Journal of Naval Sciences and Engineering
2021, Vol. 17, No. 1, pp. 181-203
Maritime Security/Deniz Güvenliği

RESEARCH ARTICLE

**An ethical committee approval and/or legal/special permission has not been required within the scope of this study.*

UNLAWFUL ACTS THREATENING MARITIME SECURITY AND SUA CONVENTION*

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Received: 18.03.2021 **Accepted: 15.04.2021**

ABSTRACT

Piracy is an illegal act that has existed since the beginning of the sea trade. However, efforts continue to be made to or to commit terrorist acts in the seas through piracy activities today. Piracy and terrorist acts at sea threaten/affect not only commercial security but also international maritime security and therefore international security. On October 7, 1985, the hijacking of the Achille Lauro ship brought up the necessity of making an international agreement and cooperation of states to prevent illegal acts at sea, and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988 SUA Convention) and its Additional Protocol were signed. The terrorist acts of September 11, 2001, besides the acts of piracy, also led to the questioning of terrorism and international maritime security in this context and the actions that can be done at sea on 14 October 2005 were rearranged. Within this context, the development of the 1988 SUA Convention was examined in this study, and then the intervention made by the Russian Federation based on the SUA Convention and its Additional Protocol to the Arctic Sunrise ship, which operates on behalf of the Greenpeace Organization, and evaluations were made within the framework of the decisions made as a result of the case being brought to the judiciary.

Keywords: *Piracy, Privateering, Maritime Terrorism, Unlawful Acts on Sea, Arctic Sunrise.*

DENİZ GÜVENLİĞİNİ TEHDİT EDEN YASA DIŞI EYLEMLER VE SUA SÖZLEŞMESİ

ÖZ

Deniz haydutluğu, deniz ticaretinin başladığı ilk zamanlardan beri varlığını koruyan yasadışı bir fiildir. Ancak günümüzde deniz haydutluğu faaliyetleri ile denizlerde terör eylemleri yapılmaya veya yapılması için çaba sarf edilmeye devam edilmektedir. Denizlerde yapılan haydutluk ve terör eylemleri sadece ticari güvenliği değil, uluslararası deniz güvenliğini ve dolayısıyla uluslararası güvenliği de tehdit etmekte/etkilemektedir. 07 Ekim 1985 yılında Achille Lauro gemisinin kaçırılması, denizlerde yapılacak yasadışı fiillerin önlenmesi için uluslararası bir adlaşmanın yapılmasının ve devletlerin işbirliği içinde çalışmalarının gerekliliğini gündeme getirmiştir ve Denizde Seyir Güvenliğine Karşı Yasa Dışı Eylemlerin Önlenmesine Dair Sözleşme (1988 SUA Sözleşmesi) ve Ek Protokol imzalanmıştır. 11 Eylül 2001 tarihli terör eylemleri ise haydutluk fiillerinin yanı sıra, terörizm ve bu bağlamda uluslararası deniz güvenliğinin de sorgulanmasına sebep olmuştur ve 14 Ekim 2005 tarihinde denizde yapılabilecek fiiller yeniden düzenlenmiştir. Bu bağlamda çalışmada, 1988 SUA Sözleşmesinin gelişimi incelenmiştir ve ardından, Greenpeace Örgütü adına faaliyetlerde bulunan Arctic Sunrise gemisine, Rusya Federasyonu tarafından SUA Sözleşmesi ve Ek Protokolüne dayanarak yapılan müdahale ve olayın yargıya taşınması sonucunda verilen kararlar çerçevesinde değerlendirmelerde bulunulmuştur.

Anahtar Kelimeler: *Deniz Haydutluğu, Korsanlık, Deniz Terörizmi, Denizde Yasadışı Fiiller, Arctic Sunrise.*

1. INTRODUCTION

One of the oldest rules of the maritime law, which started to develop with the common law, is the principle of "freedom of high seas". This principle has been clearly defined in international legislation, Article 2 of the Convention on the High Seas, Geneva, 1958 and later in Article 87 of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) (Gündüz, 1994). Nearly 90% of the products imported and exported worldwide are transported by sea and maritime transportation is the most profitable transportation sector compared to land and air transportation, while the volume of maritime transportation is expanding day by day, the risks and threats encountered in maritime transportation are increasing at the same rate. In order to maintain sea transportation without interruption and without interruption, it is necessary to take necessary national and international measures/precautions for the prevention of illegal acts that may occur in the seas and for the navigation safety of the ships.

One of the unlawful acts that are supposed to begin with maritime history is piracy. The acts of piracy increased and faded at certain times in history. The piracy (LOC, n.d.), which lived its golden age between 1650 and 1726, was supported by the states in a certain period and until the Paris Declaration of 1856, some pirates began to roam the seas with the title of privateer. Privateer, on behalf of the states they pledged allegiance to; they took part in wars against enemy states in the seas and engaged in looting activities. However, as the states gradually lost their control over the privateers, privateering was prohibited upon not being able to prevent their actions.

Illegal acts at sea are not limited to piracy and privateering. Just like piracy, terrorist acts by terrorist organizations and by illegal criminal organizations; acts such as human / weapon / drug smuggling affect the sea and maritime transportation and the economic, social and national security of the states. In this article, the acts of piracy, privateering and terror in the seas, done/can be done, will be defined and the developments of these regulations and the new threat perceptions shaped in the world will be analyzed.

2. UNLAWFUL ACTS ON THE SEAS: PRIVATEERING, PIRACY AND TERRORISM AND THEIR PLACE IN INTERNATIONAL LAW

Illegal acts against the security of ships and crew at sea can be sorted as piracy, privateering and terrorist activities by illegal organizations. Piracy and privateering are different notions in terms of their elements and legal consequences. In the past, it's indicated that these notions were used in the same sense without distinction. Also, no source has been found that indicates precisely when these actions started. However, in a 2009 study, the earliest sources referring to piracy or privateering; it is stated that it was mentioned in the Roman Laws (Justinian Digest) compiled by the Roman Emperor Justinian I in 529 A.D. and in the King John's ordinance of 1201 (Zou, 2009).

In the past, attacking and looting the ships belonging to other states in war and peace was regarded not as a crime, but as an "honorable" act, and those who committed these actions were also identified as heroes (Doğru, 2017). The interests of a union or state in the sea, the protection of merchant fleets and the acquisition of spoils by reaching wealth in distant countries, the seizure / loot of merchant ships under the flag of other states, were carried out using privately owned ships. The use of these ships as if they were state ships was regulated by a document under the name of a permit issued by the states. With this document, the ships belonging to private individuals were given the authority to participate in naval wars with enemy states as if they were warships of the state (Topal, 2010). Private ships with permits became a part of the state navy due to their widespread participation in naval warfare under a state authority. In this context, an attack on enemy ships with a ship equipped by private persons with the permission of a state is called the act of privateering, the person who attacks enemy ships and lands with the permission of the union, authority or state to which he is affiliated is called a privateer, the ships used in such activities are called privateer ships (Bayıllıoğlu, 2011). The privateers authorized for their activities at sea had a mutual relationship of interest with the union, authority or state to which they were affiliated. The privateers had a certain share of the spoils they obtained as a result of their actions in the seas. Unions, authorities or states that did not have a navy or a sufficient naval power compensate for this need in the seas thanks to the privateers. In the 15th and 16th centuries, plundering was used as a method of privateering in the conflict between the

European Christian States and especially the Ottoman Empire and Muslim countries. However, as long as the pirates did not commit an act of injustice in the wars they participated in on behalf of the states they were affiliated to, they were considered prisoners of war if they were captured in war (Evin, 2012). Over time, the activities of privateers gradually shifted towards piracy, the control of unions, authorities or states over privateers and the damage to maritime trade led states to stop using privateers and privateering activities from the end of the 18th century (Evin, 2012), and privateering was prohibited with the Paris Declaration of 1856 (Azubuike, 2009).

Piracy, on the other hand, can be defined as illegal violent acts, which have no connection with any union, authority, or state, unlike privateering, by non-state actors or private individuals to take advantage of on their behalf with the ships and vehicles belonging to them or their organizations against merchant ships, cargoes, goods and people. As it is an important source of income, piracy has continued since previous periods, in the areas where sea trade routes are intensely used and with authority gaps, such as canals, straits, sea crossing nodes and uncontrolled sea areas. The basic international regulations regarding piracy are among Articles 14 and 22 of the Convention on the High Seas, 1958, and between Articles 100 and 107s of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS). The issues specified in the aforementioned articles of the UNCLOS, 1982, are similar to the issues mentioned in the Convention on the High Seas, 1958.

In Article 100 of the UNCLOS, 1982 (Gündüz, 1994), it is stated that 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. Since piracy is an illegal act committed in the seas from past to present and has a negative effect on sea trade, states take all necessary measures in cooperation to prevent piracy.

In Article 101 of the UNCLOS, 1982, piracy is defined as follows (Gündüz, 1994).

> "*Piracy consists of any of the following acts:"*

a. Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

i. On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

ii. Any unlawful violence and arrest or any act of looting against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

b. Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft,

c. Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 102 of the UNCLOS, 1982, states that the acts of piracy committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft. In Article 103 of the convention, the definition of a pirate ship or aircraft is given. In Article 104 of the convention, retention or loss of the nationality of a pirate ship or aircraft is determined by the law of the State from which such nationality was derived (Gündüz, 1994) and in Article 105 of the convention, In the event of piracy acts, the prevention of the action and the punishment of the perpetrators are not limited by the authority of the state to which these persons, ships and aircraft were derived. In Article 110 of the UNCLOS, 1982, the right of visit is mentioned, provided that it is supported by reasonable provisions that the act of piracy of a ship.

Any state that detects any acts of piracy is equipped with disciplinary and jurisdiction over the ship or aircraft concerned (Gündüz, 1994). In short, ships detected to be piracy on the high sea or suspected of engaging in such acts can be stopped or inspected by state warships or other state / public ships and military/ public aircrafts authorized to use public force. The aforementioned third state ships and aircraft have the authority to seize the ships, planes and

seized goods used in the act of piracy, and to arrest the perpetrators and hand them over to the national judicial bodies in case of detection.

The notions of piracy and armed robbery at sea are also confused and sometimes used interchangeably. Piracy and armed robbery at sea do the same deeds against ships, personnel / passengers on board and cargo, the distinction between them is made according to the area of the sea in which the act was committed. In the second paragraph of article 2 of "Adoption of the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships" which is accepted by International Maritime Organization (IMO) with the resolution A.1025 (26) dated January 18, 2010, the acts constituting the crime of armed robbery at sea are expressed (International Maritime Organization, 2010). From this point of view, armed robbery at sea includes acts committed in internal waters, archipelagic waters and territorial waters, briefly in the sea areas dominated by states, while piracy includes acts performed on the high seas. In terms of jurisdiction, armed robbery at sea is exclusively under the jurisdiction of the coastal state, as it is carried out in the territories of the states. Since piracy is carried out on the high seas outside the sovereignty of the states, every state has the authority to judge pirates (Gündüz, 1994). However, as in Somalia, obeying this rule is not considered possible today, as it puts states in a troubled process. The ships of the pirates captured by the naval forces of the states struggling with piracy in the Somalia region are released within the framework of the "Capture-Release Strategy" after their weapons are taken away and they are not involved in any trial press (Geib and Petrig, 2011).

Another illegal act committed at sea is terrorist acts committed by illegal organizations at sea. Piracy and armed robbery at sea are illegal crimes for financial gain, and the degree of violence used in these acts is as much as necessary and until reaching the goal. On the other hand, the act of terrorism acts with very different purposes, political / religious goals and ideologies, creates a state of fear in society and individuals, causes disruptions in the national / international functioning of states, destroys / destabilizes the existing government structure and prevents its functioning, and to damage private / public property. It can be defined as disproportionate and highly violent acts.

Terrorist activities at sea are the above-mentioned definition of acts of high violence for certain purposes against ships, oil platforms, port facilities, port hinterland in the marine environment. In this context, within the framework of the current dynamics and trends in international terrorism, terrorist acts that can be carried out in the marine environment can be listed as follows (Knyazeva and Korobeev, 2015):

a. Seajacking, seizure of ships, or control of them by force or in another way;

b. An act of violence against any person on board a ship (the port area) if that act is likely to endanger the safe navigation of the vessel (port security);

c. The destruction of a ship, inflicting damage to the ship or its cargo, or inflicting damage to a certain extent which might endanger the safe navigation of the vessel or port security;

d. Taking actions by placing any electronic device or explosive that could cause damage to that ship or its cargo, threaten to or endanger the safe navigation of the vessel or port security, inflict damage to a device or a system on board or port;

e. The use of vessels by members of international terrorist groups as an indirect object of the terrorist activity

f. The use of sea transport by crime syndicates/terrorist groups involved in illegal commercial activities such as human, weapon, drug etc. to gain pecuniary profit;

g. Making navigational facilitators such as mechanisms of the ship's wheel, gyro, radar etc. unusable by interfering with them and affecting the safe navigation of the ships;

h. Affected port security by the destruction or inflicting serious damage on port facilities, and endangering the safety of navigation and port security

i. Deliberately giving/spreading false information that could jeopardize the safety of navigation and port security;

j. Placing explosives in high-speed boats and causing damage by hitting ships or port facilities / oil platforms;

k. Capturing the navigation (gyro and radar) systems of ships through cyber-attacks and causing accidents or damaging them by changing their routes;

l. Attacks in narrow channels / straits, port entrances or ports where international commercial activity is intense, especially during the cruise of oil tankers and tankers loaded with Liquefied Gas (LNG) by using explosive drones / herd drones;

m. Attacks with drifting mines or floating handmade explosive devices,

n. Damage to ships or port facilities by means of equipment carried by swimmers / divers (Limpet Mine, etc.);

o. Attacks by using handmade explosive devices such as booby traps in ships / vessels to be visited, captured or confiscated based on the intelligence received by law enforcement forces;

p. Attacks to ports or ships using mini / midget submarines loaded with explosives, which are seen in activities such as drug trafficking and illegal immigrant smuggling.

The actions included in the issues mentioned above are actions that are done or can be done at sea. However, it should not be forgotten that the methods used in terrorist acts are limited to the human mind. In these actions, if oil tankers, LNG tankers or oil platforms are targeted, the intense and large amount of oil and its derivatives that will spread to the environment will cause major environmental disasters in addition to human life and economic losses.

3. CONVENTION FOR THE SUPPRESSION OF THE UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION

On October 7, 1985, the cruise ship named Achille Lauro with the Italian flag was kidnapped by the members of the Palestine Liberation Front, which is affiliated with the Palestine Liberation Organization, during the Alexandria - Port Said expedition. The people involved in this incident got on the board as tourists from the Port of Genoa in Italy and took the ship's personnel and passengers as hostage by seizing the ship. The activists stipulated the release of 50 Palestinians imprisoned in Israel in order to put an end to their actions, and also stated that they would destroy the ship with explosives in case of a rescue

operation (Halberstam, 1988). The President of the United States of America considered the action as piracy. However, the act was labeled as an act of terrorism due to the fact that a second ship was not used and taking action within the frame of political purposes other than for the purpose of obtaining personal benefit as stated in the Convention on the High Seas, Geneva, 1958, and Article 101 of the UNCLOS,1982.

It has been seen that international law is insufficient in this and possible similar events as a result of the aforementioned action. The preparation of a convention for acts of maritime terrorism was proposed with the initiative of Italy and the participation of Austria and Egypt (Halberstam, 1988). Within this scope, the draft convention text was prepared and submitted to IMO by modeling the contents of the Hague Convention dated December 16, 1970 for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention for the Unification of Certain Rules for International Carriage by Air, and the International Convention against the taking of hostages of December 17, 1979.

A committee was established by IMO and started working on it to examine and mature the draft convention. As a result of the work carried out by the mentioned committee, in addition to Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA), The Protocol for "the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf" was signed on March 10, 1988 and entered into force on March 01, 1992 (International Maritime Organization, 2021). The Convention, which aims to make amendments against acts of terrorism that can be carried out at sea, also covered offenses such as piracy and armed robbery at sea. On September 27, 1990, Turkey became a party to the 1988 SUA Convention by approving it (Turkish Ministry of Justice, 1998).

In the articles 3 and 4 of the SUA Convention, regulations were made for acts of piracy and armed robbery against ships except for the requirement of self-interest and the requirement of two ships and without distinction between the sea areas in which the act took place, as specified in the Convention on High Seas, Geneva, 1958, and the Maritime Law Convention, 1982. There were different points of view in some evaluation made within this framework.

Because the SUA and the conditions such as not committing an illegal act of violence on the high sea and the presence of a single ship during commitment of the action agreement was shown as an anti-terrorist agreement on the United Nations (UN) official website. Although it is possible that the act in question can be considered as piracy, the term piracy was not used in the convention. Therefore, it is a controversial issue whether the SUA Convention changed the definition of piracy, mentioned in the Convention on the High Seas, Geneva, 1958 and UNCLOS, 1982 (Sterio, 2009).

In the event that any person commits one or more of the acts, defined in Article 3 of the SUA Convention and constitute a criminal element; in accordance with Article 6 of the convention, in cases of commitment of crime against a ship carrying the flag of its state or on this ship, in its country including the territorial waters of the state or by a citizen of that state, contracting states of the SUA Convention emphasize that they can take the necessary measures to establish their own jurisdiction over them. Again, in accordance with Article 6 of the convention, each contracting state specified that they can establish their own jurisdiction over cases of commission of the crime with the intention of compelling that state to do or prevent it from doing something such as: committed by stateless persons whose permanent residence is in that state; the detention, threatening, injury or murder of the citizen of that state during the commission of the crime, the commission of the crime with the intention of compelling that state to do something or prevent it from doing something.

With Articles 7, 8, 10 and 11 of the SUA Convention, the powers and obligations of the contracting states were determined regarding the detention, extradition, extradition conditions and trial of the suspects who committed the said crimes. Article 9 of the convention emphasizes that it will not in any way affect the international laws regarding the exercise of powers of investigation or enforcement on ships that do not carry their flag.

In Articles 12, 13 and 14, it is indicated that contracting states should cooperate with each other in all matters, collecting evidence to judge suspects who committed crimes and making cooperation agreements in order to prevent these crimes, to cooperate with each other in all matters in the absence of or not making such an agreement, including assistance in accordance with their

national laws, and every contracting state that believes that one of the crimes specified in Article 3 will be committed, should share the related information held within the framework of its national law.

Article 15 of the convention includes the transmission of the type of commission of the present crime, held in contracting states, procedure in accordance with the second paragraph of Article 13, the measures taken in relation to the offender or suspect, and in particular the consequences of extradition or any information about the results of other legal proceedings, in accordance with their national laws, to the UN Secretary General and the UN Secretary General to publish this information to the relevant units. In the 16th article of the contract, disputes and solution methods arising between two or more contracting states related to the interpretation or implementation of the contract are specified.

The SUA Convention consists of 22 articles in total. After Article 16, articles include the date of ratification, the process related to its entry into force, its sanction, approval, confirmation and the type of the accession to the convention, termination conditions and the issues related to the review or amendment of the convention. The regulated matters and the convention are binding only for the contracting states.

After the acts of terrorism in the United States of America on September 11, 2001, especially, the possibility of oil / LNG tankers and container ships' use for purposes of terrorism in ports and international straits and narrow waterways; tracking and controlling the ships to be used in terrorist activities; the need for more effective measures to prevent the spread and use of nuclear, biological and chemical weapons of mass destruction by sea were defended by other states, especially the USA.

The SUA Convention, 1988, does not give states parties the authority to interfere with ships, known or suspected of illegal acts, boarding, and prosecution of caught criminals on the high seas. Therefore, the provisions of the convention can be applied in the event that persons who commit or are suspected of illegal acts in the seas are caught in the territorial waters, internal waters or territorial land of the state’s party to the SUA convention. This situation was identified as an important deficiency of the SUA Convention and

it was necessary to amend the aforementioned convention in order to prevent acts of terrorism that can be carried out by sea or at sea, and to provide the legal basis for the measures and measures to be taken by the states against illegal activities.

Additionally, on 20 November 2001, IMO's resolution on "Review of Measures and Procedures to Prevent Acts of Terrorism which Threaten the Security of Passengers and Crew and the Safety of Ships" and numbered A.924 (22) was adopted and published expressed (International Maritime Organization, 2002). Within this scope:

- The resolution of IMO, A.924 (22),
- 1997 the International Convention for the Suppression of Terrorist Bombings,
- 1999 the International Convention for the Suppression of the Financing of Terrorism,
- 2005 the International Convention for the Suppression of Acts of Nuclear Terrorism,

The texts above-mentioned and deemed necessary to be added to the 1988 SUA Convention were amended and the 2005 SUA Protocol was prepared as an annex to the 1988 SUA Convention (Klein, 2011). The aforementioned Protocol and some articles in the 1988 SUA Convention were revoked or amended (Official Gazette of the Presidency of the Republic of Turkey, n.d.). In the aforementioned protocol, crimes of terrorism were included in detail, and prevention of the proliferation and use of weapons of mass destruction by sea was stated as one of the most important objectives. In short, the scope of the acts included in the 1988 SUA Convention was expanded with the Articles 3 bis, 3 ter and 3 quater of the 2005 protocol and the scope of the intervention opportunities to the ships / persons was increased with the regulations on the boarding regime with the 8 bis article (Bayıllıoğlu, 2011). The 2005 SUA Protocol is an important document for the legal framework to improve maritime security, as it enables the right to visit ships for crimes against terrorism and proliferation of weapons of mass destruction (Klein, 2011).

4. ARCTIC SUNRISE CASE WITHIN THE FRAMEWORK OF THE SUA CONVENTION AND ITS PROTOCOL

As a result of the melting of the glaciers in the Polar Regions together with the global climate change, the wealth that is assumed to be in the region has created an attraction area. In this context, the littoral countries of the Arctic and the global actors interested in the region have entered a race to get a share from the energy resources (oil, natural gas) in the high sea in recent years. All Arctic Ocean coastal states; The United States, Canada, Denmark / Greenland, Norway, and the Russian Federation have begun to license oil companies to operate in Arctic waters and have begun to establish offshore oil platforms to extract hydrocarbon resources presumed to be in the region. However, due to the risk of oil spills during the operation of oil platforms or as a result of accidents for the vulnerable Arctic ecosystem, for this reason, the environmental organizations such as World Wildlife Fund (WWF) and Greenpeace has been opposed these activities as much as possible.

The Prirazlomnaya oil platform is owned by the Russian oil company Gazprom that was established in the Barents Sea, which constitutes the part of the Arctic Ocean between Norway and Russia in the exclusive economic zone of the Russian Federation and it was established to drill the hydrocarbon resources in the region. On September 18, 2013, activists aboard the Dutch-flagged "Arctic Sunrise" owned by Greenpeace started their actions to protest the Prirazlomnaya oil platform and stop the operation of the platform for a certain period of time. The Russian Federation Coast Guard ship Ladoga notified the Arctic Sunrise crew that it would take the necessary measures to protect the security of the Prirazlomnaya oil platform within the framework of the 1982 UNCLOS provisions, and that it would not be allowed to enter the security zone of 500 meters around the platform and the navigation security area with a radius of 3 nautical miles around the oil platform (Greenpeace, 2018). On 19 September 2013, a total of 30 people, including 28 Greenpeace members (one of them a Turkish citizen) and two crew members of the ship, were detained by the Russian Coast Guard forces and were taken to the Russian port of Murmansk (Silveira and Garbaccio, 2019). The arrest of Arctic Sunrise and its crew by Russia was met with reaction from the flag state, the Netherlands. By the Netherlands;

- During the intervention of the Russian Federation to the ship, being of the Arctic Sunrise in the high sea, the restriction of the high sea navigation freedom of the ship with the intervention,
- The arrest and seizure of the personnel by Russian Coast Guard personnel upon boarding the ship without the consent of the Netherlands, the flag state of the Arctic Sunrise, not being in compliance under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), were reported to the Russian Federation that the Netherlands' Arctic Sunrise ship violated its powers arising from being a flag state.

The protest activity carried out on the Prirazlomnaya oil platform by the environmental activists on the Arctic Sunrise ship was associated with the concept of piracy defined in 1982 UNCLOS article 101 by the Russian Federation and it was also stated that the same agreement could intervene in accordance with the issues mentioned in article 110. (Since the topic addressed in this study is the SUA Agreement, the SUA Agreement and related issues have been mentioned in detail in the Arctic Sunrise case.)

Based on this, in addition to the above-mentioned allegations based on the 1982 UNCLOS, the Russian Federation described the people on board the Arctic Sunrise as terrorist and the action taken as a terrorist activity within the context of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. In this context, in accordance with the Article 2.1. of the aforementioned Protocol (United Nations Office on Drugs and Crime, 1988), if any person;

a. Seizes or seizes control of a fixed platform using force or threats or any form of intimidation; or,

b. Acts violently against a person on a fixed platform in a way that is likely to endanger the security of that platform; or,

c. Destroys or damages a stationary platform in such a way as to endanger its security; or,

d. Is deemed to have committed an offense, if the person places or puts a fixed platform, a device or substance that could destroy or endanger its security, on the fixed platform in any way.

Due to the demands of the Netherlands and the stance applied by Russia against the situation, diplomatic contacts between the two states could not contribute to the solution of the problem. Following the dispute, on 21 October 2013, within the scope of both countries being a party to the UNCLOS, the Netherlands requested provisional measures from the International Tribunal for the Law of the Sea (ITLOS) in Hamburg, and the immediate release of the Arctic Sunrise ship and its crew by the Russian authorities (ITLOS, 2013a). The Russian Federation, on the other hand, stated that the Netherlands did not accept the arbitration procedure and did not intend to attend the hearings in line with its position on arbitration on 21 October 2013 (ITLOS, 2013b).

This case has been dealt with by two courts and two decisions have been passed. The first hearing took place in ITLOS, then the decision on the boarding, the seizure and the detention of the Arctic Sunrise by Russian Coast Guard units was made by the International Court of Arbitration.

On 22 November 2013, ITLOS stated that the Netherlands should pay bail for the release of the Greenpeace activists and the Arctic Sunrise ship and its crew. Upon this, the Russian Parliament uncharged all persons on board, and then Greenpeace activists, the Arctic Sunrise ship and its crew were released. In the decision of the International Court of Arbitration on August 14, 2015, it was stated that the Russian Federation Coast Guard's boarding the Arctic Sunrise ship without the approval of the flag state, the detention of the ship and the arrest of the ship's personnel and Greenpeace member activists could not be associated with piracy, and the oil platform could not be recognized as a ship. Finally, in the decision of the International Court of Arbitration on 10 July 2017, the Russian Federation was found guilty on the grounds that the detention and detention activity it had made on the basis of the SUA Convention and its Additional Protocol was not appropriate and was sentenced to pay approximately 5,395,000 Euros (Permanent Court of Arbitration, 2017) to the Dutch Government (Silveira and Garbaccio, 2019).

5. CONCLUSION

The security of the seas and maritime routes, where 90% of the commercial goods are transported, signifies ensuring the security of trade on a global scale and this issue also affects the welfare, security and policies of the states. Since the beginning of mankind to use the seas for their purposes, seas have harbored various dangers and risks. Piracy and privateering as a state-supported activity are two of mentioned dangers at sea. Privateering was abolished with the Paris Declaration of 1856, but piracy still continues to be concentrated in the east and west of Africa and certain parts of Southeast Asia. However, the smuggling of weapons / drugs by illegal organizations and acts of terrorism, carried out by terrorist organizations in the sea areas, put seas into problematic areas and affect the security, policies and economies of the states.

In international law, it must involve violence, detention and plunder, be done on the high seas or outside the maritime jurisdictions beyond the jurisdiction of a state and for personal benefit, in order for an act to be defined as piracy. However, the criminal act must be committed against another ship by a private ship whose crew and passengers or crew mutiny, or a state ship which the state can no longer exercise control over. Except for situations that do not cover the aforementioned issues, commission of acts is considered as different acts such as armed robbery or terrorism.

Following the kidnapping of the Italian flagged Achille Lauro cruise on 07 October 1985, the necessity of a new regulation that will affect the decisions to be taken in similar events came to the agenda due to the inadequacy of the current international regulations. In this context, the 1988 SUA Convention was prepared and signed on March 10, 1988 and entered into force on March 1, 1992. The regulations introduced by the SUA Convention are binding only on the states that are parties to the convention. In the early 2000s, after the political developments in the world and the terrorist acts of September 11, 2001, the argument that a similar terrorist attack could be carried out from seas by ships became valid, and it has become necessary to make some updates in the contract in order to prevent such terrorist acts and to establish a legal basis for the intervention of those who will perform or performs these acts. The SUA Convention was adopted by preparing an additional protocol within this

framework. Turkey is a party to the protocol which crimes of terrorism are covered in a detailed way, prohibition and prevention of the use and proliferation of weapons of mass destruction by sea, the use and prevention are expressed in one of the most important objectives. Piracy and terrorist acts at sea bear similarities on many points. As in treaties / conventions regulating international law, this convention also does not provide a detailed definition of terrorism. Therefore, this convention makes it difficult to distinguish between piracy and terror at sea. However, the 2005 SUA Protocol is an important document added to the international legal framework for ensuring maritime security in the context of preventing terrorism and the proliferation of weapons of mass destruction in the maritime environment, preventing crimes, and enabling the right to visit ships, which is not specified in other international agreements and conventions.

In this context, the action carried out by Greenpeace, an environmentalist organization, on the Arctic Sunrise ship and the Prirazlomnaya oil platform of the Russian Federation in 2013 was examined as a case study within the scope of the SUA Convention and its additional Protocol. As a result of this review; based on the 1988 SUA Convention and its additional Protocol; the boarding Arctic Sunrise by the Russian Coast Guard Units, the arrest of Greenpeace activists and ship crew, and the detention of the Arctic Sunrise ship were brought to jurisdiction by the Netherlands, the flag state of the Arctic Sunrise. In the decision of the International Court of Arbitration on 10 July 2017, the Russian Federation was found guilty and sentenced to pay compensation to the Government of the Netherlands, stating that the detention and detention activities he had made on the basis of the SUA Convention and its Additional Protocol were not appropriate.

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