

*Portuguese Contribution on the Prevention and Repression against Piracy
Response to the request of the Secretariat of the United Nations*

1. Overview

The United Nations Security Council (hereinafter, "UNSC") has adopted a series of resolutions to combat piracy and armed robbery against ships in the Gulf of Guinea (hereinafter, "GoG"). In 2011, it adopted Resolution 2018, which called on the international community to support the countries of the GoG in their efforts to combat piracy and armed robbery in their seas.¹

Resolution 2018 welcomed the intention of the Heads of State and Government of the GoG countries to convene a summit to outline a comprehensive response to the threat of piracy and other criminal activities at sea. It called on ECOWAS, ECCAS, and GoG Commission Member States to develop a comprehensive strategy that includes (i) the adoption of legislation and regulations to criminalize piracy; (ii) the establishment of a regional framework to combat piracy through the exchange of information and coordination of operational cooperation mechanisms; and (iii) the development and strengthening of legislation to implement international agreements concerning the safety of navigation.

In 2012, UNSC Resolution 2039 renewed the call for the international community to support the efforts of countries of the GoG region to combat piracy and armed robbery against ships through (i) their capabilities to conduct regional patrols; (ii) the establishment and maintenance of joint coordination centers; and (iii) the effective implementation of a joint strategy once adopted by countries in the region.²

More recently, UNSC Resolution 2634 (i) welcomes the efforts of countries in the GoG to improve maritime security, particularly the Code of Conduct for the Prevention and Suppression of Piracy and Armed Robbery against Ships in West and Central Africa and its operational frameworks; (ii) acknowledges the contribution that international organizations have made to assist countries in the region in combating piracy in the GoG, namely (a) the G7+FoG; (b) the Coordinated Maritime Presences (hereinafter "CMP") promoted by the European Union; (c) the South Atlantic Peace and Cooperation Zone; and (d) the Portuguese Atlantic Center initiative in the Azores.

Encourages bilateral and multilateral partners to provide appropriate legal and operational support upon request, taking into account the human, financial, technological, training, and equipment needs of states and regional organizations in the GoG. This support aims to strengthen their counter-piracy capabilities, including in the areas of patrols, enforcement, and naval exercises.

¹ Resolution 2018, S/RES/2018 (2011), October 31, 2011.

² Resolution 2039, S/RES/2039 (2012), February 29, 2012.

2. Portuguese international practice in the field of piracy and armed robbery at sea

In accordance with the provisions of the above-mentioned UNSC resolutions and in compliance with the spirit and letter of international conventions, in particular the United Nations Convention on the Law of the Sea, Portugal has developed a series of initiatives at the bilateral and multilateral levels that reflect the priority that Portugal gives to maritime security in the GoG. However, it should be noted that none of these initiatives deals specifically with the phenomenon of piracy, or the transfer of persons accused of piracy or armed robbery at sea with a view to their prosecution in the requesting State.

a) From a bilateral perspective

For historical and cultural reasons, Portugal maintains a privileged relationship with the Portuguese-speaking countries of the GoG (Angola, Cape Verde, Guinea-Bissau, and São Tomé and Príncipe), which are members of the Community of Portuguese-speaking Countries (CPLP). With these states, Portugal has developed projects and activities within the framework of cooperation in maritime security that contribute to strengthening the security and authority of the state at sea, framed by the Yaoundé Security Architecture.

The main objective is to contribute to strengthening the capabilities of these states in the maritime domain. In this sense, the mission “Open Sea” was created by the Portuguese Navy and takes place annually. In 2023, this mission will last more than two months with visits to ports of several GoG countries (Dakar, Bissau, Freetown, Abidjan, Luanda, Malabo, Lagos and Accra). Portugal has also concluded international agreements with several countries in the GoG, including:

1. Angola

- a. Legal and Judicial Cooperation Agreement between the Portuguese Republic and the Republic of Angola, done in Luanda, on August 30, 1995,³ under which Portugal and Angola have the obligation to transfer to each other persons who are in their territories (Article 66) for the purpose of prosecution for acts that are within the jurisdiction of the courts of the requesting State and are punishable under the laws of both States, among other reasons (Article 67). It should be noted that (i) this agreement also covers other areas of legal and judicial cooperation; (ii) Contracting States may refuse assistance if the request relates to violations that the requested State considers to be political in nature; and (iii) acts of maritime piracy cannot be classified as political (Article 33).

2. Cape Verde

- a. Judicial Agreement between Portugal and the Republic of Cape Verde, signed on February 16, 1976,⁴ under which Contracting Parties undertake to cooperate

³ Resolution of the Republic Assembly No. 11/97, of 4 March (in Portuguese), available at <https://dre.pt/dre/detalhe/resolucao-assembleia-republica/11-1997-513002>.

⁴ Decree No. 524-O/76, of 5 July (in Portuguese), available at <https://dre.pt/dre/detalhe/decreto/524-o-1976-353915>.

in all proceedings relating to criminal offenses which, at the time of the request for cooperation, fall within the jurisdiction of the judicial or police authorities of the requesting Party and which are punishable under the domestic laws of both Parties (Article 10). Particularly, they mutually undertake to transfer persons charged with or convicted of an offense committed in the territory of one Party to proceedings before the courts of the other Party, provided that certain conditions are met (Article 15). It should be noted, however, that the Second Protocol to the Judicial Agreement between Portugal and the Republic of Cape Verde, done in Lisbon on March 3, 1982,⁵ establishes various situations in which the transfer of persons is inadmissible and may be refused by the requested Contracting Party.

- b. Agreement on Legal and Judicial Cooperation between the Portuguese Republic and the Republic of Cape Verde, signed in Praia on December 2, 2003.⁶
- c. Treaty between the Portuguese Republic and the Republic of Cape Verde on the Joint Surveillance of Maritime Spaces under the Sovereignty or Jurisdiction of the Republic of Cape Verde, signed in Mindelo on September 16, 2006,⁷ which establishes the bases for joint patrols in the maritime spaces under the sovereignty or jurisdiction of the Cape Verde Party, which may focus on any type of illegal activity, in compliance with international law and the domestic law of both Parties (Article 1). It therefore also aims to prevent and combat maritime piracy.

3. Guinea-Bissau

- a. Legal Cooperation Agreement between the Portuguese Republic and the Republic of Guinea-Bissau, concluded in Bissau on July 5, 1988,⁸ under which Contracting States undertake to transfer to each other persons who are in their territories (*cf.* Article 45) for the purpose of prosecution for acts that are within the jurisdiction of the courts of the requesting State and are punishable under the laws of both States, among other reasons [*cf.* Article 46(1)].

4. São Tomé and Príncipe

⁵ Resolution of the Republic Assembly No. 4/91, of 18 January (in Portuguese), available at <https://dre.pt/dre/detalhe/resolucao-assembleia-republica/4-1991-498335>.

⁶ Resolution of the Republic Assembly No. 6/2005, of February 15 (in Portuguese), available at <https://dre.pt/dre/detalhe/resolucao-assembleia-republica/6-2005-604180>.

⁷ Resolution of the Republic Assembly No. 52/2009, of 30 July (in Portuguese), available at <https://dre.pt/dre/detalhe/resolucao-assembleia-republica/52-2009-493185>. Portugal and Cape Verde also concluded the d. Additional Protocol to the Treaty between the Portuguese Republic and the Republic of Cape Verde on the Joint Surveillance of Maritime Spaces under the Sovereignty or Jurisdiction of the Republic of Cape Verde, signed in Lisbon, on December 17, 2014 [Resolution of the Republic Assembly No. 100/2018, of 10 April (in Portuguese), available at <https://dre.pt/dre/detalhe/resolucao-assembleia-republica/100-2018-115017483>].

⁸ Resolution of the Republic Assembly No. 11/89, of 19 May (in Portuguese), available at <https://dre.pt/dre/detalhe/resolucao-assembleia-republica/11-1989-610765>.

- a. Judicial Agreement between Portugal and São Tomé and Príncipe, done in Lisbon, on March 23, 1976,⁹ under which Contracting Parties undertake to cooperate in all proceedings relating to criminal offenses which, at the time of the request for cooperation, fall within the jurisdiction of the judicial or police authorities of the requesting Party and which are punishable under the domestic laws of both Parties (Article 10). Particularly, they mutually undertake to transfer persons charged with or convicted of an offense committed in the territory of one Party to proceedings before the courts of the other Party, provided that certain conditions are met (Article 15), the request is admissible (Article 17), and the requested State may not refuse to comply with the request (Article 18).
- b. Cooperation Agreement between the Portuguese Republic and the Democratic Republic of São Tomé and Príncipe on the Joint Surveillance of Maritime Spaces under the Sovereignty or Jurisdiction of the Democratic Republic of São Tomé and Príncipe, signed in São Tomé City on June 17, 2013,¹⁰ which establishes the bases for joint patrols in the maritime spaces under the sovereignty or jurisdiction of the Cape Verde Party, which may focus on any type of illegal activity, in compliance with international law and the domestic law of both Parties (Article 1). It therefore also aims to prevent and combat maritime piracy. The Portuguese Navy maintains in São Tomé and Príncipe a vessel that operates virtually year-round with a joint garrison of elements from the Portuguese Navy and the São Tomé and Príncipe Coast Guard to monitor, control, and patrol the country's territorial waters and EEZ. This cooperation occurs in the framework of the agreement identified in 4(b) and 4(c) above.

b) From a multilateral perspective

Due to their historical relationship, Portuguese-speaking countries cooperate closely in the framework of the CPLP, including in the field of judicial and legal cooperation. Accordingly, the Convention on Legal Assistance in Criminal Matters between the Member States of the Community of Portuguese-Speaking Countries, signed in Praia, on November 23, 2005, is currently in force.¹¹ However, Contracting States may not transfer persons accused of piracy or any other offense under this convention. Instead, cooperation among Contracting States is reserved for other areas, namely the provision of information, the transmission of procedural documents and other public documents when necessary to achieve the objectives of the proceedings, and acts necessary for the seizure, freezing, or confiscation of instrumentalities, property, or the proceeds of crime (Article 1).

⁹ Decree No. 550-M/76, of 12 July (in Portuguese), available at <https://dre.pt/dre/detalhe/decreto/550-m-1976-181674>.

¹⁰ Resolution of the Republic Assembly No. 97/2014, of 19 November (in Portuguese), available at <https://dre.pt/dre/detalhe/resolucao-assembleia-republica/97-2014-58940161>.

¹¹ Resolution of the Republic Assembly No. 46/2008, of 12 September (in Portuguese), available at <https://dre.pt/dre/detalhe/resolucao-assembleia-republica/46-2008-453868>.

Moreover, Portugal is also engaged in numerous initiatives in the GoG with the objective of contributing to the strengthening of the Yaoundé Security Architecture. Portugal has actively participated in the work of the G7++FoGG and held the presidency of this group in 2016. It cooperates in the implementation of the European Union Strategy¹² and the Maritime Security Action Plan in the GoG¹³ and has participated in all the initiatives of the European Union CMP in the GoG, including the implementation of one of the components of the Support to West Africa Integrated Maritime Security. The latter aims to contribute to the strengthening of operational measures for law enforcement and management of the rule of law at sea in the twelve coastal countries of ECOWAS.

Portugal's commitment to the security and prosperity of the Atlantic region led to the creation of the Atlantic Center, an initiative of the Portuguese government open to all Atlantic countries and currently composed of 21 states. Its mission is to contribute to the development of the community of interests of the countries bordering this ocean. It is an initiative that focuses on Atlantic security in the broadest sense and is committed to developing cooperative actions to advance shared security priorities based on the principle of complementarity. The Atlantic Center has three interrelated areas of action: political dialogue, research and analysis, and security and defense capacity building.

Action lines were identified that can help the PMC contribute more effectively to maritime security in the GoG, including (i) strengthening coordination; (ii) the need to avoid duplication of efforts; (iii) strengthening operational dialog, not only among European Union member states and their institutions, but also with GoG states; and recommended joint exercises with mixed crews of European and African mariners and coast guards.

Strengthening the structures of the Yaoundé Security Architecture is another area in which the Atlantic Center has been active, particularly in supporting the operationalization of the Maritime Multinational Coordination Center, Zone G in Cape Verde, in cooperation with Germany, the European Union, and UNODC.

3. Portuguese domestic law dealing with piracy (at least in part)

The Portuguese Penal Code does not contain a specific offense of piracy.¹⁴ Instead, the acts and conduct commonly associated with piracy—murder, assault, threats, kidnapping, theft—are covered by other criminal norms. For example, (i) Articles 131 to 137 of the Portuguese Penal Code cover different types of murder, including qualified murder, privileged murder, murder at the request of the victim, and murder due to negligence; (ii) Articles 143-144, 145-146, and 148 cover the different types of bodily injury, namely in its simple, serious, qualified, and privileged forms, and due to negligence; (iii) Articles 153 and 154 cover the crimes of threat and coercion;

¹² See, Maritime security strategy, available at https://oceans-and-fisheries.ec.europa.eu/ocean/blue-economy/other-sectors/maritime-security-strategy_en#objectives.

¹³ See, EU Maritime Security Factsheet: The Gulf of Guinea, available at https://www.eeas.europa.eu/eeas/eu-maritime-security-factsheet-gulf-guinea_en.

¹⁴ Decree-Law No. 48/95, of 15 March, as amended by Law No. 2/2023, of 16 January (in Portuguese), available at <https://dre.pt/dre/legislacao-consolidada/decreto-lei/1995-34437675>.

(iv) Article 158 covers the crime of kidnapping; and (v) Articles 203-204 and 211 cover the crimes of theft (with and without force). This is, of course, without prejudice to the civil compensation that may be due for the damage related to the conduct and actions in question.

Moreover, the Portuguese Government enacted in 2019 Decree No. 159/2019, of 24 October,¹⁵ which establishes the legal regime governing the exercise of armed private security activities on board Portuguese-flagged vessels passing through areas of high risk of piracy.¹⁶ In addition, these activities must also comply with Law No. 34/2013, of 16 May, which establishes the legal regime governing the exercise private security activities.¹⁷ Decree No. 159/2019, of 24 October, recognizes piracy as a

[...] multifactorial phenomenon for which various structural and conjunctural causes come together to affect m safety of people and goods on board ships and the cost to the global economy. In the first case, it is important to consider the responsibility of the Portuguese State in defining and implementing measures to ensure the safety of people and goods on board. In the second case, it is a matter of promoting the competitiveness of the national maritime sector.¹⁸

It establishes that hiring of armed private security on board is reserved for owners of Portuguese-flagged vessels passing through areas with a high risk of piracy with the exclusive aim of protecting them against acts of piracy.¹⁹

¹⁵ Decree-Law No. 159/2019, of 24 October (in Portuguese), available at <https://dre.pt/dre/detalhe/decreto-lei/159-2019-125633665>.

¹⁶ Article 1 of Decree-Law No. 159/2019, of 24 October. In addition,

¹⁷ Law No. 34/2013, of 16 May (in Portuguese), available at <https://dre.pt/dre/detalhe/lei/34-2013-261089>.

¹⁸ Free translation of “[...] fenómeno multifatorial, para o qual concorrem diferentes causas estruturais e conjunturais, tendo impacto na segurança das pessoas e bens embarcados nos navios e nos custos para a economia global. No primeiro caso, importa ter em conta a responsabilidade do Estado português na definição e concretização de medidas que garantam a segurança das pessoas e bens embarcados. No segundo, está em causa a promoção da competitividade do setor marítimo nacional”.

¹⁹ Article 3(1), (2), and (3) of Decree-Law No. 159/2019, of 24 October.