

Extraterritorial Application of the European Convention on Human Rights at Sea¹

AMARILLA KISS² 

We live in a world where we face countless crises and directly experience armed conflicts. The seas, such as the Red Sea, the Black Sea, and South China Sea hold strategic importance in these crises and conflicts. The sea is a unique and challenging environment, considering both its distinct physical characteristics and the jurisdictional issues. At sea, human rights can be compromised in various ways, and these cases often go unreported or they lack sufficient public awareness. It is also an expansive area to monitor, and the effectiveness of the police or military forces is sometimes hindered by limited resources or the reluctance to take action due to the non-compliance with legal regulations. It is the responsibility of the international community to encourage the authorities to prosecute the perpetrators by establishing a legal framework that effectively safeguards human rights and can be enforced by state authorities. This paper aims to explore the challenges of enforcing human rights during the arrest and detention process in cases of transnational crimes or violations of international law, such as piracy, terrorism, and drug trafficking committed on sea, involving the case law of the European Court of Human Rights.

Keywords: European Convention on Human Rights, extraterritorial, human rights, international law, maritime piracy, sea

Introduction

We live in a world where we face countless crises and directly experience armed conflicts, the world order is changing in front of our eyes. Oceans and seas have always had a strategic importance in these processes, a special role in geopolitics. They don't only mean a unique venue for battles to be fought, but the majority of world trade is based on maritime transport, which expands

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2 Nanovic Institute, University of Notre Dame; Assistant Professor, Institute of International Studies and Political Science, Pázmány Péter Catholic University, e-mail: kiss.amarilla@btk.ppke.hu

year by year. More than 80% of cargo traffic³ is already carried by seas, and maritime trade is expected to grow more than 2% between 2024 and 2028.⁴ Nowadays, it is not only about the traffic, but there are approximately 1.4 million kilometres of active submarine cables in the world.⁵ The bulk of data transmission occurs beneath the ocean's surface, and these cables facilitate roughly 95% of international data transmission.⁶

Global events are immediately reflected on the maritime trade and its commercial performance. We could track the decline in trade in 2020, when the Covid-19 hit the world. If any incident directly happens at sea or affects it, especially at strategically important locations, it can disrupt maritime trade, as we have seen it in the case of the obstruction caused by Ever Given in the Suez Canal in 2021, the war between Russia and Ukraine, the attacks by Houthi militants on ships in the Red Sea, or we can think about the activity of Somali “pirates”, and other armed robbers or terrorists. These activities are menacing shipping and lead to higher costs. End-consumers also feel its effect in the price increase of food and other items, as these higher freight rates are usually passed on to.⁷ We also experience delays, and it also leads to higher greenhouse gas emission, for ships have to change their route and sail around the African continent to transport goods from China to Europe. This is, however, still not without any risks, regarding the armed robberies happening in the Gulf of Guinea. Unfortunately, these crimes are impossible to eradicate because they count as usual symptoms of a state having certain economic or social problems.⁸

Consequently, shipping is a unique genre. In international law, we have principles defining jurisdiction, we have maritime zones, flag states etc. Oceans and seas, however, create a specific environment, bringing together those affected by an incident.

Violation of human rights at sea can come in various forms for sure. It may manifest in misdemeanour, or sometimes felonies like sexual violence, violating labour rights, but also in forced labour, child labour, or human trafficking. For this reason, a team of distinguished experts of international law drafted the Geneva Declaration on Human Rights at Sea (Declaration).⁹ The document was initiated in 2019, and it serves as a recommendation for various actors of the industry by providing clarity and guidance laying down the basic cornerstones.

The Declaration also recognises that one of the oldest menaces to the security of navigation and to human lives at sea is piracy. In almost every article published in this topic we can read that the first crime in history that triggered solidarity and unity among people, irrelevant to their national affiliation, was actually piracy.

3 UNCTAD [s. a].

4 For further details visit UNCTAD 2023.

5 GERVASI 2023.

6 SYMINGTON 2024.

7 For further details on the Houthi attacks, visit BLENKINSOP 2024.

8 KISS 2010: 143–153.

9 Geneva Declaration on Human Rights at Sea.

In international law we prefer to use the term *hostis humani generis* to emphasise its threatening nature.

This article has a special point of view. It provides an insight into what happens when suspects of “piracy” are caught and detained. It is to present the complex legal background because of which states and their navies tend to hesitate detaining these individuals, leading to the practice of impunity if an abuse happens at sea.

Considering the above-mentioned, this article has the ambition to raise awareness to those problems related to legal enforcement and human rights that we face on mainland as well, however, the sea is a more challenging environment. Individuals, not working in a job related to the sea, tend to have an “out of sight, out of mind” attitude towards matters at sea, and honestly, many abuses can remain unreported because no one is watching.

“Piracy”, or what you will

In the international law of the sea, piracy is defined by Article 101 of the United Nations Conventions on the Law of the Sea (UNCLOS).¹⁰ According to international law, piracy is an illegal act “of violence or detention, or any act of depredation, committed for private ends by the crew of the passengers of a private ship [...] on the high seas against another ship [...] [and] any act of voluntary participation [in this act]”.¹¹ Consequently, those crimes that are very similar to piracy in nature, but aren’t committed on high seas or they actually happen on high seas but by political motivation, are not regarded as piracy according to international law. In reality, however, we see that many incidents happen at ports or in the territorial waters of a state and not on high seas. We face attacks targeting the cargo, the ship, the staff, but we also see perpetrators striking yachts, but drugs or human trafficking are also often involved in these incidents. Then, of course, there is maritime terrorism. It seems to be widely accepted that piracy and maritime terrorism are mutually exclusive categories, because we can usually draw the demarcation line at the intention. We think the motivation is different, it is more like a politically motivated crime, and the *animus furandi* is not a goal, contrary to piracy, it is at most a means. On the other hand, however, we can also observe that piracy appears in political reasoning, especially after the terrorist attacks in 2001. Some experts relied on the piracy analogy. Given that piracy was the first crime targeting people, regardless of their citizenship, the community considered the perpetrators as common enemies of all mankind, just like modern terrorists nowadays.¹²

In reality, defining maritime terrorism is a complex task, for terrorism in general doesn’t have a universally accepted definition. The definition of piracy is not entirely clear either, considering the *travaux préparatoires*, analysing how the definition

¹⁰ United Nations Conventions on the Law of the Sea (UNCLOS) 1982.

¹¹ Article 101, UNCLOS.

¹² Sources rely on Cicero, however, it is also a misinterpretation of his words.

evolved through times. According to Guilfoyle, piracy was originally created as a general term, and the difference is whether an action requires the reaction of the State in form of a sanction. If yes, it is for public ends, otherwise, it is committed for private ends.¹³

From our point of view, the reason for having some clarity in this field is to know whether there is a difference in the way how suspects are detained. If terrorists are identified similarly to pirates, the jurisdictional issues, usually associated with their capture, can be elegantly circumvented.¹⁴ In the author's opinion, a crime committed for private end is not exactly the same when it is committed by private motivation. Motivation includes the reason that triggers an action, and it may include the goal someone would like to reach with the action in question, as the purpose may motivate you. When "private end" comes into picture, it is more like a purpose, what you would like to reach, and what you would like to get out of it.

Consequently, although some argue that hatred itself can also be a private motivation,¹⁵ and to some extent it may be definitely true, however, there is a doubt whether it fits the term "private end".

Nonetheless, despite the careful analysis of the regulatory history, aiming to know what the legislator's intention was, it may turn out, that the meaning of private ends changed, and it is actually more practical to think that it involves some private financial gain.

It is true, however, that in a historical context, ancient pirates were a group of people, distancing themselves from the protection and jurisdiction of their own state and to declare war on civilisation, engaging into activities like the terrorists: killing, destroying, destroying trade, terrorising. In order to reach their goal, they were indiscriminate in choosing their means.¹⁶

We can observe that these crimes are blended by colloquial language and are indistinguishable for everyday people for they all come in a form of a violent crime happening on sea. International law is aware of this problem, therefore, we have other documents like the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA)¹⁷ to think about related incidents.

These classifications may have relevance when determining on jurisdiction, because usually it is limited, except for the traditional piracy cases. Strictly from the perspective of international law, the concept of piracy is an exception to the general regulation that on high seas only the flag state has jurisdiction.

This article primarily focuses on a unique perspective, the human rights concerns when seizing, arresting and transferring the suspects of piracy. This may be important from the viewpoint of those state authorities (coastguards, the navy, courts etc.)

¹³ GUILFOYLE 2015: 36.

¹⁴ BURGESS 2006: 300.

¹⁵ KARIM 2017: 48.

¹⁶ BURGESS 2006: 308.

¹⁷ Adopted in Rome, 10 March 1988.

that are involved in the process of arresting and condemning perpetrators. It is of great importance to suppress armed robbery and piracy at sea, but states, as it will be clarified later, face with difficulties when actually prosecuting suspects at sea, as they are usually bound by human rights regulations, which doesn't make them interested in taking actions. Therefore, it may have a general impact on suppressing these crimes in the long run.

The extraterritorial application of human rights

The question of the extraterritorial application of human rights comes into play as suspects will often be pursued and apprehended by law enforcement agencies of another state. The situation is complicated by the fact that pursuing warships are, however, primarily equipped to deal with detainees on the basis of humanitarian law rather than human rights law.¹⁸ Therefore, as problems double, in fear of violating the human rights of the perpetrators, states often decide to release them or, as a more elaborated solution, states (especially European countries) made agreements with regional states so that they would prosecute the suspects.¹⁹ This latter, however, is usually applied in case of armed robbery, which is technically piracy happening on territorial waters.

The reason for doing this is that according to the human rights standards of certain states, the state itself and its authorities could be sued and bear the responsibility of violating international conventions.

In this sense, the best way to learn about human rights issues is from the case law of the European Court of Human Rights (ECtHR), which seeks to ensure maximum protection for individuals.²⁰ This is linked to the violation of the European Convention on Human Rights (ECHR),²¹ with particular involvement of Articles 5 (Right to liberty and security) and 6 (Right to a fair trial). Occasionally, Articles 2 (Right to life) and 3 (Prohibition of torture) also apply. In piracy operations the question of the right to life may arise not only in operations against perpetrators, but also in the context of hostage-taking, which is typical of piracy in some regions.

The role of effective control

In order to the extraterritorial application of the ECHR, it is important to know who has effective control over a territory.²² In case of sea, it is a complex task to decide, in particular, to determine where the effective control begins. The concept of effective control raised many questions, even when it came up in connection with incidents

18 MANUSAMA 2010: 153.

19 See for example: Council Decision 2009/293/CFSP.

20 TREVES 2010: 409; DUBNER–OTHERO 2016: 229.

21 European Convention on Human Rights 1950.

22 GUILFOYLE 2010a: 15; GALANI 2017: 38.

on mainland. Therefore, it is desirable to discuss it in general as well. Essentially, effective control means that states acts extraterritorially, and also has jurisdiction over a certain area, or they can enforce their interests somewhere outside their territory. In international law, we traditionally meet this in case of diplomatic missions as the most important public administration authority of a state operating in the territory of another state.²³ In this sense, the state controlling an area also has jurisdiction over that territory and the people there. The issue of effective control, however, can be more complicated than that.

Preceding the piracy cases, the question of effective control had already been raised in the highly-debated *Bankovic* case.²⁴ In 1999, during the NATO bombing in Belgrade, a TV and radio station was struck by a bomb. Sixteen people died and many left injured in the incident. Six people, related to the victims, sued European NATO member states. They based their claims on the violation of the ECHR. They argued that when air strikes took place, these states had *de facto* control over the territory they bombed, so they should have provided the basic human rights laid down in the ECHR for those individuals accidentally being there, falling within the jurisdiction of these states.²⁵ Applicants insisted on the view, there must be no discrimination in the application of the Convention whether a state acts on its own territory or outside its territory, so to some extent they had a new, not traditional approach to jurisdiction. The real question was, however, whether these states had jurisdiction in a traditional sense during the bombing.²⁶ In this case we technically see pilots, other members of the military as the agents of the state, taking operations in the airspace. As a result, the Strasbourg Court held that “the jurisdictional competence of a State is primarily territorial”,²⁷ and then it mentioned the traditional cases of international law (law of diplomatic and consular relations, flag states etc.), declaring that it is limited by the home state.²⁸ Furthermore, there is no jurisdictional link between the victims and the respondent states. For there is no invasion or military occupation of the territory, but a military operation was going on, this cannot be interpreted in a way that victims were under the jurisdiction of these European states.²⁹

Considering our topic, this case is important, as later, in the case-law after the *Bankovic* case, this argument reappears again in the *Medvedyev*³⁰ case, which will be mentioned in the next chapter. This case is different from the *Bankovic* in nature, however, they shared some similarities, so the Court had to justify why the ECHR couldn't be applied in *Bankovic* and why it could be referred to in the *Medvedyev*.

23 1961 Vienna Convention.

24 *Bankovic and others v. Belgium* 2001.

25 *Bankovic and others v. Belgium* 2001, see also ROXSTROM–GIBNEY–EINARSEN 2005: 61.

26 *Bankovic and others v. Belgium* 2001: 36.

27 *Bankovic and others v. Belgium* 2001: 59.

28 *Bankovic and others v. Belgium* 2001: 59.

29 It must be also noted that the USA and Canada had important role in the incident, but they were excluded since they couldn't be sued based on the ECHR.

30 *Medvedyev and Others v. France* 2010.

With regard to the above-mentioned, if an individual comes under this practical, *de facto* control of the state, it can be a subject to the jurisdiction of the state practicing it extraterritorially, involving the detention and custody of that individual, depending on the circumstances. In case of maritime incidents, as it was mentioned in the beginning of this chapter, it is important to know when this effective control begins. The reason for this is that on high seas ships can be intercepted and boarded by a warship sailing under the same flag as the intercepted ship. Otherwise, according to the Article 110 of the United Nations Conventions on the Law of the Sea (UNCLOS),³¹ boarding is prohibited, unless there is reasonable ground for suspecting that the ship is engaged in piracy, the slave trade, the ship is engaged in unauthorised broadcasting, or the ship is without nationality.³² In case of suspected illicit drug trafficking, the situation is a bit more complicated as the authorisation of the flag state of the suspected vessel must be obtained according to the Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (INCB), but boarding the vessel is possible with permit.³³ The common ground is that in both cases, navies must approach the vessel in question. As Article 110 (2) states, “[t]o this end, it may send a boat under the command of an officer to the suspected ship”.³⁴ If the grounds for suspicion are right, the officers have the right to take perpetrators in custody, but then the question of effective control raises. Do officers have effective control when they board the ship? Does it mean the suspects are within the flag state jurisdiction of the warship? How should the ECHR apply in case of detention and custody? The next chapter sheds light on the Court’s opinion in these questions.

The Medvedyev and Rigopoulos cases as cornerstones

Considering the ECtHR case law on detention at sea, we cannot skip the *Medvedyev* and *Rigopoulos*³⁵ cases, as practically everything we know about the enforceability of human rights of perpetrators is built on these two cases.³⁶ Although these two cases were based on drug smuggling, the same applies to persons detained at sea for piracy. The *Bankovic* case showed us that no effective control over the territory of the state could be exercised from the airspace,³⁷ and that the ECHR does not apply extraterritorially in situations where states act outside their own territory, except in certain limited circumstances.

In both cases, illicit drug trafficking was involved, nevertheless, what the ECtHR declared applies to those detained on charges of piracy as well. These cases raised

31 United Nations Conventions on the Law of the Sea 1982.

32 Article 110, UNCLOS.

33 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.

34 Article 110(2) UNCLOS.

35 *Rigopoulos v. Spain* 1999: 11.

36 BODINI 2011: 830; TREVES 2010: 409.

37 *BANKOVIC* 2001: SE5

questions about the application of Article 5(1) and (3) of the ECHR, as the applicants considered that they had been deprived of their liberty in violation of Article 5.

In the *Rigopoulos* case, the Spanish Navy stopped a Panamanian-flagged vessel in the Atlantic Ocean, on the high seas, and escorted it to a port in the Canary Islands. The journey took 16 days.³⁸ Article 5(3) of the ECHR requires that suspects be brought promptly before a judicial forum. In the *Rigopoulos case*, the Court held that a detention period of 16 days did not meet this requirement, however, it also recognised that exceptional circumstances may influence this. In the present case, it was decided that the distance involved made it physically impossible to bring the perpetrators to trial sooner.³⁹

In the *Medvedyev* case, the French Navy intercepted a Cambodian ship with the flag state, Cambodia's consent. For Cambodia was not a party to the relevant conventions (like the UNCLOS and the UN Convention against Illicit Traffic in Narcotic Drugs), France had no choice, but to look for diplomatic ways to get the consent, which the Grand Chamber approved retrospectively. The suspect vessel was escorted to a French port, resulting in a voyage that lasted for 13 days.⁴⁰ Once in France, however, the perpetrators had to be brought to justice immediately. According to the Court, which relied on the *Rigopoulos* judgment, arguments, other than geographical distance, are not acceptable and, in the Court's view, are attributable to the fault of the arresting state.⁴¹ The Court also held that the arrests were not entirely lawful, in particular because they couldn't have contact with family members or a lawyer, and the detention was not supervised by any judicial body. The other problematic issue was that those suspected with drug trafficking on board couldn't foresee that they would be taken away and brought into a court in France.⁴²

In this context, the Court ruled that Article 5(1) and (3) must be interpreted as strictly as possible in the case of detention of vessels in the course of maritime operations. In conclusion, the Court held that the detention by the French Navy was in breach of Article 5(1) ECHR, but it didn't violate Article 5(3). In this case, altogether forty days passed by between the arrest and the trial, and the Court found that this time taken to bring the arrested crew to France and before a judge were tolerable.⁴³

In these cases, the Court basically agreed that boarding the foreign vessel (with consent) didn't just establish control over it, but also regarded it as the exercise of state jurisdiction. Comparing to *Bankovic*,⁴⁴ the situation is more stable for ships at sea, than for aircrafts in the airspace, since ships can make a blockade, they anchor, so, there is no obstacle to effective control within firing range, although it is still less certain than land operations. Again, it must be noted that in terms of jurisdiction,

38 *Rigopoulos v. Spain* 1999: 11.

39 *Rigopoulos v. Spain* 1999: 9.

40 *Medvedyev and Others v. France* 2010.

41 *MANUSAMA* 2010: 160.

42 *GUILFOYLE* 2010b.

43 *GUILFOYLE* 2010b.

44 *BODINI* 2011: 844.

traditional piracy is an easier situation as it is still an exception to flag state jurisdiction on high seas. However, this can still conceal numerous problems. If it is easier to accept the jurisdiction of the operating states in case of piracy, it is easier to realise that they should provide the human right guarantees according to ECHR.

Once the suspects are detained on board of a warship, it has jurisdiction, and those regulations of the capturing flag state also apply. Based on the experiences so far, two models have emerged. The typical one, when the Navy checks upon the suspicious ship, they go on-board and they detain suspects on the warship. Besides the usual one, there is the careful one, which we could observe in the operations of the UK, as they do not transfer suspects to their own ship, but they are typically left on the board of the original vessel, of course only after the vessel was neutralised.

Additional aspects of applying the ECHR

Measures taken by an international organisation

Another aspect that can contribute to the clarification of applying the ECHR is related to the responsibility in case of an operation under the auspices of international organisations, like the EU or the UN,⁴⁵ for states usually act within the framework of a specific mission when they take actions to suppress piracy.

There were two cases related to the conflict in Kosovo during the late 1990s and early 2000s, the *Behrami* and *Saramati* cases,⁴⁶ where the applicants argued that they had suffered harm due to the actions of the United Nations Interim Administration Mission in Kosovo (UNMIK) and the NATO-led Kosovo Force (KFOR).⁴⁷ The ECtHR ruled that it lacked jurisdiction to examine the complaints against UNMIK and KFOR, as these are organisations that did not fall under the jurisdiction of any single ECHR state party. The ECtHR found that the armed forces in question acted under the Chapter VII of the UN Charter, so they were attributable to the UN as they are not acting on behalf of their own state in the region, but within the framework of a specific mission.⁴⁸

This is important as it may be an incentive for states engaging in military cooperation to suppress piracy as, in the future, they might try to attribute these operations to international organisations. However, in case of piracy, it is also typical that states retain jurisdiction over their fleets, even though the operation is international. Operations related to the European Union are no exception, but the legal background to the *Atalanta* mission is more specific, because the EU has legal personality, and the agreements establishing the Operation *Atalanta* were signed by the EU itself. However, here it also applies that the decision on transfer cannot

45 BODINI 2011: 845.

46 *Behrami and Saramati v. France* 2007.

47 *Behrami and Saramati v. France* 2007.

48 BODINI 2011: 845.

be taken by the command of the Force Commander of the EUNAVFOR Operation Atalanta, but must be approved by the flag state of the intercepting vessel. Moreover, the EU itself, despite its independent legal personality, is not yet a member either of the UNCLOS, or of the ECHR.

It is also worth noting that this decision of the Court has been criticised based on the matter of ultimate control, for it is not the organisation that exercises it.⁴⁹ The term “operational control” is more adequate and expressive than “ultimate control”, as it is closer to the *de facto* control and authority.⁵⁰ The International Law Commission has itself changed its terminology in the draft on the Responsibility of International Organizations, and now talks about operational control, which is closer to effective control, but it also means that states are responsible for ensuring that human rights are respected.⁵¹

As it was mentioned above, we usually see that a state’s Navy captures the suspects and they transfer them to another state (for example the flag state of the attacked commercial vessel). International law does not prohibit such a change of jurisdiction by transfer or rendition, it is possible by diplomatic consent or by *ad hoc* agreements, but basic human rights guarantees must be provided.⁵² Usually, however, these agreements don’t provide more information or regulate the transfer in detail.⁵³ For example, in theory, it must be ensured that some (not necessarily, but preferably judicial) procedure is followed before the transfer, but in reality, it is often not the case.

Asylum-seekers

It is worth noting, at least briefly, that sometimes the capturing states have other concern as well, which can serve as an additional factor that discourages states from conducting prosecutions. Usually, the procedures taking place in European countries are not deterrents, as offenders can still be released relatively young, and many are particularly happy with the prison conditions Western countries provide, where they have television or even adequate toilets comparing to prisons in their home country. We know of several cases⁵⁴ where convicted people have reported that being in prison is the best thing that has happened to them, and that they would certainly not go back. Offenders often have such a background that it needs to be explained to them that they do not face death penalty, mutilation, or they don’t need to be in fear that terrorist organisations such as *al-Shabaab* militias will catch them.⁵⁵ It is no coincidence that European and U.S. procedures could in theory attract refugee applications. And these states fear that, once perpetrators have completed their

49 Draft articles on the Responsibility of International Organizations 2011: Art. 7.

50 GUILFOYLE 2010a: 157.

51 PETRIG–GEISS 2011: 125.

52 PETRIG–GEISS 2011: 197.

53 PETRIG–GEISS 2011: 207.

54 KONTOROVICH 2012: 227.

55 LAKOTTA 2011.

sentences, it will be difficult to return them to their own countries.⁵⁶ Therefore, it is important to mention the prohibition of *refoulement*, expressed in the 1951 Geneva Convention, which states that a state may not return a refugee to a place where his life or freedom would be threatened on racial or religious grounds, on grounds of nationality, membership of a particular social group or political opinion.⁵⁷ However, this should be interpreted in line with the provision that admission as a refugee is possible if he or she has not committed a serious non-political crime.⁵⁸ The question is whether the principle of non-*refoulement* applies to offenders who apply for asylum during the transfer. As a matter of fact, they do not meet the conditions of the 1951 Geneva Convention, cited above, because the perpetrators of piracy leave their country not for fear of persecution, but to commit a crime.⁵⁹ Piracy is a serious crime, the prohibition of *refoulement* should not apply to them, as they should not fear persecution in their own country because of their origin, religion, etc. Moreover, a state is not obliged to accept asylum applications from those who may pose a threat to the security of the state or its population because they have committed violent crimes.⁶⁰ This is important, as the argument that the general condition of enforcing human rights is poor in the state to which the suspect would return is not sufficient, and doesn't make Article 3 of the ECHR applicable.⁶¹

Furthermore, in practice, we don't talk about traditional asylum seekers, but about offenders who have been convicted and are serving their sentence in the country in question, typically in Europe or the United States. They are looking for the opportunity to stay in the country and escape re-settlement. As discussed above, the legislation allows for an interpretation whereby states are not obliged to admit offenders even in this case. All this is based solely on international law, not forgetting the national legislation on aliens of each state. States often agree with each other to seek diplomatic assurances that a suspect who is brought there will not be subjected to torture or degrading treatment. In this way, they do not need to bother with the non-*refoulement* principle. Overall, suspected pirates are not eligible to apply for refugee status under international law, nor are they typically able to avoid *refoulement*. It is very rare⁶² that suspected pirates are able to demonstrate in a specific way that they would be subjected to torture or degrading treatment in their home country. Moreover, they have committed a crime that does not allow them to successfully apply for refugee status.

56 TREVES 2010: 13.

57 1951 Refugee Convention: Article 33.

58 1951 Refugee Convention: Article 1 F (b).

59 GUILFOYLE 2010a: 153.

60 1951 Refugee Convention: Article 33(2).

61 DUTTON 2012: 268.

62 An exception was *H.M.H.I. v. Australia* 2002, where the Committee against Torture accepted the argument that the perpetrator would be subjected to torture in his own state.

Concluding remarks

Despite the numerous examples of European states and the United States conducting proceedings against pirates, they tend to hesitate when taking action and prefer to rely on the proceedings conducted by the states of the respective region, or they simply let wrongdoers go. There are usually two reasons in the background. To begin with, in many cases, states cannot adequately provide the human rights for the suspects, which is not necessarily intentional, but the suspects are detained on a moving warship at sea far from mainland, and this makes things significantly harder. This could lead to violations of the generally stricter European or American regulations, and there have been cases where the European Court of Human Rights has condemned a state based on it. Since the national regulations regarding detention are often even stricter than the ECHR, and they usually specify a concrete period until the detention is lawful. This is why there has already been a decision where the ECtHR, ruling on a six-day detention, concluded that France owed compensation to several Somali pirates.⁶³ Therefore, the human rights of the perpetrators are important when discussing piracy, because the complications around providing human rights are the main reason why states are hesitant to prosecute perpetrators. The other reason is the fear of developed states of receiving asylum requests.

It is important to know when a state can act and have control over a situation, like in case of a military operation, and whether this control does amount to exercising jurisdiction as well in case of law-enforcement on high seas. In the *Bankovic* case and in the cases related to the topic, it turned out that the extraterritorial application of the ECHR was possible, but also exceptional, however, the Court has no coherent approach to these exceptional circumstances.⁶⁴

We could see how the Court doesn't count with the, sometimes harsh, reality of maritime operations. If a warship approaches a vessel on sea, assuming there are unlawful events going on board, like illicit drug trafficking, they must obtain the consent of the vessel's flag state, and then they still can't make sure whether they can detain the suspects. This applies to those cases that manifest in armed robbery at sea as well. Conversely, in case of piracy, which seems to be an easier situation, as warships don't need a consent, they still need to provide human rights guarantees.⁶⁵ This results in a bad practice that European states are not inclined to act themselves, rather, they prefer to rely on states that lack proper regulations and have no ethical concerns or shame if they need to take tougher measures.

Finally, it must be mentioned that the International Maritime Bureau (IMB) itself is also critical of the ECtHR's procedures, fearing that they may encourage piracy.⁶⁶ As Prof. Saiful Karim notes in connection with maritime terrorism: "[t]his legal

63 *Ali Samatar and Others v. France and Hassan and Others v. France* ECHR 361 2014.

64 *GUILFOYLE* 2010b.

65 *GUILFOYLE* 2010b.

66 *DUBNER* 2016: 225.

framework is thus mostly reactive, rather than proactive, with one consequence being the possibility of disputes between States, as some States may seek to exercise jurisdiction that interferes with the freedom of navigation irrespective of restrictions.”⁶⁷ In the opinion of the present paper’s author, this statement, or at least the first sentence is generally true in case of maritime incidents (piracy, armed robbery, drug trafficking etc.), and not much has changed in the past seven years, since the publication of Karim’s book.

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