it will be a clue in finding final solution to the piracy problem in Somalia.

Bibliography

1. Katarzyna Wardin, *Współczesne piractwo morskie: wyzwanie somalijskie oraz spowiedź społeczności międzynarodowej*, Warszawa 2012
2. Krzysztof Kubiak, *Przemoc na oceanach: współczesne piractwo i terroryzm morski,* Warszawa 2009
3. Zdzisław Skrok, *Świat piratów morskich,* Gdańsk 1982
4. Santiago Iglesias Baniela, Juan Vinagre Rios, *Piracy in Somalia: a challenge to the International Community,* The Royal Institute of Navigation 2012
5. L. Seay, *Understanding Somali Piracy,* Cambridge University Press 2013