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硕 士 学 位 论 文

# 国际海盜犯罪问题研究

——兼谈中国海盜犯罪的刑事立法

**A Study on Issues of International Crime of Piracy**

**—— Criminal Legislation Governing Piracy in China**

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## 内 容 摘 要

根据相关国际公约的规定，海盗罪是指私人船舶或私人飞机的船员、机组成员或乘客为私人目的，在公海上或无管辖区内对另一船舶或飞机，或其内人员及财物所从事的任何非法的暴力、扣留或掠夺行为。由于 1982 年《联合国海洋法公约》本身有关海盗罪规定的不足及部分国家海盗罪国内刑事立法的缺失，导致国际社会对海盗罪的认定存有分歧。因此，为了满足打击海盗犯罪的现实需要，提高惩治海盗犯罪的效率，加强和完善海盗罪的立法规定是非常重要的。

为此，笔者首先对海盗罪的概念和构成特征等基本问题进行了分析，从国际法和国内法的角度对海盗犯罪进行了比较。之后，针对海盗罪的特点，笔者结合《公约》的规定重点分析了海盗犯罪的法律控制，并提出了有效的防治措施。在此基础上，笔者最后就如何在我国完善海盗犯罪的刑事立法提出了建议。

本文由前言、正文和结论组成，其中正文包括四章。

第一章对国际海盗犯罪进行了概述。首先介绍了海盗犯罪的历史背景和现状；之后分析了海盗犯罪国际规范的演变进程；最后根据《公约》的规定对海盗罪的概念进行了归纳。

第二章从国际法和国内法的角度对海盗犯罪进行了比较分析。首先分析了海盗罪的犯罪构成；之后重点对《公约》中关于海盗罪的规定进行了评析；最后介绍了外国（地区）刑法对海盗罪的立法规定。

第三章结合《公约》的规定分析了国际海盗犯罪的法律控制。首先分析了海盗犯罪的管辖权问题；之后提出了海盗犯罪的侦缉、惩治和防范措施。

第四章讨论了海盗犯罪在中国刑法中的体现及适用，分析了中国海盗犯罪的立法现状及增设海盗罪的必要性；最后提出了海盗犯罪国内刑事立法建议。

**关键词：**海盗犯罪；《联合国海洋法公约》

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## ABSTRACT

According to relevant international conventions, piracy consists of five elements:(1) the illegal acts complained against must be violence or detention, or any act of depredation;(2) committed on the high sea beyond the land territory or territorial sea, or other territorial jurisdiction, of any State; (3) by a private ship, or a public ship which through mutiny or otherwise is no longer under the discipline and effective control of the State which owns it;(4) for private ends; and, (5) from one ship to another so that two ships at least are involved. The international community is confused about the definition of piracy due to the intrinsic flaws in the piracy law under UNCLOS and the absence of criminal legislation with regard to piracy in some countries. So it is important and necessary to strengthen and improve the law of piracy to crack down on piracy and punish such criminals more effectively.

The author of this article firstly introduces the basic concepts of piracy and its constitution and studies the crime of piracy comparatively from the perspectives of international law and national law. On the grounds of the characteristics of piracy, the author then emphasizes the legal suppression concerning crime of piracy combined with the law of piracy under UNCLOS, and presents effective measures on anti-piracy. Finally, on this basis, the author presents his constructive proposals on how to establish and improve criminal legislation governing piracy in China.

This dissertation is divided into three parts: preface, main body and conclusion. The main body includes four chapters:

Chapter 1 states the survey of international crime of piracy. Firstly, it introduces the historical background of piracy and the current scope of piracy problem. It then analyzes the development of the law of piracy. Finally, it concludes the concept of piracy according to the UNCLOS.

Chapter 2 studies the crime of piracy comparatively from the perspectives of international law and national law. Firstly, it analyzes the constitution of piracy. Secondly, it highlights the law of piracy under UNCLOS. Finally, it introduces the provisions of piracy in criminal laws of major foreign countries and so on.

Chapter 3 emphasizes the legal suppression concerning crime of piracy combined with the law of piracy under UNCLOS. It firstly studies the jurisdiction of

piracy and then presents the measures on how to crack down the crime of piracy and punish such criminals and prevent such crimes more effectively.

Chapter 4 discusses the embodiment and application of piracy in Chinese criminal law. It also analyzes the present Chinese criminal law on piracy and the necessity of adding piracy into Chinese criminal law. It finally presents constructive proposals on criminal legislation governing piracy in China.

**Key Words:** Crime of Piracy; UNCLOS

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## 前 言

海盗罪是一种古老的国际犯罪，自从有了海上交通和海上贸易以后，就出现了海盗行为以及针对海盗行为所进行的斗争。在 17、18 世纪以来，随着国际贸易的不断增加，通过海洋运输的世界贸易也日益增多，海盗行为已成为海上贸易、船舶航行和人身安全的严重威胁。于是，在国际法领域就出现了“海盗行为是人类的公敌”的主张，<sup>①</sup>海盗行为已经开始被视为一种相当严重的国际犯罪。在有关规制海盗行为理论的推动下，逐渐形成了有关惩治海盗行为的习惯法规则。1958 年《日内瓦公海公约》第一次确认了海盗罪，把习惯国际法中惩治海盗罪的规则加以明确化，使之更具规范性。1982 年《联合国海洋法公约》更是用了 8 条的篇幅，对海盗行为的定义和惩治做了规定，进一步确认了海盗罪这一国际罪行。上述两个公约，构成了现今国际社会认定海盗罪的重要法律依据。

近年来，随着现代科技的发展，与传统的海盗相比，现代海盗装备更为先进，作案手法也更为“高明”，有的甚至还走上了集团化、组织化的道路。据国际商会下属国际海事局（International Chamber of Commerce's International Maritime Bureau, ICC-IMB）海盗报告中心（Piracy Reporting Center）的统计，海盗袭击的数量在 2003 年上升了 20% 达到了 445 件。同时海盗已经发展成有组织犯罪的一个分支，在某些事件中还带有政治或恐怖的目的。<sup>②</sup>国际海盗罪行也再次成为国际社会关注的焦点问题之一。因此，认真研究海盗罪，提出有效的防止和惩治措施，是摆在国际社会面前的一项重要任务。

① [英]劳特派特修订.奥本海国际法(上卷平时法第二册)[M].王铁崖,陈体强译,北京:商务印书馆,1972.117.

② ALI M KOKNAR.Terror on the High Seas[J]. Security Management,2004, 48(6): 76.



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