



## The Politicization of Maritime Piracy in International Law A Dialectical Approach

**Dr: Aissaoui Nabila**

Faculty of Law and Political Science  
University of 8 May 1945, Guelma / Algeria  
[aissaoui.nabila@univ-guelma.dz](mailto:aissaoui.nabila@univ-guelma.dz)

**Dr : Nadia Kadri**

Institute of Law  
Governance Horizons Laboratory for Sustainable Local Development  
University Center of Barika / Algeria  
[nadia.kadri@cu-barika.dz](mailto:nadia.kadri@cu-barika.dz)

**Prof : Siham Abbassi**

Institute of Law  
Governance Horizons Laboratory for Sustainable Local Development  
University Center of Barika / Algeria  
[siham.abbassi@cu-barika.dz](mailto:siham.abbassi@cu-barika.dz)

**Dr : Youcefi Alaeddine**

Institute of Law  
Governance Horizons Laboratory for Sustainable Local Development  
University Center of Barika / Algeria  
[alaeddine.youcefi@cu-barika.dz](mailto:alaeddine.youcefi@cu-barika.dz)

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### Introduction:

Maritime piracy is an ancient crime with many distinctive characteristics that make it unique. It is an international or transnational crime due to its occurrence in the high seas, and it is also extremely dangerous considering the difficulty of providing relief to the individuals and assets subjected to piracy. Moreover, maritime piracy is highly perilous due to the frequent use of force as a means of robbery and attack on ships. This crime can have significant repercussions that may affect various security, social, and economic aspects of nations. Consequently, maritime piracy has garnered international, regional, and local attention, attracting the interest of journalists, jurists, and researchers.

Alongside maritime piracy, there exists political crime, which is also of great importance and poses significant risks due to its connection to the security, political stability, and governance system of a state. These concepts (security, political stability, governance system) evoke international and jurisprudential opinions and positions.

Although at first glance, and based on purely legal elements, maritime piracy and political crime appear to be independent acts that cannot be attributed to one another due to their independence and separation, some jurists and researchers' perspectives on the relationship between these two crimes prompt us to carefully consider the possibility of

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characterizing maritime piracy as a political crime—a notion that some have sought to deny while others have explored its feasibility.

On this basis, the problem that we can address in this field is encapsulated in the following question:

### **To what extent can maritime piracy be considered a political crime?**

The significance of answering this question lies in examining jurisprudential opinions and researchers' findings in this field. Therefore, this paper will delve into the realm of jurisprudence, focusing on the jurisprudential debate surrounding the consideration or non-consideration of maritime piracy as a political crime, based on the legal consensus regarding the distinction between maritime piracy and political crime.

Accordingly, the answer to this problem will be addressed by exploring the following topics:

1. **First:** Definition of maritime piracy and political crime.
2. **Second:** Arguments for considering maritime piracy a political crime.
3. **Third:** Arguments for dismissing the political nature of maritime piracy.
4. **Fourth:** Consequences of considering maritime piracy a political crime.

#### **First: Definition of Maritime Piracy and Political Crime:**

Exploring the extent to which maritime piracy can be characterized as a political crime, and thus considered a political crime, requires us first to address the definition of both maritime piracy and political crime, according to what we will attempt to cover within the following points:

##### **01 - Definition of Maritime Piracy:**

There is no legal or jurisprudential consensus on giving maritime piracy a unified definition. Therefore, multiple definitions have been provided for this crime, which we will delve into the most important ones as follows:

- Maritime piracy is among the international crimes involving significant danger due to its direct assault on property and lives.
- Maritime piracy is what individuals engage in on the high seas, involving unlawful acts of violence against persons or property, aimed at achieving financial gain for the perpetrators<sup>1</sup>.
- According to Algerian legislation, maritime piracy is a crime under maritime law that affects the maritime navigation system and includes:
  - ✓ Any act related to violence, possession, or loss caused by the crew or passengers targeted against:
    - Ships, persons, or property aboard ships on the high seas.

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<sup>1</sup> **Aissat Radia**, Piracy and its Repercussions on Maritime Security, Master's Thesis in Law, Branch of Maritime and Coastal Activities, Faculty of Law and Political Sciences, Mouloud Mammeri University, Tizi Ouzou, Algeria, (D.T.), pp. 08, pp. 20-36, adapted.



- Ships or people or properties located in areas where the ship is not subject to any international jurisdiction.
- Any voluntary participation in the use of a vessel when the owner is aware of facts from which the vessel is known to be a piracy vessel<sup>2</sup>.
  - ✓ According to the International Maritime Bureau, maritime piracy is any act of boarding or attempting to board any ship with the intent to commit theft or any other crime and having the apparent intent to use force in those actions<sup>3</sup>.

Maritime piracy may have a universal or national nature:

**Universal piracy:** It is piracy subject to the rules of international law, occurring in the high seas not subject to the jurisdiction of any state. Any state has the right to intervene against the pirate ship, arrest the pirates, prosecute them, and impose punishment, applying the principle of universal jurisdiction.

**National piracy:** It is piracy subject to the national law of the state, occurring in its maritime areas (territorial waters or internal waters). Only the state whose maritime areas the piracy occurred in has the right to intervene to arrest the ship or pirates. Any intervention by other states would constitute an encroachment on the sovereignty of the state, unless an international agreement states otherwise, applying the principle of territorial jurisdiction<sup>4</sup>.

Thus, there is consensus in international law on the spatial scope of maritime piracy, which is the high seas, as well as consensus regarding the purpose of committing maritime piracy, which is to achieve specific goals.

It is also noteworthy that the Algerian legislator did not address the purpose or motive behind committing this crime in its definition of maritime piracy.

Furthermore, there are other definitions of maritime piracy that focus on the economic aspect rather than just the legal aspect. For instance, the International Maritime Bureau's definition of maritime piracy does not emphasize legal aspects but rather considers piracy to involve attempting to board a ship to commit theft or any other crime, using force or displaying the intention to use it, without specifying the location of the crime (high seas) or the motive for committing it (personal gain).

## 02 - Definition of Political Crime:

Political crime has been defined in various ways, including:

- As a type of serious crime that has a detrimental impact on individuals and society.
- As acts or statements directly or indirectly intended to alter the political situation in the state.

<sup>2</sup> Article 519 of Maritime Law No.: 76/80 dated: 10/13/1976.

<sup>3</sup> This definition was issued by the International Maritime Bureau, and it is a definition with a purely economic outlook. See:

IMB, piracy and armed robbery against ships, annual report, 2008.

<sup>4</sup> Ahmed Abu Al-Wafa Muhammad Hassan, scientific seminar on: Piracy and International Law "Arcanas and Provisions", Department of Teaching Programs, College of Teaching, Khartoum, December 19-21, 2011, p. 03.



- As intentional actions or statements that target state officials, diplomatic personnel, political leaders, or individuals or groups due to their political views<sup>5</sup>.
- As actions aimed at harming public authority or government institutions responsible for managing state affairs, if committed for political motives to reform situations and optimize the management of one or more state affairs in the interest of national welfare<sup>6</sup>.

Thus, it is evident that there is no consensus on the definition of political crime due to its association with events that are difficult to categorize under a single basis. However, agreement has been reached on the victim of this crime, which is the public authority and its institutions<sup>7</sup>, as well as the focus of the crime, which is the political motive. Additionally, consensus exists regarding the rights infringed upon, which are political rights<sup>8</sup>.

### **Second: Contents of Considering Maritime Piracy as a Political Crime:**

Based on the foregoing, it can be said that there are many contents upon which maritime piracy can be considered a political crime, or upon which the political nature can be attributed to maritime piracy, and the most important of these contents are:

#### **01 - The Content of the Purpose (Motive) of Committing the Crime:**

When analyzing the purpose of committing both maritime piracy and political crime, and examining the motive behind each of them, we can attribute the political nature to maritime piracy.

- If the **political motive** is the essence of the political crime, then if this motive is available to those who go out to sea, their actions will be tinged with a political hue and stripped of the character of maritime piracy because maritime piracy cannot occur for political motives. This opinion seems not to differ in substance from what is stated in the Law of the Sea Convention, which defined maritime piracy as: "Any illegal act of violence, detention, or any act of robbery committed for private purposes ..." The import of this text is that if an attack at sea occurs for a private purpose, it is piracy, but if it occurs for a political purpose, it is another crime that cannot be described as piracy<sup>9</sup>, so long as the political description is present in it.

- The criterion for distinguishing between maritime piracy and **political crime** is the standard or motive or purpose behind which the criminal acts. If the political crime has a political purpose or motive, as this crime is intended and aimed at political gain, separate from personal desires and opinions, and aims to direct thought and opinion and is directed at the state or one of its figures... etc., then anything not considered a political crime can be considered ordinary, whether it is harmful to public or private interests<sup>10</sup>. Therefore, acts of assault and

<sup>5</sup> **Hani Rafiq Hamid Awad**, Political Crime Against Individuals "A Comparative Jurisprudential Study", Master's Thesis in Comparative Jurisprudence, Faculty of Sharia and Law, Islamic University, Gaza, Palestine, 2009, pp. 02, pp. 36-37, adapted.

<sup>6</sup> **Aissat Radia**, op. cit, p. 26 et seq.

<sup>7</sup> **A group of authors**, Terrorism and Maritime Piracy, Naif Arab Academy for Security Sciences, Academics for Publishing and Distribution, Amman, Jordan, 01st edition, 2014, 61.

<sup>8</sup> **Aissat Radia**, op. cit, p. 26 and elsewhere.

<sup>9</sup> **A group of authors**, op. cit, pp. 22-23.

<sup>10</sup> **Hani Rafiq Hamid Awad**, op. cit, pp. 41-49.



looting within the high seas, if the motive behind them is political, they are political crimes, whereas if the motive behind them is non-political, they are maritime piracy.

- If it is necessary to recognize the interest in directing certain concepts of terrorism crime, usually related to political and economic strategic goals intertwined, it is difficult to disclose their intentions<sup>11</sup>, then it must also be recognized that the standard for classifying the crime as maritime piracy or political is governed by many other political and economic factors. Therefore, we can rely on the criterion of the motive to consider the act of hijacking ships on the high seas a political crime or an act of maritime piracy.

- Some legislators, like the Algerian legislator, did not mention the purpose of the crime when defining maritime piracy, and others, like the Italian legislator, defined political crime as a crime committed with a total or partial political motive<sup>12</sup>. Therefore, acts of aggression against ships on the high seas may have both political and personal motives simultaneously, and therefore maritime piracy can be considered a political crime. Maritime piracy, according to that, can be an ordinary crime if it occurred to achieve private purposes, and it can be a political crime if it occurred for a political motive. Therefore, it is conceivable that political crimes are committed by overthrowing the ruling authority at sea, meaning that the sea or one of the fields of rebellion that the rebels outside the ruling authority take with a political motive, so then it is necessary to describe the incident as maritime piracy and a political crime at the same time, i.e., maritime piracy with a political motive. This opinion can be reinforced, especially since in practical field there are cases and evidence that occurred by rebel and revolutionaries outside their countries taking the sea as a field for their rebellion, and they were recognized as rebels and treated on that basis, although many jurists that going out to sea by force if the political motive is present can describe maritime piracy with a political characteristic<sup>13</sup>.

- The reality of international work indicates that some acts of seizing ships in the high seas, which have been classified as maritime piracy, have been criticized by some researchers, based on the fact that these crimes are political, and the justification for the unsoundness of this classification is the motive leading to committing the crime. Among these crimes, we refer to the following cases:

- The case of the Portuguese ship Santa Maria, which was seized by Captain Galvão, where there were a large number of passengers from several nationalities on board this ship, Galvão sailed it on the high seas with the aim of drawing attention to the global public opinion to the opposition taking place in Portugal against the rule of the dictator Salazar. However, Spain and Portugal considered this act as acts of maritime piracy, while this act cannot be classified as maritime piracy due to the absence of the private purpose of the latter, as the purpose here is political, so the crime must be described as political.

<sup>11</sup> **Collection of authors**, op. cit, p. 161.

<sup>12</sup> **Mahdi Farhan Qabha**, Political Crime in Penal Laws “A Comparative Study”, research submitted to supplement the course on criminal legislation, College of Graduate Studies, An-Najah National University, Nablus, Palestine, 2014-2015, p. 10.

<sup>13</sup> **A group of authors**, op. cit, p. 64



• The case of the ship *Gastom* (Sardinia and Naples case), where this ship sailed towards Tunisia, and upon reaching the high seas, some of its passengers rebelled and seized it, releasing some of the political prisoners who were on board the ship, then they headed to Naples to ignite the revolution, but the ship *Naples* managed to capture them, and the court ruled to confiscate it on the basis that it was acts of piracy. British judges (Twiss) and (Philimore) issued a fatwa that this seizure was unsound and that a distinction must be made between revolutionary acts and acts of maritime piracy.

• The case of the *Mavi Marmara Freedom Ship*, where on May 15, 2010, this ship, carrying the Turkish flag, headed to Gaza with ten thousand tons of humanitarian aid for the residents of the sector and 600 Arab and foreign solidarity activists. The naval and air forces of the Zionist entity attacked the ship in international waters, killing 06 crew members, and injuring 03 others, and this attack was classified as an act of maritime piracy, although it is confirmed that the purpose of the attack on that ship is purely political and does not have any political characteristics. So, the attack can be classified as an act of maritime piracy because this classification is unsound due to the absence of the specific motive<sup>14</sup>.

## **02 - Contents of the Consequences of Committing the Crime:**

Besides the political motive, there are other contents through which the political nature can be attributed to maritime piracy, the most important of which are:

- The possibility of treating the perpetrator of piracy in the same way as a political criminal in terms of extradition, where the rule is that a political criminal cannot be extradited unlike other criminals. In this case, pirates are treated as political criminals rather than pirates. Based on some legal texts - especially national ones - they can be considered to be committing an act of political crime due to the surrounding circumstances and conditions that justify it. In this case only, the perpetrators of piracy can be considered political criminals, and therefore they have the right not to be extradited to the state requesting them for that crime committed by them<sup>15</sup>.

- Some international conventions related to maritime piracy have imposed restrictions on this crime, considering acts of assault on ships or their passengers in the sea under certain circumstances as acts of piracy, particularly if committed for political or national purposes...etc.<sup>16</sup>. Hence, the consequences of committing acts of piracy on ships in the high seas for reasons other than private motives, such as political reasons, make the crime not qualified to be described as piracy. Therefore, it must be legally described, and the most appropriate description for the crime when its purposes are political is to consider such actions as political crimes.

- Some national legislations do not specify the purpose of committing acts of assault on ships in the high seas. Therefore, describing the crime in this case based on these legislations does not necessarily lead to piracy. These acts can be considered terrorist or political, and in this case, the description of piracy does not apply to the crime described as political.

<sup>14</sup> Aissat Radia, op. cit, pp. 36-38.

<sup>15</sup> A group of authors, op. cit, p. 69.

<sup>16</sup> Ibid., p. 72.



### **Third: Contents of Removing the Political Nature from Acts of Maritime Piracy:**

Considering the aforementioned contents, which can describe acts of maritime piracy as political crimes, there are other contents based on which the political description can be removed from acts of maritime piracy, including:

- Some scholars believe that all acts of assault at sea are acts of maritime piracy and cannot be described as political crimes even if committed for political reasons. According to them, the criterion is the external appearance of the behavior, and there is no need to investigate the motives and intentions of the perpetrators of those acts because investigating them is futile due to the difficulty of proving psychological motives. Therefore, these acts are all considered acts of piracy, and there is no room to talk about political crimes in this regard<sup>17</sup>.

- If one of the consequences of maritime piracy is that the perpetrators of acts of assault on ships in the high seas enjoy the status of political criminals, they will benefit from a range of privileges, including full amnesty, a ban on extradition, mitigation of punishment, etc. This outcome is very dangerous, especially if the perpetrator of acts of assault on ships resorts to the use of force resulting in harm to civilian passengers on the ship and endangering their lives. Therefore, it is more appropriate to describe the aforementioned actions as acts of maritime piracy to avoid this.

### **Fourth: Consequences of Considering Maritime Piracy as a Political Crime:**

After discussing the contents of considering acts of assault on ships in the high seas as maritime piracy and the contents of considering it a political crime, we will address within this point the most important consequences of considering piracy as a political crime, which are:

#### **01 – Benefit from the Ban on Extradition of Criminals:**

National and international legal texts prohibit the extradition of political criminals. This means that considering maritime piracy as a political crime makes it prohibited to extradite the perpetrators of piracy.

Despite the criticisms that may be directed towards the benefit of perpetrators of piracy from the extradition ban, especially when committing the crime using force, particularly armed force, which may lead to loss of life, we point out that treating criminals more leniently compared to other criminals is a modern idea. Until the end of the 18th century, political criminals were treated harshly due to absolute individual rule. Therefore, the extradition of criminals only appeared at the beginning of the 19th century when the call for treating political criminals with compassion emerged, especially since a political criminal can turn from an oppositional political criminal at present to a hero and ruler in the future<sup>18</sup>.

#### **02 – Benefit from General Amnesty Laws:**

General amnesty is the axis of exempting the criminal nature from political crime. It is a reason for legalization enjoyed by anyone whose crime is considered political and occurred within the period specified by the law issuing the general amnesty. Here we note that describing

<sup>17</sup> A group of authors, op. cit, p. 62.

<sup>18</sup> Mahdi Farhan Qabha, op. cit, p. 19 p. 29.



maritime piracy as a terrorist crime necessitates depriving piracy of the benefits of political crime, including general amnesty, due to the consensus on the necessity of depriving terrorists of the benefit of general amnesty, which may be issued in favor of political criminals<sup>19</sup>.

### 03 – Benefit from Mitigating Punishment:

In modern systems, the political criminal enjoys many advantages, including being viewed as an honorable person who has gone astray in his pursuit of his political goals. Therefore, he is worthy of good treatment in the stages of criminal proceedings and deserves mercy in his punishment, both in terms of the nature and amount of the penalty.

This means that considering maritime piracy as a political crime under certain circumstances necessitates granting the pirate the benefit of mitigating punishment according to the provisions of the domestic law of the state<sup>20</sup>.

### Conclusion:

In conclusion of this research paper, we can say that maritime piracy is an ancient crime, while political crime is a modern one. Despite the antiquity of the former and the novelty of the latter, and despite explicit international laws (conventions) leaning towards describing maritime piracy as acts of assault on ships in the high seas, there has arisen a jurisprudential debate about considering some acts of assault on ships in the high seas as political crimes.

Therefore, the ongoing discussion in this field is not a legal one as much as it is a jurisprudential one, as scholars have attempted to explore the possibility of attributing political status to the crime of maritime piracy.

In this context, we can note several important results:

- International conventions have focused on the element of motive or purpose as a reason for committing the crime occurring on ships in the high seas, considering the specific motive, whether material or immaterial, as constituting maritime piracy.

- Committing acts of assault on ships in the high seas, when not motivated by specific purposes or motives, cannot be described as maritime piracy. This opens the door to seeking a description of these acts, either as terrorist acts or political acts, depending on the motive for their commission, despite the difficulty of proving the motive or purpose of committing the crime.

- The contents that can be relied upon to describe maritime piracy with a political status are countered by other contents that can be relied upon to dismiss the political description of piracy acts, especially when considering the consequences of describing maritime piracy as a political crime.

**Therefore, we can say that describing acts of assault on ships, whether using force or not, when occurring in the high seas, is considered maritime piracy if the purpose of committing them - i.e., the acts of assault - is a specific purpose aimed at achieving specific material or immaterial goals. However, if the purpose of committing the aforementioned**

<sup>19</sup> A group of authors, op. cit, p. 68.

<sup>20</sup> Ibid., p. 69.



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acts is aimed at achieving political goals, then the political status can be attributed to the political description.

This approach seems crucial in light of the necessity to describe crimes occurring on ships in the high seas when the motives behind them are not specific. It appears even more crucial in light of the jurisprudential criticisms and the opinions of researchers that have criticized the adaptation of some acts of assault on ships in the high seas as maritime piracy crimes and called for their adaptation as political crimes because the motive behind them is clearly political.