

## 11<sup>th</sup> COMMISSION

### PIRACY, PRESENT PROBLEMS

Rapporteurs: **MM. Scovazzi and Treves**

### RESOLUTION

*The Institute of International Law,*

*Deeply concerned* by acts of piracy and armed robbery at sea which put at risk the life and freedom of seafarers and endanger the safety of international navigation and trade;

*Aware* that piracy and armed robbery at sea are recurrent criminal activities, as confirmed by several United Nations Security Council Resolutions that have addressed the subject in recent years;

*Acknowledging* that the provisions on piracy of the 1982 United Nations Convention on the Law of the Sea (hereinafter: UNCLOS) reflect customary international law and that such provisions, whenever appropriate, can be interpreted and applied in light of subsequent international practice and relevant rules of international law;

*Commending* the adoption of cooperative agreements and arrangements to address piracy and armed robbery at sea, including operational responses and the establishment of measures of assistance to coastal States;

*Stressing* that the fight against piracy and armed robbery at sea can be rendered more effective by broad participation in treaties on co-operation in criminal matters, such as the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the 1979 International Convention against the Taking of Hostages;

*Concerned* over the persistent lack of uniformity and sometimes the inadequacy of domestic laws and policies relating to pirates and perpetrators of other acts of violence at sea and to jurisdiction over them;

*Calling upon* States to ensure respect for all human rights and freedoms of the victims and of the other persons involved;

*Recalling* the Naples Declaration on Piracy adopted by the Institute on 11 September 2009;

*Adopts* the following Resolution:

### ***Article 1***

1. This Resolution is based on the provisions of UNCLOS and other rules of international law bearing on the problems of piracy and armed robbery at sea.
2. The UNCLOS provisions on piracy reflect customary international law. This Resolution concerns the interpretation and application of such provisions, particularly in the light of subsequent international practice and relevant rules of international law.

### ***Article 2***

The duty to co-operate to the fullest possible extent in the repression of piracy, provided for in Article 100 of UNCLOS, includes, *inter alia*:

- (a) the adoption of national legislation establishing jurisdiction and implementing the obligations arising from the UNCLOS provisions on piracy, in particular in order to subject those who are convicted of the crime of piracy to appropriate penalties which take into consideration its gravity, to promote international assistance in proceedings relating to piracy and to facilitate extradition or transfer of suspected or convicted pirates, as appropriate;
- (b) the conclusion, as appropriate, of bilateral and multilateral agreements or arrangements providing for measures of international co-operation in the prevention and repression of piracy, such as the surveillance and escorting of ships, the establishment of safe transit corridors, the early disruption of attacks, the sharing of police information, the boarding of law enforcement officials of other States, training in avoidance, evasion and defensive techniques, the drawing up of maritime security plans and the establishment of regional anti-piracy centers;
- (c) the conclusion, as appropriate, of bilateral and multilateral agreements or arrangements addressing international legal assistance in proceedings relating to piracy, including extradition and transfer of suspected or convicted pirates;
- (d) co-operation with and within competent intergovernmental institutions;
- (e) as far as reasonable and practicable, urgent action by ships or aircraft referred to in Article 107 of UNCLOS, such as seizing a pirate ship, arresting suspected pirates and rescuing victims of piracy, where necessary to prevent or repress acts of piracy.

### ***Article 3***

1. The illegal acts of violence, detention or depredation provided for in Article 101 of UNCLOS include acts such as killing, wounding, torturing, raping, enslaving, holding for ransom or imprisoning persons, as well as robbing, stealing, destroying, damaging or ransoming ships, aircraft or property on board. They also include attempts to commit such acts.

2. Acts committed by a State do not constitute piracy under Article 101 of UNCLOS.
3. Acts, including acts of peaceful protest at sea, that do not involve illegal acts of violence or detention, or any act of depredation, do not constitute piracy under Article 101 of UNCLOS.
4. Whether the acts are committed by or against an autonomous or remotely-operated craft does not, *mutatis mutandis*, affect the application of Article 101 of UNCLOS.
5. For the purpose of defining piracy, Article 101, sub-paragraphs (b) and (c), of UNCLOS should be taken to mean that acts of participation, incitement or intentional facilitation do not need to be committed on the high seas or in a place outside the jurisdiction of any State.

#### *Article 4*

1. Article 105 of UNCLOS shall be interpreted in the light of the duty to cooperate in the repression of piracy provided for in Article 100 of that Convention.
2. A State that has detained a person it suspects of piracy shall investigate and submit the case to its competent authorities for the purpose of prosecution, unless it transfers that person to another State for the purpose of investigation and prosecution.

#### *Article 5*

1. States shall respect and ensure the human rights of victims of acts of piracy, including the right of access to justice to seek reparation and the right to compensation for damage and to restitution of depredated property.
2. States shall ensure proper care, treatment and repatriation for crews and passengers who have been subjected to acts of piracy.
3. States shall ensure that crew members subjected to acts of piracy continue to receive their wages and entitlements in accordance with applicable international labour standards.
4. States shall also respect and ensure the human rights of persons suspected of, prosecuted for or convicted of acts of piracy, including the prohibition of torture and of cruel, inhuman or degrading treatment or punishment, the prohibition of arbitrary or unreasonably prolonged detention and the right to a fair trial.
5. States shall not transfer, expel or extradite a person suspected of acts of piracy or convicted of such acts to another State where there are substantial grounds for believing that this would violate that person's human rights referred to in paragraph 4.
6. The use of force by one or several States for the seizure of a ship or aircraft on suspicion of piracy, or for arresting persons suspected of piracy, shall be strictly limited to what is necessary and reasonable in the circumstances.

*Article 6*

1. The UNCLOS provisions on piracy do not prejudice the right of self-defence of any person against acts of piracy.
2. The UNCLOS provisions on piracy do not prejudice the right to have recourse, on board ships and aircraft, to means of protection and defence against piracy, including by governmental protection detachments or privately contracted armed security personnel.
3. Flag States shall ensure that privately contracted armed security personnel act in conformity with generally accepted international standards for maintaining the safety and security of vessels and aircraft at sea.

*Article 7*

Article 107 of UNCLOS does not prejudice the right of persons onboard an attacked private ship to detain suspected pirates and to seize an attacking pirate ship in order to hand them over to a warship, military aircraft or authorized representative of a State as soon as practicable.

*Article 8*

1. For the purposes of this Resolution, “armed robbery at sea” means any of the following acts:
  - (a) any illegal act of violence or detention, or any act of depredation, committed for private ends and directed against a ship or against persons or property on board such ship, in a place within a State’s territorial sea, internal waters or archipelagic waters;
  - (b) any act of voluntary participation in the operation of a ship with knowledge of its use to commit one or more acts referred to in sub-paragraph (a), irrespective of where the act is committed;
  - (c) any act of incitement or of intentional facilitation of an act described in subparagraphs (a) or (b), irrespective of where the act is committed.
2. States and international organizations are called upon to strengthen their co-operation in the repression of armed robbery at sea through the conclusion, as appropriate, of regional agreements and instruments and through participation in, and application of, multilateral treaties for co-operation in criminal matters, such as the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocols.
3. For the purposes of paragraph 2, States and international organizations shall take into consideration the particular situation of States that lack the capacity to repress armed robbery at sea and to patrol sea lanes off their coast.

*Article 9*

1. States and international organizations should seek to alleviate situations that may create conditions conducive to piracy and armed robbery at sea, with a view to promoting respect for human rights and the rule of law, to strengthening State institutions and to ensuring economic and social development.
2. The existence of such situations shall not constitute grounds for excluding the criminal responsibility of a person suspected of committing acts of piracy or armed robbery at sea.

*Article 10*

The rules on piracy and armed robbery at sea do not affect any measures that the Security Council may adopt in discharging its primary responsibility for the maintenance of international peace and security under the Charter of the United Nations.

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