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**МОРСКОЙ ТЕРРОРИЗМ – СОВРЕМЕННАЯ УГРОЗА
МОРСКОЙ БЕЗОПАСНОСТИ**
***MARITIME TERRORISM – THE CONTEMPORARY THREAT
TO MARITIME SECURITY***

Аннотация. Несмотря на незначительное количество морских террористических актов за последние два десятилетия, наличие современной угрозы безопасности морского судоходства не вызывает сомнений. Террористические атаки 11 сентября 2001 г. вызвали обеспокоенность по поводу возможности терактов на море. С тех пор было введено множество пассивных и активных мер с единственной целью – повысить безопасность морского судоходства. В связи с этим положения Конвенции SUA, Кодекса ОСПС и Регламента (ЕС) 725/2004, считающиеся наиболее важными правовыми документами, регулирующими этот вопрос, получили отражение в настоящей статье. В статье подчеркивается важность нового европейского агентства – Европейского агентства пограничной и береговой охраны, которое было создано с целью противодействия беспрецедентным миграционным потокам на территорию ЕС и частым террористическим атакам, имевшим место в последние годы.

Abstract. *Although the number of maritime terrorist attacks in the last two decades is negligible, presence of this contemporary threat to the safety of maritime navigation is unquestionable. 9/11 terrorist attacks raised concern of the possibility of maritime terrorist attacks, as well. Since then, numerous passive and active measures have been introduced with a single purpose; to enhance safety of ships and posts. In this respect, SUA Convention, ISPS Code and Regulation (EC) 725/2004, considered to be most important legal documents regulating this issue, were given special reference in this article.*

Further more, author emphasizes the importance of new european agency, the European Border and Coast Guard Agency, which was founded with the goal of resolving unprecedented migratory flows towards Union territory and frequent terrorist attacks that occurred in recent years.

Ключевые слова: терроризм, безопасность на море, международные конвенции, Кодекс ОСПС, европейское законодательство, активные меры, европейская пограничная и береговая охрана.

Keywords: *terrorism, maritime safety, international conventions, ISPS Code, European legislation, active measures, European Border and Coast Guard.*

1. Introduction

Maritime terrorism represents enormous danger to human life, to the safety and security of marine navigation and to the marine environment. It is one of the greatest threats to the ideals of democracy and freedom and to the values of peace. We should never disregard the fact that it does not recognize borders and may affect states and people irrespective of their geographical location.¹

During the last four decades, maritime terrorism spread rapidly and during that period three categories of maritime attacks have been identified:

- 1) attacks against vessels on the sea,
- 2) attacks against vessels in ports and at anchor,
- 3) attacks against port facilities and other coastal targets.²

Terrorist prefer to attack vessels because they have numerous vulnerable points. Cruise ships are lucrative terrorist targets because of the large number of people on a relatively small area, whose movement is difficult and limited in the case of a terrorist attack. Furthermore, a major attention has recently been given to tankers and other vessels

¹ [1, p. 33–48]

² Ports vary greatly with regard to their physical attributes while airports are all basically similar. Each port is different by virtue of its geography, topography, surroundings and population. [2]

carrying dangerous materials.³ The sinking of or the damage to one of those ships would result with enormous environmental catastrophe. It's needless to say that regardless of the object of carriage, potential damage, in case of any terrorist attack, would be immeasurable.

Another possible black scenario would be an attack against a ship in port, which would cause massive economic disruption, as well. Ships are more vulnerable in port, or in the approaches to a port, than they are at sea where they might gain considerable protection and advantage from their size and speed. Specifically, in ports, ships face threats from the landside, small boats and underwater swimmers.⁴

2. The Concept of Terrorism

One of the biggest deficiencies of the legal combat against terrorism is an absence of unanimous official definition of terrorism. Today there're more than 150 different definitions of this concept, but they are all parcial definitions focused either on the object or on the form of the attack. Nevertheless, all those definitions have several aspects in common;

- they all define terrorism as an act politically or ideologically motivated;
- according to all of them, terrorists use violence always with the purpose to intimidate population or a Government in order to force them to do something or to abstain from doing it.

³ [3, p. 3] The ships that are most vulnerable to terrorist attack are those carrying hazardous or dangerous cargoes that could turn the ship into a bomb, passenger ferries and cruise liners, as well as naval vessels. Smaller tankers with cargoes of lighter more volatile crude oils, as well as refined products such as gasoline, kerosene, and diesel, are potentially a greater risk than large ships carrying heavy crude oil which is difficult to ignite. While most attention has focused on the larger tankers and liquid natural gas (LNG) carriers, smaller vessels such as product tankers, Liquid petroleum gas (LPG) carriers and chemical tankers are more prominent in the piracy statistics and may be more vulnerable to terrorist attack. [4, p. 23–24]

⁴ Most large, modern merchant ships travel at speeds in excess of fourteen knots and it is both difficult and dangerous for small craft to attempt to approach them at this speed. Generally, it remains the case that gas carriers and tankers are more vulnerable when loading or unloading than at sea. Thus the problem is more one of terminal security rather than of ship security and of providing security for ships entering port. [5, p. 83]

Considering previously said, it can be concluded that the key elements of terrorism are:

- political and ideological motives,
- violence,
- intimidation as a purpose,
- change of behavior as a goal.

Maritime terrorism is lacking of an unanimous official definition, as well. Commonly accepted definition of maritime terrorism in legal theory is the one given by the Council for Security Cooperation in the Asia Pacific (CSCAP) Working Group and it is rather extensive. It defines maritime terrorism as «...the undertaking of terrorist acts and activities within the maritime environment, using or against vessels or fixed platforms at sea or in port, or against any one of the passengers or personnel, against coastal facilities or settlements, including tourist resorts, port areas and port towns or cities.»⁵

Although this definition is rather broad, it does not define what terrorism is and whether it refers only to maritime attacks against merchant vessels or to attacks on military crafts too.

3. Particularities of Maritime Terrorism

The distinction between piracy and maritime terrorism is blurred in, at least, three dimensions: ends, means and effects. In terms of ends, piracy is usually driven by financial gain, while terrorism is usually politically motivated. In terms of means, pirates are usually associated with basic capabilities while terrorists are associated with the sophisticated ones. In terms of effects, piracy has traditionally been confined to the tactical level and terrorism usually aims at achieving a strategic effect.⁶

⁵ [6]

⁶ Nowadays pirates use modern technology and apply sophisticated tactics, as well, so it is practically impossible to make a sharp distinction between piracy and maritime terrorism. It should also be stressed out that modern terrorist often collaborate with pirates, what is more – they are often financed from piracy booty, so intertwinement of piracy and maritime terrorism is undoubtful. [7, p. 75]

Maritime terrorism is a special form of terrorism which represents today one of the most intimidating threats to the safety of navigation. Although we might have a feeling that there aren't that many maritime attacks, the fact is that during the last 40 years more than 300 maritime terrorist attacks have occurred at world seas.⁷

Maritime terrorist attacks are very specific, primarily because of its battle field. Battle at the sea demands certain particularities regarding the means, equipment⁸ and procedures.

Furthermore, open concept of ports represents mitigating circumstances for terrorists, because once they enter the port area, this concept provides terrorist with free approach to information which can be used in planning or execution of future attacks, as well as to access the vessels more easily.⁹

As mentioned before, besides attacks on passenger ships and tankers as the most lucrative targets, navigation through straits is considered to be very risky and especially demanding and dangerous because of the frequency of navigation in a relatively restricted area where ships are navigating in reduced speed so are more exposed to terrorist attacks.

Even though maritime terrorism characterizes many specifics, one thing in common with terrorism in general are maritime suicide terrorists, who are very active figures in the execution of this contemporary maritime threat. Their readiness to give their lives for the cause they are fighting for is something impossible to fight against.

4. Legal Framework of Maritime Terrorism

Legal framework of maritime terrorism comprises a list of international and European rules. Most important among them are:

⁷ [8, p. 21]

⁸ One of the problem raises from the fact that many pieces of equipment are available in sales even to civilians so it is practically impossible to monitor its further use.

⁹ [3, p. 7]

– *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention – 1988) and its 2005 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf*,¹⁰

– *International Ship and Port Facility Security Code (ISPS Code – 2002)*;¹¹

– *Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security*.¹²

Since the newest of these instruments was adopted almost two decades ago, the question arises whether they represent sufficient and appropriate legal basis to meet and regulate modern challenges to the security at sea.

4.1. SUA Convention

The SUA Convention is the most important international convention whose main purpose is to ensure that appropriate action is taken against persons committing unlawful acts against ships and safety of navigation. It was adopted in March 1988 at the Conference in Rome and its Amendments were adopted in the form of Protocols to the SUA treaties in 2005. Convention applies to ships navigating or scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.¹³

The SUA Convention was the result of a diplomatic initiative taken by the Governments of Austria, Egypt and Italy in response to Achille Lauro incident which had made it clear that the rules of existing international law, were not appropriate tool to deal

¹⁰ [9]

¹¹ [10]

¹² [11]

¹³ [10, art. 4]

successfully with maritime terrorism. Achille Lauro was the first hijack of the passenger ship in the history.¹⁴

The SUA Convention in its article 3 prescribes what shall be considered as an offence within the meaning of this convention. Among the unlawful acts are the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it, etc. The common denominator of all of these offences is endangerment of the safe navigation.¹⁵

The 2005 Protocol to the SUA Convention broadens the range of offences by adding new article. This new regulation determinates

¹⁴ In 1985 Achille Lauro, Italian-flagged cruise ship was seized while travelling from Alexandria to Port Said, allegedly by Palestinian guerrilla group. They threatened to kill the British and American passengers unless Israel was to liberate 50 Palestinian prisoners. When their demands were not met they killed an American passenger. After the Egyptian authorities complied with their demands, hijackers flew to Tunisia but the plain was intercepted by US Tomcats and was forced to land in Sicily. Unfortunately hijackers were released because of some procedural mistakes. Finally, few years later, hijackers were processed and condemned to 15–30 years in prison while Abu Abbas, as the mastermind of the operation, was condemned to life imprisonment. [12, p. 31] There have been relatively few confirmed acts of maritime terrorism. Passenger ships and ferries have been preferred targets with the sinking of Superferry 14 in February 2004 near Manila in the Philippines being the most serious act of maritime terrorism so far in terms of loss of life with 116 people killed. However, the attacks on the USS Cole in Aden in October 2000 and on the French tanker Limburg off Yemen in 2004 usually attract most attention in writings on maritime terrorism because they were initiated by al-Qaeda and occurred in the context of 9/11. [13, p. 67]

¹⁵ According to article 3, any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

- a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
- b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
- c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
- d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
- e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
- f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship.

that it should also be considered as perpetration of an offence if person unlawfully and intentionally uses or discharges from the ship hazardous and dangerous material, or threatens to do so, all with the purpose to *intimidate a population, or to compel a Government or an international organization* to do or to abstain from any act.¹⁶

Furthermore, under the 2005 Protocol, a person commits an offence within the meaning of the Convention if that person unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence under the SUA Convention or an offence set forth in any treaty listed in the Annex of SUA Convention.¹⁷ In addition, person commits an offence if that person unlawfully and intentionally transports on board a ship any deadly or dangerous material or weapon.

¹⁶ The 2005 Protocol to the SUA Convention broadens the range of offences – person commits an offence if that person unlawfully and intentionally:

a) when the purpose of the act, by its nature or context, is to *intimidate a population, or to compel a Government or an international organization* to do or to abstain from any act:

i) uses against or on a ship or discharging from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage;

ii) discharges from a ship oil, liquefied natural gas,²⁰ or other hazardous or noxious substance, in such quantity or concentration that causes or is likely to cause death or serious injury or damage;

iii) uses a ship in a manner that causes death or serious injury or damage;

iv) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a)(i), (ii) or (iii); or

b) *transports* on board a ship:

i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death or serious injury or damage for the purpose of intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act;

ii) any BCN weapon, knowing it to be a BCN weapon;

iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA21 comprehensive safeguards agreement; ²² and

iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose.

¹⁷ [10, art. 3ter]

To conclude, 2005 Protocol to the SUA Convention is more precise and defines as an offence when one unlawfully and intentionally injures or kills any person in connection with the commission of any of the offences in the Convention, when one attempts to commit an offence; when participates as an accomplice; when organizes or directs others to commit an offence or when one contributes to the commissioning of an offence.¹⁸

Convention also prescribes several obligations towards State Parties. One is to make all these offences punishable by appropriate penalties. Moreover, SUA Convention obliges Contracting Governments either to extradite or prosecute alleged offenders, also known as the principle of «*aut dedere aut iudicare*». The lack of SUA Convention is that this principle does not impose a strict obligation to actually punish the offender, but only for case to be submitted without delay to the courts.

It can be concluded that both, the SUA Convention and its 2005 Protocol, prohibit a broad range of acts of violence directed against ships or shipping but do not prescribe rules concerning suppression of maritime terrorism. On the contrary, the SUA Convention is concentrated on the prosecution of offenders which can be considered its main flaw.

4.2. ISPS Code

After the terrorist attacks on September, 11th 2001 in New York City, serious concern was raised in the shipping community in respect to the prospect of terrorist attacks against ships or against targets such as port facilities by using ships as terrorist weapons, in the same manner as planes were used as weapons against the Twin Towers. It had become clear that the shipping industry needs new, more comprehensive set of measures to upgrade measures of maritime security. As a result of the comprehensive legal initiative, new provisions of the XI-2 SOLAS Convention, 1974 and Part A of the International Ship and Port Facility Security Code (ISPS Code) as a

¹⁸ [10, art. 3quater]

mandatory code of the said Convention have been enacted in order to insure improvement of marine safety.¹⁹ It was passed in 2002 and brought into force on 1st July 2004. Main objective of this Code is to establish an international framework involving cooperation between Contracting Governments, Government agencies, local administrations and the shipping and port industries to detect security threats and take preventive measures against security incidents affecting ships or port facilities used in international trade.²⁰

ISPS Code embodies a number of functional requirements such as gathering and assessing information with respect to security threats and exchanging such information with appropriate Contracting Governments; requiring the maintenance of communication protocols for ships and port facilities; preventing unauthorized access to ships, port facilities and their restricted areas; preventing the introduction of unauthorized weapons, devices or explosives to ships or port facilities; requiring ship and port facility security plans; requiring training, drills and exercises to ensure familiarity with security plans and procedures.²¹

Part A of the Code provides the minimum mandatory requirements that ships and ports must follow, while Part B provides detailed, but not compulsory, guidelines and recommendations in the implementation of security assessments and plans.²²

In compliance with the Code, all ships over 500 gross tonnage and critical facilities within the port's domain are obliged to conduct vulnerability assessments and develop security plans to deter potential terrorist attacks. Pursuant to ISPS Code provisions, the

¹⁹ [14, p. 1]

²⁰ Besides 9/11, another terrorist attack, preceeded the adoption of the ISPS Code. It was the attack on the USS Cole which took place in 2000 in Yemen and was performed by Al Qaeda. This attack showed that not only merchant ships are vulnerable, but navy ships as well. Seventeen US sailors died in this attack and 42 were wounded. [3, p. 1]

²¹ [11, section 1.3]

²² The amendments to the SOLAS Convention and Part A of the ISPS Code are mandatory, but subject to interpretation. On the other hand, Part B of the Code consists of recommendations which the EU countries are called on to implement.

Company shall establish within the ship security plan²³ overriding authority of the master and his responsibility to make decisions with respect to the safety and security of the ship.²⁴ After the initial or renewal verification in accordance with the provisions of this Code, the International Ship Security Certificate shall be issued.

A port facility must also have security plan developed and maintained, on the basis of a port facility security assessment, for each port facility, adequate for the ship/port interface.²⁵

ISPS Code entrusts with its implementation several key persons. Those officers need to have at least one Year of experince as officers and should be thoroughly acquainted with plans they are in charge:

- **Ship Security Officer (SSO)**²⁶ – the person on board the ship, accountable to the master, designated by the Company as responsible for the security of the ship, including implementation and maintenance of the ship security plan and for liaison with the company security officer and port facility security officers. The SSO shall be accountable for his/her work directly to the shipmaster.

- **Company Security Officer (CSO)**²⁷ – the person designated by the Company for ensuring that a ship security assessment is carried out; that a ship security plan is developed, submitted for approval, and thereafter implemented and maintained and for liaison with port facility security officers and the ship security officer.

- **Port Facility Security Officer (PSO)**²⁸ – the person designated as responsible for the development, implementation, revision and

²³ [11, section 9]

²⁴ The Ship security plan (SSP) is the plan of measures aboard the ship governing the protection of persons aboard the ship, cargo, cargo transport units, ship stores and the ship from incidents posing a threat to security or security threats. The ship master and other crew members shall be obliged to proceed pursuant to the security plan and security level in effect in a particular port. The company or any other person may not prevent the shipmaster to undertake the measures or execute the decision that is, according to his expert evaluation, necessary in order to ensure the ship and navigation security. When there is a conflict between the requirements for security and those for navigation and ship safety, the shipmaster must give priority to those requirements necessary for maintaining the navigation and ship safety. [14, p. 4]

²⁵ [11, section 16]

²⁶ [11, section 12]

²⁷ [11, section 11]

²⁸ [11, section 17]

maintenance of the port facility security plan and for liaison with the ship security officers and company security officers.²⁹

There were some new security instruments introduced by this code as well:

– **Declaration of Security (DOS);**³⁰ shall address the security requirements that could be shared between a port facility and a ship (or between ships) and shall state the responsibility for each.³¹

– **Ship Security Allert System (SSAS);** in case of an attempted piracy effort or terrorists act, the ship's SSAS beacon would be activated, responding to which an appropriate law-enforcement or military forces would be dispatched for rescue. Regarding the SSAS, the silent alarm device must be located at two separate places on the ship – usually it can be found on the bridge and in the Captain's cabin as to simplify its activation.

Contrary to the SUA Convention, the ISPS Code was created with the intent to prevent and suppress terrorist attacks. It abounds with preventive provisions and comprises numerous applicable solutions in cases where ship or port security is at risk. In theory, compliance with the ISPS Code should reduce the vulnerability of port facilities and ships to maritime attacks by terrorists and pirates. However, a major problem is that unless extended by national legislation, it does not apply to fishing vessels, ships under 500 gross tonnage, or to ships employed only in the domestic trade and the fact that International Maritime Organization is powerless in enforcing the instrument, while it can only monitor compliance. Another problem represents the fact that meeting the ISPS Code requirements places substantial additional costs on ship owners.³² It is also imposing delays on port

²⁹ The PFSO shall be appointed by the competent port authority or concession in special-purpose port for a period of five years. [14, p. 5]

³⁰ [11, section 5]

³¹ DOS is a written agreement between the ship and the port and between two ships establishing the security measures that each one of them shall apply. The agreed DOS shall be kept aboard the ship for no less than 6 months from the date of its departure from the port in which it was agreed or until departure from the tenth-port counting from the port in which it was agreed, whatever is later. [14, p. 3]

³² A study conducted by the Maritime Institute of Malaysia (MIMA) concluded that Malaysia's efforts to comply with the ISPS Code cost her ports US\$21.5 million and shipping companies US\$2.8 million. [15, p. 16–23]

operations and slowing down the process of international trade.³³ Although the objective of the new measures was to protect the maritime transportation system, ships and ports from being used for terrorist purposes, its application has shown that real benefits are enhanced cargo security and reduced illegal use of shipping containers and customs fraud.³⁴

4.3. Regulation (EC) No 725/2004

The most important EU regulation concerning security on ships and in ports is Regulation (EC) 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security which was implemented in compliance with the ISPS Code. Regulation states that security should be enhanced not only for ships used in international shipping and the port facilities which serve them, but also for ships operating domestic services within the Community and their port facilities, in particular passenger ships, on account of the number of human lives which such trade puts at risk.³⁵

According to this Regulation security checks in the port must be carried out regularly by the competent maritime security authorities of the EU countries.³⁶

The main objective of this regulation is to implement European Union measures aimed at enhancing the security of ships and port facilities in the face of threats of intentional unlawful acts.³⁷

³³ Ports have introduced significant extra charges to cover the costs of additional security; insurance companies have increased security premiums etc.

³⁴ [5, p. 91]

³⁵ [11, art. 1]

³⁶ The Regulation is also intended to provide a basis for the harmonised interpretation and implementation and Community monitoring of the special measures to enhance maritime security adopted by the Diplomatic Conference of the IMO on 12 December 2002, which amended the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention) and established the International Ship and Port Facility Security Code (ISPS Code). [11, art. 1, par. 2]

³⁷ EU has developed EU Counter-Terrorism Strategy which was adopted in 2005 and it commits the Union to combating terrorism globally, while respecting human rights and allowing its citizens to live surrounded with freedom, security and justice. [16]

Pursuant to this Regulation, Member States shall apply in full, by 1 July 2004, the special measures to enhance maritime security of the SOLAS Convention and Part A of the ISPS Code, in accordance with the conditions and with respect to the ships, companies and port facilities referred to therein.³⁸

Regulation obliges Member States to ensure that effective and proportionate sanctions for breaching its provisions are introduced.³⁹

5. Active Measures in the Combat Against Maritime Terrorism

Besides legal framework which represents crucial form of passive measures against this asymmetric maritime threat, there're several other effective passive measures as well, such as updating potential terrorist aims, analyzing terrorists soft spots, forming anti-terroristic plans for navy and merchant ships, strengthening surveillance and monitoring of all merchant ships and well educated and trained crew.⁴⁰

Without disparaging the contribution of these measures in the combat against maritime terrorism, only by combining both passive and active measures, simultaneously, desired results can be accomplished. One of the most significant NATO's operations with the goal of prevention and suppression of acts of maritime terrorism was *Active Endeavour*, which was set down in the Mediterranean.⁴¹

³⁸ This Regulation shall not apply to ships of war and troop-ships, cargo ships of less than 500 gross tonnage, ships not propelled by mechanical means, wooden ships of primitive build, fishing vessels or vessels not engaged in commercial activities. [11, art. 3, par. 7]

³⁹ Besides Regulation 725/2004, another significant legal regulation is **Directive 2005/65/EC**. The Directive complements the security measures introduced by Regulation 725/2004 by making an entire port (as opposed to a port facility) subject to a security regime, in order to obtain maximum protection for maritime and port activities. The Regulation EC 725/2004 applies to all member states, while the Directive 2005/65/EC applies to all EU ports and aims to provide a sufficient and effective security level that protects the entire maritime infrastructure and transportation chain.

⁴⁰ [17, p. 376]

⁴¹ The operation was under the overall command of, and was conducted from, Maritime Command Headquarters, Northwood, United Kingdom, through a task force deployed in the Mediterranean. Task Force Endeavour consisted of a balanced collection of surface units, submarines and maritime patrol aircraft. [18]

NATO ships patrolled the Mediterranean and monitored shipping to help deter, defend, disrupt and protect against terrorist activity. Operation Active Endeavour was one of eight initiatives launched in response to the 9/11 terrorist attacks against the United States in 2001.⁴² It was terminated in October 2016. It had collateral benefits in enhanced security of shipping in general. Namely, while the mandate of Operation Active Endeavour was limited to deterring, defending, disrupting and protecting against terrorist-related activity, the operation had a visible effect on security and stability in the Mediterranean that was beneficial to trade and economic activity.⁴³ With the result of more than 128,000 ships monitored and 172 ships boarded this NATO operation was succeeded by the SEA Guardian in 2016.⁴⁴

⁴² It helped to secure one of the busiest trade routes in the world. OAE hailed merchant vessels and boarded suspect ships, intervened to rescue civilians on stricken oil rigs and sinking ships and, generally, helped to improve perceptions of security. NATO ships also systematically carried out preparatory route surveys in «choke» points, as well as in important passages and harbours throughout the Mediterranean. [19]

⁴³ What happened in practice was that merchant ships passing through the eastern Mediterranean were hailed by patrolling NATO naval units and asked to identify themselves and their activity. This information was then reported to NATO's Maritime Commander in Northwood, the United Kingdom. If anything appeared unusual or suspicious, teams of between 15 and 20 of the ships' crew boarded vessels to inspect documentation and cargo. Compliant boarding could only be conducted with the consent of the flag state and/or the ship's master. NATO personnel could otherwise convey this information to the appropriate law enforcement agency at the vessel's next port of call. The suspect vessel was then shadowed until action was taken by a responsible agency/authority, or until it entered a country's territorial waters. [18]

⁴⁴ At the NATO Warsaw Summit in July 2016, NATO announced the transformation of our Active Endeavour counter-terrorism mission in the Mediterranean to a broader maritime security operation. The new operation received the name Operation Sea Guardian. Operation Sea Guardian is a maritime security operation aimed at working with Mediterranean stakeholders to maintain maritime situational awareness, deter and counter terrorism and enhance capacity building. Some of the tasks include: supporting maritime situational awareness, upholding freedom of navigation, conducting interdiction tasks, maritime counter-terrorism, contributing to capacity building, countering proliferation of weapons of mass destruction and protecting critical infrastructure. Operation Sea Guardian is led by Allied Maritime Command (MARCOM) in Northwood, United Kingdom. [20]

6. European Border and Coast Guard – EBCG

European safety has been greatly strengthened by launching European Border and Coast Guard. With the goal of resolving unprecedented migratory flows towards Union territory and frequent terrorist attacks that occurred in recent years, new European agency was founded in September 2016 and started with its practice in October 2016.

Regulation 2016/1624 of the European Parliament and of the Council on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC), No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC establishes a European Border and Coast Guard to ensure European integrated border management at the external borders with a view to managing the crossing of the external borders efficiently. This includes addressing migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension, to ensure a high level of internal security within the Union in full respect for fundamental rights, while safeguarding the free movement of persons within it.⁴⁵

EBCG is the successor of the FRONTEX.⁴⁶ It consists of The European Border and Coast Guard Agency ('the Agency') and the national authorities of Member States which are responsible for border management, including coast guards to the extent that they carry out border control tasks.⁴⁷

Compared to FRONTEX, EBCG tasks and competence of EBCG are extended. It has broader jurisdiction and introduces liaison

⁴⁵ [21, art. 1]

⁴⁶ With the objective of improving procedures and working methods of the Common Unit, *Council Regulation (EC) 2007/2004* of 26 October 2004 led to the establishment of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). This Regulation was repealed by *Regulation (EU) 2016/1624* of 14 September 2016, establishing Frontex, the European Border and Coast Guard Agency.

⁴⁷ [21, art. 3]

officers, vulnerability assesment, fundamental rights officers, it also has permanent team and the right of direct intervention in situations at the external borders requiring urgent actions.

Fundamental EBCG tasks are:

a) to monitor migratory flows and carry out risk analysis as regards all aspects of integrated border management;

b) to carry out a vulnerability assessment including the assessment of the capacity and readiness of Member States to face threats and challenges at the external borders;

c) to monitor the management of the external borders through liaison officers of the Agency in Member States;

d) to cooperate with the European Fisheries Control Agency and the European Maritime Safety Agency, each within its mandate, to support the national authorities carrying out coast guard functions;

e) to assist Member States in circumstances requiring increased technical and operational assistance at the external borders, by launching rapid border interventions at the external borders of those Member States facing specific and disproportionate challenges, taking into account that some situations may involve humanitarian emergencies and rescue at sea in accordance with Union and international law;

f) to set up and deploy European Border and Coast Guard teams, including a rapid reaction pool, that are to be deployed during joint operations and in rapid border interventions and within the framework of the migration management support teams.⁴⁸

The Agency shall support national authorities carrying out coast guard functions at national and Union level and, where appropriate, at international level by: sharing, fusing and analyzing information available in ship reporting systems and other information systems hosted by or accessible; providing surveillance and communication services; enhancing the exchange of information and cooperation on coast guard functions including by analyzing operational challenges and emerging risks in the maritime domain; sharing capacity by

⁴⁸ [21, art. 8]

planning and implementing multipurpose operations and by sharing assets and other capabilities.

National authorities carrying out coast guard functions are responsible for a wide range of tasks, which may include maritime safety, security, search and rescue, border control etc. This is why the European Border and Coast Guard Agency, the European Fisheries Control Agency and the European Maritime Safety Agency should strengthen their cooperation both with each other and with the national authorities carrying out coast guard functions to increase maritime situational awareness and to support coherent and coast efficient action.⁴⁹

In the meantime, the EU has recognized that the Union framework needs to be further improved in the areas of external border control, return, combating cross-border crime, and asylum needs. Both Regulation (EU) 1052/2013 and Regulation (EU) 2016/1624 were repealed by Regulation (EU) 2019/ 1896.⁵⁰ European Border and Coast Guard shall be reformed once more, by giving the Agency a stronger mandate and, in particular, by providing it with the necessary capabilities in the form of a European Border and Coast Guard standing corps (the ‘standing corps’).⁵¹

7. Conclusion

The need to counter the threat of maritime terrorism has led to fundamental changes in the international maritime security environment. Although there’re several relevant legal documents which adequately regulate this contemporary marine security threat, there is always a room for progress.

⁴⁹ [21, art. 53]

⁵⁰ [22]

⁵¹ Such a capacity of 10 000 operational staff represents the maximum available capacity required to effectively address existing and future operational needs for border and return operations in the Union and third countries, including a rapid reaction capacity to face future crises. The key novelty is that the Standing Corps deployed as team members are conferred executive powers [22, art. 54 par. 3] such as verifying the identity and nationality of persons, authorising or refusing of entry upon border check, stamping of travel documents, issuing or refusing of visas, patrolling or, registering fingerprints [22, art. 55 par. 5].

Namely, they all contain particular deficiencies that should be amended. SUA Convention is focused on reactions to a terrorist act rather than its prevention and after 9/11 terrorist attack it became clear that its original text must be upgraded. The 2005 amendments broadened the scope of the Convention by providing the prosecution of individuals who use a ship as a weapon, as a means of committing a terrorist attack, or transport terrorists or cargo intended for use in connection with weapons of mass destruction programs, but still remains the problem of lacking prevention provisions. Contrary to the SUA Convention, the ISPS Code was created with the intent to prevent and suppress terrorist attacks. Even though it abounds with numerous preventive measures and applicable solution, it does not apply to fishing vessels, ships under 500 gross tonnage, or to ships employed only in the domestic trade. Furthermore, application of the ISPS Code causes substantial additional costs on ship owners. Disadvantages of the Regulation 725/2004 were decreased by implementation of Directive 2005/65/EC whose aim was to complement the Regulation by improving security co-ordination between port facilities and the wider port area beyond the individual port facilities. Their post implementation reviews have shown that the objective of enhancing port security in the wider port area may have been achieved.

In order to prevent and suppress future terrorist attacks, root causes of terrorism should be eradicated. Unfortunately this is impossible to do and there will always be political and religious fanatics ready to do anything to accomplish their cause. Therefore, it is crucial to have constant initiative and to prevent terrorist to regroup or to plan new attacks. This is why exchange of information is of key importance, as well as active measures undertaken by naval forces of maritime states. In this respect, broader authority of EBCG should facilitate optimal reaction in cases of terrorism and migration crisis. *Conditio sine qua non*, in this combat, is definitely coordination and cooperation between all interested parties. Parties must strengthen efforts concerning the extradition and prosecution of terrorist and inhibit suspicious countries and organization to finance terrorist

groups.⁵² It should be kept in mind that fight against terrorism cannot be won by military force alone, but requires a concerted effort based on diplomacy, intelligence, education, and winning community support.⁵³

Fortunately, so far, the maritime terrorist threat has had no significant impact on the volume or pattern of international seaborne trade.⁵⁴ We might even say that maritime targets are less attractive than land or air targets, because ships at sea are difficult targets and an attack on port infrastructure may have rather less impact than an attack on a major building or facility.⁵⁵ Nevertheless, additional, more severe, security checks must be introduced in ports and when boarding, regardless the delay they might lead to. There's no firm guarantee that maritime terrorist attack won't happen, but strict preventive provisions combined with effective active measures could assure us with desired step advantage in the collision with this dangerous threat to maritime security.

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⁵³ [23]

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⁵⁵ From a terrorist viewpoint, hijacking a ship to use as a floating bomb would have a lower probability of a successful outcome than hijacking an aircraft for a 9/11 type mission or placing a bomb on a crowded train. The destruction of a port facility might have significant economic impact but might not loom large in the public consciousness. The potential list of targets for a terrorist is limitless but maritime targets may not be high on the list. The preferred targets for terrorists are likely to remain on land where, as shown by the attacks on mass urban transport in London and Madrid, success is more readily assured. [5, p. 83]

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