

The United Kingdom of Great Britain and Northern Ireland

Response to the ILC on Prevention and Repression of Piracy and Armed Robbery at Sea

1. The United Kingdom of Great Britain and Northern Ireland ('UK') thanks the International Law Commission for the opportunity to submit information and views relevant to the topic 'Prevention and repression of piracy and armed robbery at sea'.

The legislation, case law and practice of States relevant to the topic, including in relation to articles 100 to 107 of the United Nations Convention on the Law of the Sea

Piracy in international law

2. The UK considers the United Nations Convention on the Law of the Sea (UNCLOS) to be the cornerstone of international law on ocean-related issues and the framework within which all activities in the ocean and seas are to be conducted.
3. Accordingly, the UK considers that articles 100 to 107 of UNCLOS, together with the right of visit under article 110 in respect of ships reasonably suspected of being engaged in piracy, comprise an authoritative account of international law concerning piracy.
4. Acts amounting to piracy, as defined by UNCLOS, may be committed exclusively on the high seas or, in accordance with article 58(2) of UNCLOS, in the exclusive economic zone.¹ Similar acts committed in the territorial sea, or in internal or archipelagic waters, do not fall within the definition of piracy under international law, but may amount to crimes, such as armed robbery, under the domestic law of the relevant coastal or flag state.
5. Acts that do not satisfy the definition in article 101 of UNCLOS do not amount to piracy under international law, but may be prohibited under other treaties and may similarly amount to crimes under the domestic law of the relevant coastal or flag state.

¹ The UK notes that the United Nations Security Council has previously decided, while acting under Chapter VII of the UN Charter, to authorise states to enter and take action in the territorial sea of a coastal state for the purposes of repressing acts of piracy and armed robbery at sea, 'in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law' (S/RES/1846 (2008) and as subsequently renewed).

6. Articles 105 and 110 contain comprehensive enforcement powers, on which the UK has relied in its counter-piracy operations. These provide *inter alia* for the interdiction, boarding and seizure by every State of pirate ships and ships taken and controlled by pirates, on the high seas and in the exclusive economic zone. Article 105 further permits the arrest and prosecution of individuals on board such ships, reflecting the existence of universal jurisdiction in respect of piracy.

The incorporation of the international crime of piracy into domestic criminal law

7. Piracy *jure gentium* has been a common-law offence since the 16th century. In *Re Piracy Jure Gentium* [1934] AC 586, the Judicial Committee of the Privy Council acknowledged that the definition of piracy in international law had changed over time, referring to international law as ‘a living and expanding code’ and holding that:

‘A careful examination of the subject shows a gradual widening of the earlier definition of piracy to bring it from time to time more in consonance with situations either not thought of or not in existence when the older jurisconsults were expressing their opinions.’

8. The relevant content of international law is currently defined by statute. Section 26(1) of the Merchant Shipping and Maritime Security Act 1997 (‘the Act’) provides that:

‘For the avoidance of doubt it is hereby declared that for the purposes of any proceedings before a court in the United Kingdom in respect of piracy, the provisions of the United Nations Convention on the Law of the Sea 1982 that are set out in Schedule 5 shall be treated as constituting part of the law of nations.’

9. Schedule 5 to the Act reproduces articles 101 to 103 of UNCLOS. Section 26(2) of the Act further provides that, for the purposes of the provisions set out in Schedule 5, *‘the high seas shall (in accordance with paragraph 2 of Article 58 of [UNCLOS]) be taken to include all waters beyond the territorial sea of the United Kingdom or of any other state.’*

10. Although the relevant provisions of the Act have not yet received detailed judicial scrutiny, the incorporation of the international crime of piracy into domestic law was acknowledged by the House of Lords in *R v Jones and others* [2006] UKHL 16 (see paragraph 28 in particular). It is also well-established that piracy is an international crime of universal jurisdiction (see, for example, comments referring to its status as

such in the speeches of Lord Browne Wilkinson and Lord Millett in *R v Bow Street Metropolitan Stipendiary Magistrate Ex p. Pinochet Ugarte (No.3)* [2000] 1 AC 147).

11. Where conduct analogous to piracy takes place in the UK territorial sea or internal waters, it would fall to be dealt with under the normal criminal law, for example as an offence of robbery. The Territorial Waters Jurisdiction Act 1878 extends the jurisdiction of the English courts over offences committed in the UK territorial sea.

The agreements entered into by States under which persons accused of piracy or armed robbery at sea are transferred with a view to prosecution

12. In the context of tackling piracy originating from, for example, Somalia, the UK made arrangements with a number of regional states for the transfer of suspect pirates for the purposes of prosecution. These arrangements were recorded in memoranda of understanding, which are not routinely published. The UK notes, however, that the European Union has published the details of similar agreements it concluded for the purposes of its Operation Atalanta, in which the UK was a participant (see below).²
13. The UK, through its participation in the G7++ Group of Friends of the Gulf of Guinea (FoGG) (see below), has supported efforts in West Africa to develop legal frameworks for the transfer and prosecution of persons suspected of piracy and armed robbery at sea. In particular, the UK welcomed the adoption by ECOWAS of the *Supplementary Act on the Conditions of Transfer of Persons Suspected of Having Committed Acts of Piracy and Their Associated Property and / or Evidence*.
14. The UK will continue to support the implementation of the *Supplementary Act* and associated capacity building in the region, including through participation in the FoGG's Working Group on Legal Aspects.
15. The UK would welcome and support the development of further and/or expanded arrangements for the transfer of persons suspected of piracy and armed robbery at sea, including where these arrangements would facilitate transfer to regional countries by states contributing naval forces. The UK emphasises the importance of any such

² See, for example, https://eur-lex.europa.eu/eli/agree_internation/2009/293/oj and <http://data.europa.eu/eli/exch let/2009/877/oj>.

arrangements being consistent with international law, including UNCLOS as well as applicable human rights standards.

The role of international, regional and subregional organisations regarding the prevention and repression of acts of piracy and armed robbery at sea

16. In August 2022, the UK Government published its *National Strategy for Maritime Security* ('NSMS').³ Tackling piracy and armed robbery at sea contributes to the third of its objectives, which is to ensure *'the security of international shipping, the unimpeded transmission of goods, information, and energy to support continued global development and our economic prosperity'*.⁴
17. The UK's approach to tackling piracy and armed robbery at sea recognises and supports the central roles played by international, regional and subregional organisations. According to the NSMS:

'Government's approach to counter piracy focuses on a combination of detection via improved global MDA and a concerted international naval response to disrupt the criminal networks. This sits alongside diplomatic engagement to support international institutions and frameworks. Government will continue to engage in the Djibouti Code of Conduct and the Contact Group on Piracy off the Coast of Somalia, Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) and other international fora.

Government will work multilaterally and bilaterally to support regional countries in the fight against cross-border maritime crime and piracy with a focus on legal frameworks to facilitate prosecutions, development of Maritime Domain Awareness, and capability building for navies and coastguards.

Government will take a leading role in developing multilateral engagement. For example, through our Dialogue Partner Status of the Association of Southeast Asian Nations and in the G7++ Friends of Gulf of Guinea.⁵

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1100525/national-strategy-for-maritime-security-web-version.pdf

⁴ NSMS pages 54 to 61.

⁵ NSMS pages 60 to 61.

18. For example, in 2021, the UK, alongside Senegal, co-chaired the FoGG, of which the UK is a founder member.⁶ The UK continues its active participation in the FoGG and its Working Groups, particularly those focused on legal aspects and on maritime domain awareness. The approach of the FoGG, including during the UK's co-chairmanship, has recognised and supported the central role played by regional organisations, such as ECOWAS, in tackling piracy in West Africa. Its approach has also recognised the importance of coordination with relevant international organisations and their agencies, such as UNODC.
19. The UK's approach is further demonstrated by the leading role it has played in the international effort to suppress piracy from Somalia. The UK has contributed warships to, and provided leadership at various levels of, all three of the main multinational forces that have participated in this effort: the Combined Maritime Forces' CTF151; NATO's former Operation Ocean Shield; and the European Union's Operation Atalanta. The UK remains a leading member of the Bahrain-based Combined Maritime Forces, including through the provision of warships and officers within its staff. Notably, the Deputy Commander of the Combined Maritime Forces remains a Royal Navy Commodore, and the Legal Adviser is a Royal Navy Legal Officer.
20. In both of these contexts, and with respect to tackling piracy and armed robbery at sea more generally, the UK commends and supports the work of the United Nations and its specialized agencies, including that of the International Maritime Organization. The UK recalls, for example, its close involvement in the series of Security Council resolutions concerning piracy originating from Somalia, leading *inter alia* to the creation of the Contact Group on Piracy off the Coast of Somalia. The UK notes, in particular, the important role and continued relevance of guidance resulting from such international cooperation, including the *Best Management Practices to Deter Piracy and Enhance Maritime Security in the Red Sea, Gulf of Aden, Indian Ocean and Arabian Sea*.⁷

⁶ The final report of the Ministerial Session held at the culmination of the UK's co-chairmanship can be found here: <https://www.gov.uk/government/publications/group-of-friends-of-the-gulf-of-guinea-g7-fogg-2nd-ministerial-session-2021-final-report/group-of-friends-of-the-gulf-of-guinea-g7-fogg-2nd-ministerial-session-2021-final-report>

⁷ The latest version being 'BMP5', which can be found at: <https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/BMP5%20small.pdf>