ARTICLE INFO

Article History:
Received 06th June, 2019
Received in revised form 14th July, 2019
Accepted 23rd August, 2019
Published online 28th September, 2019

Key Words:
Antiquities looting, crimes laundering, maritime criminality, money laundering, piracy

ABSTRACT

The sea constitutes a mainstreaming way to commit crimes, which are particularly exemplified by the diachronic phenomenon of piracy. Piracy has a major importance because there is a tendency to extend or enhance the ban on it, at least the last 3 centuries, mainly as for privateer practice and infringements of intellectual property law. The 1982 UNCLOS provides the framework for the repression of piracy on high seas, in particular in its articles 100 to 107 and 110. Besides, some maritime aspects of criminality have been duplicated through the branch of anti-money laundering law, corresponding to 5 directives adopted by European Union. For instance, the theft of the cargo of a ship as well as maritime aspects of crimes laundering, like antiquities trafficking at sea, have been institutionalized as basic crimes within this branch.

INTRODUCTION

Maritime Laundering of Criminal Activities

The sea may be used for laundering of various activities in the field of criminal law. The current paper focuses on maritime aspects of criminality and on the nearby phenomenon of money laundering, with a special reference to human rights. The new wave of fundamental rights consists in 4G rights, which began to emerge about at the end of the twentieth century or, at least, in the beginning of the current one. It includes various guarantees, such as the rights relevant to communication and information technologies, genetic engineering, the world of animals and Containing Climate Change.

The paper hypothesis is that the sea constitutes a mainstreaming way to commit crimes.

The current research focuses initially on piracy and then on antiquities looting. Afterwards, it examines the new branch of anti-money laundering law, established by European Union. Then, a literature discussion follows, in the perspective of a final conclusion being relevant to the above-mentioned hypothesis.

Maritime Piracy Particularly In the Oceans And International Law

There is a traditional tendency to personalization of ships in legal and social terms. Indeed, a ship is legally a mobile thing which, however, looks like a person. The anthropomorphism of this means of transport is very remarkable not only because traditionally this diachronic social phenomenon has to do mainly with animals but also because it highlights the particular significance of ships against other things, which are useful for various aspects of human life.

Piracy constitutes an activity uniquely of private individuals (not of States). This activity offends things, usually the cargo of a ship or even the ship itself. Nevertheless, this form of maritime criminality may be directed against persons, let alone professionals of the merchant navy market. It is the case of the crew and above all mainly the captain, who anyway is by law the responsible person for any damage against the crew and the ship.

Piracy is a very old economic practice, which is comparable to the job of professional robbers on land. As already implied, it is usually held as a job committed by persons, making use of force or at least of the threat of violence against the crew and...
the passengers of the ship being under attack. It is also notable that pirates are often endowed with the back of other private individuals, who are linked with them. In other words, pirates are supported by the society, to which they belong, as it is proved to be the case of the current problem of pirates coming from Somalia.

If piracy is a crime as old as the hills, it does not appear with the same intensity in various periods of history. It started to know a major breakthrough when the Middle Ages ended, around 1500 and lasted for three centuries, particularly in the Atlantic. As trade linking Europe, Africa and the Americas boomed, so did piracy.

So, piracy was held in the early phase of modern history, which is anyway marked by another important development. It is about the emergence of the branch of the law of the sea, which in its current form began to be formed in the 17th century. Big naval forces of that era wanted to expand their sovereignty and power at sea. One of them was Venice, which had already managed to become the biggest place of commerce of the Christian West. Those States adopted practices leading to the adoption of new legal norms. International law on the sea was born, not through international treaties but in a rather empirical way. It was the beginning of the development of the customary period of this branch, which lasted for almost 4 centuries. Naval forces contributed to the development of a non-written normativity, which had an innovative character in various points. This was the case of territorial sea, which emerged mainly due to the defense interests of coastal States. It constituted a new type of territory of States, a water one, against the traditional concept of land territory. It is to underline that the new maritime zone, whose breadth was not clearly established, served not only the major target of national defense, typical for the role of any State, but also an economic one. In those national waters, fishery became an internal matter of each coastal people and therefore, as a general rule, foreigners were excluded. Fishery is indirectly connected with piracy, as proved by the case of Somali pirates, who alleged that they were led to this criminal activity because Western people made an illegal use of national waters of their homeland for fishery. Anyway, the other maritime zone that was recognized by the law of the sea in modern history consisted in high seas, endowed with the diachronic principle of freedom of navigation of all ships, either public or private ones.

The most impressive point of piracy (in wide sense) has to do with the phenomenon of privateering. A privateer was a corsair operating in combination with a State ‘‘legitimizing’’ him. States, such as England and France, officially collaborated with corsairs’ criminal organizations. The aforementioned anthropomorphism of ships is enhanced by the fact that the term ‘‘privateer’’ was not historically used uniquely for private persons, as signalized, but also for ships. A privateer was an armed ship belonging not to the public sector but to the private one. It was privately owned and manned and it was commissioned by a government to fight or harass enemy ships. Recent research has shed light to the fact that piracy contributed to the material construction and ‘‘criminal organization’’ of European colonial States. Between 1500 and 1713 (year of the Utrecht treaty which ended the colonial war), European monarchies employed pirates to wage war against each other and plunder the New World at the expense of their political rivals. Then, with the establishment of a European balance of power at sea, the repression of piracy progressively became a means for European States to claim the monopoly of violence and commerce over their respective colonies. By 1713, piracy had become the residual legal category allowing those countries to repress foreign activities, which were detrimental to their commercial enterprise.

More precisely, in the early 1700s nations of Europe began to introduce stronger anti-piracy law, increase the number of warships in the area of the golden era piracy, and offer rewards to those who turned in pirates. In 1717, England offered pirate captains and crews amnesty, threatening those who refused with no mercy if, and when, caught. Over the following years, the buccaneer captains fell one by one.

It is to signalize that the same country had already adopted rules against another activity of private individuals, operating on land. Indeed, the term ‘‘Pyrate’’ has been used in England, from the seventeenth century and on, namely before the Statute of Anne, to mention the guild of printers (the Stationers’ Company), who did not pay respect for the privilege of the University. That Statute was an act of the Parliament of Great Britain, being in vigor from 10th April 1710 and on. It was the first statute to provide for copyright regulated by the government and courts, rather than by private parties.

Besides, International Law, more precisely, the 1856 Declaration, considered the privateer practice as banned but the USA continued to take advantage of that practice in the Pacific and did not want to criminalize it.

Nowadays, the 1982 United Nations Convention on the Law of the Sea (UNCLOS), called by the doctrine ‘‘Constitution for the Oceans’’, consists in the mainstreaming normativity having to do with piracy on high seas (not in the territorial and internal waters of any coastal State). It provides the framework for the repression of maritime piracy, in particular in its articles 100 to 107 and 110. It is notable that UNCLOS puts the stress on the collaboration principle to cope with this form of criminality, which is particularly complicated and dangerous in the oceans. According to article 100, ‘‘All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State’’. States have been repeatedly encouraged by the UN General Assembly to cooperate to address piracy and armed robbery at sea. However, article 100 has raised criticism because the ‘‘Duty to cooperate in the repression of piracy’’ has been consecrated in another vague way. Therefore, it is doubtful whether the collaboration principle has a really compulsory nature in practice or not.

Besides, the content of the UNCLOS is both broad and narrow at the same time. On the one hand, this legal text includes in its definition the cases of hijacking in the international air space. On the other hand, it previews no sanctions against pirates, so each State should adopt its own legal framework against this international crime. For instance, according to article 104,
retention or loss of nationality of a ship or aircraft that it has become a pirate one is determined by the law of the State from which such nationality was derived.

Anyway, the private individual committing piracy on high seas is considered by international law as “enemy of all humanity”, on the base of the Latin phrase “hostis generis humani”. Of course, International Law contains a concept of crimes against humanity, referring to serious violence and persecution committed by states and other organized groups against civilian populations. By “serious violence and persecution” the doctrine means the eleven specific crimes against humanity enumerated in the Rome Statute of the International Criminal Court. But for most of its legal history, the label “enemy of all humanity” applied solely to pirates whilst pirate thefts have little to do with crimes against humanity in the modern sense. Last but not least, some writers assert that the true modern counterpart to piracy is terrorism, so that terrorists are today’s enemies of humanity.

Last but not least, piracy has been correlated to the neologism of world ocean governance, given that the approach to the marine environment should be exempted from this criminal activity. However, no mention, at least explicit, is made against piracy in “Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development” of the 2030 Agenda for Sustainable Development, which was adopted by all UN member states in 2015.

**Antiquities Looting**

Laundering has been used to support various forms of financial crimes and fits in with the aforementioned neologism “criminal organization”, namely a structured group, endowed with a durable action, which includes three or more persons and aims at committing crimes. Criminality coming from criminal organizations is well exemplified by antiquities looting. As this kind of illegal activities takes place not only on land but also at sea, the French State was led to adopt a legislative framework on archaeological excavations on land in 1941 and later (in 1989) another one to protect maritime heritage. It is also notable that trafficking of cultural goods is held at sea and comprises an important dose of innovation to cope with State controls. This important remark is exemplified by the following “Chippendale’s law”: “Whenever one takes an interest in anything to do with illicit antiquities, reality is always worse than what was expected.” Anyway, the majority of products in the framework of legal commerce worldwide are transferred by merchant navy, so the sea is the mainstreaming way for important economic activities basically held by the private sector. The common itinerary for the exportation of antiquities coming from Greece is the maritime route of the Ionian Sea to another typical archaeological State, Italy. The transport is continued in the territory of this country, to Switzerland, whilst a famous case of antiquities laundering, particularly of both Greek and Italian ones, takes place in Geneva. In this way, the looted antiquities coming from the two similar archeological countries are placed as legal antiquities, when they reach to Western markets, particularly to the market of the USA, by air.

As far as the Greek State is concerned, it has been marked by its traditional weakness to protect its own cultural treasures. This remark is valid mainly in the matter of Hellenic Coastguard (called “Port Corps”, till recently). This public service, which follows the military standards of internal organization, needs enhancement, in terms of both education and equipment. For instance, till educational year 2018-2019, the prospective officers attend a study program of just 9 months. The Coastguard is supposed to cope with antiquities looting from the bottom of the national (internal and territorial) waters and the expatriation of these objects to other countries through maritime routes. Its relatively low scores have led to several problems, even as for the crucial question of the development of tourism industry. Indeed, because of this failure and the archeologists’ serious concern on the matter, the Greek State did not allow, as a rule, the hobby of scuba diving anywhere in its own waters. It has followed a policy of prohibition, with the unique exception of some maritime regions, for which this kind of leisure activity was especially permitted. However, a State which wanted to combine cultural assets with tourism development could not keep prohibiting a leisure activity particularly relevant to international tourism. So, it has inverted the aforementioned anachronistic status quo through law on scuba diving and other provisions, 3409/2005. This development initially raised criticism even in technical terms, given that the new regulations were not incorporated into the law on the protection of antiquities and in general of cultural heritage, 3028/2002, namely into the basic cultural (or archaeological) law. This liberalization was not completed in practice, in the sense that the State has been reluctant to develop underwater archaeological museums, introduced by these new regulations. To date, it is almost thoroughly deprived of any museums on land, highlighting the underwater treasures, in contrast to the Turkish case. It is notable that the museum of underwater antiquities in the port of Bodrum constitutes an important attraction for the movement of international tourism.

**The Criminalization of Money Laundering**

European Union has already made use of four directives against money laundering whilst a fifth one has been produced. The first directive introduced a definition of this activity, following the standard wording of International Law, consisting in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This definition has become classic given that the main elements of money laundering have remained the same.

the following conduct, when committed intentionally, is regarded as money laundering:

1. The conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person’s action;

2. The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity or from an act of participation in such an activity;

3. The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such an activity;

4. Participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the actions referred to in points (a), (b) and (c).

European Union has extended the field of anti-money laundering law to various forms of criminality. More precisely, European law has moved from the prohibition of money laundering relevant to proceeds of drug trafficking to the prohibition of laundering of proceeds of organized and serious crime, and, after the terrorist attacks of 9/11, has added the terrorist finance to the money laundering prohibition regime. The fourth directive went further, by focusing on tax offences, which were defined as tax crimes relating to direct taxes and indirect ones. It required member states to treat this kind of financial criminality as predicate offences.

As noticed by the doctrine, anti-money laundering directives consist of the following elements:

1. the criminalization not only of money laundering but also of terrorist finance, which is a new target that may not involve proceeds of crime, opposite to the classical phenomenon of money laundering;

2. the prevention of money laundering via the imposition of a series of duties on the private sector;

3. the focus on financial intelligence, via the establishment and cooperation of financial intelligence units responsible for receiving and analyzing reports received from the private sector.

As already signaled, European Union keeps adopting norms on this modern matter. This fact is proven by directive (EU) 2018/843 of the European Parliament and the Council, of 30 May 2018, amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU. This fifth directive entered into force on 9 July 2018 and member states must adopt these new rules into their national legislation by 10 January 2020. According to the preamble of the text, recent terrorist attacks have brought to light emerging new trends, in particular regarding the way terrorist groups finance and conduct their operation. It is also added that certain modern technology services are becoming increasingly popular as alternative financial systems, whereas they remain outside the scope of Union law or benefit from exemptions from legal requirements, which might no longer be justified. So, to the likely criticism consisting in a very extended legal inflation produced by European institutions, particularly the last years, the preamble responds that further measures should be taken to ensure the increased transparency of financial transactions, of corporate and other legal entities, as well as of trusts and legal arrangements having a structure or functions similar to trusts (‘similar legal arrangements‘), with a view to improving the existing preventive framework and to more effectively countering terrorist financing.

The directive on the matter brings the following changes:

- improving transparency on the real owners of companies,
- improving transparency on the real owners of trusts, interconnection of the beneficial ownership registers at the European Union level,
- setting up centralized bank account registers or retrieval systems,
- enhancing the powers of European Union Financial Intelligence Units and facilitating their cooperation,
- enhancing cooperation between financial supervisory authorities.

Besides, in the Greek legal order, article 1 of the law on prevention and suppression of money laundering and other penal provisions - plenary of the Supreme Court and other provisions, 2331/1995, previewed from scratch the illegal commerce of antiquities as a basic crime, in addition to other heteroclite crimes like the theft of the cargo of a ship. Afterward, the aforementioned basic cultural law replaced this rule with a very extended one, having to do with any crime, whose object was a monument. However, the Greek State proceeded to the adoption of the anti-money laundering law on prevention and suppression of money laundering and terrorist financing and other provisions, 3691/2008, which abolished articles 1-8 of the initial one. The legislative initiative raised severe criticism as it got rid of the “National Authority on Countering the Legitimization of Proceeds from Criminal Activities”. It was about an independent authority which was replaced by another Committee, whose the nine-member composition was dependent on the government, as for the majority. It is to underline that essentially this datum blocks the eventual physiognomy of the Committee as a non-governmental public authority whilst the law does not characterize, at least explicitly, this State mechanism as an
independent one. It is also notable that no provision of European Union law had imposed the replacement of the first authority, despite the claims to the contrary.

**LITERATURE DISCUSSION**

The diachronic rule of freedom of some concrete activities, exemplified by navigation, at high seas, is completed by criminalization of piracy\(^\text{20}\). Maritime piracy has been traditionally regarded as the unique “crime against humanity” whilst in the current era constitutes an emblematic one, like terrorism, within international law. It is to point out that other activities, such as illicit trafficking of goods, especially of the cultural ones, are strongly facilitated using maritime routes. So, freedom at sea is an important principle that has a traditionally ambivalent impact worldwide, going from various legal activities, such as the navigation of merchant navy, to criminal ones.

From the current analysis it is obvious that the advent of new sciences, like inter alia oceanography, and the promotion of traditional ones, such as archaeology and history, are attributed to the freedom of use of high seas and to the State policy against maritime trafficking of looted antiquities. If mainly the nineteenth century was the era of the birth of new sciences to make the quality of human life better, the twentieth one was characterized by the institutionalization of this development. Indeed, from about 1917-1918 and on, the second generation of fundamental rights emerged, which did not consist merely in social rights but also included economic rights (to work, syndicalism and strike) and cultural ones (to education, culture, science, research…). If initial scientific research at sea might be blocked by piracy attacks, the conventional scientific activities the last decades are likely to be impeded by intellectual piracy, due to the advent of copying facilities. However, navigation in a metaphorical sense, namely the use of Internet, has changed to a significant extent the possibilities of the promotion of knowledge worldwide, in the framework of relevant 4G rights.

In a parallel way, the international community has been related to the ideal of international justice\(^\text{21}\), in the current era of globalization\(^\text{22}\). For instance, European Union has duplicated the law against the commerce of drugs, frequently facilitated through navigation, by introducing anti-money laundering law. This modern branch includes inter alia the theft of the cargo of a ship as well as antiquities looting and trafficking as basic crimes, so it is obviously related to various forms of maritime criminality. Nevertheless, it has sometimes caused severe criticism, such as the relevant to the misuse of independent authorities mechanism. Anyway, it has been recently connected with the transfer of information from the private sector to the competent public authorities, to cope with this complex form of criminality. As far as the fifth directive is concerned, it is quite impressive the fact that European Union keeps adopting rules and making use of over-criminalization.

**CONCLUSION: STRENGTHENING ANTI-PIRACY LAW**

The paper hypothesis has been confirmed, given that the sea, particularly the high seas zone, is a mainstreaming way to commit crimes. As implied by the nature of things, conventional State systems of criminal Justice are rather insufficient in operational terms, if not incompetent in legal terms, to cope with illegal activities beyond their land. The grade of difficulty in dealing with maritime criminality is enhanced as long as States traditionally have put the stress on police forces and have rather marginalized their Coastguard…

The above-mentioned confirmation of the paper hypothesis is valid particularly for some aspects of maritime criminality, exemplified by the transfer of looted antiquities within the international trade of monuments. This offence of legal interests and rights mainly of typical archaeological countries is held particularly through maritime routes, at least from Greece to Italy. It results a sui generis cultural circuit as the universal fundamental right to heritage is transgressed through antiquities smuggling whereas Hellenic Coastguard professionals are rather deprived of traditional cultural rights, such as the rights to science and particularly to higher education.

Besides, the current analysis ends up to the following findings:

- The sea is a mainstreaming way of crimes laundering in a global setting, as signalized in the matter of the emblematic case of antiquities smuggling.
- Humanity has gradually progressed from the legal approach to navigation against traditional financial crimes, to innovative forms of repressive public policy, against the transgression of authors’ intellectual rights and money laundering.
- Crimes laundering is comparable with the phenomenon of money laundering. Furthermore, maritime criminality, such as the theft of the cargo of a ship, and maritime aspects of crimes laundering, like antiquities trafficking at sea, have been institutionalized as basic crimes within the modern branch of anti-money laundering law.
- The sea has been historically connected not only with commerce, either legal or illegal, but also with the birth and the promotion of sciences. As anti-piracy law has been adopted to protect the legal trafficking of goods at sea but resulted in protecting also scientific research, rules against piracy in a metaphorical sense (intellectual property law) have served the legal trafficking of knowledge, so inter alia the scientific research.

Last but not least, piracy is the great protagonist of the current research. Indeed, this activity gains this title for various reasons, such as its diachronic character and its important tradition even in the oceans. For instance, it is a very old crime in contradiction to the other crime being typical of international law, slavery. Not only did humanity take advantage of slavery in economic terms, but conceived it as a legal institution at least till early 1800s. Besides, piracy has a major importance because there is a tendency to extend or enhance the ban on it, at least the last 3 centuries. This tendency is mainly exemplified by the following developments, particularly connected with the most powerful country of this period, the United Kingdom:
the introduction of the metaphorical sense of the term ‘piracy’, already before the 1710 Statute of Anne in England, and therefore the extension of a merely maritime form of criminality (as far as its literal sense is concerned) in another activity of private individuals, on land,

the adoption, from early 1700s and on, of stronger anti-piracy law as well as the real political volunteer of European colonial forces, particularly of Great Britain, to get rid of the criminal organization of privateers, which was used by themselves in the golden age of piracy (1500 – 1800) whilst the USA have never prohibited, at least formally, the corsair practice to date,

the duplication of a form of piracy, consisting in the theft of the cargo of a ship, through the adoption of the pioneer normativity against money laundering, in 1990s. Anyway, it is to point out that piracy is, even indirectly, connected with this modern concept of criminality. For instance, if nowadays the Caribbean is more of a tourist haunt than a pirate's home, these same islands have become jurisdictions of convenience, from which tax evasion and money-laundering flourish.

Piracy has constituted for private individuals an ambivalent way to cope with State interventionism whilst States have baptized various anti-regime movements with the term ‘pirate’.

Acknowledgements

Special thanks to the College of Law of the University of Dubai, having offered the impetus for an academic research on Anti-money laundering Law.

References