

ILC Report on the Work of the Seventy-Fourth Session (2023)

Chapter III: Specific issues on which comments would be of particular interest to the Commission

A. Prevention and Repression of Piracy and Armed Robbery at Sea

Information from Ireland

(a) 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 (UNCLOS)

i) Piracy jure gentium

1. Article 101 UNCLOS, which codifies customary international law, defines piracy *jure gentium* as:

(a) ‘any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft and directed:

i. on the high seas, against another ship or aircraft or against persons or property on board such ship or aircraft;

ii. against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or intentionally facilitating an act [described in the provision].’

2. Piracy *jure gentium*, as defined by international law, exists as an offence under Irish common law. There have, however, been no prosecutions for piracy *jure gentium* in Ireland since the foundation of the modern Irish State.

ii) Armed robbery at sea

3. The term ‘armed robbery at sea’ is understood by Ireland to refer to acts committed within a state’s territorial sea or internal waters. The term distinguishes such acts from acts of piracy committed on the high seas or in other places beyond the jurisdiction of any state. Although a number of international and regional instruments define ‘armed robbery at sea’ and ‘armed robbery against ships’, the definitional elements are not settled under international law. The term is, nonetheless, regularly used in resolutions of the United Nations Security Council and General Assembly, and it is generally accepted that it covers acts similar to those set out in Article 101 UNCLOS, but with a different jurisdictional scope.

4. The pre-Irish independence Piracy Acts [1613](#), [1837](#) and [1850](#) create offences of statutory piracy and related offences. These offences do not correspond to the crime of piracy *jure gentium* as defined in international law, and so may be considered types of offences of armed robbery at sea. The [Statute Law Revision Act 2007](#) retained these Piracy Acts on the Irish Statute Book and they, therefore, still have the force of law in Ireland. There have, however, been no prosecutions pursuant to these Acts since the foundation of the Irish State.
5. Offences analogous to piracy that take place in the Irish territorial sea and internal waters are dealt with under Irish criminal law. For example, section 14 of the [Criminal Justice \(Theft and Fraud Offences\) Act 2001](#) creates the offence of robbery, carrying a maximum punishment of imprisonment for life.
6. Additionally, section 10 of the [Maritime Jurisdiction Act 2021](#) provides for the jurisdiction of the Irish State over all offences committed on board or by means of a foreign ship that is within the territorial sea or internal waters of Ireland, which jurisdiction is exercised in accordance with Article 27 of UNCLOS.

iii) Offences committed on board Irish ships outside of the Irish territorial sea

7. The [Maritime Jurisdiction Act 2021](#) applies Irish criminal law to acts committed aboard Irish ships outside Ireland's territorial sea and internal waters, and confers jurisdiction on the Irish courts to try such offences. Any acts committed on an Irish ship outside the territorial sea and internal waters of Ireland which would, if done in the State, constitute an offence under the law of the State, are made offences in Irish law under section 22 of the Act.

iv) Other legislation relevant to this area

8. There are a number of other pieces of Irish legislation that deal with maritime security and violence at sea in various forms, and may thus be of relevance.
9. The [Maritime Security Act 2004](#) gives effect in Irish law to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) and to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA Protocol), specifically dealing with violent acts against ships and persons on board ships. Pursuant to section 2 of the 2004 Act, the following acts, done unlawfully and intentionally in or outside the State, are offences in Irish law:
 - seizing or exercising control over a ship or fixed platform by force or threat of force or any other form of intimidation;
 - performing an act of violence against a person on board a ship or fixed platform if that act is likely to endanger the safe navigation of the ship or the safety of the fixed platform;

- destroying a ship or fixed platform;
- causing damage to a ship or its cargo which is likely to endanger its safe navigation or endanger its safety;
- placing or causing to be placed on a ship or fixed platform a device or substance which is likely to destroy or cause damage to the ship or fixed platform;
- injuring or killing any person in connection with doing any of the above acts;
- threatening to endanger the safe navigation of a ship by doing any of the above acts with the aim of compelling a person to do or not to do any other act; and
- attempting to do any of the above acts.

10. A person guilty of any of any of these offences is liable on conviction on indictment to imprisonment for life. The 2004 Act establishes jurisdiction over the above offences when committed outside the Irish State by a person on board or against an Irish ship, by a citizen of Ireland on board or against a non-Irish ship or fixed platform, or by a person who is not a citizen of Ireland against a non-Irish ship or fixed platform (section 3).
11. The prosecution of a person who is not a citizen of Ireland for offences committed against a non-Irish ship or fixed platform can only be taken where the Director of Public Prosecutions (DPP) is satisfied that any extradition or surrender proceedings have been finally disposed of, or that it is 'expedient' that proceedings be taken (section 7(4)(b)(iii)). This implements the obligation contained in the SUA Convention to either extradite or prosecute an alleged offender if they are apprehended within the jurisdiction of a State Party. No such prosecutions have been taken in Ireland to date.
12. The [Criminal Justice \(Terrorist Offences\) Act 2005](#) (updated, consolidated version of the Act available [here](#)) gives effect to, *inter alia*, the 1979 International Convention against the Taking of Hostages. Pursuant to section 9 of the 2005 Act, a person is guilty of the offence of hostage-taking if he or she, in or outside the State:
- (a) 'seizes or detains another person ("the hostage"), and
 - (b) threatens to kill, injure or continue to detain the hostage,
- in order to compel a state, an international intergovernmental organisation, a person or a group of persons to do, or abstain from doing, any act.'
13. Section 9(6) provides that a person guilty of any of these offences is liable on conviction on indictment to imprisonment for life. Section 6(2) of the 2005 Act establishes jurisdiction over this

offence when committed outside the State, *inter alia*: on board an Irish ship or aircraft registered to Ireland; by a person who is a citizen of Ireland or resident in the State; or when directed against the State or an Irish citizen.

14. There is also provision in section 6(3) for jurisdiction to apply to acts committed outside the State where none of the above circumstances apply. Similar to the Maritime Security Act 2004, the DPP may only consent to such proceedings being taken when satisfied on certain matters (mostly relating to the fact that an extradition or surrender request had been made in the matter and has been refused) (section 43(3)). Similar to the Maritime Security Act 2004, this implements the obligation contained in International Convention against the Taking of Hostages to prosecute or extradite an alleged offender if they are apprehended within the jurisdiction of a State Party. No such prosecutions have been taken in Ireland to date.

(b) Agreements entered into by States under which persons accused of piracy or armed robbery at sea are transferred with a view to prosecution

15. As referred to above, Ireland is a party to the SUA Convention and SUA Protocol and the International Convention against the Taking of Hostages. The provisions on extradition in these multilateral agreements have been implemented in Irish law by the [Extradition \(Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf\) Order 2019](#) and the [Extradition \(International Convention against the Taking of Hostages\) Order 2019](#). These orders apply Irish extradition legislation to the States Parties to the Conventions concerned for the purpose of giving effect in Ireland to extradition requests made under those Conventions.
16. While Ireland has not entered into any other specific agreements for extraditing or surrendering persons accused of piracy or armed robbery at sea, the offences in question may come within the scope of other extradition treaties and regimes to which Ireland is party, such as the European Arrest Warrant regime. The offences would also be considered extraditable offences under, for example, the European Convention on Extradition 1957 and Ireland's bilateral extradition treaties with Australia and with the United States, insofar as they are offences punishable under the laws of the requested and requesting state by imprisonment for a period of at least one year or by a more severe penalty.

(c) The role of international, regional and sub-regional organisations regarding the prevention and repression of acts of piracy and armed robbery at sea

17. The EU maintains two Common Security and Defence Policy missions that deal specifically with the prevention and repression of acts of piracy and armed robbery at sea in the Horn of Africa: EUCAP Somalia, a civilian capacity-building mission, and EUNAVFOR Operation ATALANTA, a military maritime operation. Ireland deploys personnel to EUCAP Somalia, which supports Somali maritime security through both the development of the Somali coastguard and maritime police, and the improvement of Somalia's maritime legal framework and law enforcement capacity.