

Annex C

Prevention and repression of piracy and armed robbery at sea

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I. Introduction

1. Maritime piracy is generally understood to be acts of violence, detention or depredation committed for private ends by the crew or passengers of a private ship against another ship, including its persons or property on the high seas.¹ Maritime piracy began in antiquity and since the advent of the Law of Nations, has been regarded as an international crime. Indeed, it can be said that piracy at sea is as old as maritime navigation itself.²

2. Unfortunately, today maritime piracy is resurging at a rate without precedent in history as exemplified by maritime piracy committed in Indian Ocean off the coast of Somalia, the Gulf of Guinea, the Singapore and Malacca Straits, the Arabian Peninsula, Caribbean, Celebes, Java, North Yellow, and South China Seas, and the Bay of Bengal.³ Far from being a replica of the past, piracy has reappeared in new forms that are more violent, as pirates are now better organised, better equipped and more heavily armed.⁴ In its Report of October 1997⁵ on Oceans and the Law of the Sea, the Secretary-General of the United Nations alerted the International Community on the gravity of piracy and armed Robbery at sea. Such robbery and criminal violence come with a plethora of other associated illicit acts, such as maritime terrorism,⁶ corruption, money laundering, violation of international human rights law, illegal fishing, and the unlawful release of waste and toxic substances in the seas and oceans, human and drugs trafficking, etc.⁷

3. As such, maritime piracy is now a major concern of the international community as a whole, as acts of piracy are committed in all maritime zones and affect to various degrees the interests of all states, whether coastal or landlocked.⁸ From a standpoint of the wealth and development of States, it is worth noting that 85% of commerce transits through maritime routes,⁹ many of which are threatened by piracy. Consequently, Flag States,

¹ See *United Nations Convention on the Law of the Sea*, 10 December 1982, 1833 UNTS 3 [UNCLOS], at Arts 100–107.

² Jane G Dalton, J Ashely Roach & John Daley, “Introductory Note to United Nations Security Council: Piracy and Armed Robbery at Sea – Resolutions 1816, 1846 & 1851” (2009) 48 ILM 129 at 129; Alfred P Rubin, “The Law of Piracy” (1987) 15:2-3 *Denver Journal of International Law and Policy* 173.

³ C Paul Hallwood & Thomas J Miceli, *Maritime Piracy and Its Control: An Economic Analysis* (New York: Palgrave Macmillan, 2015) at 3-4; ICC International Maritime Bureau, *Piracy and Armed Robbery Against Ships: Report for the Period 1 January – 31 December 2018*, London, January 2019.

⁴ Jennifer C Bulkeley, “Regional Cooperation on Maritime Piracy: A Prelude to Greater Multilateralism in Asia?”, (2003) 14 *Journal of Public and International Affairs*, Article 2 at 3; Masataka Okano, “Is International Law Effective in the Fight against Piracy: Lessons from Somalia” (2010) 53 *Japanese Yearbook of International Law* 178 at 179-81; Yvonne M Dutton, “Maritime piracy and the impunity gap: insufficient national laws or a lack of political will” (2012) 85:5 *Tulane Law Review* 1111 at 1127–30.

⁵ Secretary-General, *Report on Oceans and the Law of The Sea: Law of the Sea*, UNGAOR, 52nd Sess, UN Doc A/52/487 (1997) at para 374.

⁶ Monica Pathak, “Maritime Violence, Piracy at Sea & Marine Terrorism Today” (2005) 20 *Windsor Review of Legal and Social Issues* 65.

⁷ Hugh R Williamson, “New Thinking in the Fight against Marine Piracy: Financing and Plunder Pre-empting Piracy before Prevention Becomes Necessary” (2013) 46 *Case Western Reserve Journal of International Law* 335; S Whitman & C Saurez, “Dalhousie Marine Piracy Project: The Root Causes and True Costs of Marine Piracy” (2012) *Marine Affairs Program Technical Report* #1.

⁸ UNSCOR, 67th year, 6727th Mtg, UN Doc S/RES/2039 (2012) at Preamble.

⁹ D Ortolland & J-P Pirot, eds, *Atlas géopolitique des espaces maritimes : frontières, énergie, pêche et*

Coastal States, Port States and other States are attempting to fight all forms of maritime piracy across the oceans, so as to protect human lives, to protect economic interests, to preserve freedom of navigation, and to preserve the marine environment against unlawful marine pollution and other unlawful acts at sea.

4. Piracy at Sea is typically directed against private vessels and therefore has significant effects upon private actors.¹⁰ Crew members of an attacked vessel are at risk of prolonged detention,¹¹ bodily harm or death. Ship owners are exposed to large ransoms¹² to obtain the release from pirates of their crew, cargo and ship. Maritime insurance companies must take account of the possibility of maritime piracy, thereby increasing the overall cost of maritime transport and introducing in maritime contracts piracy clauses.¹³ Piracy is also a source of concern for coastal communities and international organizations.¹⁴ One solution found appropriate under these circumstances, was to involve private companies to help combating piracy despite the controversy surrounding this approach and its legal basis in international law.

5. The human and economic impacts of piracy are indeed far from negligible. In 2010, 26% of piracy victims were taken hostage – representing 1181 out of a total of 4185 victims – and 59% of hostages faced increased levels of violence.¹⁵ Economic costs for piracy acts in Somalia only are estimated at between US\$1 billion and US\$16 billion; they include the cost of fuel due to rerouting, an increase in insurance cost of US\$20,000 per trip, reduced availability of tankers, and increased charter rates.¹⁶ Additionally, ransoms paid by the owner(s) of a ship to pirates have been between US\$500,000 and US\$5.5 million, resulting in an estimated total of US\$160 million paid in ransom for Gulf of Aden piracy acts only.¹⁷ Approximately, 10 hijackings of ships decrease export between Asia and Europe by 11%, which results in costs of US\$28 billion.¹⁸ While precise statistics on fishers are difficult to find, they suffer a disproportionate amount of attacks (usually to steal valuable catches and equipment) resulting in thousands of US\$ of costs per fisher and millions for each affected regions.¹⁹ Finally, the annual estimated cost for security measures implemented by EU and NATO anti-piracy navies is of US\$1.15 billion, and of US\$4.7 billion for private anti-piracy measures.²⁰

6. Modern pirates operate from landward bases, spending much less time at sea than pirates of the past.²¹ “Their usual strategy is to undertake quick raids in small boats launched from mother ships that were themselves pirated and then return to onshore

environnement (Paris : Technip, 2008).

¹⁰ Storny-Annika Mildner & Franziska Grob, “Piracy and World Trade: The Economic Costs” in Stefan Mair, ed, *Piracy and Maritime Security: Regional characteristics and political, military, legal and economic implications*, SWP Research Paper, (German Institute for International and Security Affairs: Berlin, 2011) at 26–28.

¹¹ *Ibid.* at 12.

¹² Hallwood and Miceli, *Maritime Piracy and Its Control*, *supra* note 3 at 5–6.

¹³ See R Wright, “Piracy set to escalate shipping costs”, *Financial Times*, 20 November 2008; Christopher N Douse, “Combating Risk on the High Sea: An Analysis of the Effects of Modern Piratical Acts on the Marine Insurance Industry” (2010) 35 *Tulane Maritime Law Journal* 267 at 278–81.

¹⁴ See José Louis Jesus, “International Tribunal for the Law of the Sea” in Jon M Van Dyke *et al.*, eds, *Governing Ocean Resources: New Challenges and Emerging Regime* (Leiden: Martinus Nijhoff, 2013) 25 at 26.

¹⁵ Torben C Skaanild, “Piracy: Armed Robbery, Kidnapping, Torture and Murder at Sea” in Maximo Q Mejia, Chie Kojima & Mark Sawyer, eds, *Piracy at Sea* (New York: Springer, 2013) 23 at 24; Hallwood & Miceli, *Maritime Piracy and Its Control*, *supra* note 3 at 4; Whitman & Saurez, “Dalhousie Marine Piracy Project” *supra* note 7 at 70.

¹⁶ Hallwood & Miceli, *Maritime Piracy and Its Control*, *ibid.* at 5.

¹⁷ Hallwood & Miceli, *Maritime Piracy and Its Control*, *ibid.* at 5–6; Whitman & Saurez, “Dalhousie Marine Piracy Project” *supra* note 7 at 57.

¹⁸ Hallwood & Miceli, *Maritime Piracy and Its Control*, *ibid.* at 6; Whitman & Saurez, “Dalhousie Marine Piracy Project” *ibid.* at 58.

¹⁹ Whitman & Saurez, “Dalhousie Marine Piracy Project” *ibid.* at 59–61.

²⁰ Hallwood & Miceli, *Maritime Piracy and Its Control*, *supra* note 3 at 6.

²¹ Hallwood & Miceli, *Maritime Piracy and Its Control*, *ibid.* at 15.

sanctuaries where they receive protection from local clans and their militias.”²² This land-based protection makes the detection of pirates very difficult and the success of pirates often depends on the effectiveness of this protection. Harbours and protecting pirates often brings in lucrative revenues, but risky revenues, and it is hypothesized that coastal communities will make this choice when other forms of revenues are unavailable or minimal.²³ Modern day pirates do not possess complex organisational structures, in a sense that they are usually led by a single leader who demands absolute loyalty from their subordinates, and finance themselves by integrating their activities into local economies.²⁴

7. There is considerable international law relating to maritime piracy, beginning with State practice that over time developed extensive customary international law in this area. Based on such custom and most importantly the Harvard Research Draft on piracy,²⁵ the International Law Commission developed as part of its work on the law of the sea²⁶ a series of provisions concerning piracy which ultimately became Articles 14 to 21 of the *Geneva Convention on the High Seas*,²⁷ which in turn later served as the basis for Articles 100 to 107 of the *United Nations Convention on the Law of the Sea*²⁸ (UNCLOS). Additional conventional law has been developed on the global level, principally under the auspices of the International Maritime Organisation, such as the 1988 *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*²⁹ (SUA Convention), and its *Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf*³⁰ (and further 2005 Protocols). Other global treaties not specific to piracy may also be relevant, such as the 1979 *International Convention against the Taking of Hostages*³¹ and *Convention of the Safety of Life at Sea (SOLAS Convention 1974)*, the *Convention Against Transnational Organized Crime*, the International Ship and Port Facility Security Code (ISPS), etc.

8. There are also numerous treaties and instruments developed at the regional and sub-regional level. Such as the 2004 *Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia*³² (RECAAP) to which 16 Asian States are party.³³ Many States have developed national laws³⁴ addressing maritime piracy, which has led to important jurisprudence in national courts³⁵ and good deal of success in the prevention and repression of piracy in certain regions.³⁶ Other subsequent sub-regional

²² *Ibid.*

²³ *Ibid.* at 16.

²⁴ *Ibid.* at 16–18.

²⁵ Committee of Experts for the Progressive Codification of International Law, “Codification of International Law: Part IV: Piracy” (1932) 26 *American Journal of International Law Supplement* 739.

²⁶ International Law Commission, *Report of the International Law Commission on the Work of its Eighth Session*, UNGAOR, 11th Sess, Supp No 9, UN Doc A/3159 (1956) at 282.

²⁷ *Convention on the High Seas*, 29 April 1958, 450 UNTS 11.

²⁸ UNCLOS, *supra* note 1.

²⁹ *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, 10 March 1988, 1678 UNTS 221.

³⁰ *Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf*, 10 March 1988, 1678 UNTS 304.

³¹ *International Convention against the Taking of Hostages*, 17 December 1979, 1326 UNTS 205.

³² *Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia*, 29 November 2006, 2398 UNTS 199.

³³ See Brice Martin-Castex & Guillaume Loonis-Quélen, “L’Organisation maritime internationale et la piraterie ou le vol à main armée en mer : le cas de la Somalie” (2008) 54 *Annuaire français de droit international* 77 at 86. This Agreement was adopted under Japan’s initiative and to which the following States are parties; Bangladesh, Brunei Darussalam; Cambodia, Japan, China, India, South Korea, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Sri Lanka, Thailand and Vietnam.

³⁴ See United Nations Division for Ocean Affairs and the Law of the Sea, Piracy Under International Law, online: <<https://www.un.org/depts/los/piracy/piracy.htm>>.

³⁵ See Selected Bibliography of this topic; point 4 relates to National Court Decisions.

³⁶ G Noakes, “Statement on International Piracy” before the US House of Representative Committee on Transportation and Infrastructure’s Subcommittee on Coast Guard and Maritime Transportation”, February 2009, online: <www.marad.dot.gov/documents/HOA_Testimony-Giles%20Noakes-

cooperation have been created to fight against piracy, notably the Code of Conduct of Djibouti adopted in 2009 under the auspices of the International Maritime Organization (IMO) entitled “Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden”³⁷ to which 9 States are parties: Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles; Somalia, United Republic of Tanzania and Yemen. A second Code of Conduct has been adopted in 2013 in Cameroon dealing with piracy in Western and Central Africa of the Gulf of Guinea called “Code of Conduct Concerning the Repression of Piracy, Armed Robbery against Ships, and illicit Maritime Activity in West and Central Africa”³⁸ (Gulf of Guinea Code of Conduct covering Economic Community of West African States (ECOWAS) and Economic Community of Central African States (ECCAS)). A study indicated that “in the first half of 2018, over 40% of all reported pirate attacks in the world occurred in the Gulf of Guinea”.³⁹

9. Further, the Security Council, faced with the gravity of maritime piracy, and acting under Chapter VII of the *United Nations Charter*, has adopted a series of resolutions⁴⁰ addressing maritime piracy committed off the coast of Somalia and in the Gulf of Guinea, as well as in several seas such as the Gulf of Aden, the Straits of Malacca and Singapore, and in the Caribbean Sea.

10. Nevertheless, despite the extensive amount of international, regional and national law, there remain important issues of international law that are uncertain or underdeveloped, which could benefit from study, codification, and progressive development by the International Law Commission.

11. The Commission should begin by noting that the core aspects of the topic of maritime piracy has already been codified, notably by the *Convention on the Law of the Sea of 1982*, by *SUA Convention*, and by other treaties. The Commission’s objective would not be to seek to alter any of the rules set forth in existing treaties, but would include whether and how States might best implement their treaty obligations.

II. Current Issues of International Law Relevant to Piracy and Armed Robbery at Sea

A. *Prevention of Piracy at Sea: A requirement for cooperation*

12. Ideally, in their implementation of these obligations, the conditions by which piracy flourishes would be addressed by States, so as to minimise the ability of pirates to operate on the seas. The Commission might analyse methods of prevention that have operated successfully in other areas of international law so as to provide guidance to States on how to implement these obligations of prevention.

B. *Repression of Piracy at Sea: A requirement for Laws and Regulations in place and Clarification of Universal Criminal Jurisdiction with Respect to Piracy at Sea*

13. Prevention, of course, is not always possible, and acts of piracy will continue to occur, raising issues relating to punishment of persons for committing such acts. Piracy has

[BIMCO.pdf](#)>.

³⁷ “Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden”, IMO Council 102nd Sess, Attachment 1, Doc C 102/14 (2009).

³⁸ *Code of Conduct Concerning the Repression of Piracy, Armed Robbery against Ships, and illicit Maritime Activity in West and Central Africa*, 25 June 2013, Yaoundé, Cameroon, online: <http://www.imo.org/en/OurWork/Security/WestAfrica/Documents/code_of_conduct%20signed%20from%20ECOECO%20site.pdf>.

³⁹ Ministries of Foreign Affairs, of Industry, of Justice and of Defence of Denmark, *Priority Paper for the Danish efforts to Combat Piracy and Other Types of Maritime Crime 2019–2022*, at 6.

⁴⁰ UNSC Resolutions on piracy: S/RES/1816 (2008), 6 November 2008; S/RES/1838 (2008), 7 October 2008; S/RES/1846 (2008), 2 December 2008; S/RES/1851 (2008), 16 December 2008; S/RES/1897 (2009), 30 November 2009; S/RES/1918 (2010), 23 April 2010; S/RES/1950 (2010), 23 November 2010; S/RES/1976 (2011), 11 April 2011; S/RES/2015 (2011), 24 October 2011; S/RES/2020 (2011), 22 November 2011; S/RES/2018 (2011), 31 October 2011; S/RES/2020 (2011), 22 November 2011; S/RES/2039 (2012), 29 February 2012; S/RES/2077 (2012), 21 November 2012; S/RES/2125 (2013), 18 November 2013; S/RES/2383 (2017), 7 November 2017.

long been regarded as a crime punishable by any State even if that State has no direct connection to the pirates, to their victims, or to the location of the criminal act. Indeed, pirates have long been considered the enemies of all States and of all humanity (*hostis humani generis*). As such, exercise of national jurisdiction over pirates by any State has long been recognized as the first form of universal criminal jurisdiction, allowing pirates no refuge in any State regardless of their connection to it.⁴¹

14. Even so, the exact parameters of such universal criminal jurisdiction with respect to piracy are not well understood. The definition of piracy as set forth in the *1982 Law of the Sea Convention* might be analysed by the Commission to help States understand the meaning of “piracy” when establishing and exercising national criminal jurisdiction. Further, whether States have a duty to establish such jurisdiction under either conventional or customary international law could be assessed, as opposed to whether States are simply permitted under international law to establish such jurisdiction if they chose to do so.

C. *Adoption and Harmonisation of National Criminal Laws on Piracy at Sea*

15. In light of the conclusions reached with respect to Section B above, consideration might be given to the specific measures States should or may take within their national criminal law so as to establish and exercise jurisdiction over persons alleged to have committed maritime piracy. Such measures may assist promoting the adoption of and harmonisation of national laws of States in this area, thereby allowing for a more effective global regime of enforcement and for greater inter-State cooperation in this area.

16. Some States may be able to exercise national criminal jurisdiction based solely on ratification of the 1958 or 1982 Conventions and perhaps even based solely on customary international law.⁴² Yet in most jurisdictions, it seems likely that such bases would be insufficient, requiring instead the enactment of national statutes criminalising piracy. This requirement for national statutes may be driven by the principle *nullem crimen, nulla poena, sine lege*, which means no crime and no penalty without a law in place.⁴³ The resurgence of violent maritime piracy criminal acts in 2008 off the coast of Somalia in the Indian Ocean and in the Gulf of Guinea bordering the Atlantic Ocean demonstrated that many States from all continents did not have any national legislation dealing with piracy.⁴⁴ One example is that of France in *Ponant case*.⁴⁵ After capturing Somalian pirates, France had to release them because, at the time, it did not possess national law creating criminal offences for piracy, and general criminal law was insufficient to render piracy acts justiciable in a criminal court in France. Yet France was not alone in this regard. Currently, a majority of African States also do not have legislation on piracy or have laws that are outdated in relation to contemporary international law on this matter.⁴⁶

17. Thus the existence of general criminal law for some States may not be sufficient to prosecute and repress piracy offences. Rather, specific legislation on piracy offences or at least a general reference to maritime piracy in general criminal provisions may be needed to ensure that criminal procedures are available for prosecuting pirates. Furthermore, national prosecutors and judges often do not possess the requisite technical and legal knowledge to effectively deal with this crime, which is unique and may require special guidance for understanding the elements to be proved for the crime and the types of evidence necessary

⁴¹ Sandra L Hodgkinson, “The Governing International Law on Maritime Piracy” in Michael P Scharf, Michael A Newton & Milena Sterio, eds, *Prosecuting Maritime Piracy: Domestic Solutions to International Crimes* (Cambridge: Cambridge University Press, 2015) 13 at 15–17; Malcolm D Evans & Sofia Galani, “Piracy and the Development of International Law” in Panos Koutrakos & Achilles Skordas, eds, *The Law and Practice of Piracy at Sea: European and International Perspectives* (London: Hart Publishing, 2014) 343 at 344–45.

⁴² Dutton, “Maritime piracy and the impunity gap” *supra* note 4 at 1143–44.

⁴³ *Ibid.* at 1152.

⁴⁴ *Ibid.* at 1116.

⁴⁵ Mahinga, Jean-Grégoire, “L’affaire du Ponant” (2008) 7 *Revue de droit des transports* 10; Philippe Chapleau & JeanPaul Pancraccio, *La piraterie maritime : Droit, pratiques et enjeux* (Paris: Vuibert, 2014) at 106–107.

⁴⁶ United Nations Division for Ocean Affairs and the Law of the Sea. National Legislation on Piracy. online: <https://www.un.org/depts/los/piracy/piracy_national_legislation.htm>.

to meet those elements.⁴⁷ Even though the ratification of the *Convention on the Law of the Sea* represents the clearest expression of states' consent to be bound by international law and is a necessary legal act, it is insufficient for the effective enforcement of states' obligations. This observation is equally applicable to customary international law related to piracy and to the *Convention on the High Seas* which is still in force for six states. In other words, a state cannot legally repress piracy acts by simply relying on the fact that it is a state party to one of the two relevant conventions or on customary international law. Even if international law has already defined the legal framework to combat piracy, states' national laws are needed for the criminalisation of piracy.⁴⁸

18. In addition to the lack of national legislation and the obsolescence of certain national laws on piracy, there is the issue of harmonisation of piracy law. Some States' national laws link maritime piracy only to acts committed on the high seas, while others link it only to acts within the States' territorial sea or exclusive economic zone.⁴⁹ Ideally, States would have the same or similar laws addressing piracy in all areas outside the territorial seas.

D. Clarifying the relationship of Maritime Piracy to Armed Robbery at Sea⁵⁰

19. A further issue, though related to Section C above, concerns analysing and helping to clarify the difference between maritime piracy as a crime and armed robbery at sea as a different crime. As a general matter, maritime piracy is a crime that has emerged in relation to the high seas (including what is now regarded as the exclusive economic zone).⁵¹ By contrast, the crime of armed robbery at sea occurs within a States territorial sea.⁵²

20. It appears that many States have both types of crime, but are not clear in their national laws as to the distinction between the two offences and, in particular, with respect to the location of the offences.⁵³ As such, a problem of "double incrimination" may arise, creating confusion regarding the applicable law. Based on international law and States practice, the Commission might analyse when these respective offences should apply, how they differ, and whether they are linked, as a means of clarifying the law in this area, which may be of value to States when developing national laws and exercising national jurisdiction.

III. Scope of the topic

21. State actions at sea, whether unilateral or multilateral, are limited in their ability to deal comprehensively and efficiently with maritime piracy, leaving private vessels vulnerable. That vulnerability has led ship owners to pursue their own maritime security often through contracts with security companies. Such private maritime security may consist of having armed security personnel on the private vessel, who may exercise lethal action when approached by other vessels. This phenomenon, in term of preventive measures, raises the questions of whether international law requires or should require the flag State, the State where the security company is incorporated, or other States to regulate such actions.⁵⁴ Private vessels are not authorized under the 1982 Convention to engage in hot pursuit. Thus, a private ship that is the victim of piracy has no recourse to undertake

⁴⁷ See for e.g. Brian Wilson, "Reshaping maritime security cooperation: the importance of interagency coordination at the national level" in Guilfoyle, Douglas, ed, *Modern Piracy: Legal Challenges and Responses* (Cheltenham, UK: Edward Elgar, 2013) 202.

⁴⁸ Anna Petrig & Robin Geiß, *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (Oxford: Oxford University Press, 2011) at 140–44.

⁴⁹ United Nations Division for Ocean Affairs and the Law of the Sea, *supra* note 46.

⁵⁰ Melda Kamil Ariadno, "Maritime Security in South East Asia: Indonesian Perspective" (2009) 7:1 Indonesian Journal of International Law 88 at 95.

⁵¹ *UNCLOS*, *supra* note 1 at Arts 58 & 101; Anna Petrig, "Piracy" in Donald Rothwell et al, eds, *The Oxford handbook of the law of the sea* (Oxford: Oxford University Press, 2016) 844 at 848–49.

⁵² Petrig, "Piracy" *ibid.* at 851–52.

⁵³ United Nations Division for Ocean Affairs and the Law of the Sea, *supra* note 46.

⁵⁴ Ilja Van Hespén, "Protecting merchant ships from maritime piracy by privately contracted armed security personnel: a comparative analysis of flag state legislation and port and coastal state requirements" (2014) 45:3 Journal of Maritime Law and Commerce 361.

enforcement action under the law of law of the sea. The Commission might consider the law and practice in this area to see if private vessels are prohibited from engaging in such action by international law and, if so, the line between such actions and defensive acts when attacked by maritime pirates.

22. The *1982 Convention on the law of the Sea* allows exclusively pursuit against pirates by public vessels, such as military vessels and other vessels owned by the State and accomplishing a public service.⁵⁵ The Commission might analyse the operation of such rules in the context of piracy and armed robbery at sea based on contemporary State practice, and consider whether the rules set forth in the 1982 Convention in this regard have the status of customary international law, binding upon all States.

23. In fact, pirates committing crimes in the high seas know that by staying in the high seas or the exclusive economic zone, they may be pursued and captured by any state on the basis of universal criminal jurisdiction. To avoid that situation, they typically will quickly move, after an act of piracy, to the nearest territorial sea of a State to escape pursuit by foreign vessels. Moreover, the fact that many States do not have the capacity to control their territorial sea encourages pirates to move their operations in these waters by raiding and attacking ships waiting their turn to enter a port.⁵⁶

24. It was to solve this issue that the Security Council, on an exceptional basis, authorised foreign naval forces to engage in pursuing into the Somalian territorial sea from the adjacent high seas and exclusive economic zone for the purpose of capturing pirate vessels. Moreover, the Council also authorized foreign naval vessels, with the consent of the Government of Somalia, to enter into Somalia's territorial sea for the purpose of capturing pirate vessels. In the same time, the Security Council made it clear that "the provisions of this resolution apply only with respect to the situation in Somalia and do not affect the rights and obligations or responsibilities of Member States under international law",⁵⁷ which means that these provisions should be enforced under the legal framework of the fight against piracy as established by the *1982 Convention on the law of the Sea*⁵⁸ and rules of customary international law.

25. With respect to the Rights of Alleged Offenders, persons who are alleged to have committed maritime piracy are entitled to fair treatment, including a fair trial, and full protection of his or her rights under national and international law as demonstrated by case law through domestic courts' decisions and international courts' rulings dealing with pirates' prosecution.⁵⁹

26. The operation of such rights in context of seizure of the person on the high seas and hence outside the sovereign jurisdiction of any State might be analysed so as to clarify how such rights operate in this context.

27. The scope of this topic is limited to the prevention and repression of piracy and armed robbery at sea. The topic will address the following issues: the definition of piracy in the context of United Nations Convention on the Law of the Sea provisions and taking into account the current and evolving aspects of piracy, as well as the definition provided by relevant international organizations such as the International Maritime Organization. Other elements to be addressed include: the punishment of piracy, the cooperation in the suppression of piracy, the exercise of jurisdiction over the crime of piracy, including issues on criminalization, pursuit, arrest, detention, extradition, transfer agreement of suspected pirates, mutual legal assistance, prosecution, investigation, evidence, sentences, rights of alleged pirates, rights of victims of piracy and armed robbery at sea, etc.

⁵⁵ *UNCLOS*, *supra* note 1 at Art 111.

⁵⁶ Joseph M Isanga, "Countering Persistent Contemporary Sea Piracy: Expanding Jurisdictional Regimes" (2010) 59 *American University Law Review* 1267 at 1273.

⁵⁷ UNSCOR, 66th Year, 6635th Mtg, UN Doc S/RES/2015 (2011) at Preamble.

⁵⁸ UNSCOR, 63rd Year, 5902nd Mtg, UN Doc S/RES/1816 (2008) at Preamble.

⁵⁹ Douglas Guilfoyle, "Counter-Piracy Law Enforcement and Human Rights" (2010) 59:1 *International and Comparative Law Quarterly* 141; see also point 4 of the Selected Bibliography.

IV. The topic satisfies the requirements for addition to the Long-term Programme of Work of the International Law Commission

28. For a topic to be included on the ILC's long-term programme of work, it must be demonstrated that it satisfies the following criteria: *a)* the topic must reflect the needs of States in respect of the progressive development and codification of international law; *b)* the topic should be at a sufficiently advanced stage in terms of state practice to permit progressive development and codification; *c)* the topic should be concrete and feasible for progressive development and codification; and *d)* the Commission should not restrict itself to traditional topics, but could also consider those that reflect new developments in international law and pressing concerns of the international community as a whole.⁶⁰

29. The topic of piracy and Armed Robbery at Sea responds to the criteria needed for its inclusion in the long term program of work of the Commission.

30. **First:** this topic responds to the needs of states to progressively develop this area of international law. In fact, the interest in this topic is global since, as shown in the introductory section of this syllabus, it concerns the whole of the international community. The global nature of this concern has justified the adoption of several resolutions by the General Assembly and the Security Council of the United Nations on combating maritime piracy and armed robbery at sea. Coastal states, flag states, port states, states whose nationals have been victims of maritime piracy or armed robbery at sea, landlocked states, private maritime industry actors (ship owner, shipper, maritime insurer, etc.) whether they are loaders, receivers, importers or exporters of merchandises, international organisations, all have an interest that the seas be free of all safety concerns and criminality to ensure the development of states, and the security and socio-economic wellbeing of all people.

31. **Second:** the topic deserves to be considered by the Commission since there is State practice that lends itself to the codification and progressive development of international law in respect of the topic. As indicated above, there are global and regional treaties and other instruments that may be analysed in relation to this topic. Further, according to the data provided by the Secretariat of the Ocean Affairs and Law of the Sea Division of the United Nations, there are more than 70 states that have adopted legislation for the prevention and repression of piracy and armed robbery at sea. This practice is sufficiently advanced at this stage and will develop further as additional proposed bills on piracy progressively become applicable laws. On this point, several African coastal states have tabled bills in their respective Parliaments which should be adopted in the near future. Generally, the available legislation on the topic represents the main region of the worlds and the main legal systems as they originate from Africa, Europe, Asia, the Americas and the Caribbean.

32. **Third:** the topic deserves to be analysed in light of the applicable law while keeping in mind its concrete, practical and feasible nature. The topic will not pose any particular difficulties as the majority of the work will involve existing international law: the *lex lata* codified by the 1982 *Convention on the Law of the Sea* that defines the legal regime and the framework for piracy and armed robbery at sea. In addition to the existing and still developing state practice, we can rely on other universal legal instruments such as the *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, and the relevant resolutions of the International Maritime Organisation on piracy and armed robbery at sea adopted between 2005 and 2012. There is an abundance of scholarly writings (see Selected Bibliography below) and national jurisprudence (American, English, French, Spanish, Tanzanian, Kenyan, Seychellois, European through the European Court of Human Rights, Japanese, Korean, etc) on the topic. These judicial domestic decisions will be analysed in light of applicable national laws and of the relevant international law they implement. The various regional approaches on maritime piracy and armed robbery at sea in the different seas of the world will be analysed taking in account the particular

⁶⁰ See International Law Commission, *Report of the International Law Commission on the work of its fiftieth session*, UNGAOR, 53rd Sess, Supp No 10, UN Doc A/53/10 (1998) at para 553; International Law Commission, *Report of the International Law Commission on the work of its sixty-ninth session*, UNGAOR, 72nd Sess, Supplement No 10, UN Doc A/72/10 (2017) at para 32.

geographical context of each maritime region and regional sea as defined by the Regional Seas Programme of the United Nations Environment Programme (UNEP).

33. **Fourth:** International law relating to piracy and armed robbery at sea falls squarely within the scope of topics traditionally taken up by the Commission, which has long had a history of addressing rules relating to the law of the sea. As such, inclusion of this topic in the long-term program of work should not, in principle, pose any problems due to the fact that this topic is a pressing concern of the international community as a whole.

V. Methodology

34. The point of departure of this study will be *UNCLOS* Provisions relating to piracy at sea. Therefore, the purpose when taking up this subject, as indicated above, is not to alter whatsoever these provisions. Further, aspects of this topic not directly regulated by such treaties would be analysed, using other instruments and State practice in this area, so as to further codify or progressively develop international law in a manner that may be helpful to States. The analysed state practice, whether it is legislation or domestic court decisions, will be that of all States with a potential or real interest in the protection of the oceans against piracy and armed robbery at sea. These include coastal States, flag States, port States, landlocked States, States that are susceptible of exercising their active or passive jurisdiction regarding nationals that are victims of perpetrators of piracy acts, and other relevant actors and international organisations.

VI. Form of the outcome

35. The objective of this topic could be to develop draft articles on the prevention and repression of piracy and armed robbery at sea. As the topic unfolds, it may become clearer whether the topic is an appropriate one for the development of new convention, in which case draft articles would remain the proper form for the Commission's work. If, however, it becomes apparent that the topic is best developed simply as guidance to States with respect to implementation of existing international obligations, then the outcome might be changed to "conclusion" or "guidelines".

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3. National Legislations on Piracy and Armed Robbery at Sea

Africa

Côte d'Ivoire: *loi No.2017-442 du 30 juin 2017 portant Code Maritime ; Articles 1008-1010 ; Article 1018*

Kenya: *Act 4 of 2009 – Merchant Shipping, Part XVI – Maritime Security, articles 369-372*

Liberia: *Title 26 of the Liberian Code of Laws Revised and Approved July 22, 2008, Vol.IV, page 816, Article 15.31. Piracy*

Morocco: *Code disciplinaire et penal de la marine marchande, Annexe2 du Code maritime de 1919, Article 23(3) crime de piraterie*

South Africa: *Act No.42, 2002, Defence Act 2002, Chapter 4: Law Enforcement Powers of Defence Force at Sea*

Tanzania: *Penal Code, Chapter 16 of the Laws (Revised)*

Togo: *Ordonnance No.129 du 12 Aout 1971, Code de la Marine Marchande, révisée en 2018 ?*

Union des Comores: *Projet de code maritime, Article 81 (sur la piraterie maritime)*

Americas

North America

Canada: *Criminal Code (2009); C-46, Part II, Sections 74-75*

United States of America: *18 U.S.C. §2280; 18 U.S.C.§ Piracy under law of nations; 18 U.S.C.§ 1652 Citizens as pirates*

Latin America and the Caribbean

Argentina: *Penal Code, Chapter III (piracy), Articles 198 and 199*

Argentina: *Penal Code, Section VII, « Crimes against Public Safety », Chapter III-Piracy, Articles 198 and 199*

Bahamas: *Penal Code, Chapter 84, Article 404 (piracy)*

Brazil: *Criminal Code, as Decree Law No 2828 from 7 December 1940, Chapter II, Article 157: Robbery and Extorsion*

Chile: *Codigo Penal : Titulo I del Decreto No.5839 de 30 de septiembre de 1948, Art.6 (7): la pirateria*

Cuba: *la Ley No. 93 de 20 de Diciembre de 2001, « Ley contra actos de terrorismo », Capitulo IV: Actos contra la Seguridad de la Navegacion Maritima, Articulo 16.1 ; Capitulo VI : Otros Actos que Atentan contra la Seguridad Aerea y Maritima, Articulo 21*

Guatemala: *Decreto Numero 56-96*

Mexico: *Federal Penal Code, Chapter I: Piracy, Article 146 (I, II, III)*

Asia

Indonesia: *Penal Code, Chapter XXIX, Article 438-448*

Iran: *Islamic Punishment Act, Article 683, Article 185*

Japan: *Law on Punishment of and Measures against Acts of Piracy*

Philippines: *Act No.9372, "Human Security Act of 2007", Section 3: Terrorism, (a) Article 122 (piracy in general and Munity in the High Seas or in the Philippine Waters); (5) Presidential Decree No.532 (Anti-Piracy and Anti-Highway Robbery Law of 1974*

Republic of Korea: *Laws and Ordinances on Punishment of Act of Piracy and Armed Robbery at Sea, Article 340*

Singapore: *Penal Code, Cf.12 and 13 Victoria c.96 (Admiralty Offences (Colonial Act 1849), Article 130B (piracy); Article 130C (piratical acts)*

Sri Lanka: *Act No.9 of 2001 (Piracy) and Act No.42 of 2000 (Suppression of Unlawful Acts Against The Safety of Maritime Navigation)*

Thailand: *Act on Prevention and Suppression of Piracy, B.E.2534 (1991), Anti-Piracy Law*

Turkey: *Turkey Penal Code, Articles 8, 12, 13, 35, 36, 37, 223, 224*

United Arab Emirates: *Commercial Maritime Law No.26 of 1981, Articles 208, 209, 210*

Europe and others

Australia: *Crimes Act 1914, Sections 51, 52, 54, Part IV – Piracy and Criminal Code Act 1899*

Austria: *Criminal Code, Section 65*

Belgium: *Loi relative a la lutte contre la piraterie maritime et modifiant le Code judiciaire (1), 30 décembre 2009*

Bulgaria: *Penal Code, Article 6, para.2*

Czech Republic: *Law No.40/2009 Coll., Criminal Code, January 1, 2010, Section 290 (Gaining Control over the Aircraft, Civil Vessel and Fixed Platform)*

Cyprus: *Criminal Code, Part I: Offences related to Piracy, Section 69, and Part II: Other Cyprus legislative provisions on certain acts of piracy/armed robbery*

Denmark: *Criminal Code, Section 183a (piracy) and b (Armed robbery at Sea)*

Estonia: *Penal Code, Section 110 (piracy)*

Finland: *Criminal Code, Chapter 1, Section 2*

France: *Decret No.2011-1213 du 29 septembre 2011 pour l'application de l'article 4 de la loi No.94-589 du 15 juillet 1994 relative a la lutte contre la piraterie et aux modalites de l'exercice par l'Etat de ses pouvoirs de police en mer*

Greece: *Greek Code on Public Maritime Law, Article 215 (crime of piracy), Article 8 of the Penal Code (piracy as a crime jure gentium)*

Italy: *Decree of December 30, 2008, no209 converted by Law 24th February 2009, n.12, Article 5 of Italian Navigation Code, Article 1135 (Piracy); Article 1136 (Ship on suspicion of Piracy) Israel: Anti-Piracy Legislation: Penal Law, 1977, Section 169*

Latvia: *Criminal Law of 17th June, 1998, Article 176 (Robbery), Article 268 (Seizure of an Air or Water Transport vehicle)*

Malta: *Criminal Code: CAP.9, Sub-title IV B of Piracy, Article 328N (Definition of piracy, Added by XI.2009.7)*

New Zealand: *The Crimes Act 1961, s92-97*

Norway: *General Civil Penal Code, Section 49*

Poland: *Polish Penal Code, Chapter XVI, Chapter XX and Chapter XXXII*

Russia: *Federal Act No.162-FZ of December 2003, Article 227. Piracy*

Spain: *La legislacion Espagnola en material de Pirateria, 2009, la Ley Organica 6/1985, Articulo 23 apartado 4 (c) : Pirateria y apoderamiento illicito de aeronaves*

Ukraine: *Criminal Code of 2001, Article 446*

United Kingdom: *Merchant Shipping and Maritime Security Act of 1997, Article 26; and Piracy Act 1837 c.88*

4. National Court Decisions

Africa

Tanzania

Ibrahim Sangoro v. Republic, Court of Appeal of Tanzania, Case No.298 of 1992; [1984] TZHC 13; (12 May 1984); 1984 TLR 314 (TZHC)

Magendo Paul and Others v. Republic, [1992] TLR 220; [1993] TZCA 23; (25 October 1993); 1993 TLR 220 (TZCA)

Manju Salum Msambya v. Attorney General and kifu Gulamu Hussein kifu

Makoye Samwal Kashinge and 4 Others v. Republic

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Mohamed Said Matula v. Republic, [1995] TLR3; [1994] TZCA 8; (11 April 1994); 1995 TLR 3 (TZCA)

Raymond Francis v. Republic, [1994] TLR 100; [1994] TZCA 2; (14 February 1994); 1994 TLR 100 (TZCA)

Republic v. Mohamed Bin Akui

Republic v. Mohamed Nuru Adam and Others

Seychelles

Hassan Thaliil Ahmed and Others v. Republic, Supreme Court Decision CR73/2013, Criminal Appeal SCA06-13/2015; (SCA 06-13/2015) [2016] SCCA 32

Mohamed Abdi barre and Others v. Republic, Criminal Appeal SCA 07/2013, Appeal from Supreme Court Decision, 28/2012; SCA No. 7 /2013) [2015] SCCA 2

Mohamed Hassan Ali and Others v. Republic, Seychelles Court of Appeal, Appeal from Supreme Court Decision CR08/2012, 12 December 2014; (CO 06/2014) [2016] SCSC 129

Mohamed Shire v. The Republic, [2015] SCCA 25 (Seychelles Court of Appeal); (SCA CR 31-37/2014) [2015] SCCA 25

R v. Ise, (2011) SLR 220;(75 of 2010) [2011] SCSC 37

R v. Osman, (2011) SLR 345; CO 19/2011) [2011] SCSC 74

Republic v. Aden, (2011) SLR 41; (CO 75/2010) [2011] SCSC 100

Republic v. Ali, (2010) SLR 341, Supreme Court of Seychelles; SCA 22/2012) [2014] SCCA 34

Republic v. Farad Ahmed and Others, Supreme Court of Seychelles, Criminal Side No. 16 of 2012; (Criminal Side No: 16 of 2012) [2013] SCSC 17

Republic v. Mohamed Ahmed Dahir & TEN (10) Others, Supreme Court of Seychelles, Criminal Side No. 51 of 2009; (51 of 2009) [2010] SCSC 81

Republic v. Mohammed Ali Hossein and Others, [2016] SCSC 129, 20 January 2016, Supreme Court of Seychelles; (CO 06/2014) [2016] SCSC 129

The Sunshine incident; No citation available

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Kenya

Abdiaziz Ali Abdulahi & 23 others v Republic, [2014] EKLR

Abdikadir Isey Ali & 8 others v Republic, [2015] EKLR

Abdirahman Mohamed Roble & 10 others v Republic, [2013] EKLR

Attorney General V Mohamud Mohammed Hashi & 8 Others, [2012] EKLR

Hassan M. Ahmed v. Republic, [2009] EKLR

Omar Shariff Abdalla v. Corporate Insurance Co Ltd, [2005] EKLR

Republic v. Chief Magistrate Court, Mombasa Ex-parte Mohamud Mohamed Hashi & 8 Others, [2010] EKLR

Asia

Enrica Lexie case 2012 (India/Italy)

Lia incident 2009 (China)

MV Guanabara case 2011 (Japan)

M/V Guanabara Case, Tokyo High Court, 18 December 2013 (Japan)

MV Jag Arnav case 2008 (India)

MV Stolt Valor (India)

MV Zhenhua 2009 (China)

Europe & others

Alakrana case 2009 (Spain)

Athens Maritime Enterprises Corp v. Hellenic Mutual War Risks Association (Bermuda) Limited or the Andreas Lemos, [1983] 1 All ER 590 (UK); [1982] 2 Lloyd's Rep. 483

Carré d'As Case (France)

The case In Re Piracy Jure Gentium, [1934] AC 586 (UK)

Castle John case (Belgium)

The Cygnus case (Somali Pirates), Rotterdam District Court, 17 June 2010, 145 International Law Report 491, 499 (Netherlands); 145 I.L.R. 491, 491–92 (Rb. Rotterdam 2010)

Feddah case 2012 (Netherlands); 22-004920-12 (ECLI:NL:GHDHA:2014:1006)

Fidelio case, Court of Cassation decision of 1 February 1993 (Italy)

MV Faina case 2009 (Russia)

MV Taipan case 2012 (Germany)

New South Wales v. Commonwealth, (1975) 135 CLR 337 (Australia)

Petral case 2010 (Belgium)

Pompei case 2009 (Belgium)

Ponant Case (France)

Re Castioni, [1891] 1QB 149 (UK)

Republic of Bolivia v. Indemnity Mutual Marine Assurance Company Limited, [1909] 1 KB 785 (UK)

Samanyulo case 2009 (Netherlands)

Tanit Case (France)

Winner Case 2008 (France)

*Americas**United States of America*

The Belfast, Supreme Court of the United States, December 1, 1868, 74 U.S. 624.

Ex parte Gordon, Supreme Court of the United States, December 1, 1861, 66 U.S. 503.

Kiobel v. Royal Dutch Petroleum Co., Supreme Court of the United States, April 17, 2013, 569 U.S. 108.

Manro v. Almeida, Supreme Court of the United States, March 8, 1825, 23 U.S. 473.

New Jersey Steam Nav Co. v. Merchant's Bank of Boston, Supreme Court of the United States, January 1, 1848, 47 U.S. 344.

United States v. Flores, Supreme Court of the United States, April 10, 1933, 289 U.S. 137.

U.S. v. ALI, United States Court of Appeals, District of Columbia Circuit, June 11, 2013, 718 F.3d 929 782 F.3d 159.

U.S. v. ALI, United States District Court, District of Columbia, July 13, 2012, 885 F.Supp.2d 17.

U.S. v. Beyle, United States Court of Appeals, Fourth Circuit, April 3, 2015, 782 F.3d 159.

U.S. v. Dire, United States Court of Appeals, Fourth Circuit, February 28, 2014, 680 F.3d 446

U.S. v. Smith, Supreme Court of the United States, February 25, 1820, 18 U.S. 153.

U.S. v. Wiltberger, Supreme Court of the United States, February 18, 2018, 18 U.S. 76.

5. International case law relating to the use of force at sea

Affaires Yassin Abdullah Kadi et Al Barakaat International Foundation/Conseil et Commission, 3 Septembre 2008, CJUE; Joined cases C-402/05 P and C-415/05 P.

Enrica Lexie case, India v. Italy, 2012; AIR 2012 SC 2134; 2013(4) SCALE 578. (2013) 4 SCC 721

Guyana v. Suriname, (2008) 47 ILM 164;ICGJ 370 (PCA 2007), 47 ILM 166, 2008

Medvedyev v. France, judgment, March 29, 2010, para.85 (Eur.Ct.H.R 2010); GC] 3394/03 Judgment 29.3.2010 [GC]

M/V Saiga (No.2) (Saint Vincent and the Grenadines v. Guinea), judgment, [1999] 3 ITLOS Rep 10 at 48; [1999] 3 ITLOS Rep 10 at 48

SS I'm Alone (Canada v. United States), (1935) 3 RIAA 1609; 3 RIAA 1609

The Red Crusader (Denmark v. UK), (1962) 35 ILR 485; (1962) 35 ILR 485

6. Legal Instruments (regional and multilateral legal instruments)

UNCLOS, Articles 100-107, 110, 111, Article 87

IMO Resolutions, Documents and Guidance

- *Assembly Resolution Res.A.922 (22) (November 29, 2001): Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships*,
- *“Piracy : elements of national legislation pursuant to the United Nations Convention on the Law of the Sea, 1982” (Doc LEG 98/8/1 and LEG 98/8/3, submitted by DOALOS*
- *“Establishment of a legislative framework to allow for effective and efficient piracy prosecutions” (Doc LEG 98/8/2, submitted by UNODC*
- *“Uniform and consistent application for the provisions of international conventions relating to piracy” (DOC LEG 98/8), submitted by IMO Secretariat*
- *“Establishment of a legislative framework to allow for effective and efficient piracy prosecutions” (DOC LEG 98/4), submitted by Ukraine*
- *Implications of the United Nations Convention on the Law of the Sea for the International Maritime Organization”; IMO, LEG/MISC.8, January 30, 2014; at 46-51 (Chapter on piracy*

IMO Assembly Resolutions

- *A.545(13) (1983), Measures to prevent acts of piracy and armed robbery against ships*
- *A.683(17) (1991), Prevention and suppression of acts of piracy and armed robbery against ships*

- A.738(18) (1993), *Measures to prevent and suppress piracy and armed robbery against ships*
- A.979(24) (2005), *Piracy and armed robbery against ships in waters off the coast of Somalia*
- A.1002(25) (2007), *Piracy and armed robbery against ships in waters off the coast of Somalia*
- MSC.1/Circ. 1333 (2009), *Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships (replaces MSC/Circ.622/Rev.1)*
- MSC.1/Circ. 1334 (2009), *Guidance to Shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships (replaces MSC/Circ.623/Rev.3)*
- MSC.1/Circ. 1332 (2009), *Piracy and armed robbery against ships in waters off the coast of Somalia*
- MSC/Circ.1073 (2003), *Directives for Maritime Rescue Co-ordination Centres (MRCCs) on Acts of Violence against Ships, Conference Report: Overview of legal issues relating to different private interests*
- Draft 26th IMO Assembly Resolution, *Adoption of the Code of Practice for Investigation of crimes of piracy and armed robbery against ships (2009), to replace A.922(22), MSC 86/26/Add.2, Annex 23*
- *Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden, 2009, IMO doc. C 102/14, Annex*
- SN.1/Circ.281, *Information on Internationally Recommended Transit Corridor (IRTC) for Ships Transiting the Gulf of Aden, 32 August 2009*
- *Seoul Statement on Piracy off the Coast of Somalia, 10 June 2009, IMO doc. C 102/INF.3, Annex*

SOLAS Convention (Convention on Safety of Life at Sea)

UNODC Regulations

ICC; International Chamber of Commerce

IMB (International Maritime Bureau)

FAO Resolutions

INTERPOL:

- *INTERPOL's Global Piracy Database ; and its case: Greece to Prosecute First Maritime Piracy Case with Evidence Gathered by INTERPOL Team, December 12, 2012*
- *The EVEXI (Evidence Exploitation Intelligence)*

IOCA Rules

7. Security Council Resolutions

S/Res/1816(2008), November 6, 2008

S/Res/1838(2008), October 7, 2008

S/Res/1846(2008), December 2, 2008

S/Res/1851(2008), December 16, 2008

S/Res/1897(2009), November 30, 2009

S/Res/1918(2010), April 23, 2010

S/Res/1950(2010), November 23, 2010

S/Res/1976(2011), April 11, 2011

S/Res/2015(2011), October 24, 2011

S/Res/2018(2011), October 31, 2011

S/Res/2020(2011), November 22, 2011

S/Res/2039(2012), February 29, 2012

S/Res/2077(2012), November 21, 2012

S/Res/2125(2013), November 18, 2013

S/Res/2383(2017), 7 November 2017

S/2012/45(2012), January 19, 2012

S/2012/50, January 20, 2012: *Report of the Secretary-General on specialized anti-piracy courts in Somalia and other States in the region*

8. United Nations General Assembly Resolutions and Documents

G.A. Res. 63/111, para.61, U.N. Doc. A/RES/63/111, December 5, 2008

G.A. Res. 66/231, para.81, U.N. Doc. A/RES/66/231, December 24, 2011

G.A. Res. 67/78, para.88, U.N. Doc. A/RES/67/78, December 11, 2012

UNGA: International Expert Group on Piracy off the Somali Coast: Final Report: Assessment and Recommendations (workshop commissioned by the Special Representative of the Secretary-General of the United Nations to Somalia, 21 November 2008)

UN Basic Principles on Firearms, UN DocA /CONF.144/28/Rev.1, article 9

UN Doc. S/2011/30, January 25, 2011, Special Advisor to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia (Special Advisor Jack Lang)

9. Reports of the UN Secretary-General

S/2010/394, July 26, 2010

S/2010/556, October 27, 2010

S/2011/360, June 15, 2011

S/2011/662, October 25, 2011

S/2012/50, January 20, 2012

S/2012/783, October 22, 2012

S/2013/623, October 21, 2013

10. International Cooperation

States involved: Australia, Canada, Denmark, France, India, the Netherlands, the Russian federation, Spain, the United Kingdom, the United States, Japan, China, South Korea, Germany, etc

EU NAVFOR Atalanta, 2008

NATO Operation Ocean Shield, 2009

American-Led Combined Maritime Forces (Task Force 151 on piracy, 2009)

“Exchange of Letters between the European union and the Government of Kenya on the Conditions and Modalities for the Transfer of Persons Suspected of having Committed Acts of Piracy”, Introductory Note by Eugene Kontorovich, in (2009) 48 *ILM* 747, 747-9

11. Regional Cooperation

Regional Cooperation Agreement in Combating Piracy and Armed Robbery against Ships in Asia, 2006 (*ReCAAP, 2006*)

The Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden, (*Djibouti Code of Conduct, 2009*)

Code of Conduct Concerning the Repression of Piracy, Armed Robbery against Ships, and illicit Maritime Activity in West and Central Africa (*Gulf of Guinea Code of Conduct, 2013*)

