
THE MARITIME PIRACY IN JORDANIAN PENAL LEGISLATION COMPARATIVE STUDY

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Abstract

This study addresses the crime of maritime piracy from the perspective of Jordanian penal legislation with the aim of scientific rooting of it, highlighting its legal structure, identifying the legal provisions that regulate it, and examining the problems that may be raised, in the light of the latest amendment to the Penal Code in 2022, according to which the legislator introduced the acts of maritime piracy to the scope of criminalization at the level of national penal legislation after it was a crime of an international nature. The study found that the Jordanian penal legislation has narrowed the objective scope of criminalization to limit the crime of piracy to acts of violence, detention, and robbery only, and has narrowed the personal scope of criminalization to include the crew and passengers of a ship or aircraft only, and also limited the existence of the crime on the need for a special intent with no indication of its nature and concept. It was found that this approach of the Jordanian penal legislator would create a gap and legislative ambiguity situation that can result in problems during practice. The study made some recommendations, the most important of which is the need for the Jordanian penal legislator to intervene at the earliest opportunity to expand the objective and personal scope of criminalization, in addition to the need not to adhere to the text with a special intent and to be satisfied with the presence of the general intent in the crime.

Keywords: crime of maritime piracy, freedom of maritime navigation, high seas.

Introduction

Maritime piracy is an old and new phenomenon that fluctuates between decline and spread. Since its emergence, it has been a source of threat to the security of the international community, because of the flagrant violation of the freedom of maritime navigation and a grave attack on the integrity of international trade and on spirits and property outside the territorial scope of countries. It has been and continues to be of interest to the international community, which has joined forces to oppose it, drawing up a collection of international and regional conventions that have criminalized acts of maritime piracy, thus becoming a crime of an international character.

Despite these efforts and close cooperation towards combating it, this is not enough unless countries rush to address it through their national penal laws, as most of the countries have been content to regulate the international legal basis for this crime without enshrining it in their national penal legislation, but the Jordanian penal legislator has responded to international trends to combat this crime and has recently introduced the scope of criminalization under the amended Jordanian Penal Code No. 10 of 2022, and therefore the subject of this study is framed in dealing with the crime of maritime piracy on ships and aircrafts in accordance with the plan of Jordanian penal legislation.

The importance of this study stems from the treatment of a criminal phenomenon that was recently enshrined in the Jordanian Penal Code, which has been the subject of international attention for decades and more, as it is one of the topics in which novelty is worth studying from the perspective of national penal legislation, where jurisprudence has been studying this crime from the perspective of international law and has mastered it, and the researcher has found very little researches - to the extent of his knowledge - that studied the perspective of national penal legislation, especially at the level of Arab penal legislation, where some of those interested

have tried to adapt some traditional texts to apply them to this crime, perhaps because most of the national penal legislation has not yet entered the scope of criminalization.

This study aims at scientific rooting, highlighting the legal structure of the crime of maritime piracy, identifying the legal provisions that regulate it, and examining the problems that may raise it.

With regard to the scientific method followed in this study, the nature of this study requires the adoption of three approaches :

First: The descriptive approach by identifying the conceptual and legislative framework that regulates this crime.

Second: The analytical approach through the analysis of the public and private legal provisions governing this crime.

Third: The comparative approach by comparing several legislations and jurisprudential trends, both within the scope of the general or special provisions that have been laid down as a basis for the regulation of this crime and at the national, regional, and international levels within the limits that achieve the purposes of this study.

The main problem of the study lies in addressing the legal provisions governing the crime of maritime piracy in the Jordanian penal legislation and the problems it raises, and of course, this main problem generates many questions, the most important of which are:

1. What is the concept of the crime of maritime piracy from the perspective of Jordanian penal legislation?
2. What is the legislative framework that regulates the crime of maritime piracy?
3. What is the authority of the legal text related to the crime of maritime piracy in terms of location, and is there a departure from the general provisions governing the scope of application of the Jordanian Penal Code in terms of location?
4. What acts has the legislator introduced into the scope of criminalization, which represents the images of the crime of maritime piracy, and whether the framework of criminalization and the extent to which it adheres to the legal limits established by international and regional conventions?
5. What is the legal structure of the crime of maritime piracy, and does it require a special corner and a special criminal intent?
6. What is the criminal penalty resulting from the commission of the crime of maritime piracy, given the circumstances of its aggravation and mitigation?
7. What are the provisions for complicity and attempted crime of maritime piracy, whether the legislator has satisfied with the general provisions or has special provisions established for them?

In order to fulfill the subject of the study and achieve its objectives, and to try to answer its main problem and the questions that are raised through a critical evaluation study, the researcher decided to divide the study as follows:

The first part: the concept of the crime of maritime piracy.

The second part: the legal provisions for the crime of maritime piracy in the Jordanian penal legislation.

The first Part

The concept of the crime of maritime piracy.

In fact, the definition of maritime piracy is not easy and there are many approaches to identifying the concept of the crime of maritime piracy. It is known that those who tried to identify this concept are the jurists of international law and not criminal law, and most of their definitions have been influenced by the texts of international conventions on maritime piracy and their definitions have varied according to the different approaches of these conventions in addressing this international crime. Therefore, this study will address the concept of the crime of maritime piracy from the perspective of international jurisprudence (**section I**), and from the perspective of international and regional conventions (**section II**), and then indicate the position of penal legislation on this crime (**section III**).

Section I: The concept of the crime of maritime piracy from the perspective of international jurisprudence:

Part of international jurisprudence defines it as: the commission of acts of coercion or the intention to carry out such acts at sea without a legitimate agency and outside the jurisdiction of any civilized country. Another part of them consider it to be: an armed assault carried out by a ship on the high seas without being authorized to do so by a country, the purpose of which is to obtain a gain by usurping the ship, goods or persons and they are directed against the persons themselves, or in order to rob them of their property in places not under the sovereignty of any particular country, and such acts would prejudice the integrity of such premises and their security¹. Other part defines it as any act aims to unlawful seizure of a ship or aircraft or its contents on the high seas ²

Section II: The concept of the crime of maritime piracy from the perspective of international law:

First: International Conventions:

1. Geneva Convention on the High Seas:

This Convention was signed on 29/4/1958 and implemented on 30/9/1962. This Convention is the first international codification to confront the crime of maritime piracy, where piracy entered the framework of criminalization under articles 13 to 23³. This convention did not define piracy and merely mentioned the effective acts that are considered acts of piracy, considering that acts of piracy are any illegal act involving violence, seizure, arrest, or robbery for the achievement of special purposes carried out by a crew or passengers of a private ship or aircraft, governmental ship or aircraft whose crew rebelled and were able to seize it against another ship or aircraft or against persons or property on board. Such acts of piracy include anyone who knowingly and willingly engages, instigates, or facilitates acts of piracy. The Convention specified the territorial jurisdiction to which the provisions of the Convention may apply to the high seas area or outside the territory of any country, and the Convention also required a special purpose, which is that the crime of piracy is committed to achieve special purposes and did not clarify what is meant by these purposes.

2. United Nations Convention on the Law of the Sea:

This Convention was signed on 10/12/1982 and implemented on 16/10/1994, and this Convention is binding on all Members of the United Nations, whether ratified or not. Articles 100 to 107 dealt with piracy and did not address its definition, but merely stated the acts that are considered acts of piracy that are largely identical to what is stated in the Geneva Convention on the High Seas⁴.

3. Rome Convention on the Prevention and Punishment of Unlawful Acts against the Security and Safety of Maritime Navigation and the Safety of Life at Sea:

The Convention was signed in Rome on 10/3/1988 and implemented in 1997⁵. This Convention did not contain a definition of maritime piracy but enumerated acts that are considered maritime piracy. It should be noted that this Convention came only to address maritime piracy against ships without aircraft, contrary to the

(1) Baydoun, Maysa Said Moussa (2018), Competence to Combat the Crime of Maritime Piracy, Magazine Legal and Economic Research, No. 67, p. 352.

(2) Alawdi, Jalal Fadel Mohammed (2014), Maritime Piracy and the Freedom of the High Seas, PhD thesis, Faculty of Law, Department of Public Law, University of Aden, Right Republic, p. 71.

(3) Hammad, Ali Muhammad Hassanein (1434 AH), Sharia classification of the crime of maritime piracy, Journal of Sharia Sciences, No. 29, p. 210.

(4) Habash, Samer Ahmed Naji Habbash (1014-2015), International Cooperation to Combat Maritime Piracy, Master's Thesis, Faculty of Political Science, Department of Public Relations, Damascus University, Syrian Arab Republic, pp. 12-14.

(5) The Hashemite Kingdom of Jordan has acceded to this Agreement and to Protocol against Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, after the issuance of the Royal Will approving the Decision of the Council of Ministers to Accede No. (7) dated 4/11/2003, published in the Official Gazette, No. (4639), p. (109), dated 5/1/2004

Geneva Convention and the United Nations Convention, and on the other hand, it expanded the scope of criminalization to include all unlawful acts committed against the security of navigation and the safety of life at sea, and not only acts of maritime piracy against ships, but also against aircraft, and has considered acts of complicity, incitement, and threats among the acts of piracy, and has defined the spatial scope to the provisions of this Convention, namely the extraterritorial boundary, and considered the country is competent to prosecute such acts if the perpetrator is present in the territory of a country Party to this Convention¹, and this Convention applies to all wrongful acts as mentioned without regard to the motive behind such acts.

Second: Regional Conventions:

1. RECAB Convention: This regional convention was signed in 2004 between a group of ten Asian countries known as ASIAN to combat piracy and other illegal acts committed against the safety of maritime navigation in the Asian region and was implemented in 2005, and like the rest of the conventions, it did not come up with a definition of the crime of maritime piracy but worked on a detailed account of the acts considered as acts of maritime piracy. The Convention has the advantage of extending the scope of criminalization to include acts of piracy mentioned in the Geneva Convention and the United Nations Convention, in addition to other acts, the most important of which is armed robbery committed against naval vessels. Despite the distinction of this Convention, its disadvantage is that it included acts of maritime piracy on ships without aircraft, and these crimes were restricted by the availability of the condition of the motive for the crime to be the achievement of special purposes without specifying what these purposes are².

2. Arab Protocol to Prevent and Combat Maritime Piracy and Armed Robbery Appending and Supplementing the Arab Convention against Transnational Organized Crime ⁽³⁾: This Protocol supplementing the Arab Convention against Transnational Organized Crime was signed during the joint meeting of the Councils of Arab Ministers of Justice and Interior in Tunis on 4/3/2019, and by scrutinizing the provisions of this Protocol, the researcher believes that what is stated in this Protocol in relation to Maritime piracy is largely identical to that of the Geneva Convention and the United Nations Convention, and two acts have been added in addition to those mentioned in the two conventions, namely the act of threat and the act of financing⁴.

(1) Article 3 of the Convention provides that: "Any person shall be deemed to have committed an offence if he unlawfully and intentionally commits the following: a. seizure or control of any vessel by the use of force or the threat of use or use of any form of intimidation; b. an act of violence against a person on board the ship if such an act may endanger the security of the ship's navigation. c. destruction of the vessel or damage to it or its crew thereof It can jeopardize the safe navigation of this vessel. d. To place or cause by any means whatsoever to place or cause the placement of any material that would destroy, damage or damage the vessel of the vessel. e. Destroy, severely damage or severely impede the operation of maritime navigation facilities if such acts could endanger the security of the ship's navigation. f. Transmit or give incorrect information knowing that it is incorrect if doing so would endanger the security of the ship's navigation. g. Injuring or killing any person when committing or attempting to commit the said criminal acts. 2. A person shall also be deemed to have committed an offence if he or she commits the following: a. attempt to commit any of the offences in the paragraph ((1) (b) Incitement to commit any of the criminal acts specified in paragraph (1) by a person or a cover-up of the person who has committed such acts. c. If he threatens a person to induce him to perform any of the foregoing acts if doing so would endanger the safety of maritime navigation.

Article (4) of the Convention stipulates that: (1. ٣ The provisions of this Convention if the ship is sailing or intends to sail in waters beyond the outer limits of the territorial sea of a single State or the lateral boundaries of that adjacent sea or through or from those waters. 2. In cases where the Convention does not apply according to the Paragraph (1) It will, however, apply if the perpetrator(s) is located in a State party to the Convention other than the States referred to in paragraph (1).

(2) AlawdiJalal Fazl Mohammad, former reference, p. 82.

(3) Regulated The Hashemite Kingdom of Jordan for this Protocol after the issuance of the Royal Will on a decision Cabinet No. (6025) dated 27/2/2022, and published in the Official Gazette, Issue (5781), AM (2639), dated 31/3/2022.

(4) Article (5) of the Protocol provides that: (1. The following workers are considered acts of maritime piracy: a. any illegal act Violence or detention, looting or threat of any of them Committed for special purposes, by

Section III: The position of the Jordanian legislator on the crime of maritime piracy.

As for the position of the Jordanian legal system on the international conventions relating to the crime of maritime and air piracy - the focus of the study - the Hashemite Kingdom of Jordan has acceded to the Rome Convention on the Prevention and Punishment of Unlawful Acts Committed against the Security and Safety of Maritime Navigation and the Safety of Life at Sea ¹, and to the Arab Protocol to Prevent and Combat Maritime Piracy and Armed Robbery supplementing the Arab Convention against Transnational Organized Crime ², in addition to the fact that the United Nations Convention is binding on all Members of the United Nations, whether ratified or not and therefore each of them is considered part of Jordanian legislation and its provisions are binding and effective against all.

As for the position of the Jordanian criminal legislator on the enshrinement of the crime of maritime and air piracy in the Jordanian Penal Code, following Jordan's accession to the above-mentioned Arab Protocol, the Jordanian legislator worked to amend the Jordanian Penal Code under the amended Law of the Penal Code No. 10 of 2022³, adding Article (378 bis). The Jordanian Penal Code, under which acts of maritime piracy against ships and aircraft are criminalized at the national level, hence this crime has become of a national character in addition to its international nature.

Second part

Legal provisions governing the crime of maritime piracy

In Jordanian penal legislation.

The study deals with these provisions by identifying the legislative framework for the crime of maritime piracy in accordance with the plan of the Jordanian penal legislator by highlighting its legal structure (**section I**), and indicating the provisions of attempted and criminal participation for this crime (**section II**), then addressing the impact of the commission of this offense as the estimated criminal sanction with the circumstances and special reasons leading to the tightening or reduction of such sanctions (**section III**).

Section I: Legal Structure of the Crime of Maritime Piracy:

The legal structure/statement of the crime means the elements on which the crime is based, which by the consensus of criminal jurisprudence are three general elements: the legal element, which expresses the wrongful character of the act, the material element: which represents the materiality of the crime, that is, the appearance by which it emerges to the outside world that is based on three elements of the act, the result, the causal relationship, then the moral element: which represents the will with which the act is accompanied, and

the crew or passengers of a ship or private aircraft, provided that it is located on the high seas or in a place outside the jurisdiction of any State and is directed against another ship or aircraft, or against persons, funds or property on board that ship or on board that aircraft. (b) Any act of voluntary contribution or participation in the use of a ship or aircraft with knowledge of a fact which confers on that vessel or aircraft the status of piracy. c. Any act that incites or intentionally facilitates the commission of one of the acts mentioned in clauses (a) and (b) of paragraph (1) Even if no trace followed, 2. The acts mentioned in clause (a) of paragraph (1) committed by the crew of a ship or warplane or a government whose crew rebelled and seized the reins of the ship or aircraft, and such acts shall be considered as acts committed on a ship or private aircraft, 3. Any financing directly or indirectly that would result in the occurrence of any of the acts listed in this Article).

(1) The Hashemite Kingdom of Jordan has acceded to this Agreement the Protocol against Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, after the issuance of the Royal Will approving the Decision of the Council of Ministers to Accede No. (7) dated 4/11/2003, published in the Official Gazette, No. (4639), p. (109), dated 5/1/2004

(2) Regulated The Hashemite Kingdom of Jordan for this Protocol after the issuance of the Royal Will on the Council of Ministers Resolution No. (6025) dated 27/2/2022, and was published in the Official Gazette, No. (5781), p. (2639), dated 31/3/2022.

(3) Law No. (10) of 2022, a law amending the Jordanian Penal Code, Official Gazette, No. (5796), p. 3591, dated 25/5/2022.

If these or any of these elements are not available, we are not facing a criminal offense, as each of the crimes requires special elements that represent in their entirety the legal model of the crime, which distinguishes it from other crimes. These special elements do not depart from the general elements mentioned, of course, as they are just an application of the general elements to a specific crime¹.

In addition to the availability of the aforementioned elements, some crimes may require the availability of a presumed element required by their legal model, which is assumed to be available at the time of the perpetrator's commencement of his criminal activity² or its availability prior to the commencement of the act. This element may be the capacity of the perpetrator, the place of the crime, a legal situation, or a legal or judicial act³. Therefore, this study will classify the crime statement/structure as follow:

First: The legal element of the crime of maritime piracy:

The legitimate element of the crime is "the unlawful character of the act, the essence of which is a legal adaptation that detracts from the act and the reference in its determination of the Penal Code⁴, and it is embodied in the criminalization text, which confers on the positive or negative conduct its unlawful character since the act acquires the description of the crime only by establishing its criminality by a legal provision and otherwise, the act remains lawful⁵ and the legal existence of the offense depends not only on the fact that the act is subject to the criminalization provision, but also requires that it is not a subject to a justifying reason⁶. Therefore, the legal element consists of two manifestations: a positive manifestation, namely, that the act corresponds to a criminalization text, and a negative manifestation according to which no reason for justification is attached to it, removing from the act its criminal character⁷.

The legal element of the crime of maritime piracy is represented in the text of article (378 bis)⁸ and thorough scrutiny of the article in this text and its analysis. The researcher believes that it is imperative to innovate to

(1) Hosni, Mahmoud noble (1984)· Explanation of the Lebanese Penal Code, General Section, Beirut: Da J Al , Nahda Arabic pp. 55-56.

(2) Abu Amer J, Mohamed Zaki (1993) · Penal Code, General Section, Alexandria: Knowledge Facility, p. 42.

(3) Al-Abbadi, Musa Abdul Hafez (2018), Explanation of the Penal Code, General Section, 1st Edition, Amman: Dar Wael for Publishing and Distribution, pp. 304-306.

(4) Hosni, Mahmoud noble Former ReferenceAM: 73.

(5) Abd El , Banā, Suleiman (2014)· General theory of the Penal Code, Alexandria: Dar printouts Undergraduate, p. 370

(6) Said, Kamel Hamed (2009)· Explanation of the General Provisions of the Penal Code, Volume 1, Second Edition, Oman: House of Culture For Publishing & Distribution· p. 51.

(7) Tharwat, Galal (2012)· The theory of the general section in the Penal Code, Alexandria: University Press, P.O. Box: 137.

(8) Article 378 bis of the Jordanian Penal Code stipulates that: (1). Punishable by hard labour for life Whoever commits one of the following acts of piracy: violence, detention or robbery committed for special purposes by the crew or passengers of a ship or private aircraft and is directed: 1. Against another ship or aircraft on the high seas or against persons or property on board such ship or aircraft. 2. Against ship or an aircraft, persons or property on board this ship or aircraft in a place located outside the jurisdiction of any State. (b) voluntary participation in the operation of a ship or aircraft with knowledge of a fact that confers on such ship or aircraft the status of piracy; c. incitement to commit or intentionally facilitating the commission of one of the acts set forth in clauses (1,2) of this paragraph, 2. The penalty shall be the death penalty if the act results in the death of one or more persons, 3. The penalty shall be temporary work for a period of not less than five years if the offender voluntarily returns the ship or aircraft after seizure to its rightful commander or to a person who has the right to legally possess it and whose act has not resulted in damage to it or the property on board or to any of the persons on board. 4. Subject to any more severe penalty provided for in any other law, the penalties

draw a definition of the crime of maritime piracy in line with the orientation of the Jordanian penal legislator, and the researcher is based on a jurisprudential rule that a good definition of any crime must include its elements and effects since the opinion of professor Dr. Mahmoud Najib Hosni in this regard is that "the full definition is what defined the elements of the crime along with its statement of its impact".¹

The researcher defines the crime of maritime piracy as any unlawful attack emanating from the will of a sinner that entails a criminal penalty that falls on a ship, aircraft, persons, or property on board on the high seas or outside the jurisdiction of any State or within the territory of the Jordanian State, and this attack involves violence, detention or robbery by the crew of a ship or private aircraft, including acts of voluntary participation, incitement, and facilitation of the occurrence of the attack in the said manner with the intention of achieving specific purposes.

The researcher has worked hard to develop this definition in compliance with the legal provisions of the Jordanian Penal Code on the crime of piracy, and this definition does not necessarily reflect the researcher's point of view, because the researcher believes that the approach of the Jordanian legislator is not without the obligations of criticism as the study will show later.

Through the study's analysis of the text of Article (387 bis) of the Penal Code, it is possible to draw the plan of the Jordanian criminal legislator in its legal treatment of the crime of maritime piracy as follows:

1. The legislator narrowed the objective scope of criminalization by defining the acts considered to be such as the crime of maritime piracy, namely acts of violence, detention, and robbery only, thus removing from the scope of criminalization the acts of threat² and financing³ provided for in the Arab Protocol, and the act of arrest provided for in the Geneva Convention⁴ and the United Nations Convention⁵, nor did it enshrine the acts of robbery provided for in the Arab Protocol⁶.

On the other hand, the Jordanian penal code narrowed the scope of criminalization by removing acts of piracy committed by the crew of a ship or a warplane or a government aircraft in the event of seizure and control by its crew, which is a departure from the provisions of the Geneva Convention⁷ and the provisions of the Arab Protocol⁸.

In addition, the Jordanian penal legislator did not follow the approach of the Rome Convention of 1988, despite Jordan's accession to this Convention, according to which this Convention became an integral part of Jordanian domestic legislation, despite the important positive aspects that this Convention entails. These aspects include its expansion of the scope of criminalization to include all unlawful acts committed against the security of navigation and the safety of life at sea and not limited to acts of maritime piracy only, in addition to considering that States parties to the Convention are competent to prosecute such acts if the perpetrator is present on the territory of one of these States.

provided for in this Article shall apply to the perpetrator of any of the offences set forth therein on a ship or aircraft within the Kingdom).

(1) Hosni, Mahmoud Naguib/ Former Reference, p. 49.

(2) See the text of the article (5/1) From the Arab Protocol of 2019.

(3) See the text of the article (5/3) From the Arab Protocol of 2019.

(4) See the text of the article (15) From the Geneva Convention of 1985.

(5) See the text of the article (101) From the United Nations Convention of 1982.

(6) See the text of the article (7) From the Arab Protocol For the year 2019.

(7) See the text of Article (16) From the Geneva Convention of 1985.

(8) See the text of the article (5/2) From the Arab Protocol, For the year 2019.

Moreover, the Jordanian legislator was not affected by the Recap Convention, despite the advantages of this Convention, especially in terms of its expansion of the scope of criminalization to include acts other than acts of piracy, such as acts of maritime robbery.

Subsequently, it is clear that the Jordanian penal legislator narrows the scope of criminalization, it has been limited to three types of criminal behavior, namely violence, detention, and robbery, and the researcher believes that this narrowing is incorrect and unjustified and may lead to practical problems and is expected to create a state of legislative gap. It is conceivable that the crime of maritime piracy will occur in other forms and then it will escape the scope of criminalization to remain in the circle of permissible acts.

2. The legislator has expanded the spatial scope of criminalization, as it applies to crimes of maritime piracy committed on ships and aircraft, and to persons and property on board and that is committed in areas of the high seas and areas outside the territory of any State, which are also located within the territory of Jordan. The researcher believes that is a good approach from the Jordanian legislator in spite of being outside the general provisions that regulate the efficacy of the spatial penal code¹, that is acceptable because it is permissible to depart from the general provisions if the legislative necessity requires, and this departure is considered an exception and not an allocation, and the exception here is limited to its case and is not measured against it, and is not generalized and does not apply its application to cases similar to it. This departure does not violate the general provisions, but on the contrary, the priority is to apply the provisions of the Penal Code to maritime piracy crimes that occur within its territory.

3. The legislator has narrowed the personal scope of criminalization. The provisions of the Jordanian Penal Code apply only to anyone who commits the crime of maritime piracy, including the crew or passengers of a ship or aircraft, and in the sense of a violation, if the crime of maritime piracy is committed by persons other than the aforementioned, the provisions of the Jordanian Penal Code do not apply to them, and this is a kind of narrowing of the personal scope that is not justified and it was more useful for the Jordanian penal legislator to follow the approach of the Arab Protocol² which has broadened the personal scope of criminalization to include anyone who commits an act of piracy and armed robbery by an organized criminal group, an individual or individuals not connected by any organizational association, or an individual and crew members of a ship or aircraft who rebelled and seized it.

4. The legislator restricted the moral element of the crime of maritime piracy to the need for a special intent, which is to achieve special purposes, and did not follow the approach of the Rome Convention of 1988. The researcher believes that the legislator has deviated from the right in this aspect since this Convention did not restrict itself to a specific motive, as it applies to all acts of piracy without regard to the motive behind these

(1) **Article (7) states** of the Jordanian Penal Code as follows: (1. The provisions of this Law shall apply to anyone who commits within the Kingdom one of the offences set forth therein. 2. The crime is committed in Kingdom, Just in case Done on the land of this kingdom Sunday Elements constituting the offence or any of the acts of an indivisible offence or act of complicity My origin Or subsidiary: The territory of the Kingdom includes the air layer that Covered by The territorial sea is up to a distance of five kilometers from the shore and the air range that covers the territorial sea, ships and air vehicles Jordanian. B. Foreign Territories Occupied by the Jordanian Army Just in case The crime committed was against the safety of the army or its interests.

It states Material (8) of the Jordanian Penal Code as follows: (The law does not apply Jordanian: 1. Crimes committed in the Jordanian air territory on board a foreign air vehicle Just in case The crime did not exceed the blade of the vehicle, provided that crimes that do not exceed the blade of the air vehicle are subject to Jordanian law. Just in case The perpetrator or the victim was Jordanian or Just in case The aerial vehicle landed in the Hashemite Kingdom of Jordan after the crime was committed. 2. Crimes committed in the Jordanian territorial sea or in the air range covered by a foreign ship or air vehicle Just in case The offence did not exceed the blade of the ship or vehicle Pneumatic.

It states Material (9): on It's: (Applies) The provisions of this Law on all Jordan He Non-Arabic - An actor or accomplice who instigated or interfered - committed outside the Kingdom a felony or misdemeanor of a breach I am securing The state or imitated the seal of the state or imitated money or forged papers Cash Or Jordanian or foreign bank bonds that are legally traded or dealing in Kingdom.

(2) See the text of the article (8) From the Arab Protocol, For the year 2019.

acts¹. It would be desirable if the Jordanian legislator had not restricted the validity of the provisions of this article with a special intent, because with the increase in the crime of piracy and the multiplicity of purposes and criminal motives, especially political ones, and with this restriction, some crimes of piracy have emerged from the circle of criminalization.

5. The legislator considered the crime of maritime piracy to be one of the serious crimes, and he gave it the description of a felony and this attribute is inferred by looking at the criminal penalty estimated for this crime. The Penal Code punished the commission of this crime with the penalty of life labor, and if the crime of piracy results in a death, the penalty shall be increased to the death penalty, but if there is a circumstance or reason for failure, the penalty shall not be less than temporary work for five years. The legislator has mastered this because of the serious danger and harm involved in the crime of maritime piracy to the security of the national and international community and the safety of maritime navigation and trade, as well as the serious harm to individuals and property, not to mention the seriousness of the acts of maritime piracy that the persons of the perpetrators of this crime reveal.

6. This article contains special provisions relating to the situation of criminal complicity, incitement and interference, which in their entirety constitute a departure from the general provisions of the Penal Code, and the same approach applies to aggravating and mitigating circumstances as well. This is a good approach for the Jordanian legislator, as each crime has its own circumstances, and this does not prevent the application of general provisions.

7. The Jordanian legislator did not adopt the approach of the Arab Protocol regarding substantive and procedural and legal measures², and the provisions of Al Oudd as an aggravating circumstance for the punishment³. Perhaps the Jordanian legislator left this matter to the general provisions contained in the Penal Code, and the researcher supports this approach to the Jordanian project, as it was better not to develop special provisions dealing with these topics, because the general provisions in the Penal Code dealt with the organization of precautionary measures and the circumstances of the crime in a tight and stable manner, and there is no legislative necessity here that calls on the legislator to deviate from the general provisions.

Second: The presumed element of the crime of maritime piracy: One side of the researchers considers that the crime of maritime piracy requires the existence of a special element called the expression of the international element on the basis of the statement that the international character is what distinguishes this crime from other crimes, and this element is available if an attack is committed against interest or right protected by international law, and this trend may imply an aspect of validity from an international perspective⁴. However, the crime of piracy that is the subject of this study is a national crime defined by the Jordanian Penal Code, according to which this crime is considered a national crime, and therefore the researcher does not recognize this element and excludes it from the scope of the study.

From the researcher's point of view, the crime of maritime piracy does not require the availability of an element or element assumed because the interest subject to legal protection is a condition for criminalization. The attack on this interest, whatever it is, is the reason for giving the illegal character of the act, in the sense of the reason for the availability of the legitimate element.⁵

Third: The material element of the crime of maritime piracy: The material element of the crime is what represents its external appearance, that is, it is an external act of a tangible material nature and constitutes an attack on the interests protected by law, or exposes it to danger and the crime does not take place without a material element, each crime must have a material in which the criminal will of the perpetrator is embodied,

(1) See text Article (3) And (4) From Rome Convention, 1988.

(2) See the text of the material fig (8) and (10) of the Arab Protocol, For the year 2019.

(3) See the text of the article (11) From the Arab Protocol For the year 2019.

(4) Nafal, Muhammad Qasim (2013), The Crime of Maritime Piracy, Master's Thesis, Baghdad: Faculty of Law, Nahrain University, p. 80, Baydoun, Evening of Said Musa, op. cit., p. 361, Hammad, Ali Mahmoud Hassanein, op. cit., p. 209.

(5) Hosni, Mahmoud Naguib Hosni, Former reference, p. 57.

and the material element of the crime is composed of three elements: Criminal behavior, harmful consequence, and causal relationship between behavior and consequence¹.

1. Criminal conduct in the crime of maritime piracy: Criminal conduct as one of the elements of the material element is the most important component of the crime, it is the explicit disclosure of the offender's violation of the provisions of the law. The conduct is almost synonymous with the crime², criminal behavior is: the activity and external physical appearance issued by the offender to achieve the criminal result and for which the law imposed a penalty³. This behavior has a broad connotation and has two manifestations, one positive and the other negative: the positive is the activity that assumes a voluntary organic movement emanating from the offender's body and bringing about change in the outside world, while the negative is the failure to do something that the law requires the person to do under penalty of criminal accountability⁴.

Based on the general determinants already outlined of the concept of conduct as one of the elements of the material element of the crime in general, it is clear that conduct in the crime of maritime piracy as stated in the text of the article (387 bis) of the Penal Code is defined by three forms of positive acts: violence, detention, and robbery.

Violence: It is a form of aggression against freedom represented by freedom of will and is achieved by any means whatsoever that constitutes a material or moral coercion of the will, it is the deliberate use of material force, whether by the actual use of physical force or simply the threat of it⁵. The concept of violence in general involves severity and cruelty, and it is conceivable that violence occurs in word or deed, as it is any behavior that leads to harm, whether physical, psychological, or verbal harm, it is a deliberate physical act by an individual or group against another individual or group with the aim of causing damage to the material condition of the individual or target group⁽⁶⁾.

Detention: It is a form of assault on personal liberty achieved by unlawfully arresting and depriving a person of his or her liberty, i.e., preventing a person from using his or her freedom to leave the place where he is and go to another place he wants, whether it is in a specific place or any other special place, even if the place is not locked, and whether the time period is long or short⁷.

Robbery: It is an aggravated form of crimes against property, and the Jordanian penal legislator has defined the crime of theft as taking the money of a third party transferred without his consent⁽⁸⁾, and the legislator has dealt with the term robbery in crimes of theft that occur on the public road as an aggravating circumstance for the crime of theft, and the operative part of the texts that mention robbery is understood as an attack on the

(1) Al, Hadithi, Fakhri Abd El, Razzaq, Al, Zoubi, Khaled Hamidi (2010), Penal Code Explanation Section General I 2, Oman: Culture House for Publishing and Distribution, p. 86

(2) Abd El, Munim, Solomon (2003), General Theory of Penal Law, Beirut: Al-Halabi Publications, p. 460.

(3) Majali, Nizam (2010), Penal Code Explanation Section General, 3rd Floor, Oman: Culture House for Publishing and Distribution, p. 2012.

(4) Al-Hayari, Maan Ahmed (2010), The Material Pillar of Crime, 1st Edition, Beirut: Al-Halabi Human Rights Publications, p. 149.

(5) Abu al-Enein, Abd al-Nabi Muhammad Mahmoud (2012), The Impact of Domestic Violence on Criminality, Journal of Sharia and Law, Volume (14), Issue (1), Taif University, Saudi Arabia, pp. 128-129.

(6) Al-Helou, Hussein bin Ibrahim Yassin (2010), Mass Violent Crimes, Master's Thesis, Faculty of Graduate Studies, Department of Criminal Justice, Islamic Criminal Legislation, Naif Al-Arabi University for Security Sciences, Riyadh, p. 7.

(7) Resolution No. (16805/2021) issued by the Amman Criminal Magistrate's Court on 23/6/2022, Jordanian Bar Association, Qara'a website <https://qarark.com>

(8) Article (399) of the Jordanian Penal Code No. (16) of 1960.

property of others accompanied by violence or while carrying a weapon or resulting in bruises or wounds to the aggressor ¹.

2. Criminal consequence in the crime of maritime piracy: The criminal consequence is the effect of conduct that constitutes aggression against a right or interest for which criminal protection is established by law², and the criminal consequence has two meanings: a material connotation, which is the actual change caused by conduct in the outside world as an effect of such conduct, and a legal connotation as a legal idea that represents an attack on a right or interest that the legislator has criminal protection for.

Based on the above-mentioned general rules, it is clear that the criminal consequence of acts of maritime piracy is an infringement of the right to liberty, the right to the integrity of the body, the right to property, the right to freedom of maritime navigation and the right to the security of the national, regional and international community, all of which are protected by virtue of the foregoing.

In its material sense, it is the material effects of acts of piracy, such as preventing or restricting the freedom of movement of a ship or aircraft and the personnel and property on board for a certain period of time, causing material damage to the ship or aircraft, or causing material or moral damage to the individuals on board by acts of intimidation, beating, wounding or loss of life, or taking that ship or aircraft or the money or property on board, or the money and property on board, belonging to the individuals on board, from the possession of its owners, expropriation and disposal thereof by the owner.

Third: Causality in the crime of maritime piracy: Causality is the relationship that links the act and the result, and this relationship is established if it was the commission of the act that led to the result. The legal importance of causation lies in the fact that it is like the link between the elements of the material element of conduct and result, which evaluates its unity and entity, and contributes fundamentally to determining the scope of criminal liability³

In determining the causation in the crime of maritime piracy, the criminal consequence of the infringement of the right under legal protection must be the result of the act of violence, detention, and robbery. This relationship proves whether the acts of the right that led to the infringement of the right are the subject matter of legal protection, and the existence of the causal relationship is an objective matter at the discretion of the trial court.

Fourth: The moral element of the crime of maritime piracy: The existence of the crime is not based solely on the commission of its materialism represented by the elements of the material element, but there must be a psychological relationship between the perpetrator and the materiality of the crime, and this relationship is embodied in the tendency of the will of the perpetrator to create its materiality, in the sense that the perpetrator has a sinful will to violate the law⁴. The moral element of the crime as representing the mental and psychological criminal activity of the offender is basically the criminal will that links the perpetrator to his legally forbidden act, and this criminal activity is represented in two forms: the criminal intent: which expresses the tendency of the will of the perpetrator to create criminal behavior and achieve the result, and the criminal error: which expresses the direction of the will of the perpetrator to cause criminal behavior without his consent to end with the result⁵.

The researcher considers that the crime of maritime piracy is one of the intentional crimes, given the nature of the criminal conduct in this crime, the occurrence of the act of violence and the detention of robbery is only intentionally conceived by the racism of science and will, but the important question here is whether this crime requires a special intent in addition to the general intent, and it is known that the special intention is the direction of the will to achieve a specific goal, or is the tendency of the will to cause the crime to achieve a

(1) Text of Articles (402) and (303) of the Jordanian Penal Code No. (16) of 1960.

(2) Abd El , Sattar· Fawzia (1992)Description of the law, Penalties: General Section· Cairo: Dar Al Nahda, p. 248.

(3) Hosni, Muhammad Najib, op. cit., p. 282.

(4) Abd al-Sattar, Fawzia, op. cit., p. 467.

(5) Al , Hadithi· Fakhri Abd El , RazzaqThe former reference,· AM: 191.

certain purpose, and it is also known that the extent to which it requires the availability of an intention Special in any crime is not under the legal text.

The researcher believes that the legislator requires the existence of a special intent in the crime of maritime piracy, where it is explicitly stated: "... Violence, detention or robbery committed for special purposes..."). It is understood from this that the crime of maritime piracy is only for the purpose of achieving a special purpose, and this expression of the Jordanian penal legislator has an ambiguity in that it has not specified the nature and base, and this approach is criticized, on the one hand, the legislator confuses the text a state of ambiguity that opens the door widely to innovation, and on the other hand, it would have been more useful to limit itself to the general intent without a special intention to accommodate all crimes of maritime piracy as soon as the general intent is available without suspending on a specific motive.

Section II: Provisions for attempting and criminal participation in this crime of piracy:

First: Attempted Maritime Piracy Crime: Initiation is a stage of the commission of the crime that comes next to the stage of preparation and precedes the stage of completion of the crime¹, and the attempt to commit the crime comes according to two forms, an incomplete attempt, and a complete attempt. The Jordanian legislator defined the incomplete attempt to commit the crime as: (Initiation of the execution of an apparent act leading to the commission of a felony or misdemeanor if the perpetrator is unable to complete the acts necessary for the occurrence of that felony or misdemeanor to prevent reasons beyond his will)². The Jordanian legislator expressed the full attempt to commit the crime as: "If the acts necessary to complete the crime have been carried out but for the purpose of inhibiting reasons that have nothing to do with the will of the perpetrator thereof, the crime in question has not been carried out, the offense in question shall be punished as follows"³. Legislation in its complete and incomplete forms is conceived and assumed in crimes of the type of felony and does not require a legal text, or in crimes of the type of misdemeanor, it is only under an explicit legal text⁴

As for the attempt to commit the crime of maritime piracy, it is conceivable in its full and incomplete type and does not need a special text, as it is assumed because the crime of maritime piracy is a crime of the type of felony, and the Jordanian penal legislator has not established special provisions for the attempted commission of this crime, and the general provision of the Jordanian Penal Code is applied.

Second: Criminal complicity in the crime of maritime piracy: The Jordanian legislator has regulated the general provisions for criminal participation in the provisions of articles (75 to 84) of the Jordanian Penal Code, but with regard to the crime of maritime piracy, it has not complied with these general provisions, as it has equated the original perpetrator of the crime with the accomplices, whether in the form of interference or incitement, considering them all as the original perpetrators of this crime and it considered all of them as the original perpetrators of this crime and gave them the same original punishment.

Section III: Legal Effect of the Offence of Maritime Piracy:

The effect of the offense is the criminal sanction, and the penalty is the legal consequence of violating the criminalization provisions contained in penal legislation or is the legal effect of the establishment of criminal responsibility. Criminalization is supposed to be accompanied by a penalty, so criminalization has no meaning unless it is accompanied by a deterrent that warns the perpetrator of punishment, and this sanction is naturally subject to the principle of legality, as there is no crime except by a text, and a penalty or measure is not imposed except on the basis of a legal text⁵. The penal sanction has two forms: punishment and precautionary

(1) Ben Ali, Abdelilah Ahmed Abd El , Lal• (1993)• Crime of attempted crime, Master's thesis, Higher Institute For Security Sciences, Arab Center for Security Studies and Training, Riyadh, p. 18.

(2) text Material (68) Jordanian Penal Code No. (16) of 1960.

(3) Article (70) Text Jordanian Penal Code No. (16) of 1960.

(4) The text of Article (71) of the Jordanian Penal Code.

(5) See the text of Article (3) of the Jordanian Penal Code.

measure¹, and the penalty is divided into several sections according to the basis that takes the criterion for this division, the most important of which is the division of the penalty into criminal penalties, misdemeanors and indigency, or an original or consequential penalty, while precautionary measures are divided into measures of infidelity, confiscation in kind, precautionary guarantee, closure of the assignee and suspension or dissolution of legal bodies².

With regard to the penalty prescribed by the legislator for the offence of maritime piracy, it is the penalty of life imprisonment, and it is considered a criminal offence, while with regard to precautionary measures, the legislator has not provided for special measures for the offence of maritime piracy, and therefore the precautionary measures contained in the general provisions of the Penal Code shall apply to this crime. In terms of the circumstances of the aggravation of the penalty for the crime of maritime piracy, the legislator has made the occurrence of death due to acts of piracy an aggravating circumstance of the penalty, so that the penalty becomes death instead of life labor. It also stipulates a mitigating circumstance in this crime, which is if the offender returns the ship or aircraft to its legitimate captain or legal holder without resulting in any damage to it or the property on board or harming any of the persons on board, so that the penalty becomes temporary work for a period of not less than five years. It should be noted that these provisions relating to the penalty for the crime of piracy shall apply to all acts of maritime piracy that fall on Jordanian territory regardless of any other penalty provided for in the Jordanian Penal Code, unless the penalty is more severe.

Summary

The study dealt with the crime of maritime piracy in the Jordanian penal legislation, where it worked to highlight the substantive provisions that it contains, and concluded several conclusions and recommendations as follows:

Results:

1. The legislator narrowed down the objective scope of criminalization by limiting it to three types of criminal behavior as violence, detention or robbery only.
2. The legislator narrowed the personal scope of criminalization as it was limited only to the crew or passengers of a ship or private aircraft.
3. The Jordanian legislator has expanded the spatial scope of criminalization to include areas on the high seas, areas outside the territory of any state, as well as Jordanian territory.
4. The legislator restricted the commission of the offence to the need for a special purpose, which is to achieve special purposes, without specifying the concept and nature of these special purposes.

Recommendations:

1. The need to expand the objective scope of criminalization to accommodate all types of criminal conduct that are considered acts of maritime piracy to include every act of unlawful attack on ships, aircraft, property and individuals in areas of the high seas and areas outside the territory of any State.
2. The need to extend the personal scope of criminalization to any person or group of organized or unorganized persons who commit acts of unlawful aggression against ships, aircraft, property and individuals in the areas of the high seas and areas outside the territory of any State.
3. The need not to restrict the text to the availability of a particular motive, and to limit itself to the general intention only to accommodate all forms of the crime of piracy regardless of the motive for its committal.

(1) Al , Qahwaji: Penal Code, General Section, MHe's back Ex, p. 745.

(2) Al-Halabi, MHe's back Ex, p. 454.

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