



## COUNTERTERRORISM MECHANISM OF MARITIME TRANSPORTATION SECURITY

Elena MAKHMUROVA-DYSHLYUK,

graduate student

Kyiv National University of Trade and Economics

### Summary

The article analyzes the problem of international maritime transportation security enhancement from the prospect of maritime counterterrorism measures. The categories and the elements of activity are defined that emerge in the result of maritime transportation security maintenance. The elements of terrorism risk and the risks of counterterrorism activity of the vessel's crew members and vessel's executives are defined. The unique algorithm of emergence and elimination of risk situations is proposed.

**Key words:** transportation security, risk, terrorism, safety, algorithm, mechanism.

### Анотація

В статті розглядається проблема забезпечення безпеки при міжнародних морських перевозках. Проблема подається в аспекте міжнародної правової доктрини та міжнародних економічних відносин. Проводиться аналіз антитерористических операцій в нейтральних водах для звільнення мирних суден. Аналізуються правові, технічні, соціальні аспекти антитерористическої діяльності в міжнародному праві як єдиного механізму протидії угрозам тероризма.

**Ключевые слова:** транспортная безопасность, риск, терроризм, право, алгоритм, механизм.

Globalization processes in all the spheres all over the country demonstrate upward trend, contributing essentially to economic, cultural and social effect of unification of countries aimed at improving international relations security situation. These processes are determined by the objectivity and the necessity of the most rational use of countries international resources with simultaneous achievement of positive international indices of evolutionary development. Along with positive outcomes, globalization processes cause a long line of negative unexpected effects and phenomena. One of the most negative and unexpected globalization process's effects is the increase of all round activity of terrorist and international illegal organizations that inflict damage on economic organizations carrying out transportation.

Terrorism is one of the most dangerous and threatening phenomena of our age that is steadily growing in types and scales. Terrorist attacks cause mass casualties among people, destroy material and cultural values, inflict material damages on natural and legal persons, including during maritime international transportation.

The scales of the world terrorism and its interstate features add to the importance of creation of countermeasures

international system, coordination of all long-term efforts of different countries and at the highest level – the creation of various counterterrorism international organizations both on the territories of existing continents and in the open water.

Ukraine as a sovereign country does not stay out of fighting with international and interstate terrorism. It is determined by the unique geographic position of Ukraine virtually separating the countries of the west from the eastern countries such as Russia, Georgia, Iran and others. The use of Ukraine as a transit state for unlawful acts is one of the most important terrorist and illegal international organizations' aims. Therefore, as a part of counterterrorism policy the role of structures of executive branch that are specially empowered by existing legislature to fight against terrorism and counteract all the terrorist organizations considerably increases. Fighting against terrorism is of practical value, but it also greatly contributes to scientific inquiries within this field. The balance between the categories "maritime transportation security" and "international risks of maritime transportation" as a constituent category of counterterrorism activity on the international level remains one of the underinvestigated questions of counterterrorism and similar activity nowadays.

плати, стипендії, пенсії чи інших установлених законом виплат : автореф. дис. ... канд. юрид. наук : спец. 12.00.08 / В.В. Топчій ; Львівський державний університет внутрішніх справ. – Львів, 2009. – 18 с.

5. Лиськов М.О. Кримінально-правова характеристика складів злочинів проти трудових прав людини : дис. ... канд. юрид. наук : спец. 12.00.08 / М.О. Лиськов ; Львівський державний університет внутрішніх справ. – Львів, 2012. – 210 с.

6. Борисов В.І. Злочини проти безпеки виробництва: поняття та види. Кримінальна відповідальність за порушення правил ядерної або радіаційної безпеки : [монографія] / В.І. Борисов, О.О. Пащенко. – Х. : Вид-во СПД ФО Вапнярчук Н.М., 2006. – 224 с.



The relevance of the article is determined by the increase in international and interstate terrorist organization activities in the context of present rapid globalization, the enhanced world role of international maritime transportations in the international economic activity and the necessity of further investigation of the concept "international security" in relation to the category "transportation risk".

The purpose of the article is international security and international risks investigation and classification that emerge during international maritime transportation, identification of regulatory mechanisms that will reduce possible risks of terrorist activity in the open water.

The tasks of the article lie in defining the place and meaning of the categories "international security" and "international risks" during important counterterrorism activity in the open water transportations, development of significant practical algorithms aimed at reducing risks on international maritime transportation alternative activity.

The scientific novelty of the article is revealed through structuring and generalization of the categories "international security" and "international risks" in counterterrorist activity of the open sea transportation security, international risks' theoretical classification and codification, definition of the role of regulatory framework as a category of maritime transportation security.

Legal scholars within different fields of legal science study the problem of public, economic, social and legal elements of international risks. Russian scientist A.P. Algin conducted pioneer research in risks analysis, V.V. Mamchun, M.Sh. Kozhev, I.I. Slutskiy study the problems of political and legal types of risks etc. In Ukraine, the questions of international legal risks were considered in the works of legal scientists V.A. Lipkan, V.M. Spivak, V.O. Zarosylo and others. The relatively small number of modern legal scholars is explained by specific character of scientifically grounded researches and lack of information resources in this field of legal science.

The main components of further area of research are the general concepts of maritime transportation security, terrorism and risks.

In the field of maritime transportation, the problem of safety maintenance is considered based on the categories "natural risk" and «inflicting financial damage».

In our opinion, studying the category of international security in terms of categories risk, counterterrorism activity will amend and extend the range of use of the category "maritime transportation security".

Ayala F. gave the following definition of the terrorism: it is socially dangerous act directed at deliberate and purposeful use of violence by means of taking hostages, setting a fire, murders, tortures, citizens, state authorities and local authorities intimidation or inflicting other attacks on privacy or health of innocent unauthorized people, or the threats of committing criminal acts for the criminal purpose [1].

The main subjects of maritime counterterrorism actions are the state authorities of particular country and international military missions that counteract terrorism by means of their actions cooperation and coordination. Their actions are directed not only at encouragement or prevention of terrorist activities but at active all-round counterterrorists activities involving the concept of terrorists' resistance and their use of hired terrorists, weapons, armored and other transport vehicles (motor boats and sea vessels) and special military means. The real possibility of counteraction and tolerance to negative outcomes is the main source of concept "risk in counterterrorism activity" emergence during maritime transportation security.

According to the definition of legal scholar L. Barthouse that we support, the risk as the element of international law is the real possibility of negative outcomes of certain actions or events the knowledge of which while taking certain decisions is unlikely or insufficient [2].

The purpose of terrorist organization is carrying out a terrorist act. According to Europe scientist C. Deelen, a terrorist act is the result of illegal organizations' activity that may cause damaging of community facilities and common amenities, objects of state significance, military objects by means of their destruction and short-term or complete breakdown [3].

In the context of maritime transportation security, terrorist act is

an action – that increases the risks of damaging for the carrier of the goods by sea and poses a threat to the safety of vessel and crew in general.

The legal aspect of international maritime terrorist act is that its consequences are provided in international legislation [4].

Practical peacekeeping actions on terrorism as a sort of crime counteraction are carried out by means of particular set of activities (inshore and offshore patrolling, maintenance of vessel safety during potentially danger zone navigation etc.). This is the principal maritime counterterrorism element at the positive stage of its action.

In our opinion, international counterterrorism is the set of legal use of all enforcement measures with the involvement of special tools and weapons during organizational activity of international maritime organizations directed at international maritime counterterrorism and the protection of existing rights and liberties of vessel, crew and legal persons (carrier, shipper and the person, receiving cargo) and elimination of criminal infringements in the form of international maritime terrorism (piracy and seizure of vessel or crew members as hostages).

The main counterterrorism elements in response to various terrorist effects in the open water are: firstly, special regime of promotional events on particular maritime territory (patrolling and vessel's escort, necessary documents check and inspection of suspicious vessels, other measures), provided by international legislation. Secondly, special authority to use preventive measures to avoid international terrorism in the open water (the possibility to use special weapon including automatic, general military means and others), prescribed by the UN Convention on the High Seas of 1958 and the UN Convention on the Law of the Sea of 1982 and other legal documents [5].

The main purpose of maritime transportations security maintenance in counterterrorism – is the protection of sea vessels and crew members, legal persons from terrorist effects and terrorist actions consequences by means of encouraging, identification and stopping them by relative authorized persons both on the territory of certain state and in international open water.



In terms of counterterrorism actions two main safety provisions of maritime transportation security emerge, that are antagonistic in substance but complimentary in the structure composition, they are terrorist risks and counterterrorist risks.

Let us consider the model of emergence and functioning of "maritime transportation risk" category within the structure of counterterrorism policy as the element of maritime transportation security maintenance.

The model will be characterized by general order of emergence, acting and ceasing to act under the condition of the open water in case there is a threat of unauthorized tampering in the crew actions (piracy, seizure of a vessel): [the risk of interference with the crew members' actions or the seizure of a vessel] – [the decision about preventive measure or actions to the exclusion of such measure] – [legal; executive action] – [counterterrorist risk] – [the probability of action] – [overcoming terrorist risks].

The functioning of the above mentioned structural model involves several features: 1) the absence of any element does not exclude functioning of the model; 2) the decision on overcoming method – is legal and psychological category; 3) the implementation of the decision is enabled through actions, inaction presupposes negative outcomes; 4) overcoming risk brings it into the state of "latent functioning". Let us consider the above-mentioned categories in detail.

Terrorist risks – is the possibility to commit an act of terror by defined organized illegal groups or radical organizations with the purpose of inflicting damage on the state or individuals that result in negative outcomes.

Terrorist risks emergence, in our opinion, can be explained by several factors that can be divided into external and internal ones.

Internal factors originate from external circumstances of the development of society that enables the state to influence actively these processes. External reasons originate from external circumstances of the development of the world economy and law. The state has almost no effect on external processes.

The restriction of the influence stems from the diversity of social development of other countries and result-oriented

division of natural and other goods. Therefore, the countries exist, which nations consider such a division to be unfair and influence it by radical means of terrorist fighting. On the other hand, there are certain religious believes mainly in Muslim countries that assume terrorist fighting to be the principal aim of their religion existence as well as those citizens who exercise it.

The active restriction of countries interference implies the existence of counteraction ways of subjects' activities that refuse to act in compliance with regulatory requirements of public authorities and voluntarily abandon the activity aimed at doing harm to the whole society and state's interests.

Organizational risk is the possibility of the crew member status change in the system by means of change of position or rank in case of adverse consequences.

The element of possible consequence involves two situations – 1) post-remedial action or prevention of terrorist threat (that is terrorists fail to achieve results), 2) failure to prevent consequences (terrorists achieved results). In these situations, the possibility of validity and illegitimacy of the decision taken to abide becomes secondary criterion because taking decision to abide occurs in the past while negative consequences are "real-time" characteristics.

The prevention of terrorist risk involves total elimination of terrorist threat and physical extermination or detention of terrorists as a source of terrorist threat as well as saving the vessel, cargo, crew member's life and health at a time.

There is a possibility to overcome the risk situation to the fullest extent if the results achieved correspond to the previously mentioned conditions. The risk evolves into the latent stage that is the hidden stage, however with probability of happening and causing harm to citizen's health and life, unless such components as terrorists' detention or extermination are eliminated.

The main risk preventing or eliminating methods in maritime transportation security counterterrorism are the following: legal method – the involvement of risk-adjusted concept during counterterrorism laws formation, giving out special instructions related to the vessel crew members' actions under risk; psychological (individual)

methods – preparation of crew members to act under risk and their knowledge of the main aspects of risk category in counterterrorist actions as well as in international maritime transportation in general; tactical (strategic) method – involvement of "risk" category during maritime transportations and vessels' routes planning in the open water.

The following conclusions can be drawn: 1) maritime transportation security's counterterrorism activity involves the number of risks; 2) emergence, action and risk elimination in counterterrorism are closely connected to the activity efforts during terrorist resistance prevention; 3) the risks in maritime transportation exist in a non-random manner, but in the definite structure that can be represented in the form of certain model; 4) the elements of counterterrorism special model act as one whole, creating "synergetic risk effect", so that the rising opportunities of crew member actions' adverse consequences are in direct proportion to his active actions to overcome the risk situation; 5) the main conditions of counterterrorism risk reduction as the element of international transportation security – is the set of legal, psychological (individual) and tactical (strategic) approaches while carrying out counterterrorism actions, by means of which the probability evolves to overcome organizational and informational risk as a constituent of maritime transportation security.

#### Literature:

1. Ayala F. Analisis de los conceptos fundamentales de riesgos y aplicacion a la definicion de tipos de mapas de riesgos geologicos // *Boletion Geologico y Minero*. – 1990. – 101–103, № 2. – P. 108–109.
2. Barhtouse L., Suter G. Risk assessment – ecology // *Mech. eng.* – 1984. – 106, № 11. – P. 36–39.
3. Deelen C. Methods for assessing the risk of environmental contamination // *Risk manag. chem. environ.* : Proc. NATO com. challenges Mod. Soc. Pilot study risk manag. chem. environ. Oslo, Apr. – New York ; London, 1989. – P. 25–36.
4. Domingue G. Approaches to risk assessment (management) // *Toxic. Subst. J.* – 1984. – 6, № 2–3. – P. 97–103.
5. Falco J., Moraski R. Methods used in the United State for the assessment



and management of health risk due to chemicals // Risk manag. chem. environ : Proc. NATO com. challenges Mod. Soc. Pilot study risk manag. chem. environ. Oslo, Apr. – New York ; London, 1989. – P. 37–60.

6. Greenberg M Production risk problem in criminal law / Greenberg M. – Moscow : Nauka, 2004. – 72 p.

7. Computers, the brain and the universe as a physical problem / A. Akimov, V. Bingina. – Moscow : Nauka, 1998. – 112 p.

## СПЕЦИАЛЬНАЯ КОНФИСКАЦИЯ В УКРАИНЕ: УГОЛОВНО-ПРАВОВОЙ И УГОЛОВНЫЙ ПРОЦЕССУАЛЬНЫЙ АСПЕКТЫ

**Алёна МИКОЛЕНКО,**

кандидат юридических наук, доцент,  
доцент кафедры уголовного права, уголовного процесса и криминалистики  
Одесского национального университета имени И.И. Мечникова

**Татьяна ПАВЛОВА,**

кандидат юридических наук, доцент,  
доцент кафедры уголовного права, уголовного процесса и криминалистики  
Одесского национального университета имени И.И. Мечникова

### Summary

The given article investigates some view points of the representatives of science of criminal and criminal procedural law of Ukraine and provides an analysis of the legal nature of the special confiscation, when compared with the common confiscation, as a type of punishment and it should be noted that the analysis of solving the given question in foreign countries can be applied. The article substantiates the conclusion that the legal nature of the special confiscation completely depends on the will of a lawmaker and the purpose, which he pursued including the measure of the legal enforcement in accordance with the current legislation of Ukraine.

**Key words:** measures of the legal enforcement, common confiscation, special confiscation, measures of criminal law nature, measures of criminal and procedural enforcement.

### Аннотация

В статье рассмотрены основные точки зрения представителей наук уголовного и уголовного процессуального права Украины о правовой природе специальной конфискации, ее отличие от общей конфискации как вида наказания, дается анализ правового регулирования данного вопроса в зарубежных странах. Указывается, что правовая природа специальной конфискации полностью зависит от воли законодателя и целей, которые он преследовал, внося данную меру правового принуждения в действующее законодательство Украины.

**Ключевые слова:** меры правового принуждения, общая конфискации, специальная конфискации, меры уголовно-правового характера, меры уголовного процессуального принуждения.

**Постановка проблемы.** Вопросы правовой природы мер правового принуждения исследуются либо в рамках уголовного права, либо в рамках уголовного процессуального права Украины. Следует отметить, что часто такие исследования между собой не согласованы. Это свидетельствует об отсутствии сегодня в уголовном и уголовном процессуальном праве единой доктрины понимания мер правового принуждения и их системы. Поэтому в науке уголовного права представлены многочисленные и в то же время противоречивые концепции понимания данных мер.

**Актуальность темы исследования** подтверждается тем, что для наук уголовно-правового цикла, а также для правоприменительной деятельности перспективными сегодня яв-

ляются межотраслевые исследования различных правовых явлений. Такой межотраслевой подход в исследованиях обусловлен не только тем, что реализация уголовно-правовых предписаний осуществляется посредством применения норм уголовного процессуального законодательства, но и тем, что такие исследования, во-первых, дают обобщенное представление в науках уголовно-правового цикла о мерах правового принуждения; во-вторых, позволяют получить четкое представление о системе мер уголовно-правового воздействия, которые относятся исключительно к институтам уголовного права, хотя и реализуются посредством норм уголовного процессуального права (например, уголовное наказание, принудительные меры воспитательного характера, принудительные