

CODE OF PRACTICE FOR THE INVESTIGATION OF CRIMES OF PIRACY AND ARMED ROBBERY AGAINST SHIPS

INTERNATIONAL MARITIME ORGANIZATION



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**Adopted on 2 December 2009
(Agenda item 10)**

**CODE OF PRACTICE FOR THE INVESTIGATION OF CRIMES OF
PIRACY AND ARMED ROBBERY AGAINST SHIPS**

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety,

RECALLING the rights and obligations of States under the international law of the sea, including the provisions of the United Nations Convention on the Law of the Sea relating to piracy,

RECALLING ALSO the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988 and encouraging States that have not done so, to ratify the said instruments as a matter of priority,

NOTING resolution A/RES/63/111 on *Oceans and the law of the sea*, by which the United Nations General Assembly, at its sixty-third session, urged all States, in cooperation with the International Maritime Organization, to actively combat piracy and armed robbery at sea by adopting measures, including those relating to assistance with capacity-building through training of seafarers, port staff and enforcement personnel in the prevention, reporting and investigation of incidents, for bringing the alleged perpetrators to justice in accordance with international law, and by adopting national legislation,

NOTING ALSO the approval by the Maritime Safety Committee of MSC.1/Circ.1333 and MSC.1/Circ.1334 containing recommendations to Governments and guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships,

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RECOGNIZING WITH DEEP CONCERN the grave danger to safety of life at sea, maritime safety, security and the protection of the marine environment arising from acts of piracy and armed robbery against ships,

RECOGNIZING ALSO that the number of acts of piracy and armed robbery against ships continues to increase worldwide,

BEING AWARE that the fight against piracy and armed robbery against ships is often impeded by the absence of effective legislation in some countries for investigating reported cases of piracy and armed robbery against ships,

NOTING the need for capacity-building and technical cooperation in the field of suppression of piracy and armed robbery against ships,

BEING ALSO AWARE that, when arrests are made, some Governments lack the legislative framework and investigative guidelines necessary to ensure the conviction and punishment of those involved in acts of piracy and armed robbery against ships,

RECALLING that the Assembly, at its twenty-second regular session and through resolution A.922(22), adopted the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships (“the Code of Practice”) and, at its twenty-fifth session and through resolution A.1002(25), requested as a matter of urgency the Maritime Safety Committee to review and update the Code of Practice taking into account developments and emerging needs,

BEING CONVINCED of the need for an amended Code of Practice to be adopted and promulgated as soon as possible,

BEING ALSO CONVINCED of the need for Governments to cooperate and, as a matter of the highest priority, take all necessary action to prevent and suppress any acts of piracy and armed robbery against ships,

HAVING CONSIDERED the recommendation made by the Maritime Safety Committee at its eighty-sixth session,

1. ADOPTS the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships (“Code of Practice”) set out in the annex to the present resolution;
2. INVITES Governments to cooperate in the interests of safety of life at sea, environmental protection and enhancement of maritime security by increasing their efforts to suppress and prevent acts of piracy and armed robbery against ships;
3. URGES Governments to implement the Code of Practice, to investigate all acts of piracy and armed robbery against ships under their jurisdiction, and to report to the Organization pertinent information on all investigations and prosecutions relating to these acts so as to allow lessons to be learned from the experiences of shipowners, masters and crews who have been subject to attacks, thereby enhancing preventative guidance for others who may find themselves in similar situations in the future;
4. ALSO INVITES Governments to develop, as appropriate, agreements and procedures to facilitate cooperation in applying efficient and effective measures to prevent acts of piracy and armed robbery against ships;

5. ENCOURAGES Governments to apply the provisions of international instruments aimed at enhancing the safety and security of life at sea and at preventing and suppressing acts of piracy and armed robbery against ships;
6. FURTHER URGES all Governments responsible for ports, anchorages and sea areas off their coasts to inform the Organization of specific advice they have issued on the subject of piracy and armed robbery against ships, for promulgation to ships concerned;
7. REQUESTS the Maritime Safety Committee and the Legal Committee to keep the Code of Practice under review and authorizes them to adopt jointly the necessary amendments to the Code of Practice;
8. REQUESTS FURTHER the Maritime Safety Committee and the Legal Committee to report on action taken in accordance with this resolution to the twenty-seventh regular session of the Assembly;
9. REVOKES resolution A.922(22).

ANNEX

CODE OF PRACTICE FOR THE INVESTIGATION OF CRIMES OF PIRACY AND ARMED ROBBERY AGAINST SHIPS

1 PURPOSE OF THIS DOCUMENT

The purpose of this document is to provide Member States with an *aide-mémoire* to facilitate the investigation of the crimes of piracy and armed robbery against ships.

2 DEFINITIONS

For the purpose of this Code:

2.1 “Piracy” means an act defined in article 101 of the United Nations Convention on the Law of the Sea (UNCLOS).*

2.2 “Armed robbery against ships” means any of the following acts:

- .1 any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal waters, archipelagic waters and territorial sea;
- .2 any act of inciting or of intentionally facilitating an act described above.

2.3 “Investigators” means those people appointed by the relevant State(s) to investigate an act of piracy or armed robbery against a ship, after the event has occurred.

2.4 “Initial responders” means those people who are appointed by the relevant State(s) to intervene in an act of piracy or armed robbery against a ship, during the event.

* The following definition of piracy is contained in article 101 of the United Nations Convention on the Law of the Sea:

“Piracy consists of any of the following acts:

- (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 of intentionally facilitating an act described in sub-paragraph (a) or (b).”

3 PRIOR CONSIDERATIONS

LEGISLATION

Apprehension and prosecution

3.1 States are recommended to take such measures as may be necessary to establish their jurisdiction over the offences of piracy and armed robbery against ships, including adjustment of their legislation, if necessary, to enable those States to apprehend and prosecute persons committing such offences. States are furthermore encouraged to take the necessary national legislative, judicial and law enforcement actions as to be able to receive, prosecute or extradite any pirates or suspected pirates and armed robbers arrested by warships or military aircraft or other ships or aircraft clearly marked and identifiable as being on government service. States should take into consideration appropriate penalties when drafting legislation on piracy.

3.2 States are encouraged to implement the provisions of UNCLOS, the Convention for the Suppression of Unlawful Acts Against the Safety of Navigation, 1988 and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988.

Action by coastal/port States

3.3 To encourage masters to report all incidents of piracy and armed robbery against ships, coastal/port States should make every endeavour to ensure that these masters and their ships will not be unduly delayed and that the ship will not be burdened with additional costs related to such reporting.

Agreements or arrangements for investigations

3.4 Article 100 of UNCLOS requires all States to cooperate to the fullest possible extent in the repression of piracy.

3.4.1 Coastal States are encouraged to cooperate to the fullest possible extent in the investigation of armed robbery incidents and attempts, together with other interested States such as the flag State, and, where appropriate, to enter into appropriate bilateral or multilateral agreements to facilitate such investigations and the prosecution of the perpetrators.

3.4.2 In addition, States are encouraged to cooperate to the fullest possible extent in the investigation of acts or attempted acts of piracy and to enter into bilateral or multilateral agreements with other interested States such as the flag State or the coastal State so as to facilitate such investigations and the prosecution of the perpetrators.

4 TRAINING OF INVESTIGATORS

4.1 Training of investigators should cover the primary purposes of an investigation:

- .1 In any cases where persons on board have been abducted or have been held hostage, the primary objective of any law enforcement operation or investigation must be their safe release. Their rescue and safety should take precedence over all other considerations.

- .2 Arrest of offenders.
- .3 Securing of evidence, especially if an examination by experts is needed.
- .4 Dissemination of information which may help prevent other offences.
- .5 Recovery of property stolen.
- .6 Cooperation with the authority responsible for dealing with any particular incident.
- .7 Gathering and assessing related information from all available sources.

4.2 Investigators should be trained and experienced in conventional criminal investigative techniques, and should be as familiar as possible with a ship environment. Maritime knowledge will, of course, be an advantage, and access to persons with knowledge of maritime procedures useful, but it is investigative skills which are vital.

4.3 Written procedures in the national language on how to conduct an investigation could be useful. Such procedures should be updated and adjusted in light of experiences gained and with due regard for national legislation.

4.4 Trainers may wish to emphasize that offenders could still be at the scene of the crime when investigators arrive on scene.

4.5 Investigators should be trained how to handle persons who have experienced very stressful situations. Learning techniques on how to question persons suffering from post-traumatic stress could prove useful.

5 INVESTIGATIVE STRATEGY

5.1 It is essential that investigators should have demonstrated criminal investigation skills and competencies, as well as maritime knowledge/experience. Offenders are ultimately land-based, and it is likely that it is on land that they will be most vulnerable to detection. Associates may be prepared to give information against them, for example, and it is there that they will be spending the proceeds of their crime. It is also probable that offenders will be involved in other offences such as smuggling irregular immigrants, and useful intelligence may be lost if investigators are too compartmentalized in their approach.

5.2 Conventional detective methods offer the best chance of identifying and apprehending pirates and perpetrators of armed robbery.

5.3 It may be appropriate to link anti-piracy measures to anti-smuggling patrols or efforts to prevent illicit traffic in narcotic drugs and psychotropic substances, thus minimizing duplication of effort and saving resources. Wherever possible, an inter-agency approach to investigation should be adopted.

Overall management/other liaison/cooperation

5.4 For the purpose of enhancing the capacity of States to combat piracy and armed robbery against ships, States should endeavour to cooperate on the investigation to the fullest possible extent.

5.5 Maritime trade, being of an international nature, will bring into play various legal/boundary issues. While conducting investigations all States which have an interest should fully cooperate with those conducting the investigations.

5.6 It is important to identify the person and/or organization in charge of an investigation. Confusion or delay in the early stages will at best result in delayed investigative opportunities and loss of evidence. At worst, it may increase the danger to any member of the crew held captive by the offenders, possibly resulting in loss of life or injury which could have been avoided.

5.7 Recognition should be given to the different national interests that may be involved in each case, including: flag State of the ship; country in whose territorial waters the attack took place; country of suspected origin of the perpetrators; country of nationality of persons on board; country of ownership of cargo; and country in which the crime was committed. In cases of piracy, the flag State of the ship should take lead responsibility, and in cases of armed robbery the lead should be taken by the State in whose territorial waters the attack took place. In all cases it should be recognized that other States will have legitimate interests, and therefore liaison and cooperation between them is vital to a successful investigation and apprehension of the perpetrator.

5.8 The shipowner or company should be informed of the attack and the plan for the investigation.

5.9 It is important to involve relevant intergovernmental organizations at an early stage, where appropriate, in order to take account of the possibility that transnational organized crime may be involved and, where appropriate, to provide related information to non-governmental organizations dealing with various forms of maritime crime or fraud.

5.10 If, in the course of the investigation, there is an unavoidable need to change the investigators in charge, a full debriefing should take place.

6 DEALING WITH AN INITIAL REPORT

When information is received that a ship is under attack, or a recently committed major offence is reported and the ship is accessible, initial responders and investigators should attend without delay. The responsibilities of those who first attend crime scenes are the following:

Preservation of life

- .1 Secure medical treatment for all persons injured and advise the crew, if the situation warrants, that the threat no longer exists and the crew is safe.

Prevention of the escape of offenders

- .2 Be alert to the possibility that, in some circumstances, offenders may still be in the vicinity and advise the crew accordingly.

Warnings to other ships

- .3 Whenever practicable, issue warnings to other ships in the vicinity which may be vulnerable to attack.

Protection of crime scenes

- .4 Recovery of forensic material from a crime scene has the potential to provide evidence to identify offenders. Equally, interpretation of what happened at the scene will help investigators determine the outcome of the investigation. It is therefore vital that crime scenes be protected until appropriately qualified personnel arrive to examine them. This point should be fully understood by the master, crew and shipowner of any ship involved.
- .5 The initial phases of the law-enforcement and emergency services' response present the greatest risk of scene contamination. Personnel coordinating the law enforcement response should be aware of the risk of contamination and advise persons attending scenes, including other law enforcement officials and naval personnel, accordingly.
- .6 The authorities in the country with lead responsibility for investigating any crime should be informed of the details of the incident and given the opportunity to conduct an investigation into it. Any evidence, details of action taken, etc., should be passed to the State with the lead responsibility.

Securing evidence

- .7 Focused questioning at the crime scene may lead to information which, by being rapidly passed to all appropriate authorities, could lead to the identification or arrest of the offenders, e.g., description of offenders, description of ship and direction in which the ship was last seen heading.
- .8 Law enforcement officials first attending a scene must appreciate the importance of their role in gathering and passing on as quickly as possible relevant evidence, even if the offenders have escaped. Mistakes or omissions at the outset may have serious implications for the subsequent investigation.
- .9 Investigators should bear in mind that recovery of property during the investigation is important, as it may become evidence in the event of any prosecution.

7 INVESTIGATION

Proportionality

The course of an investigation will depend to a large extent on the circumstances of the offence. In this regard the investigating agency will wish to take account of the "seriousness" of the incident. This can range from theft of property to hostage-taking and ultimately to loss of life. Consequently, the action to be pursued should be proportionate to the crime committed and consistent with the laws that were violated. The following considerations will, however, be common to all piracy and armed robbery investigations:

Establishing and recording all relevant facts

- .1 All relevant facts should be recorded in a systematic way. Most law enforcement agencies use multi-purpose crime reporting forms, but officers dealing with offences at sea should be sure to include the additional information which may subsequently prove essential in legal proceedings in these cases, e.g., weather, sea state, position, direction of travel and speed of the ship, a detailed description of the ship and so forth.
- .2 Photographs and videotapes taken of and on a ship will help investigators and witnesses to explain subsequently what happened.
- .3 Investigators should bear in mind that the laws governing offences committed at sea allow, in some circumstances, for legal proceedings in countries other than those where the investigators are based. Investigations should therefore be sufficiently comprehensive and detailed to make it possible to explain what happened to courts other than the investigators' own, possibly several years after the offences have been committed. The *modus operandi* of investigators should be described in the investigation report.

Recording individual witness accounts

- .4 These should be recorded in a formal manner acceptable for use in subsequent court proceedings. Witness accounts will form the basis of any prosecution case and untrained personnel should not be used for this important task.
- .5 Witness accounts should be recorded at the earliest opportunity, as memories fade and accounts may be influenced by contact with other witnesses and media reports.
- .6 If witnesses speak languages different from that of the investigators, as will happen frequently in piracy and armed robbery cases, their accounts should be recorded in their own languages and with the aid of properly qualified interpreters when this can be done within a reasonable timescale. Investigators should be aware that an account signed by a witness, or indeed a suspect, in a language foreign to that person may be valueless in court proceedings. It is important, therefore, to establish the legal requirements for the validity of evidence in each case.
- .7 Experience has proved that witnesses in piracy and armed robbery cases, particularly those who have been subjected to violence, are likely to be exceptionally distressed. Their experience will have been all the worse if they have been held captive for a long period and/or been in fear of death, and the situation will be exacerbated still further if they are far from home. Investigators should bear these factors in mind and deal with the witnesses sympathetically and patiently if they are to elicit all relevant facts.
- .8 Witnesses should be interviewed separately from each other, when this can be done within a reasonable timescale, in order to protect the integrity of the individual accounts of the incident.

- .9 Investigators should focus on obtaining specific descriptions of the individuals involved in the piracy incident, particularly noting any distinguishing characteristics of the “leader”.
- .10 If more than one offender is involved, investigators should attempt to obtain specific information from the witnesses about the actions of each individual offender, rather than be satisfied with general statements about what “the hijackers” or “the pirates” did on the ship.

Detailed forensic examination of scenes

- .11 Detailed forensic examination of the crime scene, particularly in serious cases including cases of homicide, offers investigators the best opportunities of establishing crucial information and evidence which may ultimately result in the case being solved.
- .12 Investigators should secure particular objects or places on the ship where the offenders may have left fingerprints or other latent prints of value.
- .13 Investigators would be well advised to take advantage of the full range of specialist services available to them.
- .14 Investigators should take into consideration the need not to detain ships or impede work on board longer than is strictly necessary to carry out the forensic examination.

Searching intelligence databases

- .15 Crimes should not be treated in isolation.
- .16 Offenders may be responsible for similar crimes not yet solved, and when the evidence from those cases is accumulated and considered, opportunities of identifying offenders may emerge. Appropriate databases, including those held by organizations such as the Information Sharing Centre established in Singapore under the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia or the International Maritime Bureau established in Kuala Lumpur, Malaysia by the International Chamber of Commerce, should be searched to identify any series of offences. However, usage of private databases has to be compatible with the laws governing the investigation. Consideration should be given to contacting Interpol or neighbouring coastal States in case they have any information on the offenders.
- .17 Equally, offenders may have previous convictions, the details of which could link them to crimes under investigation.

Distribution of information and intelligence to appropriate agencies

- .18 An important product of an effective investigation, even if it does not lead to any arrests, should be the generation of intelligence, and systems should be in place to ensure that potentially useful intelligence is disseminated to all appropriate parties. These might include law enforcement agencies, naval authorities, coastguards, harbour masters and others that might need it and could act on it according to their national regulations.

- .19 Lessons learned from the investigation, even if it does not lead to any arrest, should be reported to the Organization and made available by the Organization to Member States, intergovernmental organizations and non-governmental organizations with consultative status in order to enable all interested parties to benefit from the information obtained during the investigation.
 - .20 If information gathered during an investigation leaves the State in charge of the investigation with reason to believe that an offence of piracy or armed robbery might have been committed elsewhere or might be committed at a later time, that State should furnish, as promptly as possible, and in accordance with its national legislation, any relevant information in its possession to States which it regards as having established jurisdiction over the offences of piracy and armed robbery in accordance with paragraph 3.1 of this Code.
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