

Symposium on Maritime Piracy in International Law

**PIRACY IN ROMAN LAW
AND THE BEGINNINGS OF INTERNATIONAL CRIMINAL LAW**

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“What Rome was facing was a threat very different from that posed by a conventional enemy. These pirates were a new type of ruthless foe, with no government to represent them and no treaties to bind them. [...] They were a worldwide pestilence, a parasite which needed to be stamped out...”

R. Harris, *Imperium*, London 2006, at p. 226.

R. Harris, the best-selling author of such books as *Enigma* and *Ghostwriter*, also writes with much passion about antiquity¹. Searching for a parallel to the tragic events of 11.9.2001, he stated that the threat posed by contemporary terrorists may be likened to the situation existing in ancient Rome at the beginning of the seventh decade of the 1st century B.C., when the pirates were so emboldened that they invaded and burned down Ostia², a harbour nearest to the capital city. Maritime robbery constituted an enormous problem during those times,

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¹ R. Harris is the author of *Pompeii* and first two volumes of a trilogy about Cicero: *Imperium* and *Lustrum*.

² R. Harris, *Pirates of the Mediterranean*, ‘The New York Times’, 30.9.2006, <http://www.nytimes.com/2006/09/30/opinion/30harris.html?pagewanted=all>.

incomparably more dangerous than terrestrial banditry. It was necessary to stand up to this challenge in many aspects, including the introduction of required legal regulations. It is submitted that Roman legal rules concerning piracy constitute the first step leading to the creation of international criminal law.

Piracy has always been an inherent aspect of maritime exploration. Initially, it did not have merely negative connotations and was often difficult to distinguish from other forms of maritime activity, such as trade or naval warfare³. Homeric heroes openly, sometimes even with pride, spoke of how they committed deeds which undoubtedly should be recognised as maritime robbery⁴. Another leading example of such attitudes may be noted in the well known digression⁵ describing the most ancient history of Greece, in a section of the first book of *The Peloponnesian War* by Thucydides, in which the author – having mentioned that Minos combated piracy – acknowledges that those Greeks who lived by the seaside often committed maritime robbery and that this profession did not discredit them but, rather, made them famous⁶.

Piracy was also no stranger to artistic representation. According to one of the Homeric hymns, *Hymn to Dionysus*, young Bacchus was captured by pirates known as the Tyrrhenians⁷. Contrary to warnings made by the steersman, who had recognised the divinity in a beautiful

³ Cf. F. Cassola, *I gruppi politici nel III secolo a.C.*, Roma 1968, at p. 28; J. Rougé, *Navi e navigazione nell' antichità*, Firenze 1977 (transl. R. Massari, A. Marazzi), at pp. 108–109; T. Łoposzko, *Tajemnice starożytnej żeglugi, [Mysteries of Ancient Navigation]*, Gdańsk 1977, at pp. 215–216.

⁴ Odysseus admits that, prior to his visit to Troy, he made predatory excursions which brought him prosperity (Hom., *Od.* 14,222-234). In another fragment, Homer describes an expedition to Egypt accompanied by pirates (Hom., *Od.* 17,424-433). Also the question, addressed to Odysseus by Polyphemus, seems characteristic, because the Cyclops wants to know whether the strangers sail the seas for any purpose (as merchants), or as pirates (Hom., *Od.* 9,252-255). This allows us to suppose that both options were typical and equally possible those times. Cf. L. Casson, *The Ancient Mariners. Seafarers and Sea Fighters of the Mediterranean in Ancient Times*, Princeton 1991, at p. 177; P. de Souza, *Piracy in the Graeco – Roman World*, Cambridge 1999, at pp. 19–21.

⁵ This fragment is traditionally entitled “Archeology”.

⁶ Thuc. 1,4-5.

⁷ Cf. A.W. James, *Dionysus and the Tyrrhenian Pirates*, ‘Antichthon’ 1975, Vol. 9, at pp. 17–34.

stranger, they sailed away, taking the youth with them. Dionysus turned the mast of the ship into a grapevine, transformed himself into a lion and attacked the captain. The terrified pirates flung themselves into the sea and there they were changed into dolphins. Only the clever steersman was saved from such a fate by Bacchus⁸. Euripides, in *Cyclops*, suggested that the assault of the pirates was not casual: it was Hera, who pestered them in order to get rid of Dionysus, by selling him into slavery⁹. However the most popular version of the myth has been passed on by Ovid in *Metamorphoses*¹⁰, embedded into the story of the impious King Pentheus. An image automatically associated with this beautiful myth is a masterpiece of Athenian pottery: a magnificent black-figure calyx, on which the painter has depicted a boat overgrown with grapevine, with Dionysus and the pirates transformed into dolphins and swimming around. The calyx was made by Exekias, an artist from 6th century B.C., and is now exhibited in the Antiker Kleinkunst Museum in Munich.

The sea in ancient times was perceived as a dangerous environment¹¹. Navigation was always inherently connected with the undertaking of great risk. In order to minimise such risk, mariners aimed never to lose sight of the shore, and the sailing season¹² lasted for only a few months of the year¹³.

For a long time the Romans feared the sea so much that they made no plans whatsoever for maritime exploration. With time, however, it transpired that only the sea could provide the opportunity to establish

⁸ *Hom. Hymn. VII Dion.* 32-54.

⁹ *Eur., Cycl.* 11-20.

¹⁰ *Ovid., Met.* 605-692.

¹¹ Cf. J. Jundziłł, *Rzymianie a morze*, [*The Romans and the Sea*], Bydgoszcz 1991, at pp. 18–22; Z. Benincasa, 'Periculi pretium'. *Prawne aspekty ryzyka związanego z podróżami morskimi w starożytnym Rzymie (II w. p.n.e. – II w. n.e.)*, [*'Periculi pretium'. Legal Aspects of the Risk Connected with Maritime Travels in Ancient Rome*], Warszawa 2011, at pp. 54–59. There are many literary texts which evidence the fear associated with setting out for sea. The poet Phalaecus (*Ant. Pal.* 7,650) wrote: "Avoid busying thee withe sea, and put thy mind to the plough that the oxen draw, if it is any joy for thee to see the end of a long life. For on land there is length of days, but on the sea it is not easy to find a man with grey hair" (transl. W.R. Paton). Cf. *Ant. Pal.* 7,532; 7,636; 13,27.

¹² Cf. S. Ducin, *Sztuka nawigacji w starożytnej Grecji i Rzymie*, [*The Art of Navigation in Ancient Greece and Rome*], Lublin 1997, at pp. 59–73.

¹³ Cf. Z. Benincasa, *op. cit.*, at pp. 48–54.

beneficial commercial relationships and – moreover – further territorial expansion could only be guaranteed by taming the ferocious seas. These conclusions led to the development of fleets and provide the impetus to construct harbours including Ostia, Portus Iulius (Misenum) and others¹⁴. Gradually, the Romans became lords of the Mediterranean, but the risk connected with navigation still remained.

The sense of foreboding connected with maritime voyages is confirmed in a fragment of the commentary to the works of Sabinus by Paulus.

D. 39,6,3 (Paul. 7 *ad Sab.*):

“Mortis causa donare licet non tantum infirmæ valetudinis causa, sed periculi etiam propinquæ mortis vel ab hoste vel a prædonibus vel ab hominis potentis crudelitate aut odio aut navigationis ineundæ”.

“It is lawful to make a donation ‘mortis causa’ not only when a person is induced to do so by failing health, but also because of the danger of impending death, either at the hands of enemies, or robbers; or on account of the cruelty or hatred of some powerful man, or when anyone is about to undertake a sea voyage” (transl. S.P. Scott).

According to the jurist, the possibility to make a donation in the event of death existed not only in relation to health problems but also in case of a risk of early death in the hands of the enemies, pirates, resulted from cruelty or hatred of an influential man or ongoing maritime voyage. Paulus explained that all of these situations represented examples of imminent danger: *haec enim omnia instans periculum demonstrant*¹⁵. The danger during a maritime voyage could be a disaster resulting from the unseaworthiness of the ship, the incompetence of the crew, weather (storms, gales), or from an attack by pirates. In spite of the intrinsic risks, marine transport was a necessary element of trade and a key to economic development.

Thus Rome was founded in a world where piracy was an inherent element of the state’s existence¹⁶. Rome needed merely to declare on

¹⁴ Cf. L. Winniczuk, *Ludzie, zwyczaje i obyczaje starożytnej Grecji i Rzymu*, [People, Customs and Habits in Ancient Greece and Rome], Warszawa 1983, at pp. 128–138.

¹⁵ D. 39,6,6 (Paul.7 *ad Sab.*).

¹⁶ Cf. J. Jundziłł, *op. cit.*, at pp. 142–143; J. M. Alonso-Núñez, *Piracy*, ‘Brill’s New Pauly. Encyclopedia of the Ancient World’, ‘Antiquity’ 2007, Vol. 11, col. 284–285.

which side she stood: that of pirates or their victims. However, the Romans turned out to be an unconventional society, because – although they lived in the basin of the Mediterranean – they limited their contact with the sea to an absolute minimum¹⁷. According to L. Casson, in the history of naval development the Romans constituted an anomaly – they were landlubbers who involuntarily became lords of the sea¹⁸.

Roman legal sources offer no definition of maritime robbery. However one should not omit other literary sources from which it is possible to deduce how piracy was understood. In one of his *controversiae*¹⁹, Seneca the Elder quoted the following pronouncement of Lucius Cestius Pius, a known teacher of rhetoric from the Augustan age, who estimated his own rhetorical art higher than the talents of Cicero.

Sen., *Contr.* 1,2,8:

“Non est credibile temperasse a libidine piratas omni crudelitate efferatos, quibus omne fas nefasque lusus est, simul terras et maria latrocinantes, quibus in aliena impetus per arma est; iam ipsa fronte crudeles et humano sanguine adsuetos, praeferentes ante se vincula et catenas, gravia captis onera, a stupris remove potuisti, quibus inter tot tanto maiora scelera virginem stuprare innocentia est?”

“It is incredible that pirates abstained from lust, men brutalised by every sort of cruel deed, for whom right and wrong are a jest, plunderers by land and sea, whose profession is to attack the property of others, in arms. Such men, cruel even to look at, used to human blood, carrying before them chains and bonds destined to weigh heavily on their captives – could

¹⁷ Cf. S. Tramonti, *La pirateria adriatica e la politica navale augustea (36-31 a.C.)*, ‘Ravenna: studi e ricerche’ 1997, Vol. 4, at pp. 96–97.

¹⁸ L. Casson, *op. cit.*, p. 171; F. Cassola however persuasively proves that the Romans had a fleet in archaic times. Even if they themselves were unable to construct robust ships, they acquired them from conquered enemies, for example from the citizens of Antium. In 311 B.C., under the plebiscite, which was initiated by a tribune Marcus Decius, an office of *duumviri navales classis ornandae reficiendaeque causa* (Liv. 9,30) was established, which implies that the fleet had existed beforehand. For the *plebiscitum Decium de duumviris navalibus*, F. Cassola, *op. cit.*, at pp. 27–34 cf. M. Elster, *Die Gesetze der mittleren römischen Republik*, Darmstadt 2003, at pp. 91–92.

¹⁹ *Controversiae* are rhetorical exercise based on hypothetical legal cases. Whereas their subjects were quite imaginary, we may suppose that the opinions of the speakers reflected legal rules. Cf. G.B. Conte, *Latin Literature. A History*, Baltimore – London 1999 (transl. J.B. Solodow), pp. 404–405.

you turn them aside from their desires? Amid so many greater crimes, the deflowering of a virgin is for them an act of innocence” (transl. M. Winterbottom)”

He described pirates as merciless people who did not distinguish between right and wrong, who committed robberies at sea and on land, committed thefts using weapons, had a cruel countenance, were accustomed to the sight of human blood, held ropes and chains to tie up their captives, for whom violating a virgin would be quite an innocent deed, compared to other crimes they committed. This pronouncement undoubtedly served for rhetorical purposes. However it allows one to deduce for certain that robbers using ships were known as pirates, but also that their marine activity was not their crucial distinguishing feature. Very often they robbed seaside villages and cities, and so they were also active on land²⁰. The core of their activity was also the use of armed force²¹. Piracy thus represented a branch of organised crime.

The dual nature of piracy was also underlined by Florus, the author of *Epitome de T. Livio bellorum omnium annorum DCC libri duo*, in one of many summaries of Livy’s works.

Flor., *Epit.* 1,41:

“Non ideo tamen tot cladibus domiti terra se continere potuerunt; sed ut quaedam animalia, quibus aquam terramque incolendi gemina natura est, sub ipso hostis recessu impatientes soli in aquas suas resilierunt, et aliquando latius quam prius Siciliae quoque litora et Campaniam nostram subito adventu terrere voluerunt”.

“But the pirates, though overcome by so many disasters, would not on that account confine themselves to the land, but, like certain animals whose nature fits them equally well for living in the sea and on the earth, as soon as ever the enemy had gone away, impatient of remaining ashore they launched forth again upon their natural element, the sea, and, extending their operations over a far wider area than before, were eager to create a panic on the coasts of Sicily and our own Campania by a sudden attack” (transl. E.S. Forster).

²⁰ Cf. Plut., *Pomp.* 24.

²¹ Cf. B.G. Kramer, *Disputatio juridica de iure navium*, Napoli 1983 (reprint), at p. 29.

Pirates were compared to amphibians, animals adapted to live both on land and in the sea, in concern of the wide area of their activity. Defeated at sea, they took shelter in their seaside fortresses; they robbed ships and harbours, which made them an unpredictable enemy and tough to defeat. This trait of pirates was obviously known to Roman generals, whose military actions were very often aimed at destroying pirates' land bases. Cutting them off from their supplies and the possibility to sell stolen goods represented the most effective method of combat.

Rome, as a fast growing and increasingly dominant power in the international arena, remained in constant search of new arguments to justify her interventions in various parts of the inhabited world. Piracy, which constituted a tremendous danger for Mediterranean society, was also a good pretext to join or even to provoke military conflict. Rome was in some way predestined to combat maritime robbery, as a political successor of ancient naval powers: Rhodes, Athens, and even a historically very distant Minoan civilisation.

The Romans were supposed to start combating piracy on a large scale²² but for some considerable time these expectations were neglected. It is hard to determine the real reasons for this, but one of the predominant hypotheses²³ suggests that the reasons were primarily financial in nature: the Romans were interested in trade in slaves and the driving force and major source of slaves were pirates.

As late as during the second half of the 2nd century B.C., the first expeditions against pirates were arranged. Such campaigns included the conquest of the Balears by Metellus, who was given the name *Balearicus* (123 B.C.) for this victory, or the campaign of Marcus Antonius in 102 B.C., which was the first Roman intervention in Cilicia.

Subsequently a law was passed, most probably at the beginning of 100 B.C., the text of which was discovered in epigraphical form in

²² The theory of the mission of the Romans, who were predestined to combat piracy, was expressed by Polybius, who was fascinated with the Roman republican system: Polyb. 2,12,4-6.

²³ Cf. S. Tramonti, *'Hostes communes omnium'. La Pirateria e la fine della Repubblica Romana (145-33 A.C.)*, Ferrara 1994, at pp. 15-19; P. de Souza, *op cit.*, at pp. 64-65; M. Tröster, *Roman Hegemony and Non-State Violence: A Fresh Look at Pompey's Campaign against the Pirates, 'Greece and Rome'* 2009, Vol. 56, No. 1, at pp. 14-33.

Delphi and Knidos and is titled *lex de provinciis praetoriis* or *lex de piratis persequendis*.

It should be emphasised that both inscriptions contain Greek translations of the text of the Roman legal act, which was intended to reach out to the broadest audience and, accordingly, was published beyond the territory of Rome.

The provisions of this legal act were as follows: ensuring the security of navigation for Romans, Latins and all allies of Rome²⁴ – the regulation was, first of all, intended to enforce the undertaking of actions to deprive pirates of their land bases and of the possibility to shelter in harbours of the eastern countries²⁵. The consuls were required to ensure that no army would be sent to the province of Macedonia²⁶; the province of Cilicia was established with a governor ranked as praetor²⁷. The consul was also required to write letters to the kings and rulers of the aforementioned states (Cyprus, Egypt, Syria, etc.), requesting that they not grant asylum to pirates and prevent them from establishing their bases in their territories for the purpose of ensuring common safety. Such letters were to be conveyed to a delegation from Rhodes in order that they be delivered to the addressees, and the delegation was in turn to be received and given audience by the senate in public²⁸. Other provisions concerned the governors of Asia and Macedonia and publication of the text of the plebiscite²⁹. The last section of the text contains sanctions imposed on

²⁴ Knidos, Column II, 1-11 (all the quotations and translations come from M. Crawford, J.M. Reynolds, J.-L. Ferrary, Ph. Moreau, *Lex de provinciis praetoriis*, [in:] M. Crawford (ed.) *The Roman Statutes*, Vol. I, London 1996, at pp. 231–270, with ample bibliography).

²⁵ Delphi, bloc B, 8-14.

²⁶ Knidos, column II, 12-31.

²⁷ Knidos, column III, 28-31. It is impossible to determine with complete certainty who obtained the governance of Cilicia in that year. Among the known praetors from 100 B.C. (L. Cornelius Dolabella, Gn. Cornelius Lentulus, P. Licinius Crassus, G. Servilius Glaucia and Tremellius; cf. T.R.S. Broughton, *The Magistrates of the Roman Republic*, Vol. I, Atlanta 1951 (reprint 1986), at pp. 574–575), only Tremellius could receive it. It is possible that it was obtained by a sixth praetor, whose identity remains unknown to us. The source mentions nothing of this, certainly because, following the campaign of Marcus Antonius in Cilicia, order was established for some time and the governor did nothing special. Cf. P. de Souza, *op. cit.*, at pp. 112–113.

²⁸ Delphi, bloc B, 14-20.

²⁹ Delphi, bloc B, 20-27.

magistrates, who were obliged to submit *iusiurandum in legem* and faced severe financial penalties for failure to do so³⁰.

The most important fragment of an inscription found in Delphi concerning piracy states as follows:

Delphi, bloc B, 8-14: [...]

γράμματα ἀποστελλέτω καὶ ὅτι δίκαιόν ἐστιν αὐτοὺς φροντίσαι, μὴ ἐκ τῆς βασιλείας αὐτῶν μήτε τῆς χώρας ἢ ὀρίων πειρατῆς μηδεὶς ὀρμήσῃ μηδὲ οἱ ἄρχοντες ἢ φρούραρχοὶ οὓς καταστήσουσι τοὺς πειρατὰς ὑποδέχωνται, καὶ φροντίσαι, ὅσον ἐν δυνατοῖς ἐσταὶ τοῦτο, ὁ δῆμος Ῥωμαίων ἴν' εἰς τὴν ἀπάντων σωτηρίαν συνεργούσῃ ἔχῃ.

“[...] he is to send [letters] to the effect that it is right for them both to see that [no] pirate [use as a base of operation] their kingdom [or] land or territories [and that no officials or garrison commanders whom] they shall appoint harbour the pirates and to see that, insofar as [it shall be possible,] the Roman people [have] (them as) contributors to the safety of all”.

The term *πειρατής*³¹ was used to define maritime bandits. It was emphasised that the missions of Rome were acting as the saviour of other nations and the guardian of freedom. Furthermore, an indirect implication is important – that all who failed to combat the pirates could be accused of maritime banditry or of supporting piracy³².

With this act Rome established itself as the leader of an anti-piracy coalition to the ranks of which it attempted to recruit the powers of the East, *i.e.*, Egypt, Syria, Cyprus, Cyrenaica³³. The Romans finally realised the scale of the problem of maritime robbery and, out of necessity, classified pirates as a new category of criminals, the elimination of which was in the common interest of all peoples. The pirates became common enemies (*ἐχθροὶ κοινοί*) and it was the task of all nations to persecute them. For

³⁰ Delphi, bloc C, 10-30, Knidos, column V.

³¹ This Greek term was ambiguous and was used to determine both bandits and pirates. Cf. P. Chantraine, *Dictionnaire étymologique de la langue grecque*, Paris 1984, at p. v.

³² Cf. P. de Souza, *Rome's Contribution to the Development of Piracy*, [in:] *The Maritime World of Ancient Rome*, Ann Arbor 2008, at pp. 78–79.

³³ Lacunas in the text do not allow confirmation to which rulers of other countries the letters requesting cooperation were to be sent.

the Romans, this situation was also a suitable pretext to justify military interventions into territories where nobody had invited them, and a perfect excuse for imperial activity.

Academics continue to discuss and debate the goals and effects of the subject plebiscite. The inscription found in Knidos undoubtedly sparked the need to review hitherto existing opinions. A common modern conviction is that the problem of combating piracy was only one issue with which the regulation was concerned, the others being rather intended to stabilise the political situation in the East and to determine the status of the eastern provinces³⁴, which were mostly relatively new territorial acquisitions. Therefore the plebiscite is most often called *lex de provinciis praetoriis*. However there still exists an opinion according to which the plebiscite primarily regulated all issues concerning the combating of piracy and the rules concerning the regime of the provinces resulted from the need to subordinate their administration to this fundamental goal³⁵. This author submits that Rome utilised piracy – the fundamental question regulated in the legal act – as an excuse for extending its influence in the East. Other provisions were designed to facilitate this task.

The scale to which maritime robbery grew following the plebiscite was overwhelming. Subsequently, the Romans on many occasions arranged military campaigns against pirates. Thus an obvious conclusion comes to mind as regards the ineffectiveness of the *lex de piratis persecutendis*. What was wrong? The text of the inscription irrefutably demonstrates the huge trust and hope placed by the Romans in the countries who became allies in the fight with piracy, all of which were powers in the East. The plebiscite was already passed before the war with Mithridates erupted. Whereas, only a few years later, Rome entered into a period of conflict with the king of Pontus, who was also supported by certain other countries. It seems, therefore, that the Romans miscalculated their hopes for ensuring the cooperation of the eastern societies, many of whom did

³⁴ Cf. J.-L. Ferrary, *Recherches sur la législation de Saturninus et de Glaucia*, I, 'MEFRA' 1977, Vol. 89, No. 1, at pp. 619–660; M. Crawford, J.M. Reynolds, J.-L. Ferrary, Ph. Moreau, *Lex de provinciis praetoriis*'..., at pp. 231–270; P. de Souza, *Piracy*..., at pp. 108–109.

³⁵ Por. L. Monaco, *'Persecutio piratarum' I. Battaglie ambigue e svolte cosituzionali nella Roma repubblicana*, Napoli 1996, at pp. 176–191.

not trust Rome³⁶, and which for many years had supported maritime robbery. For them, Rome represented the real threat and piracy occupied only second place in their list of geopolitical problems. In fact, the conquests of Romulus' successors in the West of Europe, and the removal of Carthage from the world map, could overwhelm, threaten and give rise to the question: who was to be next? Forward-looking and far-sighted politicians had to suppose that overcoming the plague of piracy may imply subordination of other territories to Rome, and that accusations of supporting *praedones* would constitute the purported excuse for many territorial annexations. It is, therefore, hardly surprising that the Roman appeal did not give rise to the response which it appears the Romans had rather naively expected.

Vell. 2,31:

"belli more, non latrociniorum, orbem classibus iam, non furtivis expeditionibus piratae terrerent quasdamque etiam Italiae urbes diripuissent".

"the pirates were terrifying the world, not as heretofore by furtive marauding expeditions but with fleets of ships in the manner of regular warfare, and had already plundered several cities of Italy" (transl. F.W. Shipley).

The situation was so dire that Velleius Paterculus even went so far as to state that pirates' actions no longer constituted banditry but war. The historian noted that pirates no longer arranged clandestine predatory excursions but, to the contrary, moved overtly with all their fleets.

Only Pompey the Great, one of the most prominent leaders of the late Republic, to whom the leadership in the anti-piracy campaign had been entrusted under the *lex Gabinia de uno imperatore contra praedones constituendo*, enjoyed major successes in the battle with maritime robbery. Nevertheless, the infringement of certain important systemic principles of the Republican constitution³⁷ represented a price that needed to be paid for this victory.

³⁶ Cf. L. Monaco, *op. cit.*, at pp. 177.

³⁷ Carrying out the analysis of the Roman republican system, Polybius (6,11-18) emphasised that its greatest advantage was the balance between each component of power: consuls, who were a monarchic element, the senate, which was an aristocratic element and democratic assemblies. Each component influenced the others, exercised

The authority of Pompey in the campaign against pirates may be defined as *imperium extraordinarium*. It exceeded beyond the systematic framework in many aspects. First, in the temporal aspect: it was granted for as long as three years. This was a very long period although, despite this, the principle of time limit was preserved *per se*. Second, in the territorial aspect: Pompey was granted an area of the whole basin of the Mediterranean, from the East to the Pillars of Hercules along with an 80 kilometres long strip of shore and islands. This led to references in literature to the *imperium infinitum*³⁸. The reason for assigning such a huge amount of territory was to ensure that the general could persecute the pirates anywhere they appeared³⁹. The problem of the hitherto anti-piracy campaigns was their small scope. The *praedones*, even following defeat, were able to rebuild their power quickly in other regions and reinitiate their threats. Third, the authority of Pompey exceeded the limitations imposed by the principles of the Roman republican system as regards the scope of competencies. First of all, it concerned the right to appoint legates *pro praetore*, who in normal circumstances were appointed only by the popular assembly. The republican magistrates were not entitled to select their legates. Fourth, the procedure of granting *imperium* to Pompey was certainly inconsistent with prior practice. It represented the first time when the senate was omitted in favour of the assembly, and *moreso* a plebeian assembly. Until that time *imperia extraordinaria* were granted by the senate. An example may be seen in the leadership of Pompey in Hispania during

some degree of control over them and, when necessary, inhibited their activities. Whilst this balance could be maintained the system functioned perfectly but when breached the consequences were irreversible. Each constitutional change, even an apparently insignificant one, from a further distance may be perceived as small step toward the destruction of this subtle network of interdependences. Such changes were often caused by dangerous situations which could not be prevented by other means. Although, at the first sight, the changes were minor, they eroded the delicate balance between these system components. Since the restraint mechanisms were limited, power could easily be assumed by one individual, which eventually led to the fall of the Republic.

³⁸ The adjective *infinitum* was used by Cicero when speaking of the *imperium* of Marcus Antonius of 74 BC (*Verr.* 2,2,8), but we may suppose that he used it rather for rhetorical purposes, rather than in order to describe the legal situation. Cf. F. de Martino, *Storia della costituzione romana*, II, Napoli 1973, at pp. 155–157; L. Monaco, *op. cit.*, pp. 216–220; M. Crawford, *The Roman Republic*², Harvard 1992, at pp. 203–204.

³⁹ Cf. S. Tramonti, '*Hostes communes omnium*'..., at pp. 86–87.

the conflict with Sertorius or the leadership of Marcus Antonius of 74 B.C. *Lex Gabinia* was a precedent used, for example, a year later when leadership in the war with Mithridates was assigned to Pompey under *lex Manilia*.

Thus this episode shows the significance of the issue of piracy, which was considered so important that it required extraordinary means. Without doubt, the *lex Gabinia*, or maybe the military skills of Pompey turned out to be so effective that global-scale maritime banditry was eliminated and essentially became a local or regional problem.

At least from a theoretical perspective, the *lex de piratis persequendis* was a major step forward. The status of pirates was clearly defined as people beyond the boundaries of international society, who should be penalised by all parties to the agreement. Sanctions were imposed on countries which failed to uphold this obligation. This represented an important incursion into the limits of national jurisdiction, which in antiquity was generally restricted to legislating for the citizens of each sovereign state.

This theory was further developed by Marcus Tullius Cicero, a court orator, politician, philosopher and statesman. Cicero used the term “pirate” in numerous ways. Initially, he used it as an accurate political invective, giving due emphasis to the threat presented by ever-bolder maritime bandits which pervaded throughout society. However, over time, a theory took hold which viewed pirates as enemies of humanity who had to be eliminated absolutely and who were denied the formal status of enemies:

Cic., *De off.* 3,107:

“nam pirata non est ex perduellium numero definitus, sed communis hostis omnium; cum hoc nec fides debet nec ius iurandum esse commune”.

“...for a pirate is not included in the number of lawful enemies, but is the common foe of all the world; and with him there ought not to be any pledged word nor any oath mutually binding” (transl. W. Miller).

Cicero aimed to clarify the importance of the *iusiurandum*, an oath taken before Jupiter, and argued that it should be irrevocably maintained in relationships with the enemy⁴⁰, whereas pirates were not recognised as

⁴⁰ Cf. P. Catalano, *Cic. De off. 3. 108 e il così detto diritto internazionale antico*, [in:] ‘Synteleia Arangio-Ruiz’, Napoli 1964, at pp. 373–383; Cf. L. Loreto, *Il ‘bellum iustum’*

hostes legitimi, because this term included only enemy states and organised societies⁴¹ – *gentes*. In Cicero's opinion, pirates were enemies of humanity as a whole – *communes hostes omnium*⁴². What implications did this have from the perspective of the law of war? It should be noted that oaths taken before pirates were not binding and, accordingly, no obligation existed to pay a ransom promised to pirates in exchange for sparing someone's life. No such ransom needed to be paid upon the conclusion of an ordinary *pactum*, or where a *iusiurandum* oath had been taken.

These deliberations represented a summary of the whole Ciceronian concept of piracy, crowning his many-year efforts to define piracy and to define the legal status of maritime bandits. It seems that piracy in this perspective was viewed as a crime against the laws of nations, persecution of which was a duty of all societies⁴³.

It should be noted, however, that this was not a virtual theory and that this definition was deployed by Cicero in practice for political purposes:

Cic., *Phil.* 13,18:

“Qua enim in barbaria quisquam tam taeter, tam crudelis tyrannus quam in hac urbe armis barbarorum stipatus Antonius? Caesare dominante veniebamur in senatum, si non libere, at tamen tuto; hoc archipirata (quid enim dicam tyranno?) haec subsellia ab Ityraeis occupabantur”.

e i suoi equivoci. Cicerone ed una componente della rappresentazione romana del Völkerrecht antico, Napoli 2001, at pp. 69–73.

⁴¹ Cic., *Phil.* 4,14: *...qui haberet rem publicam, curiam, aerarium, consensum et concordiam civium, rationem aliquam, si ita res tulisset, pacis et foederis*. Cicero emphasised openly that fugitive criminals or robbers, gathered in one place, could not be deemed equivalent to a state: Cic., *Parad.*, at p. 27. Cf. C. Phillipson, *The International Law and Custom of Ancient Greece and Rome*, Vol. II, New York 1911 (reprint 2001), at p. 375; C.M. Moschetti, *Pirateria – storia*, 'Enciclopedia del diritto' 1983, Vol. 33, at pp. 878–879; M. Kaser, *Ius gentium*, Köln–Weimar–Wien 1993, at pp. 23–24; B.D. Shaw, *Il bandito*, [in:] A. Giardina (ed.) *L'uomo romano*, Roma 2009, at pp. 376–378.

⁴² Cf. K.H. Ziegler, *Pirata communis hostis omnium*, [in:] *“De iustitia et iure”*. Festgabe für Ulrich von Lübtow zum 80. Geburtstag', Berlin 1980, at pp. 97–99.

⁴³ Cf. A. Tarwacka, *Le radici della nozione di 'delicta iuris gentium' nel pensiero giuridico degli antichi Romani*, [in:] *XII Colloquio dei romanisti dell'Europa Centro-Orientale e dell'Asia*, Irkutsk 14–16 ottobre 2009. Raccolta di materiali scientifici', Irkutsk 2009, at pp. 68–72.

“For in what country of barbarians was there ever so foul and cruel a tyrant as Antonius, escorted by the arms of barbarians, has proved in this city? When Caesar was exercising the supreme power, we used to come into the senate, if not with freedom, at all events with safety. But under this arch-pirate (for why should I say tyrant?) these benches were occupied by Itureans” (transl. C.D. Yonge).

The orator fought Marcus Antonius relentlessly, delivering violent speeches called the *Philippics* which sought to deprive him of his powers. Delivering the thirteenth *Philippic* in the senate on 20.3.43 B.C., he strongly objected to the conclusion of an agreement with Antonius⁴⁴. Cicero considered Caesar to be a tyrant and thus viewed killing him as a noble deed, whereas he referred to Antonius as the leader of pirates *archipirata*. Admittedly, his work *De officiis* had not then been published, but it was certainly almost finished. The label of pirate was not only used as an invective but was an important element of the political game.

If agreements concluded with maritime bandits were non-binding, then negotiations with Antonius could also be deemed void⁴⁵. In this manner Cicero presented to Octavian a lawful way for revoking all the pacts.

The situation was not resolved in the manner Arpinate dreamed of. Octavian allied with Antonius in the triumvirate and severe proscriptions were conducted, the result of which was that Cicero was murdered. However, Octavian did not forget this lesson. When his position was threatened by the son of Pompey the Great, Sextus, he recognised him as a pirate and thereby breached the peace treaty without any consequences⁴⁶.

⁴⁴ H. Frisch, *Cicero's Fight for the Republic*, Kobenhavn 1946, at pp. 248–266; K. Kumaniecki, *Cyceron i jego współcześni*, [*Cicero and his Contemporaries*], Warszawa 1959, at pp. 512–513.

⁴⁵ Cf. K. Marciniak, ‘*Pro Cicerone poeta*’. *Poezja Marka Tulliusza Cyclerona na przestrzeni stuleci*, [*Pro Cicerone poeta*. *Cicero's Poetry over the Centuries*], Warszawa 2008, at pp. 216–217; A. Tarwacka, ‘*Termin „pirat” w pismach Cyclerona – inwektywa czy coś więcej?*’, [*The Term „pirate” in Cicero's Works – Invective or More?*], ‘*Zeszyty Prawnicze UKSW*’ 2010, Vol. 10, No. 1, at pp. 83–106.

⁴⁶ A. Tarwacka, ‘*Sextus Pompeius – fide patri dissimillimus*’. *Prawda czy propaganda?*, [*Sextus Pompeius – fide patri dissimillimus*. *Truth or Propaganda?*], [in:] “*Salus rei publicae suprema lex*’. *Ochrona interesów państwa w prawie karnym starożytnej Grecji i Rzymu*’, [*“Salus rei publicae suprema lex*’. *Protection of the State's Interest in the Criminal Law*

Cicero's views on the legal status of pirates receives confirmation from later legal sources.

D. 50,16,118 (Pomp. 2 ad Q. Muc.):

“*Hostes’ hi sunt, qui nobis aut quibus nos publice bellum decrevimus: ceteri latrones aut praedones sunt*”.

“Those are enemies who declare war against us, or against whom we publicly declare war; others are robbers or brigands” (transl. S.P. Scott).

D. 49,15,24 (Ulp. 1 inst.):

“*Hostes sunt quibus bellum publice populus Romanus decrevit vel ipsi populo Romano: ceteri latrunculi vel praedones appellantur*”.

“Enemies are against whom the Roman people have publicly declared war, or who themselves have declared war against the Roman people; others are called robbers, or brigands” (transl. S.P. Scott).

When categorising groups against whom war was waged by the Roman people in the absence of an appropriate declaration, jurists deployed the phrase: *latrones (latrunculi) or praedones*⁴⁷. The word *latro* means a common criminal, a robber, whereas the term *praedo* was used

of Ancient Greece and Rome’], Lublin 2007, at pp. 345–356; A. Tarwacka, *Romans and Pirates...*, at pp. 72–86.

⁴⁷ Despite common views on the legal status of pirates, the terms used by Pomponius and Ulpianus sound quite neglecting, as compared to the Ciceronian *communis hostis omnium*. It seems that this is caused by the different historical realities which pertained when the authors wrote their texts. The last century of the Roman Republic was a period of unprecedented intensive pirate activity. The Romans defeated powers of the Hellenic world, which until that time dictated the order in the sea, but they did not accept this function. Common opinion stated that the Romans considered piracy an easily available source of slaves. Consequently navigation became unsafe, and for the Romans it was hard to control the plague of maritime bandits. Only the campaign of Pompey after the *lex Gabinia de uno imperatore contra praedones constituendo* had been passed in 67 B.C., transpired to be a success and limited the audacity of pirates. For this reason the Romans in Cicero's times treated pirates as powerful enemies and, while they did not recognised them as *hostes legitimi*, they feared them. Principate brought in much more navigational safety, which led to changes in attitude towards pirate gangs, who began to be perceived as groups of common criminals, *latrunculi*. Cf. A. Tarwacka, *Romans and Pirates...*, at pp. 56–67.

generally to designate bandits, but was also commonly used in a narrower meaning to designate pirates⁴⁸, sometimes with the adjectival attribution *maritimus*⁴⁹. The legal status of these two groups was similar⁵⁰. One or both appear in written texts, but it should be assumed that the regulations concerning *latrones* also include pirates. This results from the fact of identifying land and maritime banditry in the period of classical law.

Roman law was gradually developing in such a manner as to categorise piracy as a crime against the laws of nations, the persecution of which represented the duty of all countries. Jurisdiction was not limited to the territory of a given society, which facilitated the successful combating of piracy but also offered a suitable excuse for Roman expansionism. In the law of war, pirates were not treated as enemy combatants against whom a war could be waged. This resulted from the non-state characteristics of their gangs. For this reason, it was unnecessary to observe any pacts concluded with them, which enabled the annulment of any agreements concerning the payment of ransoms. Conversely, it opened the way to abuses in political conflicts: proclaiming the adversary a pirate enabled flagrant breaches of any prior negotiations and agreements.

⁴⁸ Cf. Plaut., *Rud.* 40.

⁴⁹ Cf. Nep., *Them.* 2,3; Isid., *Etym.* 10,219-220.

⁵⁰ A. Calore, *Forme giuridiche del 'bellum iustum'*, Milano 2003, at pp. 137-139.