Eur J Crim Policy Res (2017) 23:115–132
DOI 10.1007/s10610-016-9325-y

Harmonisation of National Criminal Laws on Maritime Piracy: a Regulatory Proposal for the Crime of Piracy and its Penalties

Beatriz López Lorca[1]

Published online: 4 August 2016

Abstract This article outlines a regulatory proposal for the crime of piracy and its penalties. Following the introduction, Section 2 addresses the duty to cooperate in the repression of maritime piracy established in Article 100 of the United Nations Convention on the Law of the Sea (UNCLOS). It also discusses the existence of an obligation to codify the crime of piracy and establish appropriate penalties, as part of the duty under Article 100. In this context, Section 4 is a *de lege lata* analysis of how national legislators have codified maritime piracy while Section 5 is a *de lege ferenda* proposal. Namely, Section 4 identifies some regulatory patterns in a wide number of jurisdictions that show to what extent there is a lack of harmonisation of domestic laws on maritime piracy. Section 5 discusses a regulatory proposal for the crime of piracy and its penalties.

Keywords Crime of piracy · Harmonisation of domestic laws · Maritime piracy · Proportionality principle · Safety of maritime navigation

Introduction

Piracy is one of the oldest manifestations of violence at sea and even today remains a threat to the safety of maritime navigation. In fact, there have been more than 8000 recorded attacks worldwide since the 1980s.[1] However, it is widely believed that the number of attacks is actually much higher as piracy attacks are rarely reported. While there is no sole and easily

[1] See annual and monthly incident reports from the International Maritime Organization (IMO) from January 1983 to January 2016. Available at http://www.imo.org/KnowledgeCentre/ShipsAndShippingFactsAndFigures/Statisticalresources/Piracy/Pages/default.aspx. Accessed 1 July 2016. See also: http://www.icc-ccs.org/piracy-reporting-centre/piracynewsafigures. Accessed 1 July 2016.

✉ Beatriz López Lorca
beatriz.lopezlorca@uclm.es

[1] Social Sciences Faculty, University of Castilla-La Mancha, Avenida de los Alfares 44, Cuenca, Spain

identifiable cause of piracy—maritime piracy is the result of a number of interacting factors (Murphy 2007; Chalk 2008)—, financial gain is an essential element. From a criminological point of view, maritime piracy is similar to other criminal phenomena such as human or drug trafficking in which there is an underlying economic purpose—a "private end" according to UNCLOS. On the other hand, financial gain distinguishes maritime piracy from other type of violent acts at sea, namely maritime terrorism (Menefee 1986; Sobrino Heredia 2009). In this regard, Article 101 of UNCLOS excludes any act not performed for private purpose when defining acts of piracy (e.g. politically motivated acts).[2]

Maritime piracy hotspots are mainly located in Africa (Somalia, Gulf of Aden and Gulf of Guinea), the Indian Subcontinent (Bangladesh, India) and Southeast Asia, including the South China Sea—for instance, 75 % of piracy attacks worldwide took place in these areas between 2009 and 2013 (International Chamber of Commerce-International Maritime Bureau 2009–2013). It is precisely in these areas where several retentionist countries impose the death penalty for maritime piracy. Thus, there is a high probability that convicted pirates will be sentenced to death, as has happened throughout history. On this matter, in 2013 Rupert Colville, the Spokesperson for the United Nations High Commissioner for Human Rights, warned that the application of the death penalty reactivated in the Middle East and Asia, despite the significant global trend towards abolishing this sentence.[3] Colville specifically referred to recent executions carried out in China, India, Indonesia, Iran, Iraq, Japan, Kuwait, Saudi Arabia, South Korea and Yemen. He also indicated that the United States continued to impose capital punishment, and that there were no reports of executions in Africa for that year.

China, the United States, Malaysia and Yemen—four of the 11 countries mentioned by the United Nation High Commissioner—have imposed the death penalty in piracy cases over the last few years, so it can be argued that maritime piracy has played a certain role in the reactivation of capital punishment. This is why it is highly important to seek for less punitive and extreme sentences, and ultimately work on the harmonisation of the sentences for maritime piracy. That is, seeking the same form of punishment across different jurisdictions. A more homogenous penal treatment would not only encourage cooperation to repress piracy attacks, but also provide a significant step forward in the international strategy towards global abolition.

In addition to the death penalty, maritime piracy is also punishable with life imprisonment and long-term prison sentences. This means that piracy is one of the most harshly punished crime while it is not one of the most serious, as can be seen *de lege lata* from, for instance, the Statute of Rome and the Draft Code Against the Peace and Security of Mankind drafted by the International Law Commission (ILC).[4] The principle that a sentence should be proportionate to the seriousness of the offence not only remains at the centre of penal practice, it is also closely linked to the purposes of punishment (see, for instance, Article 10.3 of the International Covenant on Civil and Political Rights).

[2] However, the difference between maritime piracy and maritime terrorism may be much less evident for instance when a terrorist group embraces maritime piracy to obtain funding, as the terrorist group Abu Sayyaf (Banloi 2007). In the same vein, pirates may also collaborate with a terrorist group, so that an attack act would combine both a private and a political purpose (Herbert-Burns and Zucker 2004).

[3] Press release. Office of the High Commissioner for Human Rights (UN). Available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13211&LangID=E. Accessed 1 July 2016.

[4] Measuring crime seriousness is a complex task. While a mere criminological perspective on maritime piracy's seriousness would lead us to conclude that maritime piracy is one of the most important international crime, the starting point for a normative analysis should be the proportionality principle, recognised in continental and common law (see, for instance, Roxin 2006; von Hirsch and Ashworth 2005).

In this article, Section 1 addresses the duty to cooperate in the repression of maritime piracy established in Article 100 of UNCLOS. It also discusses the existence of an obligation to codify the crime of piracy and establish appropriate penalties, as part of the duty under Article 100. In this context, Section 3 is a *de lege lata* analysis of how national legislators have codified maritime piracy while Section 4 is a *de lege ferenda* proposal. Namely, Section 3 identifies some regulatory patterns in a wide number of jurisdictions that show to what extent there is a lack of harmonisation of domestic laws on maritime piracy. This is why Section 4 discusses a regulatory proposal in order to help to counteract maritime piracy in an effective way. The article also includes some concluding remarks.

The regulatory proposal should be regarded as an example of "best practice" for the criminalisation of maritime piracy—and other unlawful acts against the safety of maritime navigation— and its penalties. It is based on the implementation of both the UNCLOS and the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention). The proposal covers the whole range of unlawful acts against the safety of maritime navigation—including maritime terrorism—and enables a comprehensive approach to violence at sea.

This research involved the analysis and classification of 80 legal systems worldwide.[5] Initially, the research intended to include all UNCLOS member states but this soon proved to be a very complex task. It would be near impossible to access all national legislation on maritime piracy. This is why it was necessary to establish secondary selection criteria, trying to cover the highest number of jurisdictions. Firstly, countries situated in maritime hotspots were considered, so certain African and South-Eastern Asian jurisdictions were listed.[6] Secondly, countries collaborating in military naval operations against maritime piracy were also considered, namely countries engaged in the Union Naval Force ATALANTA (EU NAVFOR) and Operation Ocean Shield.[7] Finally, the research also included several European jurisdictions as well as several Asian and American countries close to minor piracy hotspots.

The information on the different legal systems was mainly collected via the United Nations Division For Ocean Affairs and The Law of The Sea database on national legislation on maritime piracy.[8] As noted in the United Nations General Assembly Resolution 64/71 (par. 75), the Division together with the International Maritime Organization and the United Nation Office on Drugs and Crime compiled national legislation on piracy to serve as a resource for States. However, this database did not include all selected countries so that further legal sources were included in the analysis (national official gazettes—especially when collecting information on Latin American jurisdictions and certain European jurisdictions—and/or national ministries of justice or related official webpages). When it was unclear whether the information on national legislation was in force or national law on maritime piracy was not accessible, that jurisdiction was not included in the study. As a result, taking into consideration that 166 States have ratified UNCLOS, nearly half of the member States (80 national jurisdictions) could be included in the research.

[5] The list of 80 countries and the corresponding legislation on maritime piracy can be found in the appendix.
[6] On maritime piracy hotspots, see International Chamber of Commerce-International Maritime Bureau 2009–2013.
[7] ATALANTA operation was launched in 2008 within the framework of the European Common Security and Defence Policy to counteract maritime piracy in Somalia. And Operation Ocean Shield was launched by NATO in 2008 to deter pirates attacks in the Gulf of Aden and off the Horn of Africa.
[8] This database can be consulted on http://www.un.org/Depts/los/piracy/piracy_national_legislation.htm. Accessed on 1 July 2016.

The Duty to Cooperate in the Repression of Maritime Piracy

The legal framework for preventing and countering maritime piracy is reflected in the UNCLOS 1982. Firstly, the Convention establishes the obligation for States parties to cooperate in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State (Article 100).[9] However, this duty can be regarded as a "flexible" obligation because States are only bound to cooperate "to the fullest possible extent", which results in different levels of performance in practice. That is, cooperation in the repression of maritime piracy depends on a number of factors and the possibility to require States commitment is limited.

States remain free to decide the steps in preventing and countering maritime piracy depending for instance on the number of pirate incidents they have experienced, the State's interests in the region where attacks have become routine, the number of merchant vessels operating in piracy hotspots or law enforcement and military capability. On the other hand, States may also refuse to prosecute pirates in their own jurisdiction to avoid asylum claims by convicted pirates (Dutton 2011).[10]

However, even if the duty to cooperate in the repression of maritime piracy may be tailored to the country's internal affairs, it does not mean—at least theoretically—that States can avoid compliance with Article 100 of UNCLOS. This was stated by the ILC during the drafting of the UNCLOS in the mid twentieth century. Although the ILC acknowledged that "Obviously, the State must be allowed a certain latitude as to the measures it should take to this end in any individual case", it also claimed that "Any State having an opportunity of taking measures against piracy, and neglecting to do so, would be failing in a duty laid upon it by international law" (International Law Commission 1956).[11]

UNCLOS—like the rest of international treaties or covenants—is binding upon the States parties and must be performed by them in good faith,[12] particularly in view of the fact that it is freely signed. Thus, although participation in cooperation strategies for counteracting maritime piracy may be weighted in accordance with a number of factors, States cannot—and must not—avoid compliance with the obligation raised by Article 100. That is, States must act in good faith according to Article 300 of UNCLOS, which provides that "States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognised in this Convention in a manner which would not constitute an abuse of right".

In order to encourage the cooperation against maritime piracy, UNCLOS gives States parties several policing and enforcements rights (Articles 105 and 110 and, if applicable, Article 111) that allow them to intercept a pirate ship, as defined under Articles 101 and 103. UNCLOS policing and law enforcement rights can only be exercised on the high seas, as established by Article 100. However, the scope of these provisions could hinder the effective

[9] Currently, the scope of Article 100 of UNCLOS is confined de facto to the high seas since there is not any maritime zone not belonging to some State.

[10] This is why Treves pointed out that "international law rules on action to be taken against pirates permit action, but are far from ensuring that such action is effectively taken" (Treves 2009).

[11] See also: United Nations (2011). Report of the Special Adviser on Legal Issues Related to Piracy off the Coast of Somalia. Letter from the Secretary-General (S2011/30), p. 22. Available at http://www.un.org/en/sc/presidency/letters/2011.shtml. Accessed 1 July 2016. By contrast, Bassiouni considers that maritime piracy constitutes an international crime that raised to the level of *ius cogens*, and thus the duty to cooperate in the repression of this phenomenon is an *erga omnes* obligation (Bassiouni 1996).

[12] See article 26 of the Vienna Convention on the Law of Treaties, which incorporates the customary norm *pacta sunt servanda*.

repression of maritime piracy, as shown by Somali piracy. This is why the Security Council of the United Nations has adopted a number of resolutions since 2008 dealing with the specific problem of piracy and armed robbery in Somali territorial waters. The Security Council resolutions adapted the regulations of UNCLOS to Somali piracy by extending the policing and law enforcement rights' scope to the territorial sea of Somalia and authorising States to use land-based operations.

These rights shall not be used indiscriminately according to the definition of piracy. Article 101 of UNCLOS only includes violent acts committed for private ends by crew or passengers against another ship in the high seas—that is, it excludes the so-called environmental crimes, violence against ships on behalf of a government, mutiny, violent acts for political gain and violent acts in territorial waters. So, from a criminological point of view, Articles 105 and 110 can only be exercised to fight a specific type of violence on the high seas (piracy) and do not cover maritime terrorism or armed robberies in territorial waters.

On the other hand, Article 105 of UNCLOS entitles all States—not only States parties to UNCLOS—to seize a pirate ship as well as arrest persons on board and put them on trial, recognising States universal jurisdiction on maritime piracy. In order to effectively implement universal jurisdiction, States need to take decisive steps at two different but closely linked levels. On the one hand, States must codify acts of piracy under domestic law and provide for a proportional sentence, and establish competent courts to hear piracy cases, on the other.

However, UNCLOS does not clarify the specific obligations raised by Article 105, which means that States have implemented universal jurisdiction *latu* sensu under domestic law in very different ways. Unlike other conventions related to the repression of violent acts at sea,[13] UNCLOS does not specifically establish the obligation of codifying a crime of piracy under domestic law. This is why it can be argued that the approach taken by the UNCLOS when defining maritime piracy is the same as that underlying the 1932 Harvard Draft Convention on Piracy: "The effect of the convention would be like the effect of the traditional law of nations—the draft convention defines only the jurisdiction (the powers and rights) and the duties of the several states inter se, leaving to each state the decision how and how far through its own law it will exercise its powers and rights" (American Society of International Law 1932). This is also shown by the fact that Article 101 of UNCLOS does not define piracy as "crime of piracy" but as "acts of piracy" (Geiß and Petrig 2011).[14]

Regulatory Responses in Domestic Criminal Law

As already mentioned above, UNCLOS does not specify which type of *ex post* criminal measures shall be developed in order to cooperate in the prevention and repression of maritime piracy. UNCLOS obligations were drafted in open or general terms mainly because it was believed that piracy was a thing of the past. However, the obligation to cooperate in the

[13] See Articles 5 and 6 of SUA Convention, Articles 3 and 5 of the Protocol to the SUA Convention and Articles 1 and 2 of the International Convention against the taking of hostages (1979).

[14] By contrast, Bassiouni considers that piracy falls under the so-called "first category of crimes" (the most important international crimes for international community), and therefore piracy is listed in its Draft International Criminal Code (Bassiouni 1980). Nevertheless, the ILC decided not to include maritime piracy in the Draft Code of Crimes Against the Peace and Security of Mankind (International Law Commission 1954). Nor was piracy placed in the revised test of the 1996 Draft Code. While the Draft Code of Crimes Against the Peace and Security of Mankind classifies crimes with a significant political impact, the international legal concept of piracy excludes such kind of violent acts.

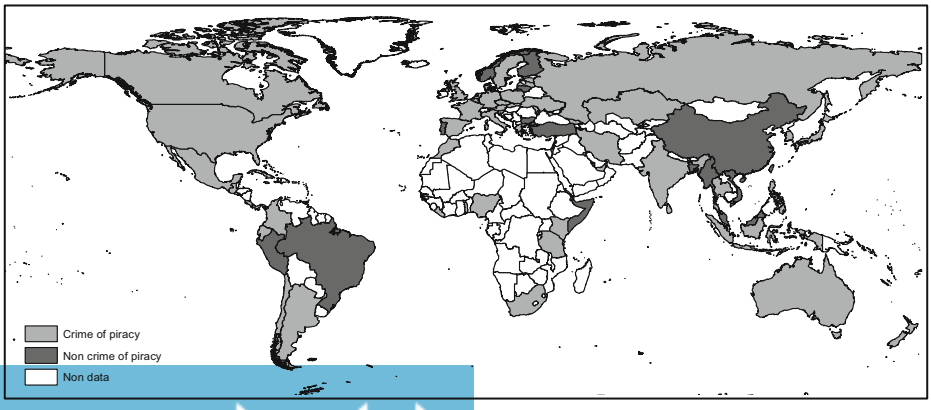
repression of piracy by arresting and trying pirates (Articles 100 and 105) in turn implies the existence of a certain level of law enforcement capability. In accordance to the principle of legality, States should at least codify the crime of piracy under domestic law and lay down penalties commensurate to the gravity of the offence (Abad Castelos 1997).

It would make little sense to make provisions for counteracting maritime piracy without expecting States to take specific action. This is shown, for instance, in the Report of the Special Adviser on Legal Issues Related to Piracy off the Coast of Somalia from January 2011, in which the Special Adviser stated that "In order to be able to sentence the detainees, all of the States—which have an obligation to cooperate—must first ensure that they have a solid body of legislation, making such substantive and procedural changes as may be necessary". Accordingly, the Report suggested that the Security Council should continue to encourage States to codify piracy under domestic laws (United Nations 2001).

Despite the fact that—as shown by Somali piracy—the lack of harmonisation of domestic criminal laws may hinder the timely and effective implementation of the duty under Article 100 of UNCLOS (Menefee 1999; Tribelli 2006; Blanco Bazán 2009; Roach 2011), maritime piracy have been classified in very different ways under national criminal laws. This is why the aforementioned Report of the Special Adviser recommends that piracy should be classified following the model of Article 101. Nevertheless, there are still a number of States that have not criminalised maritime piracy (see Map 1 below). Out of 80 countries, 64 jurisdictions have classified a crime of piracy and 16 jurisdictions have not yet specifically classified it.

As can be seen form the map, the fact that maritime piracy has not been criminalised under a number of jurisdictions close to piracy hotspots is particularly striking. Even though Articles 105 and 110 of UNCLOS—and Article 111, if applicable—set out a series of policing and law enforcement rights (the right of seizure and the right of visit), they can only be used to counteract maritime piracy as defined in Article 101. That is, the scopes of Articles 105 and 110 are the same as that of Article 101. In other words, *stricto* sensu States cannot exercise these rights nor cooperate in the suppression of piracy crimes under Article 100 if they have not criminalised piracy or the classification exceeds the scope of Article 101.

However, it should be noted that criminalising maritime piracy according to Article 101 of UNCLOS is not always required—legislative processes are complex and time-consuming. If there is already a crime or crimes of similar gravity under national criminal law, a priori it is not necessary to create an ad hoc offence. This option presents some benefits but also some



Map 1 UNCLOS implementation: criminalisation of the crime of piracy

shortcomings in terms of the principle of legality. On the one hand, it may well be that the pre-existing crime or crimes seek to protect specific legal assets that do not correlate with that of maritime piracy. This also means that penalties may not correspond to the gravity of maritime piracy. And on the other hand, if there is not any similarity between maritime piracy under domestic law and the concept of piracy as defined in Article 101 of UNCLOS, universal jurisdiction could not be applied (Satkauskas 2011; Geiß and Petrig 2011; Andersen et al. 2012).

As stated above, as long as Article 101 of UNCLOS does not establish the obligation of criminalising maritime piracy, and *stricto* sensu there is no such thing as the crime of piracy, States have a certain degree of discretion in laying down a crime of piracy under domestic law. Firstly, this can be seen from legislative technique. While most jurisdictions have classified maritime piracy in national criminal codes (47),[15] there is a significant number of States that have classified maritime piracy in special criminal laws (22).[16] In such cases, provisions related to policing and law enforcement rights are usually included.[17] In addition, maritime piracy is sometimes classified both in the criminal code and special criminal laws—for instance, Belgium, Djibouti, Filipinas, the United Arab Emirates and Singapore.

Secondly, there is no consensus on what term should be used to denote acts of piracy. Even though the terms "crime of piracy" or "piracy" are mainly used according to Article 101 of UNCLOS,[18] other terms can also be found. For instance, "taking control of ships" (Czech Republic, Lebanon, Poland, Qatar and Slovakia) or "hijacking" (Sweden). In other cases, piracy has been classified according to the SUA Convention, and therefore classified as an illicit act against the safety of maritime navigation (Cuba, Jamaica, the United States and Ireland). There are also legal jurisdictions where piracy has not been listed under any specific term (Brazil, Denmark, Djibouti, Germany, Iran, Latvia, Moldavia and the United Arab Emirates).

It should also be noted that legal systems vary considerably about the kind of legal asset protected under the law of piracy. In this regard, two basic groups can be identified. On one hand, piracy is regarded as an offence against security or public order,[19] and on the other, piracy is also considered a property offence (Brazil, Chile, Latvia, Liberia, Malta and South Korea). Along with these two basic groups, a significant number of jurisdictions could not be listed because of the heterogonous classification. For instance, maritime piracy would protect

[15] Argentina, Bahamas, Canada, Chile, Colombia, Costa Rica, Cyprus, Czech Republic, Denmark, Djibouti, Ecuador, Estonia, France, Georgia, Germany, Guatemala, Holland, Indonesia, Iran, Israel, Kazakhstan, Kuwait, Latvia, Lebanon, Liberia, Malta, México, Moldavia, New Zealand, Panama, Philippines, Poland, Qatar, Russia, Seychelles, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Tanzania, the United Arab Emirates, Ukraine and the United States.

[16] Australia, Austria, Belgium, Cuba, Djibouti, England, Greece, India, Ireland, Italy, Japan, Kenya, Mauritius, Morocco, Nigeria, Philippines, Singapore, South Africa, Sri Lanka, Thailand, Togo and the United Arab Emirates.

[17] For example, Australia, Belgium, Cuba, France, India, Japan, Kenya, Mauritius, Sri Lanka, South Africa, Thailand and Togo.

[18] See Argentina, Australia, Austria, Bahamas, Belgium, Canada, Chile, Colombia, Costa Rica, Cyprus, Ecuador, England, Estonia, France, Georgia, Greece, Guatemala, Holland, India, Indonesia, Israel, Italy, Japan, Kazakhstan, Kenya, Kuwait, Liberia, Malta, Mauritius, Mexico, Moldavia, Morocco, New Zealand, Nigeria, Panama, Philippines, Russia, Seychelles, Singapore, Slovenia, South Africa, Spain, South Korea, Sri Lanka, Tanzania, Thailand, Togo, Ukraine and the United States.

[19] Argentina, Bahamas, Canada, Costa Rica, Cyprus, Ecuador, Estonia, Georgia, Guatemala, Israel, Japan, Kazakhstan, Kenya, Malta, Moldavia, New Zealand, Panama, Philippines, Poland, Russia, Slovakia and Tanzania. Czech Republic, Denmark, Germany, Qatar, Sweden and United Arab States classify piracy as an offence against public order.

international law (Colombia, Slovenia and Mexico), peace, security of humankind and international legal order (Ukraine), the international community (Spain), relations with foreign States and external tranquility (Seychelles), ship ownership (Italy), people's safety (Iran) or their freedom (France, Djibouti) and maritime navigation (United States, Indonesia and Belgium). On the other hand, piracy is also regarded just as a maritime crime (Morocco), as a maritime and air crime (Holland), or as terrorism (Cuba). In addition, there are some jurisdictions that do not clarify the type of legal asset protected (Australia, Austria, England, India, Mauritius, Seychelles, Singapore, Sri Lanka, South Africa, Thailand and Ukraine).

Regarding how Article 101 of UNCLOS is implemented, most legal systems have defined maritime piracy in its own terms (44).[20] Only a small number of jurisdictions have classified maritime piracy using UNCLOS definition (17).[21] On the other hand, while some legal systems have only classified maritime piracy,[22] other jurisdictions have included both air and maritime piracy under domestic law when implementing Article 101 of UNCLOS.[23]

As stated above, States have a certain degree of discretion in laying down a crime of piracy under domestic law. This degree of discretion is even higher when establishing penalties. Article 105 of UNCLOS set out that States will decide upon the penalties to be imposed but it does not clarify what the length of the sentence should be. This is why the necessity of respecting the principle of proportionality is essential at this point. In the same vein, Article 5 of the SUA Convention establishes that "Each State Party shall make the offence set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences". The 2004 Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia or the 2009 Djibouti Code of Conduct contain similar clauses.

The lack of any provision on the length of piracy penalties as well as the broad drafting of Article 105 of UNCLOS, have led to extremely heterogeneous penalties across jurisdictions. However, this fact did not seem to concerned those drafting UNCLOS. They considered that it was not necessary to agree upon the penalties for maritime piracy: "The Commission did not think it necessary to go into details concerning the penalties to be imposed and the other measures to be taken by the courts" (International Law Commission 1956).

Traditionally, penalties for piracy were very serious. Pirates, who were historically considered *hostes humani generis*, were usually tried summarily—even on the high seas—and sentenced to death. Currently, maritime piracy is mainly punished with long-term prison sentences and life imprisonment but the death penalty is also imposed in some Asian and African jurisdictions. At this point, it should be noted that studying the penalties for maritime piracy under domestic law is a very complex issue. Not only because of the large number of legal systems taken into account in this research but also the diversity of piracy definitions makes it difficult to achieve a systematic approach. However, a general approach focused on

[20] Argentina, Austria, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Djibouti, United Arab Emirates, Ecuador, Georgia, Germany, Greece, Guatemala, Holland, Indonesia, Iran, Israel, Italy, Japan, Kazakhstan, Kuwait, Latvia, Lebanon, Liberia, Malta, Mexico, Moldavia, Morocco, Panama, Philippines, Poland, Qatar, Russia, Slovakia, Slovenia, South Korea, Spain, Sri Lanka, Sweden, Tanzania, Thailand, Togo and Ukraine.

[21] Australia, Bahamas, Belgium, Canada, Cyprus, England, Estonia, France, India, Kenya, Malta, Mauritius, New Zealand, Seychelles, Singapore, South Africa and the United States.

[22] See also Austria, Chile, Colombia, Costa Rica, Cuba, Ecuador, Estonia, Georgia, Greece, Indonesia, Ireland, Italy, Kazakhstan, Kenya, Kuwait, Latvia, Lebanon, Mexico, Moldavia, Morocco, Philippines, Russia, Singapore, South Korea, Sri Lanka, Tanzania, Thailand, Togo, the United Arab States and Ukraine.

[23] Argentina, Australia, Bahamas, Belgium, Cyprus, Czech Republic, Denmark, Djibouti, England, France, Germany, Guatemala, Holland, India, Iran, Japan, Liberia, Malta, Mauritius, New Zealand, Panama, Poland, Qatar, Seychelles, Slovakia, Slovenia, South Africa, Spain and Sweden.

the penalties for piracy and aggravated piracy makes it possible to identify some penological trends.[24]

There are several jurisdictions that impose the death penalty for the crime of piracy: Cuba, India, Iran, Japan, Kuwait, Lebanon, Philippines, Qatar, Singapore, South Korea, Thailand, Togo and the United Arad States. There is also a large group of jurisdictions where piracy is punished with life imprisonment.[25] In common law legal systems, life imprisonment may be a mandatory (Australia, Canada, the United States, India, Ireland and Jamaica) or a discretionary sentence (Bahamas, England and South Africa). In New Zealand, life imprisonment applies for aggravated piracy, namely when piracy results in death or when people's lives have been put at risk.

Life imprisonment is also mandatory for piracy in Cyprus, the United Arab Emirates, Kuwait, Singapore and Tanzania. In Chile, Denmark, South Korea, Slovakia and Japan, life imprisonment is the maximum term of imprisonment for piracy.[26] In some legal systems, life imprisonment is imposed for aggravated piracy, especially when resulting in death (for instance, Germany, Austria, Belgium, Djibouti, Cuba, Slovakia, France, Malta and Sweden). There are a few jurisdictions where corporal punishment (Singapore) and forced labour (Lebanon and Togo) are also imposed for maritime piracy.

Long-term prison sentences are the most common penalty across the jurisdictions considered for maritime piracy.[27] The maximum term of imprisonment differs slightly across jurisdictions. In some legal systems, it ranges from 15 to 20 years,[28] while in others, it is between 10 and 15 years.[29] In any case, it should be noted that the minimum term of imprisonment is never lower than 10 years in these jurisdictions. On the other hand, there are also two special cases regarding the maximum term of imprisonment. In Cuba, Malta, Mexico and Seychelles, the maximum term of imprisonment for maritime piracy is 30 years, and in Mauritius, 60 years.

The minimum terms of imprisonment varies greatly from legal system to legal system. It ranges from less than 5 years (Argentina, Costa Rica, Estonia, Guatemala, Poland, Slovenia and Sweden), through to 5 years (Chile, Germany, Greece, Kazakhstan, Latvia, Moldavia, Russia and Sri Lanka), to between 5 and 10 years (Czech Republic, Georgia and Ukraine). The highest minimum terms of imprisonment can be found in Belgium, Colombia, Italy, Mexico, Panama, Philippines, Slovakia and Spain (between 10 and 15 years of imprisonment).

[24] Penalties for piracy vary greatly from jurisdiction to jurisdiction. This is particularly true in the case of the penalties for aggravated piracy—even considering the same aggravating factor, for instance, piracy resulting in death.

[25] Australia, Austria, Bahamas, Belgium, Canada, Chile, Cuba, Cyprus, Denmark, Djibouti, England, France, Germany, India, Ireland, Japan, Kuwait, Lebanon, Malta, Singapore, Slovakia, South Africa, South Korea, Sweden, Tanzania, Togo, the United Arab States, Ukraine and the United States.

[26] There is not any minimum term of imprisonment in these jurisdictions, except in Slovakia and Japan where the minimum term of imprisonment is 20 and 5 years.

[27] See Argentina, Belgium, Canada, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Djibouti, Ecuador, Estonia, France, Georgia, Germany, Greece, Guatemala, Holland, Indonesia, Israel, Italy, Kazakhstan, Latvia, Mauritius, Mexico, Moldavia, New Zealand, Panama, Philippines, Poland, Russia, Seychelles, Slovakia, Slovenia, Spain, Sri Lanka, Sweden and Ukraine.

[28] Argentina, Belgium, Colombia, Costa Rica, Czech Republic, Denmark, Djibouti, Ecuador, France, Germany, Greece, Guatemala, Israel, Italy, Panama, Philippines, Slovakia and Spain.

[29] Canada, Chile, Estonia, Georgia, Holland, Indonesia, Kazakhstan, Latvia, Moldavia, New Zealand, Poland, Russia, Slovenia, Sri Lanka and Ukraine.

The various penalties for the crime of piracy across jurisdictions show that the gravity of the acts in question is perceived in a different way in each legal system. Despite the fact that maritime piracy is well understood from the criminological point of view, identifying the legal asset and the gravity of the crime is a complex issue. This fact could be at the root of the legal diversity of maritime piracy under domestic laws. This is why it is necessary to clearly identify the legal asset under maritime piracy law, understand the scope of protection and establish penalties according to the gravity of the crime (proportionality principle).

Harmonisation of National Criminal Laws on Maritime Piracy: A Regulatory Proposal Based on the Protection of the Safety of Maritime Navigation

Having established how national legislators have responded to maritime piracy (a *de lege lata* analysis), a *de lege ferenda* proposal can be put forward in order to help to overcome the piecemeal approach underlying most domestic laws on maritime piracy. It would be advisable to classify the crime of piracy—irrespective of whether piracy is codified in the criminal code or in a separate piece of legislation—to comply with Article 100 and 105 of UNCLOS. Maritime piracy is just one type of violence at sea, so it would be also advisable to classify other unlawful acts against the safety of maritime navigation together with the crime of piracy. This implies that both UNCLOS and SUA Convention[30]—including 2005 Protocol—could be implemented in national laws.[31]

Maritime piracy could be regarded as an offence against the safety of maritime navigation (legal asset). That is, an offence or crime that affects the coexistence of the international community and people on board the ship being attacked (López Lorca 2014). More specifically, maritime piracy is an infringement of the legal order of the high sea, as defined by UNCLOS (Gidel 1981; O'Connell 1984; Churchill and Lowe 2002)—principle of the freedom of the high seas (Article 87), principle of the reservation of the high seas for peaceful purposes (Article 88) and right of navigation (Article 90). It can also have a negative impact on the right to trade and fish (Article 116). These principles and rights are recognised to all States under the same conditions.

In addition, piracy affects legally protected assets of people on board the ship being attacked—mainly freedom, physical integrity and property. However, it could affect other legal assets (life, sexual freedom, etcetera).

Taking into consideration the scope of protection of the crime of maritime piracy—as well as other unlawful acts against the safety of maritime navigation—UNCLOS and SUA

[30] As stated above, although the SUA Convention was not drafted to counteract maritime piracy, it codifies unlawful acts against maritime navigation from a comprehensive approach. This is why this Convention can be used to counteract piracy, maritime terrorism and armed robberies in territorial waters.

[31] On the other hand, although this is a *de lege ferenda* proposal of crimes relating to the safety of maritime navigation, it should be stated that a *de lege ferenda* proposal of crimes relating to the safety of aerial navigation would be fairly similar. The latter would implement the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and 2010 Convention for the Suppression of Unlawful Acts Relating to Civil Aviation.

Convention regulations, the kind of rules that could be harmonised in this first stage could be as follows:

Offence of maritime piracy and other unlawful acts against the safety of maritime navigation
Regulatory proposal (unlawful acts)

1. Anyone who seizes or exercises control over a ship by force or threat or any other means on the high seas or in the Exclusive Economic Zone of a State for profit, shall be punished for the commission of an offence of piracy.
2. Any person will be punished for the commission of an offence against the safety of maritime navigation if:

a) seizes or exercises control of a ship by any means;
b) destroys a ship or causes damages to a ship which endanger or are likely to endanger the safety of maritime navigation; or

c) uses a ship in a manner that causes death or serious injury or damage.

3. Any person also commits an offence of piracy or an offence against the safety of maritime navigation if:

a) organizes or directs others to commit an offence set forth in Articles 1 and 2.

b) contributes to the commission of any offence set forth in Article 1 and 2, by a group of persons acting with a common purpose with the aim of furthering the criminal activity or criminal purpose of the group.

4. The penalties provided for in Articles 1, 2 and 3 shall be imposed without prejudice to any penalties imposed for other offences eventually committed.
5. Conspiracy, attempts to commit any offence set forth in Articles 1 and 2 and participation as an accomplice in any offence set forth in Articles 1 and 2 shall be also punished.

Article 1 adapts the concept of piracy, as defined in Article 101 of UNCLOS, to cover violence at sea considered maritime piracy in practice. This is why Article 1 incorporates a reference to the Exclusive Economic Zone of a State. It also adds an explicit reference to profit, making it possible to differentiate between maritime piracy and seizures carried out for political ends (maritime terrorism). This type of seizure should be punished under Article 2.a. On the other hand, even though Article 1 does not include the 'two-ship requirement', as established in Article 101 of UNCLOS, this should be taken into consideration in practice in order to differentiate piracy from mutiny. The scope of Article 1 falls within the scope of Article 101 of UNCLOS so that universal jurisdiction recognised in Article 105 can be exercised without further ado.

Article 2 is based on SUA Convention. Unlawful acts are classified according to their gravity. Firstly, section 2.a codifies seizures that fall under the concept of maritime terrorism or mutiny. In this regard, it can be argued that section 2.a allows for the punishment of seizures that cannot be regarded as maritime piracy. Section 2.b classifies explicitly violent acts relating to maritime terrorism, which endanger or are likely to endanger the safety of maritime navigation. Section 2.b will usually involve unlawful acts resulting in loss of human lives—especially due to the increase use of explosive devices. Finally, section 2.d classifies unlawful acts such as that of U.S.S. Cole, when ships are used as weapons.

In addition, Articles 1 and 2 are supplemented with several provisions. Article 3 can be regarded as an aggravated offence when the offences in Articles 1 and 2 have been committed by a criminal organisation. Article 4 incorporates an additional clause to punish other offenses that may eventually happen separately (the so-called concurrent crimes in continental law)—for instance, if piracy results in death of any person

on board. And Article 5 stresses the need to codify preparatory acts for the commission of any violent act at sea as well as attempts and participation in the commission of any unlawful act against the safety of maritime navigation.

Regarding the penalties for maritime piracy, the death penalty should be discarded. Although Article 6.2 of the 1966 International Covenant on Civil and Political Rights (ICCPR) allow for an exception for the death penalty in construing the right to life recognised by Article 3 of the 1948 Universal Declaration of Human Rights, the death penalty should be only applied for the most serious crimes (Hood 2012; Hood and Hoyle 2015).[32]

It may be questioned whether maritime piracy can be regarded as such a serious crime. It should be noted that piracy is excluded from the Draft Code Against the Peace and Security of Mankind drafted by the ILC and the Rome Statute. And, in addition, the Rome Statute, which classifies the most serious crimes against the international community as a whole, does not provide for the death penalty.[33] This is why it may be questioned whether the death penalty is a proportionate punishment for the offence of maritime piracy. Furthermore, the death penalty raises a number of serious human rights concerns, and can be regarded as an inhuman and degrading punishment[34] (Schabas 1996; De la Cuesta Arzamendi 1996).

It can also be questioned whether the death penalty is effective in order to counteract maritime piracy.[35] The best evidence of this is that piracy remains the main manifestation of violence at sea and the main threat to the safety of maritime navigation, despite the fact that historically pirates have been sentenced to death. Maritime piracy is a complex criminal phenomenon that will not be prevented by applying penalties for retribution and/or deterrence. It is necessary to focus on the root causes underlying maritime piracy, as Somali piracy and in the intensification of piracy in the Gulf of Guinea have shown.

Life imprisonment may also be regarded as a disproportionate penalty for maritime piracy in view of the Rome Statute—especially if life imprisonment is a mandatory sentence and irreducible. According to Article 77.1 of the Statute, the International Criminal Court may impose imprisonment for a specified number of years, which may not exceed a maximum of 30 years (Article 77.1.a). Life imprisonment may be

[32] See also *Roger Judge v. Canada*, Communication No. 829/1998, UN Doc. CCPR/C/78/D/829/1998 (2003). Available at http://www.acnur.org/secciones/index.php?viewCat=220. Accessed 15 November 2015. While China and Cuba signed the ICCPR in 1998 and 2008, they have not ratified it yet. South Korea (1990), Philippines (1996), India (1979), Iran (1975), Japan (1979), Kuwait (1996), Lebanon (1972), Thailand (1996) and Togo (1984) form part of the Covenant. So it can be argued that domestic laws on maritime piracy providing for a death sentence are in breach of the ICCPR.

[33] The 1998 Rome Statute codified the so-called core crimes category (genocide, crimes against humanity, war crimes and crime of aggression) under Articles 5–8, and established the International Criminal Court (Werle 2011).

[34] See *Öcalan v. Turkey*, (Application no. 46221/99), Judgment, 12 March 2003.

[35] By contrast, Stiles supports the application of the death penalty and considers it an effective punishment: "The sentences for committing piracy are harsh, and states should not show any mercy to accessories to piracy. Accessory law punishes accomplices who do not take an active role in the crime with the same punishment that the law metes out to active participants. Sentencing pirates' organizers to life imprisonment or death will permanently deprive the pirates of their masterminds, and combined with the other measures described above will result in fewer successful pirate raids" (Stiles 2004).

imposed exceptionally when justified by the extreme gravity of the crime and the individual circumstances of the convicted person (Article 77.1.b).[36]

Preventing pirates from resocialisation (Article 10.3 of ICCPR) by using penalties as retribution or deterrence—especially taking into account that pirates usually live in extreme poverty—may be regarded as an irrational use of Criminal Law (*ius puniendi*). That is, state punitive power is exercised beyond the boundaries of the principles limiting the application of Criminal Law. Penalties for piracy in comparative law shows to what extent domestic laws tend to go beyond the bounds of the proportionality principle.

The suppression of maritime piracy should be based on cooperation strategies of repression but also on cooperation strategies of prevention. The main root cause of maritime piracy is probably poverty and social inequality, as a result of unfair and unequal distribution of wealth (Fouché 2009; Kraska and Wilson 2009; Liss 2014). This is why it may be noted that more effective cooperation strategies for counteracting maritime piracy should be focused on prevention rather than on the protection of commercial traffic and economic flows.

On the other hand, regarding long-term prison sentences, the most common maximum term of imprisonment across different jurisdictions ranges from 10 to 20 years. In this regard, taking into account that, for instance, the International Criminal Tribunal for the former Yugoslavia imposed average sentences of 16 years of imprisonment for some of the so-called core crimes, it would be advisable a maximum term of imprisonment of 15 years.[37]

In addition, maritime piracy is not a particularly serious crime in accordance to its scope of protection. That is, even if the safety of maritime navigation can be seen as a significant legal asset, it is not the most important for the international community. For instance, in Brazil, Portugal and Norway, piracy is regarded as a property offence, namely robbery. Although piracy may result in death or injury, these offences are not inherent to the offence of maritime piracy. This is why a large number of legal systems consider that piracy resulting in death is aggravated piracy and thus, impose more severe penalties.

Taking into account comparative law, the minimum term of imprisonment could range from 5 to 8 years of imprisonment. If penalties for maritime piracy go from 5–8 years up to 15 years of imprisonment, the impact of every unlawful act on the safety of maritime navigation can be fairly weighted.

Finally, taking into consideration the scope of protection of the crime of maritime piracy and other unlawful acts against the safety of maritime navigation and the gravity of every violent act, a *de lege ferenda* proposal of the penalties for maritime piracy could be as follows. This proposal includes penalties between 5 and 15 years' imprisonment, precluding the application of the so-called ultimate penalties (death penalty, life imprisonment). From this point of view, the regulatory proposal would fit into most legal systems, including abolitionist countries and those jurisdictions where life imprisonment is regarded as unconstitutional. In addition, as the regulatory proposal is certainly based on the proportionality principle and takes into consideration the Rome Statute, the minimum and maximum terms of imprisonment for

[36] It should be noted that when the International Criminal Court stated that piracy was one of the most serious crimes against the international community in *Democratic Republic of the Congo v. Belgium*, it referred to the principle of universal jurisdiction. International Criminal Court, *Democratic Republic of the Congo v. Belgium* (14 February 2002). See votes from Judges Higgins, Koojiman and Buergenthal.

[37] See also Kontorovich, E. (2013). The Penalty for Piracy: An Empirical Study of National Prosecution of International Crime. Faculty Working Paper, Paper 211. http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/211. Accessed 1 July 2016.

maritime piracy tend to be less punitive than those penalties provided for core international crimes.

Offence of maritime piracy and other unlawful acts against the safety of maritime navigation
Regulatory proposal (unlawful acts and penalties)

1. Anyone who seizes or exercises control over a ship by force or threat or any other means on the high seas or in the Exclusive Economic Zone of a State for profit, shall be punished for the commission of an offence of piracy with 5 up to 10 years of imprisonment.
2. Any person will be punished for the commission of an offence against the safety of maritime navigation if:

a) seizes or exercises control of a ship by any means, with 5 up to 12 years of imprisonment.

b) destroys a ship or causes damages to a ship which endanger or are likely to endanger the safety of maritime navigation, to 8 up to 12 years of imprisonment; or

c) uses a ship in a manner that causes death or serious injury or damage, to 10 up to 15 years of imprisonment.

3. Any person also commits an offence of piracy or an offence against the safety of maritime navigation if:

a) organizes or directs others to commit an offence set forth in Articles 1 and 2.

b) contributes to the commission of any offence set forth in Article 1 and 2, by a group of persons acting with a common purpose with the aim of furthering the criminal activity or criminal purpose of the group.

4. The penalties provided for in Articles 1, 2 and 3 shall be imposed without prejudice to any penalties imposed for other offences eventually committed.
5. Conspiracy, attempts to commit any offence set forth in Articles 1 and 2 and participation as an accomplice in any offence set forth in Articles 1 and 2 shall be also punished.

Concluding Remarks

Article 100 of UNCLOS establishes the international obligation to cooperate in the repression of maritime piracy. In order to encourage the cooperation against this phenomenon, UNCLOS recognises States several policing and law enforcements rights (Articles 105 and 110 and, if applicable, Article 111). However, the Convention does not clarify specific obligations. States have thus implemented UNCLOS under domestic law in very different ways. In any case, there is no debate regarding the need to establish a regulatory model based on the principle of proportionality that would lead to a more effective repression of piracy.

As discussed above, maritime piracy is classified in very different ways under domestic laws, resulting in a low degree of harmonisation. There are a number of reasons for this lack of harmonisation. Piracy has been regarded as a thing of the past, UNCLOS does not establish the obligation of codifying a crime of piracy and so on. However, it should also be noted that States are reluctant to relinquish part of their sovereignty in criminal matters—as the harmonisation of criminal law in the European Union has shown.

Notwithstanding the complexity of the research, an effort has been made to identify regulatory trends in order to understand how national legislators have responded to maritime piracy. While the large majority of jurisdictions have classified a crime of piracy in the criminal code or in a separate piece of legislation, there are still some legal systems where maritime piracy is not a specific offence. On the other hand, piracy is usually regarded as an offence relating to the public security or public order inasmuch as it constitutes a breach of the public order of the high seas, as defined by UNCLOS. By contrast, some legal systems consider piracy a property offence.

However, a comprehensive approach to violent acts at sea would allow for better identification of the legal asset underlying maritime piracy: the safety of maritime navigation. Once

the scope of protection is identified, a regulatory proposal based on the gravity of violent acts at sea and proportionality principle can be drawn up.

Maritime piracy is one of the most harshly punished crimes while it is not one of the most serious. A significant number of jurisdictions impose the death penalty and life imprisonment but these penalties should be discarded. Long-term prison sentences are also common, which ultimately shows that maritime piracy is regarded as a serious crime across all jurisdictions. In this regard, the international movement towards the abolition of the death penalty should pay particular attention to the suppression of this penalty for maritime piracy—a targeted strategy could be developed.

There is a glaring disregard of the proportionality principle in practice but reality shows that using disproportionate or excessive punishment fails to provide a solution to crime. This is shown for instance by the fact that maritime piracy hotspots are located in areas where there are non-abolitionist countries and jurisdictions applying life imprisonment.

Overall, it is worth remembering that the law must not provide for any punishment other than that which is strictly and absolutely necessary. That is, a proportionate punishment and therefore, a fair one, as stated in the 1789 Declaration of the Rights of Man and of the Citizen.

Annex

Legislation on Maritime Piracy

Jurisdiction	Domestic criminal law
Argentina	Articles 198 and 199 of the Código Penal
Australia	Sections 51 and 52 of the Crimes Act.
Austria	Sections 45 and 46 of the Maritime Law, and Criminal Code
Bahamas	Article 404 of the Penal Code
Bangladesh	Criminal Code
Belgium	Articles 68–73 of the Code disciplinaire et pénal pour la marine marchande et la pêche maritime and article 3 of the Loi relative à la lutte contre la piraterie maritime (2009)
Brazil	Article 157 and 261 of the Codigo Penal
Brunei	Criminal Code
Bulgaria	Criminal Code
Canada	Articles 74–78 of the Criminal Code
Chile	Article 434 of the Código Penal
China	Criminal Code
Colombia	Article 153 of the Código Penal
Comoros Island	Criminal Code
Costa Rica	Article 258 of the Código Penal
Cuba	Articles 16, 21 and 22 of the Ley n. 93 contra actos de terrorismo (2001)
Cyprus	Section 69 of the Criminal Code
Czech Republic	Articles 290 and 291 of the Criminal Code
Denmark	Section 183a and article 260 of the Bekendtgørelse af straffeloven

Djibouti	Articles 208 and 209 of the Code des Affaires Maritimes and article 385–387 of the Code pénal
Ecuador	Article 423 of the Código Penal
England	Section 26 of the Merchant Shipping and Maritime Security Act (1997)
Estonia	Article 110 of the Criminal Code
Finland	Criminal Code
France	Loi n° 94–589 du 15 juillet 1994 relative à la lutte contre la piraterie et aux modalités de l'exercice par l'Etat de ses pouvoirs de police en mer, Loi n° 2011–13 du 5 janvier 2011 relative à la lutte contre la piraterie et à l'exercice des pouvoirs de police de l'Etat en mer and Code pénal
Georgia	Article 228 of the Criminal Code
Germany	§ 316c of the Strafgesetzbuch
Greece	Article 215 of the Code on Public Maritime Law
Guatemala	Articles 299 and 300 of the Código Penal
Holland	Articles 381–385 of the Wetboek van Strafrecht
India	Piracy Bill (2012)
Indonesia	Article 438 of the Criminal Code
Iran	Articles 185, 653 and 683 of the Islamic punishment Act
Ireland	Maritime Security Act (2004)
Israel	Article 169 of the Criminal Code
Italy	Articles 1.135-1.139 of the Codice de la Navigazione (1942)
Jamaica	Terrorism Prevention Act (2005) and Criminal Code
Japan	Law on punishment and Measures against Acts of Piracy (2009)
Kazakhstan	Article 240 of the Criminal Code
Kenya	Articles 369 and 371 of the Merchant Shipping Act (2009)
Kuwait	Article 252 of the Criminal Code
Latvia	Sections 176.3 and 268 of the Criminal Code
Lebanon	Articles 641 and 642 of the Criminal Code
Liberia	Section 15 of the Criminal Code
Lithuania	Criminal Code
Malaysia	Criminal Code
Malta	Article 328 N of the Criminal Code
Mauritius	Piracy and Maritime Violence Act (2011)
Mexico	Articles 146 and 147 of the Código Penal
Moldavia	Article 289 of the Criminal Code
Morocco	Article 23.3 of the Code disciplinaire et pénal de la marine marchande
Myanmar	Criminal Code
New Zealand	Articles 92–94 of the Crime Act
Nigeria	Merchant Shipping Act (2007)
Norway	Criminal Code
Panama	Articles 325–328 of the Código Penal
Peru	Criminal Code
Philippines	Sections 2and 3 of the Anti-Piracy and Anti-Highway Robbery Law (1974) and articles 122 and 123 of the Criminal Code.
Poland	Articles 166 and 167 of the Criminal Code
Portugal	Codigo penal

Qatar	Articles 245 and 246 of the Criminal Code
Russia	Article 297 of the Criminal Code (уголовный кодекс)
Seychelles	Article 65 of the Criminal Code
Singapore	Articles 130B-130C of the Admiralty Offences (Colonial Act) and articles 3, 4 and 6 of the Maritime Offences Act
Slovakia	Articles 185, 188 and 291 of the Criminal Code
Slovenia	Article 374 of the Criminal Code
Somalia	Criminal Code
South Africa	Article 24 of the Defence Act
South Korea	Article 340 of the Criminal Act (Act n. 5057) and Act Concerning Punishment of Unlawful Acts Against Ships and Marine Navigational Facilities (2003)
Spain	Articles 616 ter and 616 quarter of the Criminal Code
Sri Lanka	Piracy Act (2001)
Sweden	Article 5a of the Criminal Code
Tanzania	Article 66 of the Criminal Code
Thailand	Act on Prevention and Suppression of Piracy
Togo	Articles 147–153 of the Code de la Marine Merchande
Turkey	Criminal Code
Ukraine	Article 446 of the Criminal Code
United Arab Emirates (UAE)	Articles 208–210 of the Commercial Maritime Law and articles 288 and 289 of the Criminal Code
United States	Section 1.651-1.661 and 2.280 of the United States Code
Vietnam	Criminal Code

References

Abad Castelos, M. (1997). *La toma de rehenes como manifestación del terrorismo y el Derecho internacional*. Madrid: Ministerio del Interior.

American Society of International Law. (1932). Supplement: research in international law, competence of courts in regard to foreign states. Part IV- piracy. *American Journal of International Law, 26*, 746–886.

Andersen, E. et al. (2012). Suppressing maritime piracy: exploring the options in international law. Resource document. One Earth Future American Society of International Law, and ACUNS conference report. http://acuns.org/wp-content/uploads/2012/06/SuppressingMaritimePiracyExploringOptionsIntlLaw.pdf. Accessed 30 Sept 2014.

Banloi, R. C. (2007). The Abu Sayyaf group: Threat of maritime piracy and terrorism. In P. Lehr (Ed.), *Violence at Sea. Piracy in, the age of global terrorism* (pp. 122–138). London: Routledge.

Bassiouni, M. C. (1980). *International Criminal Law. A draft international criminal code*. The Netherlands: Sijthoff & Noordhoff.

Bassiouni, M. C. (1996). International Crimes: Ius Cogens and Obligatio Erga Omnes. *Law and Contemporary Problems, 4*, 63–74.

Blanco Bazán, A. (2009). War against piracy? Some misconceptions and oversights in the repression of crimes at sea. *Il Diritto Marittimo, 111*(1), 264–271.

Chalk, P. (2008). The maritime dimension of international security: terrorism, piracy and challenges for the united states. Resource document. *RAND Corporation*. http://www.rand.org/pubs/monographs/2008/RAND_MG697.pdf. Accessed 30 Sept 2014.

Churchill, R. R., & Lowe, A. V. (2002). *The law of the sea*. Manchester: Iuris Publishing-Manchester University Press.

De la Cuesta Arzamendi, J. L. (1996). ¿Pena de muerte para los traficantes de drogas? In R. Cario (Ed.), *La pena de muerte en el umbral del tercer milenio* (pp. 203–212). Madrid: Edersa.

Dutton, Y. (2011). Pirates and Impunity: is the threat of asylum claims a reason to allow pirates to escape justice? *Fordham International Law Journal, 34*, 236–295.

Fouché, H. (2009). Piracy: The African experience. In T. Potgieter & R. Pommerin (Eds.), *Maritime security in South African waters* (pp. 77–87). South Africa: SUN Press.
Geiß, R., & Petrig, A. (2011). *Piracy and armed robbery at sea. The legal framework for counter-piracy operations in Somalia and the Gulf of Aden*. New York: Oxford University Press.
Gidel, G. (1981). *Le Droit International Public de la Mer. Le temps de paix*. Paris: Librairie Edouard Duchemin.
Herbert-Burns, R., & Zucker, L. (2004). *Malevolent tide: Fusion and overlaps in piracy and maritime terrorism*. Washington: Maritime Intelligence Group.
Hood, R. (2012). Hacia la abolición universal de la pena de muerte: Progresos y perspectivas. In L. Arroyo Zapatero, P. Biglino, & W. Schabas (Eds.), *Contra el espanto. Por la abolición de la pena de muerte* (pp. 15–38). Valencia: Ed. Tirant Lo Blanch.
Hood, R., & Hoyle, C. (2015). *The death penalty. A worldwide perspective*. Osford: Oxford University Press.
International Chamber of Commerce-International Maitime Bureau. 'Piracy and Armed Robbery Against Ships. Report for the period 1 January-31 December 2009'; 'Piracy and Armed Robbery Against Ships. Report for the period 1 January-31 December 2010'; 'Piracy and Armed Robbery Against Ships. Report for the period 1 January-31 December 2011'; 'Piracy and Armed Robbery Against Ships. Report for the period 1 January-31 December 2012' and 'Piracy and Armed Robbery Against Ships. Report for the period 1 January-31 December 2013'. Resource documents. Accessed 30 Sept 2014.
International Law Commission. (1954). Draft code of offences against the peace and security of mankind with commentaries. *Yearbook of the International Law Commission*, vol. II.
International Law Commission. (1956). *Yearbook of the International Law Commission*, vol. II.
Kontorovich, E. (2013). The penalty for piracy: an empirical study of National Prosecution of International Crime. Resource document. Faculty Working Paper, Paper 211. http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/211. Accessed 30 Sept 2014.
Kraska, J., & Wilson, B. (2009). Piracy repression, partnering and the law. *Journal of Maritime Law and Commerce, 40*, 43–58.
Liss, C. (2014). Assessing contemporary maritime piracy in Southeast Asia: trends, hotspots and responses. *PRIF Report* No. 125.
López Lorca, B. (2014). *La piratería y otros delitos contra la seguridad de la navegación marítima*. Valencia: Tirant Lo Blanch.
Menefee, S. P. (1986). Terrorism at sea: The historical development of an international legal response. In E. Ellen (Ed.), *Violence at sea: A review of terrorism, acts of war and piracy, and countermeasures to prevent terrorism* (pp. 191–220). Paris: ICC.
Menefee, S. P. (1999). Anti-piracy law in the year of the ocean: problems and opportunity. *ILSA Journal of International & Comparative Law, 18*, 309–318.
Murphy, M. (2007). *Contemporary piracy and maritime terrorism. The threat to international security.* The International Institute for Strategic Studies: Adelphi Paper 388.
O'Connell, D. P. (1984). *The international law of the sea. Volume I*. Oxford: Clarendon.
Roach, J. A. (2011). General problematic issues on exercise of jurisdiction over modern instances of piracy. In C. R. Symmons (Ed.), *Selected contemporary issues of the law of the sea*. Leiden: Martinus Nijhoff Publishers.
Roxin, C. (2006). *Strafrecht Allgemeiner Teil*. Leinen: Beck.
Satkauskas, R. (2011). Piracy at sea and the limits of international law. *Aegean Review of the Law of the Sea and Maritime Law, 1*, 217–235.
Schabas, W. (1996). *The death penalty as cruel treatment and torture: Capital punishment challenged in the world's courts*. Boston: Northeastern University Press.
Sobrino Heredia, J. M. (2009). Piratería y terrorismo. In *Cursos de derecho internacional y relaciones internacionales de Vitoria-Gasteiz 2008* (pp. 81–148).
Stiles, E. C. (2004). Reforming current international law to combat modern sea piracy. *Suffolk Transnational Law Review, 27*, 299–326.
Treves, T. (2009). Piracy, law of the sea and the use of force: developments off the coast of Somalia. *The European Journal of International Law, 20*(2), 399–414.
Tribelli, C. (2006). Time to update the 1988 Rome convention for the suppression of unlawful acts against the safety of maritime navigation. *Oregon Review of International Law, 8*, 133–156.
Von Hirsch, A., & Ashworth, A. (2005). *Proportionate sentencing. Exploring the principles*. Oxford: Oxfor University Press.
Werle, G. (2011). *Tratado de Derecho Penal Internacional*. Valencia: Ed. Tirant Lo Blanch.