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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

**Replies to the questionnaire
on issues of combating maritime piracy**

**Reponses au questionnaire
sur les enjeux de la lutte contre la piraterie maritime**

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AZERBAIJAN / AZERBAÏDJAN

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

International legal frameworks existing today on combating maritime piracy such as UNCLOS 1982 (art. 100 to 107 and 110), Suppression of Unlawful Acts Convention, Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the active piracy area of Western Indian Ocean and the Gulf of Aden and other IMO *legal instruments are the basic legal tools to be adopted by the States in terms of combating piracy.*

However, existing international legal framework cannot be considered as completely sufficient.

The practice shows that some difficulties arise during criminal prosecution of persons committing crimes of piracy armed robbery at sea and other related offences. Therefore, it is necessary to improve existing international legal framework.

The other problem is the lack of coordination of international efforts for harmonization of international legal measures to combat and punish the crimes committed by pirates therefore the need of supplementing or improving current international legal framework should be considered periodically or upon the event occurs while the States or related organizations come up with new ideas or proposals in order to build the piracy policy efficiently.

Urgency of the problem of piracy has been repeatedly voiced by the UN Security Council, in which the cases were considered piracy and adopted resolutions (No 1816, 1846, 1851, and etc.) calling on the international community and international and regional organizations to enhance the fight against piracy and the expansion of the complex measures for the prosecution of perpetrations of pirate attacks.

Regarding questions 2 and 3

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

The Republic of Azerbaijan became a full-fledged member to the UN International Maritime Organization in 1995.

The Republic of Azerbaijan is a party to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and of International Convention for the Safety of Life at Sea (SOLAS-74),

Legal norms which prescribe piracy and robbery at sea have been indicated in the Criminal Code of the Republic of Azerbaijan.

In accordance with the amendments adopted on 2 July 2001, maritime piracy or sea robbery is an attack on sea and river vessels with the purpose of capturing another person's property by use of violence or a threat to use violence (art. 219-1.1.). Article 219-1 of the Criminal Code provides for 5 to 8 years of imprisonment for the offence of robbery at sea. The Article further provides for 8 to 12 years of imprisonment if the offence was committed by a group of persons or with use of weapons or objects that can be used as weapons. The Article provides for 12 to 15 years of imprisonment if the offence was committed repeatedly or by an organized criminal group or if it caused accidental death of a person or other serious consequences.

Article 11 of the Criminal Code stipulates that crimes committed within the sea boundaries of the Republic of Azerbaijan, in the part of Caspian Sea (lake) belonging to the Republic of Azerbaijan and in the economic zone of the Republic of Azerbaijan shall be considered crimes committed within the territory of the Republic of Azerbaijan.

The person, who has committed a crime on a water vessel registered in a port of the Republic of Azerbaijan, flying the flag or identification sign of the Azerbaijan Republic and sailing the high seas shall be subject to criminal liability under the Criminal Code of the Republic of Azerbaijan (Article 11.3 of the Criminal Code).

The nationals of the Republic of Azerbaijan, foreigners and stateless persons who have committed particular crimes, including sea robbery, shall be subject to criminal liability and punishment under the Criminal Code of the Republic of Azerbaijan, irrespective of the place the offence was committed (*if these persons were apprehended on the territory of the Republic of Azerbaijan and if they are not subject to liability on the territory of the foreign state for the abovementioned offence*). (Article 12.3 of the Criminal Code).

Persons suspected of committing an offence of sea robbery are entitled to benefit from all procedural guarantees set forth in Code of Criminal Procedure of the Republic of Azerbaijan. Moreover, from the moment of his/her detention a suspect has the right to know the reasons for his/her detention, to receive legal assistance of a lawyer of his choosing, to meet with the lawyer in private without any limitations as to duration of meetings, to use legal advice of the lawyer free of charge, to give testimony in his/her mother tongue or in any other language that he/she speaks, to benefit from the

assistance of a translator free of charge and some other rights as established in Article 90 of the Code of Criminal Procedure.

Concerning the piracy suspects as described in the questionnaire, Article 86 of the Code of Criminal Procedure sets forth the powers of a captain of a vessel or a military vessel as regards imprisonment, interrogation, detention and handover to appropriate justice authority of a person suspected of sea piracy. At the same time, according to Article 214.2.2 of the Code, investigation of criminal cases concerning crimes committed on board of sea vessels shall be conducted by captains of sea vessels or by other persons authorized for that.

No separate proceedings have been set in national legislation concerning the detention of suspect in piracy or sea robbery on the dock of the vessel until his/her handover to appropriate justice authority or any other entity to conduct a criminal prosecution. However, according to Article 148.4 of the Code of Criminal Procedure, a person can be detained before a criminal case is instituted. If no decision to institute the criminal case is taken within 24 hours of the person being detained, the person shall be released immediately. Even if this decision is taken, the detention of the person may not exceed 48 hours. The detained person shall be charged within 48 hours of being taken into custody and shall be brought before a court; the court shall examine the case without delay and decide between arrest as a restrictive measure and release.

Military vessels of the Republic of Azerbaijan do not escort trade ships or carry out patrol operations in the high seas where a threat of piracy exists, and there are no separate provisions in the national legislation concerning participation of an investigator, prosecutor or a judge on the dock of the vessel over the cases mentioned above.

Azerbaijan is not a party to any international covenant (rules) providing for handover of piracy suspects to littoral states with the purpose to conduct a criminal prosecution of them thereafter.

On the basis of the Law of the Republic of Azerbaijan dated 29 May 2012, the amendments were made to the Merchant Shipping Code of the Republic of Azerbaijan to ensure maritime safety and maintain disciplines in harbors by establishing competences of relevant executive authorities.

By the amendment to Article 63.1 of this Code, the implementation of the supervision of relevant executive power was established to ensure existence and compatibility of shipping documents with major vessel indicators, the due arrangement of ship crew and compliance to international requirements in the field of trade shipping.

By the Decree of the President of the Republic of Azerbaijan State Maritime Administration was established on 6 February 2006.

In compliance with the requirements of International Convention for the Protection of Life at Sea (SOLAS-74), to which the Republic of Azerbaijan is a party, the National Centre for Identifying from a Remote Distance and Tracing at the State Maritime Administration has been established. The functions of the National Centre include tracing the positions of vessels sailing within the sea boundaries of the Republic of Azerbaijan by satellite and radars, transferring appropriate information to vessels regarding navigation warnings and weather forecasts, implementing the supervision of compliance to the Rules of sailing within the sea boundaries of the Republic of Azerbaijan, ensuring the submission of SOS signals of vessels and other information obtained to concerning state authorities and its arranging their coordination, as well as establishing regular operative relations and exchanging of information with other countries' National Centers with the same functions and shipping companies including appropriate international organizations.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

There have been no cases regarding capturing of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of the public of the Republic of Azerbaijan.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

There have been no cases when persons suspected of piracy were released.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

No such operations were conducted, either crew members which are Azerbaijani citizens were never undergone piracy act or armed robbery.

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

In accordance with article 56 of the Merchant Shipping Code of the Republic of Azerbaijan and article 56 of the Regulation on Service of Transport Fleet Vessels of the Republic of Azerbaijan, the master

of the vessel has the rights to detain person who is suspected of a crime and act of armed robbery and he shall deliver suspected person to the relevant State Body.

In case of a crime conducted on board of the ship, the captain, in accordance with the criminal-procedural legislation of the Azerbaijan Republic has the duties of an investigation authority (*see reply to the questions 2 and 3*).

According to Article 3.2 of the Code of Criminal Procedure of the Republic of Azerbaijan, the provisions of criminal procedural legislation of the Republic of Azerbaijan also apply outside its territory to sea or river vessels that are flying the flag of the Republic of Azerbaijan, carrying its identification signs, or registered in its ports.

In accordance with Article 214 of the Code of Criminal Procedure, preliminary investigation of criminal cases related to crimes committed in the territory on which sea vessels are located is carried out by the vessel captain. A preliminary investigation is carried out in the form of investigative procedures which cannot be delayed in criminal cases subject to mandatory investigation.

While investigating the preliminary investigator is authorized to initiate a criminal case, detain the suspected person, interrogate him/her, and conduct such investigatory actions as search operations, search of persons (body search), and seizure.

The matters regarding detention, as one of the restrictive measures, are regulated by the Chapter 16 of the Code of Criminal Procedure.

Upon being satisfied that the circumstances so warrant, the captain of the vessel, in accordance with its law, take the offender into custody or take other measures to ensure that offender will not be able to avoid all appropriate criminal or extradition proceedings.

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

Any persons arrested on suspicion of piracy or robbery at sea shall be entitled to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence, he will be visited by a representative of that State.

According to the Code of Criminal Procedure, suspects and accused persons enjoy the rights enshrined in Article 90.7 and Article 91.5.

Under the article 91.5 of Code of Criminal Procedure, any persons arrested on suspicion of piracy at sea, have the following rights: to have an advocate since being arrested or charged, and use his/her assistance free of charge, to choose or dismiss his/her own advocate, to use assistance of interpreter free of charge, to confess his guiltiness or innocence, to give explanations in his/her native language or in other language, to have his/her objection or petition and etc.

Regarding questions 9 and 10

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

As it was mentioned above the captain of the vessel has the rights to detain person who is suspected of a crime and act of armed robbery and he shall deliver suspected person to the relevant State Body. Duration of custody standards have not been defined by law of Azerbaijan Republic but at the same time it should be mentioned that in the case of such events happen articles 8 and 10 of the SUA Convention will be applied.

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

There are no any requirements in the legislation of the Republic of Azerbaijan for participation of investigators, prosecutors and judges on board military vessels of the Republic of Azerbaijan escorting commercial vessels and patrolling piracy-prone areas of high seas.

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

The Republic of Azerbaijan has not signed any international agreements in regard to this matter.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

The Republic of Azerbaijan is not a party to any international agreements on governing the transfer of persons suspected of piracy.

Other international agreements are used as guidance on transfer of persons suspected of piracy and sea robbery to another party for the purpose of conducting a criminal prosecution. In case of absence of such agreements the Law on Extradition is applied.

In accordance with Article 7 of that Law, in urgent cases necessary measures as shown in criminal procedural legislation are taken for the purpose of searching and arresting the person before the actual receipt of request for transfer based on petition by the foreign state.

The arrested person shall be released if the requesting foreign state fails to send a request for transfer or documents specified by this Law 18 days after the receipt of an official notification regarding the arrest of the person. In case of a good reason, based on request by the petitioning foreign state the above mentioned time-period can be prolonged to no longer than 30 days after the receipt of official notification regarding the arrest of the person.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

There have not been any cases of transfer of persons suspected in sea robbery.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

There is no use of private military and security companies services at the vessels that flies the flag of Azerbaijan Republic.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

The relations that arise during the implementation of private security activities in the Republic of Azerbaijan, its legal grounds, principles and duties, as well as the mutual relationships between private security activity subjects and state bodies are regulated by the Law on "Non-state (private) security activities".

According to Article 7 of that Law this activity is carried out on the basis of a special permit (license).

According to Article 17 of that Law the special permits (licenses) are issued under this Law as well as other legislative acts by the Ministry of National Security to foreign legal entities that operate on the territory of Azerbaijan or to foreign legal entities established by foreigners or persons without citizenship, including those established by foreign funds, and by the Ministry of Internal Affairs to other legal entities.

Providing private security services without a special permit (license) is punishable under the legislation of the Republic of Azerbaijan.

According to Article 13 of the Law, guards are allowed to use physical force or special means provided by the private security institution or the security unit of a legal entity only within the confines of the protected objects in cases specified by this Law and other legislative acts of the Republic of Azerbaijan. In accordance with the requirements of this Law the use of physical force or special means shall be proportionate to the risen danger.

According to Article 20 of the Law, the supervision over private security activities and circulation of special means in the frame of such activities is undertaken by the Ministry of National Security or the Ministry of Internal Affairs in accordance with procedure and conditions specified in the legislation.

The rights and duties of guards, restrictions in regards to them, conditions and limits for using physical force or special means when carrying out private security functions are also regulated by this Law.

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

Not any such cases took place.

BELGIUM / BELGIQUE

1) *Le cadre juridique international qui existe actuellement peut-il être considéré comme suffisant pour lutter efficacement contre la piraterie maritime et les autres actes illégaux commis en mer, y compris le vol à main armée ? Faudrait-il l'améliorer (le moderniser) ou le compléter à cet égard ?*

Les dispositions juridiques actuelles sont suffisantes.

2) *Jusqu'à quel point la législation de votre pays est-elle adaptée pour engager des poursuites judiciaires contre les personnes soupçonnées d'actes de piraterie et de vol commis en mer ?*

Les personnes auteur d'actes de piraterie ou à l'égard de laquelle il existe des indices sérieux de culpabilité relatifs à une telle infraction peuvent être arrêtées :

- par les navires de guerre belges et les équipes de protection militaire belge embarqués sur des navires civiles ;
- par le capitaine d'un navire belge marchand ou de pêche maritime :
 - (i) qui peut agir, à l'égard d'un bateau battant pavillon belge, en qualité de juge d'instruction et de magistrat disciplinaire : il procède à une instruction sommaire et entend les témoins, il dresse un procès-verbal qui fait foi jusqu'à preuve du contraire si l'infraction de piraterie maritime est commise contre son navire ;
 - (ii) qui, en cas de flagrant délit, dresse un procès-verbal et informe sur le champ le procureur fédéral de la privation de liberté. Le procureur doit confirmer dans les 24 heures la privation de liberté et s'il décide de poursuivre l'inculpé, il doit requérir le juge d'instruction qui discernera ou pas un mandat d'arrêt provisoire valable au maximum un mois. Les poursuites pourront s'exercer en Belgique et dans ce cas, l'inculpé sera transféré en Belgique. Si le juge d'instruction estime que la détention doit être maintenue, il ordonne une détention préventive.

3) *Quelles sont les mesures prévues dans votre législation nationale pour criminaliser les actes de piraterie et le vol commis en mer ? Comment la piraterie est-elle définie dans la législation de votre pays ?*

Les articles 3 et 4 de la loi du 30 décembre 2009 relative à la lutte contre la piraterie maritime sont ainsi rédigés :

Art. 3.

§ 1er. Constitue une infraction de piraterie l'un des actes suivants :

a) tout acte illicite de violence, de menace, de détention ou de déprédation commis par l'équipage ou les passagers d'un navire privé agissant à des fins privées et dirigé : i) contre un autre navire, ou contre des personnes ou des biens à leur bord, en haute mer; ii) contre un autre navire, des personnes ou des biens à leur bord, dans un lieu ne relevant de la juridiction d'aucun Etat;

b) tout acte de participation volontaire à l'utilisation d'un navire, lorsque son auteur a connaissance de faits dont il découle que ce navire est un navire pirate;

c) toute tentative, tout acte préparatoire, ou tout acte ayant pour but d'inciter à commettre les actes définis aux a) ou b), ou commis dans l'intention de les faciliter.

§ 2. Les actes de piraterie, tels qu'ils sont définis au paragraphe 1er, perpétrés par un navire de guerre ou un navire d'Etat dont l'équipage mutiné s'est rendu maître sont assimilés à des actes commis par un navire privé.

§ 3. Les actes visés aux paragraphes 1ers et 2, commis dans un espace maritime autre que la haute mer, sont assimilés à des actes de piraterie tels que définis aux paragraphes 1ers et 2, dans la mesure prévue par le droit international.

Art. 4.

§ 1er. Toute personne qui aura commis une infraction de piraterie visée à l'article 3, § 1er, a) ou b) sera punie de la réclusion de dix ans à quinze ans.

Toute personne qui aura commis une infraction de piraterie visée à l'article 3, § 1er, c) sera punie de la réclusion de cinq ans à dix ans.

§ 2. Toute personne qui participe à une activité d'un groupe de pirates, y compris par la fourniture d'informations ou de moyens matériels au groupe de pirates, ou par toute forme de financement d'une activité du groupe de pirates, en ayant connaissance que cette participation contribue à commettre une infraction de piraterie, sera punie de la réclusion de cinq ans à dix ans.

Tout dirigeant du groupe de pirates sera puni de la réclusion de quinze ans à vingt ans.

§ 3. Les infractions visées au paragraphe premier, seront punies de la réclusion de quinze ans à vingt ans si la violence, la menace, la détention ou la déprédation ont causé soit une maladie paraissant incurable, soit une incapacité permanente physique ou psychique, soit la perte complète de l'usage d'un organe, soit une mutilation grave.

La même peine sera appliquée si le pirate a soumis les personnes se trouvant à bord à des actes visés à l'article 417ter, alinéa premier, du Code pénal.

Les infractions visées au paragraphe premier, seront punies de la réclusion de vingt ans à trente ans si la violence, la menace, la détention ou la déprédation, exercée sans intention de donner la mort, l'ont pourtant causée.

Les infractions visées au paragraphe premier, seront punies de la réclusion à perpétuité si un meurtre ou un assassinat a été commis.

Les infractions visées au paragraphe premier, seront punies de la réclusion de quinze ans à vingt ans si une atteinte grave a été portée à la sécurité de la navigation ou à la protection de l'environnement.

§ 4. A l'exception des peines prévues par le paragraphe 1er, alinéa 2, et le paragraphe 2, les peines seront appliquées, lors même que la consommation du crime aura été empêchée par des circonstances indépendantes de la volonté des auteurs.

4) *En ce qui concerne votre Etat, y a-t-il eu des cas où des personnes soupçonnées d'actes de piraterie en haute mer ont été capturées par un navire de guerre ou un navire civil battant pavillon de votre pays ? Si oui, quelles mesures ont été prises pour détenir et/ou poursuivre ou punir par la suite ces personnes ?*

La Belgique a connu un cas (au large du Kenya, dans le cadre de l'Opération ATALANTA) dans lequel six personnes soupçonnées d'actes de piraterie en haute mer ont été capturées par un navire de guerre battant pavillon belge. Considérant que les critères d'opportunité n'étaient pas réunis en l'espèce le Procureur fédéral (exclusivement compétent dans cette matière au regard de la loi belge) a décidé de ne pas poursuivre les suspects en Belgique. Dès lors, les autorités militaires belges qui détenaient les personnes suspectes de piraterie ont agi conformément aux règles imposées par ATALANTA. Le manque de solutions à ce niveau a rapidement eu comme conséquence que le Commandant de la frégate belge s'est tourné vers les autorités judiciaires kenyanes pour les inviter à se saisir de 5 des 6 pirates arrêtés, ce que le Kenya a refusé de faire. Exposons, pour être complet, que le 6ème suspect avait entre-temps été reconnu formellement comme ayant été le co-auteur d'un acte de piraterie précédent commis sur un navire battant pavillon belge, ce qui a eu pour conséquence que ce suspect-là a bien été ramené et poursuivi en Belgique.

5) *En ce qui concerne votre Etat, y a-t-il eu des cas où des personnes soupçonnées d'actes de piraterie ont été remises en liberté ? Si oui, quelle en a été la raison ?*

Ce fut le cas pour 5 des 6 personnes suspectées d'acte de piraterie dont question à la question précédente. Après l'échec des négociations avec les autorités judiciaires kenyanes, le manque de solutions a obligé le Commandant de la frégate belge de remettre en liberté les 5 suspects en les déposant sur une plage près de Mogadiscio.

6) *Votre Etat a-t-il jamais mené des opérations pour libérer un navire capturé battant pavillon national, des membres d'équipage faisant partie de ses ressortissants (ou des citoyens étrangers) ou, au moyen de ses forces navales, contribué à libérer des navires battant pavillon d'autres pays mais dont l'équipage comprenait certains de ses ressortissants ? Les actions menées par les représentants de votre Etat pour libérer les navires ou les membres d'équipage ont-elles eu des conséquences juridiques ?*

La Belgique a, à plusieurs reprises, participé à l'Opération ATALANTA mise sur pied par l'Union européenne. Durant ces campagnes de sécurisation du trafic maritime au large de la Somalie, la frégate belge présente sur place n'a jamais eu, sensu stricto, à participer à des actions de type militaire à l'encontre de pirates impliqués dans les actions énumérées à la question. Par contre, dans le cas de la prise d'otage de l'équipage du navire « Pompéi » battant pavillon belge, les autorités belges ont mené des négociations avec les pirates afin de libérer le navire et les membres de son équipage contre le paiement d'une rançon. Une procédure judiciaire a ensuite été introduite en Belgique, laquelle a donné lieu, jusqu'à présent, à l'arrestation, au rapatriement et au jugement de deux suspects. Le premier a été condamné à une peine d'emprisonnement de 10 ans pour des faits de piraterie, le dossier du second est actuellement pris en délibéré par le tribunal correctionnel de Brugge (jugement prononcé le 12 novembre 2012). Il n'est pas impossible que dans un avenir proche

d'autres personnes soient poursuivies également pour le fait de piraterie commis contre le navire belge « Pompéi ».

7) *Quel est le fondement juridique des droits et obligations et de l'autorité procédurale d'un capitaine de navire ou d'un commandant de navire militaire en matière d'arrestation, d'interrogatoire, de détention et de transfert éventuel de personnes soupçonnées d'actes de piraterie aux fins de l'administration de la justice ?*

- Loi du 30 décembre 2009 relative à la lutte contre la piraterie maritime ;
- loi relative à la lutte contre la piraterie maritime et modifiant le Code judiciaire ;
- loi du 5 juin 1928 portant révision du Code disciplinaire et pénal pour la marine marchande et la pêche maritime.

8) *Dans la législation de votre pays, quels droits sont reconnus aux personnes arrêtées qui sont soupçonnées d'actes de piraterie ou de vol commis en mer (droits de la défense, droit à un interprète, etc.) lorsqu'elles font l'objet d'une procédure judiciaire à bord d'un navire ?*

Droit commun adapté. Ainsi la loi relative à la lutte contre la piraterie maritime prévoit par exemple que :

- la privation de liberté qui ne peut en aucun cas dépasser vingt-quatre heures doit être confirmée dans les vingt-quatre heures par le procureur fédéral. A défaut, l'intéressé est remis en liberté. La décision du procureur fédéral est immédiatement communiquée à l'intéressé par le commandant ;
- l'audition de la personne privée de liberté peut se faire par des moyens radio, téléphoniques, audio-visuels ou d'autres moyens techniques qui permettent une transmission directe de la voix entre le juge d'instruction et le suspect tout en garantissant la confidentialité de leurs échanges. Si l'audition de la personne privée de liberté est impossible en raison de circonstances exceptionnelles, le juge d'instruction doit alors auditionner les personnes qui sont en mesure d'exposer les charges pesant contre cette personne ;
- l'intéressé est immédiatement informé de la décision du juge d'instruction par le commandant et une copie du mandat d'arrêt provisoire lui est délivrée dès que possible. Le commandant consigne dans un procès-verbal l'heure précise à laquelle l'intéressé a été informé de la décision du juge d'instruction ainsi que l'heure précise à laquelle la copie du mandat d'arrêt provisoire lui a été délivrée.

9) *Comment la législation de votre pays régit-elle l'ordonnance et la durée de détention d'une personne soupçonnée d'actes de piraterie ou de vol commis en mer à bord d'un navire et*

durant son transfert aux fins de l'administration de la justice ou vers une autre partie pour des poursuites pénales ?

Voir question 10.

10) *Comment votre Etat veille-t-il à ce que les normes légales relatives à la durée maximale de détention concernant ces personnes soient respectées en cas de transfert aux fins de l'administration de la justice depuis des zones éloignées en haute mer ?*

Notre législation stipule que :

- La privation de liberté ne peut en aucun cas dépasser vingt-quatre heures. La privation de liberté doit être confirmée dans les vingt-quatre heures par le procureur fédéral. A défaut, l'intéressé est remis en liberté;
- Si le procureur fédéral estime qu'une personne privée de liberté pour des actes de piraterie devrait être placée sous mandat d'arrêt, il requiert le juge d'instruction qui peut décerner un mandat d'arrêt provisoire. Le mandat d'arrêt provisoire doit être décerné dans les vingt-quatre heures de la privation de liberté initiale et est valable jusqu'à vingt-quatre heures qui suivent l'arrivée du détenu sur le territoire du Royaume et au maximum un mois ;
- dans l'hypothèse où les poursuites sont exercées en Belgique, l'inculpé sera transféré en Belgique aussi rapidement que les circonstances le permettent. Dans les vingt-quatre heures de son arrivée sur le territoire du Royaume, il sera présenté physiquement au juge d'instruction et interrogé. Le juge d'instruction vérifie si les délais de vingt-quatre heures qui suivent l'arrivée du détenu sur le territoire du Royaume et d'un mois maximum ont été respectés. A défaut d'audition dans les vingt-quatre heures ou en cas de non-respect des délais, l'inculpé est remis en liberté.

11) *Comment votre Etat veille-t-il à la participation des enquêteurs, des procureurs et des juges à bord des navires militaires battant pavillon national qui escortent les navires commerciaux et patrouillent dans les zones de haute mer exposées à la piraterie ?*

Outre ses compétences exclusives en matière de piraterie maritime, le parquet fédéral est également compétent pour les infractions commises par les militaires à l'étranger. Dans ce cadre, à l'instar d'autres contacts team organisés là où l'armée belge se déplace, il a été convenu qu'un magistrat fédéral puisse être à bord de la frégate belge lorsque celle-ci participe à l'opération ATALANTA. C'est ainsi qu'en 2010, un magistrat fédéral a participé à bord à une partie de la mission ATALANTA et qu'il est prévu cette année de réitérer l'expérience. Dans les deux cas, il était accompagné d'un enquêteur. Le but de la présence à bord d'un magistrat fédéral et du policier spécialisé en milieu militaire est surtout de veiller à l'application stricte des lois en vigueur lorsque des personnes

suspectées de piraterie sont arrêtées, de faciliter la coopération internationale et de veiller à l'accomplissement des formalités légales dans les meilleures conditions. Les juges d'instruction ne sont, quant à eux, pas à bord mais peuvent, si nécessaire, communiquer avec le Commandant et les détenus via vidéo-conférence.

12) *Votre Etat a-t-il signé des accords (dispositifs) internationaux régissant la participation ou l'aide de membres de forces de l'ordre étrangères aux enquêtes sur des bateaux arrêtés par l'un de ses navires militaires au cours d'une opération visant à sauver ces derniers des pirates ?*

Non.

13) *Votre Etat est-il partie à des accords (dispositifs) internationaux régissant le transfert de personnes soupçonnées d'actes de piraterie vers des Etats côtiers en vue d'engager des poursuites pénales à leur rencontre ?*

Non.

14) *Y a-t-il eu des cas de transfert où le pays de destination a dû renvoyer les personnes soupçonnées d'actes de piraterie vers le pays ayant procédé au transfert, faute de preuves concernant l'infraction ou l'acte de piraterie ? Dans de tels cas, quelles mesures ont été prises par le pays ayant procédé au transfert ?*

La Belgique n'a jamais été confrontée au cas où le transfert des personnes soupçonnées vers la Belgique n'avait pas donné lieu à des poursuites en Belgique.

15) *Les navires commerciaux battant pavillon de votre pays ont-ils recours aux services d'entreprises militaires et de sécurité privée (EMSP) qui proposent d'escorter les navires dans les zones des routes commerciales internationales exposées à la piraterie ?*

Il n'y a jusqu'à ce jour pas de législation spécifique concernant les des entreprises de sécurité à bord de navires battant le pavillon belge. En absence d'une telle réglementation spécifique, l'administration de l'inspection des navires battant le pavillon belge est d'avis que le droit criminel, y inclus les dispositions interdisant l'emploi des entreprises de sécurité non autorisés, et le port d'armes non autorisé, sont d'application aux navires battant pavillon belge. Le Conseil des Ministres a approuvé le 11 octobre 2012 un projet de loi visant à permettre les activités de surveillance, protection et sécurisation contre la piraterie maritime de manière armée à bord de navires battant le pavillon belge par des entreprises de sécurité maritimes autorisées à cet effet par l'autorité belge, dans des zones à haut risque de piraterie définies.

16) *Quelles dispositions législatives s'appliquent aux activités des EMSP qui ne relèvent pas de la compétence de votre Etat, notamment sur les aspects tels que l'octroi de licences et le contrôle des activités des EMSP, l'utilisation d'armes et l'entrée dans les ports de pays étrangers avec des gardes et des armes à bord ?*

L'octroi de licences et le contrôle des activités des entreprises, ainsi que l'utilisation des armes à bord de navires battant pavillon belge tombent sous la juridiction belge et le projet de loi susmentionné en règle les modalités. Cependant, un navire étranger naviguant dans la mer territoriale d'un autre Etat que l'Etat du pavillon du navire, ou faisant escale dans un de ses ports peut pour certains aspects être assujéti à la double juridiction de l'Etat du pavillon et de l'Etat Côtier. Le projet de loi susmentionné prévoit notamment l'obligation pour l'entreprise de sécurité maritime de démontrer que les armes dont ses agents seront équipés sur place, dans l'exercice des activités de surveillance et de protection à bord de navires pour lutter contre la piraterie, sont conservées et montées à bord dans les ports concernés, conformément à la législation en vigueur étrangère.

17) *Votre pays a-t-il rencontré des problèmes juridiques ou administratifs pour garantir l'accès de ses navires dans les ports de pays étrangers avec des gardes armés à bord ? Si oui, comment (par quels moyens) les a-t-il résolus ?*

Voir question 16 et 17.

CYPRUS / CHYPRE

1) *Can the International legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

At present the international legal framework although gives the grounds for a State to protect its citizens and their property from Piracy, in real terms it is proven to be ineffective. The protection of vessels passing from areas where acts of Piracy have been witnessed is not an easy task from the coastal state especially where such areas have political and social instability. Vessels passing from such waters are vulnerable to such acts as they have no means of being self protected. At present the issue of vessels being capable of self protection depends solely on the flag state legislation. The international legal framework should be supplemented so as to enforce measures through the IMO to improve protection and combat Piracy in international waters.

2) *At what extent is the legislation of your state adapted to prosecute persons suspected of piracy and robbery at sea?*

Article 69 of the Criminal Code, CAP 154, establishes as criminal offence the acts of piracy. The Criminal Code, according to article 5, applies, inter alia, to acts of piracy committed in a foreign state by any person and also to Cyprus and foreign flag vessels.

Furthermore, *The Protection of Cyprus Ships Against Acts of Piracy and Other Unlawful Acts Law of 2012 (Law 77(I)/2012*”also criminalizes piracy and gives the right to the Master of the vessel and members of the crew to arrest and detain persons who committed, or attempted to commit illegal acts on board a vessel, including the act of Piracy in international waters. Law 77(I)/2012 also gives the right to the Master of the ship to detain the equipment used for the illegal act including but not limited to arms and guns.

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your state?*

Law 77(I)/2012 and the Criminal Code establish piracy as a criminal offence. Robbery at sea is included in the definition of “piracy” as shown below, art. 2.L.77 (I)/2012:

“piracy” means:

(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, and directed:

- (i) on the high seas, against another ship, or against persons or property on board such ship;
- (ii) against a ship, persons or property in a place outside the jurisdiction of any State;

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

(C) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b) above;

4) *As far as your state is concerned; have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your state? If so what measures were taken to detain and/or subsequently prosecute or punish them?*

N/A

5) *As far as your state is concerned have there been cases when persons suspected of piracy were released? If so what was the reason for that*

N/A

6) *Has your state ever conducted operations to release a capture vessel flying the flag of your State, members of a crew were citizens of your of your State (or foreign citizens), or using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among the crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

The Cyprus Port and Marine Police Unit, Cyprus Police Headquarters, was not involved so far in a case of piracy and freeing a vessel and/or her crew as no such case ever happened in the area.

7) *What is the legal foundation of the rights and obligations and procedural authority of a vessel captain or commanding officers of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

Law 77(I)/2012 provides for the powers and obligations of vessel captains and/or commanding officers (military Vessels) in relation to the arrest / detention and transfer of persons and the search/ detention of property.

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc) under your States law when they undergo legal proceedings on board a vessel?*

Article 7 (2) of Law 77(I)/2012 provides that every arrest, search, detention, seizure, impoundment, or custody made by the master and/or crew of the ship pursuant to the provisions of subsection (1) of Article 7 of Law 77(I)/2012 constitutes arrest, search, detention, seizure, impoundment, or custody made within the meaning of the provisions of the Criminal Procedure

Code, Cap.155 and Laws of 1972 to Law No. 2 of 2012, which apply proportionally. Moreover, Law 163(I)/2005 provides for the rights of arrested and detained persons.

9) *How does your States law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution*

The Criminal Procedure Code, in particular article 24, as mentioned above applies proportionally. Relevant provisions also exist in article 11 of the Cyprus Constitution.

10) *How does your state ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

Articles 8, 9 and 10 of the Law 77(I)/2012 provide that the Master of the ship is obliged to inform the flag state about the arrest of a person, the conditions of his/her custody. The national authorities have the right to give guidelines to the Master of the ship on the conditions of the custody which should be met based on national legislation and the Master of the Ship is obliged to follow the guidelines given by the National Authorities.

11) *How does your state ensure the application of investigators, prosecutors and judges on board of military vessels of your state escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

N/A

12) *Has your state signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigation or provisions of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

13) *Is your State a party to any international agreements (arrangements governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

The Republic of Cyprus is a State Party to the following relevant International Conventions which provide for the duty between State Parties to cooperate:

UNCLOS (1982) – United Nations Convention for the Law of the Sea ratified by Law 203/88.
UN Convention for the Suppression of Unlawful Act against the Safety of Maritime Navigation,
Ratified by Law 17(III)/1999
UN Convention on Transnational Organized Crime Ratified by Law 11(III)/2003

The Republic of Cyprus has also signed 31 bilateral agreements and/or Memorandum of Understandings with other Countries on police cooperation matters.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

N/A

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone arts of international trade routes?*

Article 12 of the Law 77 (I)/2012 provides that the vessels under Cyprus flag have the right to employ private security companies on board vessels under certain criteria and after the relevant licenses have been issued. It is expected that certain merchant vessels flying the Cyprus flag will make use of this provision of the Law.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your state, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board.*

If a PMSC is providing services on Cyprus flag vessel, then it is subject to the jurisdiction of Cyprus legislation.

For PMSC vetted to provide services on board Cyprus flag ships, there is a process of submitting an application which is reviewed as per the provisions of the Law 77(I)/2012, and if the review indicates compliance to the provisions of the Law then the company is allowed to render such services. Those provisions include the approval of the use of weapons when the ship is at High Seas or within territorial/internal waters of another state, subject to the consent of that state. Also include provisions about the inspection/audit/investigation of the activities of a PMSC when the Competent Authority considers necessary.

For the entry of ships carrying on board guards or arms the PMSC is responsible to obtain and submit to the Competent Authority all required licenses when there will be a transfer/loading/unloading/storage etc of arms within the territory of another state.

17) *Has your state had any legal or administrative problems in ensuring access of vessels flying the flag of yours State with armed guards on board to the ports of foreign State? If so how (through what channels) were they addressed?*

N/A

FINLAND / FINLANDE

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

The current legal framework set out in the 1982 United Nations Convention on the Law of the Sea (UNCLOS) that also reflects customary international law can be considered sufficient. This framework is supported by other instruments including the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and other directive mechanisms such as best practices established by the International Maritime Organization (IMO). The legal framework is also complemented by UN Security Council resolutions, especially as regards Somalia. States are also bound by international human rights and other international and national obligations.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

And

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

Piracy is understood in this connection as defined in Article 101 of the United Nations Convention of the Law of the Sea, including the requirement that the act is committed in the high seas or in a place outside the jurisdiction of any State.

According to Finnish Penal Code and Decree issued on the basis of Section 7 of Chapter 1 of the Penal Code, piracy is defined as follows: *“Homicide, assault, deprivation of liberty or robbery directed at a person on board a vessel or aircraft, or seizure, theft or damage of a vessel, aircraft or property on board a vessel or aircraft that is to be deemed piracy as referred to in the United Nations Convention on the Law of the Seas (Treaties of Finland 50/1996),(118/1999)”*.

Chapter 1 of the Finnish Penal Code contains extensive rules on extraterritorial jurisdiction. According to its provisions Finnish law applies to an offence connected with a Finnish vessel (section 2). Finnish law applies also to an offence committed outside of Finland and directed at a Finnish citizen, a Finnish corporation, foundation or other legal entity, or a foreigner permanently resident in Finland (section 5). Furthermore, Finnish law applies to an offence committed by a Finnish citizen. The so called active nationality principle is not limited to Finnish citizens, but covers also persons permanently resident in Finland, citizens of other Nordic States or persons permanently resident in one of those countries (section 6). When applying the above mentioned provisions on active and passive nationality, it is required that the act may be punishable by imprisonment of more than six months.

In accordance with Penal Code Chapter 1 Section 7 Finnish law applies also to an offence committed outside of Finland where the punishability of the act, regardless of the law of the place of commission, is based on an international agreement binding on Finland or on another statute or regulation internationally binding on Finland (international offence). A decree issued by virtue of this provision refers to the United Nations Convention of the Law of the Sea.

As a main rule, a criminal case where the offence was committed abroad may not be investigated in Finland without a prosecution order by the Prosecutor-General. There are certain exceptions to this rule, for instance in situations where the offence has been committed by a Finnish citizen or directed against Finland (section 12 of Chapter 1 of the Penal Code).

Finland participated with a vessel to the EUNAVFOR Atalanta, the European Union military crisis operation against piracy off the coast of Somalia in the beginning of 2011 (and continues to send officials to the Operational Headquarters of EUNAVFOR Atalanta). For the purposes of Finland's participation to the Atalanta operation an Act on the Handling of Criminal Matters concerning Persons Suspected of Piracy or Armed Robbery in connection with EUNAVFOR Atalanta, the European Union Military Crisis Management Operation (1034/2010) was adopted. The act applies to the procedure to be followed in situations where during the operation a person apprehended as suspected of piracy or armed robbery is kept on board a vessel under Finnish flag, or in other cases where Finland is inquired whether it will exercise criminal jurisdiction in the matter.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

And

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

Finnish Mine Layer FNS Pohjanmaa captured and detained 18 suspected pirates in April 2011 while participating in operation Atalanta. The EUNAVFOR Atalanta had to release the suspects, as no state was willing to accept the transfer of the suspects and to exercise jurisdiction. In accordance with the Act on the Handling of Criminal Matters in connection with operation Atalanta (1034/2010), the Central Criminal Police of Finland decided that in the absence of a link required by the act, Finland could not initiate criminal investigations and try the suspects in Finland.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens*

of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?

No.

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

Public Order Act 612/2003: Pursuant to section 2, a vessel is a public place with the exception of cabins. Section 22 of the Act contains provisions on appointing a security steward and section 23 on the duties of a security steward.

The Security Stewards Act (533/1999) is applied also on board vessels. Section 7 of the Act contains provisions on the removal, apprehension and custody of individuals. Pursuant to subsection 4 of the said section, anyone apprehended under the Act on board a vessel may (however) be kept in custody on the orders of the vessel's captain until the vessel is next in port, unless the reason for the apprehension has ceased to be valid prior to that. Pursuant to subsection 6 of the same section, the security steward may place a person taken into custody only in such a space administered by the security steward that the police department of the competent population register district has before the opening of the event inspected and approved. The security steward must draw up a notice of taking into custody of each person held in custody and sign it. The security steward must submit the notice to the police department of the population register district without delay after the end of the event. (29.9.2006/847)

Provisions on maintaining law and order are laid down in Chapter 13, section 18 of the Seafarers' Employment Contracts Act (756/2011). Under the said section, the shipmaster and persons assisting the shipmaster are entitled to use such forcible measures on board that are necessary for maintaining law and order and that can be considered defensible taking into account the dangerousness of the resistance and the situation otherwise. Provisions on the exaggeration of the use of forcible measures are laid down in Chapter 4, sections 6(3) and 7 of the Criminal Code of Finland (39/1889). Furthermore, a shipmaster transporting passengers in accordance with Chapter 15 of the Maritime Act may appoint security stewards to maintain law and order and to monitor safety on board the ship and in its immediate vicinity. Provisions on the qualification requirements, training, powers and duties of such security stewards are laid down in the Security Stewards Act (533/1999).

According to the Government Proposal 90/2005, further provisions on the contents of a notice of taking into custody shall be issued by a decree of the Ministry of the Interior, as provided in section 13 of the Security Stewards Act. The notice of taking into custody may, among other things, contain information on the reason for the apprehension, time for holding the person in custody, frisk search

carried out at the time of taking the person into custody, and objects and substances taken away in the frisk.

As regards operation Atalanta, the powers of the EU Operation Commander have been defined in the Council Joint Action 2008/851/CFSP.

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

Finland is bound to international obligations concerning procedural and other fundamental rights and such obligations are as law in force in Finland. Unless authorised by an international instrument and enabled by law, Finnish authorities are not entitled to carry out legal proceedings outside Finland.

Where criminal proceedings take place within the territory of Finland, the Criminal Investigations Act applies. The person has i.e. the right to a lawyer and under certain conditions the right to a public defender, as well as the right to interpretation.

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

As stated above, unless agreed in an international instrument (such as e.g. operation Atalanta) and enabled by law, Finnish authorities do not have powers to arrest anyone, nor any other powers to use coercive measures or other investigative or procedural measure outside the territory of Finland

During operation Atalanta, when Finland has decided to initiate investigations, the Criminal Investigations Act along with other relevant national legislation applies. If possible, the trial on detention can be held on board via video link when the court has decided to do so in compliance with the Finnish Coercive Measures Act (450/1987) Chapter 1 Section 15 Subsection 2.

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

The suspects should be transferred from such remote areas for the administration of justice within the time limits stipulated by the law, when the aforementioned video link cannot be utilised. In some specific circumstances bringing the detained person promptly before a judge can be materially impossible, and this has been acknowledged even by the European Court of Human Rights (*Medvedyev and Other – France*, No 3394/03).

As stated above, Finnish authorities do not have criminal investigative powers outside the territory of Finland (including powers to arrest anyone / take somebody into custody), unless such powers are

authorised by law. As stated above, specific legislation was enacted for the operation Atalanta, when Finland participated in that operation.

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

As stipulated in the Act on the Defence Forces (551/2007) and the Act on Military Crisis Management (211/2006) Finnish military vessels could escort commercial vessels only while participating in a crisis management operation, i.e. operation Atalanta.

The forces serving in operation Atalanta have been assigned to perform initial investigations and to collect evidence when capturing suspects, after which the State that exercises jurisdiction will be responsible for the actual preliminary investigations.

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

No.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

The EU has negotiated transfer agreements that are set to guarantee respect for international law, notably international human rights law, so that no one shall be subjected to the death penalty, to torture or to any cruel, inhuman or degrading treatment or punishment, and so that the prohibition of arbitrary detention and the requirement of a fair trial will be respected. A State also needs the permission of EUNAVFOR to transfer a suspect to a third country. The EU has made transfer agreements with Kenya, Seychelles and Mauritius. Although the agreement with Kenya is no longer in force, Kenya continues to apply it on a case-by-case basis. The EU is currently negotiating with Tanzania, and has made overtures to Uganda, South-Africa and Mozambique.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

No.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

And

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

In principle, Finnish law is to be applied for all operations practiced on board of vessels flying the Finnish flag. So, when it comes to the activities of PMSC, Finnish Private Security Services Act and Firearms Act are to be applied. For example, the private security operators have to be licensed according to Private Security Services Act.

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

No.

FRANCE

1) *Le cadre juridique international qui existe actuellement peut-il être considéré comme suffisant pour lutter efficacement contre la piraterie maritime et les autres actes illégaux commis en mer, y compris le vol à main armée ? Faudrait-il l'améliorer (le moderniser) ou le compléter à cet égard ?*

Les conventions internationales qui permettent de lutter contre les actes illicites en mer sont les suivantes :

- **La convention des Nations Unies sur le droit de la mer** adoptée à Montego Bay le 10 décembre 1982

- **La convention des Nations Unies contre le trafic illicite de stupéfiants** et de substances psychotropes adoptée à VIENNE le 20 décembre 1988,

Ces conventions fournissent un cadre juridique international satisfaisant pour permettre à ce jour une lutte efficace contre la piraterie maritime et les autres actes illégaux en mer. Lorsque des Etats souhaitent approfondir leur coopération dans certaines zones ou dans certains domaines, le renforcement de leur coopération reste possible.

La France a ainsi signé l'accord de San José du 10 avril 2003 concernant la coopération en vue de la répression du trafic illicite maritime et aérien de stupéfiants et de substances psychotropes dans la région des Caraïbes.

2) *Jusqu'à quel point la législation de votre pays est-elle adaptée pour engager des poursuites judiciaires contre les personnes soupçonnées d'actes de piraterie et de vol commis en mer ?*

La législation française apparaît à ce jour tout à fait adaptée pour engager des poursuites judiciaires contre les personnes soupçonnées d'actes de piraterie. Depuis la loi du 5 janvier 2011, les juridictions pénales françaises sont compétentes pour juger des actes de piraterie ayant lieu en haute mer dans différentes hypothèses :

- Quand l'auteur des faits est français : dans tous les cas s'il s'agit d'un crime, et, en cas de délit, si les faits sont punis par la législation du pays où ils ont été commis (il faut également dans ce dernier cas, une plainte de la victime ou une dénonciation officielle des faits par le pays dans lequel les faits ont eu lieu) ;

- Lorsque la victime est française (il faut là encore une plainte de la victime ou une dénonciation officielle des faits par le pays dans lequel les faits ont eu lieu) ;

- Lorsque l'auteur est étranger mais se réfugie ensuite sur le territoire français et que la France refuse (pour certaines conditions limitativement énumérées) son extradition.

- En l'absence des critères précédents, quand les pirates ont été appréhendés par des agents français spécifiquement énumérés par la loi (Officiers de police judiciaire, commandants des bâtiments d'Etat, officiers de la marine nationale embarqués, commandants des aéronefs de l'Etat) et ce en l'absence de toute souveraineté étrangère revendiquée, et à défaut d'entente avec les autorités d'un autre Etat susceptible de retenir sa compétence juridictionnelle. (*Critère créé par la loi du 5 janvier 2011*)

3) *Quelles sont les mesures prévues dans votre législation nationale pour criminaliser les actes de piraterie et le vol commis en mer ? Comment la piraterie est-elle définie dans la législation de votre pays ?*

Il n'existe pas d'infraction de piraterie en droit français. En revanche, plusieurs infractions permettent de couvrir les comportements considérés comme des actes de piraterie au sens de la Convention de Montego Bay :

- Le **détournement de navire** (ou d'aéronef)
- **L'enlèvement** ou la **séquestration**
- La **participation à une association de malfaiteurs** lorsqu'elle est commise en vue de préparer les infractions de détournement de navire (ou d'aéronef), ou de séquestration liée à un détournement de navire ;

4) *En ce qui concerne votre Etat, y a-t-il eu des cas où des personnes soupçonnées d'actes de piraterie en haute mer ont été capturées par un navire de guerre ou un navire civil battant pavillon de votre pays ? Si oui, quelles mesures ont été prises pour détenir et/ou poursuivre ou punir par la suite ces personnes ?*

Oui. Dans 4 cas sur 5, des procédures judiciaires ont été ouvertes en France. Les personnes soupçonnées ont été ramenées sur le territoire national français et des mesures de détention provisoire ont été prises.

Un de ces affaires a donné lieu à un jugement définitif. Les autres sont en cours d'enquête ou de jugement.

5) *En ce qui concerne votre Etat, y a-t-il eu des cas où des personnes soupçonnées d'actes de piraterie ont été remises en liberté ? Si oui, quelle en a été la raison ?*

Oui une fois à notre connaissance car aucun Etat susceptible d'être compétent n'a voulu ouvrir de procédure juridictionnelle.

6) *Votre Etat a-t-il jamais mené des opérations pour libérer un navire capturé battant pavillon national, des membres d'équipage faisant partie de ses ressortissants (ou des citoyens étrangers) ou, au moyen de ses forces navales, contribué à libérer des navires battant pavillon d'autres pays mais dont l'équipage comprenait certains de ses ressortissants ? Les actions menées par les représentants de votre Etat pour libérer les navires ou les membres d'équipage ont-elles eu des conséquences juridiques ?*

Oui quatre fois. Nous ne pouvons apporter de précision sur le deuxième point s'agissant d'éléments couverts par le secret des enquêtes, toujours en cours à ce jour.

7) *Quel est le fondement juridique des droits et obligations et de l'autorité procédurale d'un capitaine de navire ou d'un commandant de navire militaire en matière d'arrestation, d'interrogatoire, de détention et de transfert éventuel de personnes soupçonnées d'actes de piraterie aux fins de l'administration de la justice ?*

Ce sont des dispositions légales qui figurent dans le code de la défense (article L1521-1 et suivants) et la loi du 15 juillet 1994 qui régissent les pouvoirs d'un commandant de bâtiment de l'Etat.

Lien vers la loi du 15 juillet 1994 :

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000713756&categorieLien=id>

Lien vers le code de la défense :

http://legifrance.gouv.fr/telecharger_pdf.do?cidTexte=LEGITEXT000006071307

8) *Dans la législation de votre pays, quels droits sont reconnus aux personnes arrêtées qui sont soupçonnées d'actes de piraterie ou de vol commis en mer (droits de la défense, droit à un interprète, etc.) lorsqu'elles font l'objet d'une procédure judiciaire à bord d'un navire ?*

Selon le droit français, la phase de privation de liberté à bord des navires est indépendante de la procédure judiciaire. C'est une phase administrative qui est régie par des dispositions spécifiques. La phase judiciaire ne commence que s'il est décidé que des poursuites seront exercées à l'encontre des pirates (ce qui suppose qu'un critère de compétence existe) et qu'après que les pirates soupçonnés aient été ramenés sur le territoire national.

Néanmoins, durant la phase de privation de liberté à bord des navires, la personne privée de liberté a le droit à un examen de santé. Un juge vérifie les conditions de cette privation de liberté et peut s'entretenir avec les personnes concernées. Si nécessaire, un interprète intervient pour les entretiens et pour la notification de la décision du juge (cf. 9).

9) *Comment la législation de votre pays régit-elle l'ordonnance et la durée de détention d'une personne soupçonnée d'actes de piraterie ou de vol commis en mer à bord d'un navire et durant son transfert aux fins de l'administration de la justice ou vers une autre partie pour des poursuites pénales ?*

Quand un commandant de navire retient à son bord des personnes soupçonnées de piraterie, il en avertit immédiatement le Procureur de la République qui doit saisir un juge (le juge des libertés et de la détention) dans un délai de 48 heures à compter du début de la privation de liberté. Ce juge statue sur la prolongation éventuelle de la privation de liberté. Il dispose pour cela de toutes les informations utiles à sa mission (à savoir les informations initiales et le compte-rendu de l'examen de santé de la personne privée de liberté). Le juge peut également s'entretenir avec cette personne (avec l'aide d'un interprète si nécessaire).

Le juge, par une ordonnance insusceptible de recours, prolonge la mesure privative de liberté pour une durée de 120 heures maximum. Cette décision est ensuite renouvelable dans les mêmes conditions de fond et de forme durant tout le temps nécessaire pour que les personnes appréhendées soient remises à l'autorité compétente, que celle-ci soit française ou étrangère.

10) *Comment votre Etat veille-t-il à ce que les normes légales relatives à la durée maximale de détention concernant ces personnes soient respectées en cas de transfert aux fins de l'administration de la justice depuis des zones éloignées en haute mer ?*

Cf. réponse au point 9.

11) *Comment votre Etat veille-t-il à la participation des enquêteurs, des procureurs et des juges à bord des navires militaires battant pavillon national qui escortent les navires commerciaux et patrouillent dans les zones de haute mer exposées à la piraterie ?*

Ceci n'est pas prévu par la loi.

12) *Votre Etat a-t-il signé des accords (dispositifs) internationaux régissant la participation ou l'aide de membres de forces de l'ordre étrangères aux enquêtes sur des bateaux arrêtés par l'un de ses navires militaires au cours d'une opération visant à sauver ces derniers des pirates ?*

Non, il n'a pas été signé d'accords spécifiques en ce sens.

13) *Votre Etat est-il partie à des accords (dispositifs) internationaux régissant le transfert de personnes soupçonnées d'actes de piraterie vers des Etats côtiers en vue d'engager des poursuites pénales à leur rencontre ?*

La France n'a pas signé de tels accords. En revanche, l'Union européenne a conclu des accords de ce type avec Les Seychelles et l'Ile Maurice.

14) *Y a-t-il eu des cas de transfert où le pays de destination a dû renvoyer les personnes soupçonnées d'actes de piraterie vers le pays ayant procédé au transfert, faute de preuves concernant l'infraction ou l'acte de piraterie ? Dans de tels cas, quelles mesures ont été prises par le pays ayant procédé au transfert ?*

Non.

15) *Les navires commerciaux battant pavillon de votre pays ont-ils recours aux services d'entreprises militaires et de sécurité privées (EMSP) qui proposent d'escorter les navires dans les zones des routes commerciales internationales exposées à la piraterie ?*

A ce jour, aucune disposition légale ne prévoit que des gardes armés peuvent se trouver à bord des navires battant pavillon français. Le recours à de telles entreprises est illégal à plusieurs titres et en particulier parce qu'en France le port d'armes est strictement interdit, sauf autorisation légale spécifique.

16) *Quelles dispositions législatives s'appliquent aux activités des EMSP qui ne relèvent pas de la compétence de votre Etat, notamment sur les aspects tels que l'octroi de licences et le contrôle des activités des EMSP, l'utilisation d'armes et l'entrée dans les ports de pays étrangers avec des gardes et des armes à bord ?*

Il n'existe aucune disposition sur ce point.

17) *Votre pays a-t-il rencontré des problèmes juridiques ou administratifs pour garantir l'accès de ses navires dans les ports de pays étrangers avec des gardes armés à bord ? Si oui, comment (par quels moyens) les a-t-il résolus ?*

Sans objet.

GEORGIA / GEORGIE

1) *Le cadre juridique international qui existe actuellement peut-il être considéré comme suffisant pour lutter efficacement contre la piraterie maritime et les autres actes illégaux commis en mer, y compris le vol à main armée ? Faudrait-il l'améliorer (le moderniser) ou le compléter à cet égard ?*

Réponse : -----

2) *Jusqu'à quel point la législation de votre pays est-elle adaptée pour engager des poursuites judiciaires contre les personnes soupçonnées d'actes de piraterie et de vol commis en mer ?*

Réponse : Le Code Pénal de la Géorgie donne la définition de la piraterie maritime et de la compétence de la Géorgie sur des actes criminels commis sur un navire battant pavillon de la Géorgie ou commis contre ce navire. En outre, la compétence géorgienne sur la piraterie maritime et de vol commis en mer découle des obligations internationales prises par la partie géorgienne en signant à cet effet des instruments juridiques contraignant.

3) *Quelles sont les mesures prévues dans votre législation nationale pour criminaliser les actes de piraterie et le vol commis en mer ? Comment la piraterie est-elle définie dans la législation de votre pays ?*

Réponse : La définition de la piraterie est donnée à l'article 228 du Code Pénal de la Géorgie.

« Article 228. Piraterie

1. Piraterie, c'est-à-dire un acte d'agression, commis contre un navire de mer ou autre moyen de transport navigable, avec l'emploi de la force ou la menace de son emploi, dans le but de prise de possession de bien d'autrui ou de son appropriation illégale, est punie de sept à dix ans de privation de liberté.

2. Même fait :

a) commis plus d'une fois ;

b) ayant entraîné le décès d'une personne ou autre conséquence grave, sont punis de dix à quinze ans de privation de liberté.»

4) *En ce qui concerne votre Etat, y a-t-il eu des cas où des personnes soupçonnées d'actes de piraterie en haute mer ont été capturées par un navire de guerre ou un navire civil battant pavillon de votre pays ? Si oui, quelles mesures ont été prises pour détenir et/ou poursuivre ou punir par la suite ces personnes ?*

Réponse : Non

5) *En ce qui concerne votre Etat, y a-t-il eu des cas où des personnes soupçonnées d'actes de piraterie ont été remises en liberté ? Si oui, quelle en a été la raison ?*

Réponse : Non

6) *Votre Etat a-t-il jamais mené des opérations pour libérer un navire capturé battant pavillon national, des membres d'équipage faisant partie de ses ressortissants (ou des citoyens étrangers) ou, au moyen de ses forces navales, contribué à libérer des navires battant pavillon d'autres pays mais dont l'équipage comprenait certains de ses ressortissants ? Les actions menées par les représentants de votre Etat pour libérer les navires ou les membres d'équipage ont-elles eu des conséquences juridiques ?*

Réponse : Non

7) *Quel est le fondement juridique des droits et obligations et de l'autorité procédurale d'un capitaine de navire ou d'un commandant de navire militaire en matière d'arrestation, d'interrogatoire, de détention et de transfert éventuel de personnes soupçonnées d'actes de piraterie aux fins de l'administration de la justice ?*

Réponse : Le code maritime de la Géorgie en son article 60 définit l'autorité procédurale d'un capitaine de navire en plein navigation. Notamment, lors de la perpétration d'un acte criminel prévu et réprimé par la législation pénale géorgienne, le capitaine de navire assure les fonctions de l'autorité d'enquête. A cet effet, il se fonde sur le Code de procédure pénale de la Géorgie et sur l'instruction relative à l'exécution des actes procéduraux sur un navire maritime étant en navigation.

8) *Dans la législation de votre pays, quels droits sont reconnus aux personnes arrêtées qui sont soupçonnées d'actes de piraterie ou de vol commis en mer (droits de la défense, droit à un interprète, etc.) lorsqu'elles font l'objet d'une procédure judiciaire à bord d'un navire ?*

Réponse : Dans ce cas, la personne arrêtée possède tous les droits garantis aux personnes arrêtées qui sont sujettes d'une procédure judiciaire ordinaire. Quoique, le fait de ne pas pouvoir faire valoir de ses droits en raison des causes objectives, ne peut pas être considéré comme une entrave à une bonne administration de la justice.

9) *Comment la législation de votre pays régit-elle l'ordonnance et la durée de détention d'une personne soupçonnée d'actes de piraterie ou de vol commis en mer à bord d'un navire et durant son transfert aux fins de l'administration de la justice ou vers une autre partie pour des poursuites pénales ?*

Réponse : Conformément au Code maritime de la Géorgie, le capitaine peut prendre une décision d'arrêter une personne se trouvant à bord d'un navire et soupçonnée de la perpétration de fait prévu et réprimé par la législation pénale géorgienne. Le capitaine a une obligation de transmettre cette personne dans le premier port de l'Etat aux organes judiciaires compétents. Dans le cas de la nécessité le capitaine a le droit d'envoyer en Géorgie cette personne et les matériaux correspondants, avec un autre navire enregistré en Géorgie. Ces clauses ne sont pas applicables lorsqu'il s'agit d'accomplissement des obligations découlant des instruments juridiques internationaux contraignant.

10) *Comment votre Etat veille-t-il à ce que les normes légales relatives à la durée maximale de détention concernant ces personnes soient respectées en cas de transfert aux fins de l'administration de la justice depuis des zones éloignées en haute mer ?*

Réponse : -----

11) *Comment votre Etat veille-t-il à la participation des enquêteurs, des procureurs et des juges à bord des navires militaires battant pavillon national qui escortent les navires commerciaux et patrouillent dans les zones de haute mer exposées à la piraterie ?*

Réponse : -----

12) *Votre Etat a-t-il signé des accords (dispositifs) internationaux régissant la participation ou l'aide de membres de forces de l'ordre étrangères aux enquêtes sur des bateaux arrêtés par l'un de ses navires militaires au cours d'une opération visant à sauver ces derniers des pirates ?*

Réponse : La Géorgie n'a pas signé des accords internationaux régissant spécialement ce sujet.

13) *Votre Etat est-il partie à des accords (dispositifs) internationaux régissant le transfert de personnes soupçonnées d'actes de piraterie vers des Etats côtiers en vue d'engager des poursuites pénales à leur rencontre ?*

Réponse : La Géorgie n'a pas signé des accords internationaux régissant spécialement ce sujet.

14) *Y a-t-il eu des cas de transfert où le pays de destination a dû renvoyer les personnes soupçonnées d'actes de piraterie vers le pays ayant procédé au transfert, faute de preuves concernant l'infraction ou l'acte de piraterie ? Dans de tels cas, quelles mesures ont été prises par le pays ayant procédé au transfert ?*

Réponse : Non

15) *Les navires commerciaux battant pavillon de votre pays ont-ils recours aux services d'entreprises militaires et de sécurité privées (EMSP) qui proposent d'escorter les navires dans les zones des routes commerciales internationales exposées à la piraterie ?*

Réponse : -----

16) *Quelles dispositions législatives s'appliquent aux activités des EMSP qui ne relèvent pas de la compétence de votre Etat, notamment sur les aspects tels que l'octroi de licences et le contrôle des activités des EMSP, l'utilisation d'armes et l'entrée dans les ports de pays étrangers avec des gardes et des armes à bord ?*

Réponse : -----

17) *Votre pays a-t-il rencontré des problèmes juridiques ou administratifs pour garantir l'accès de ses navires dans les ports de pays étrangers avec des gardes armés à bord ? Si oui, comment (par quels moyens) les a-t-il résolus ?*

Réponse : -----

GERMANY / ALLEMAGNE

General remarks

The questionnaire aims at compiling information on national approaches to combating piracy. The questions cover a very broad range of topics starting with existing national criminal law, practical experiences, Criminal Procedure Law, trials and enforcement of sentences in third states and ending with armed guards on civil vessels. It might be interesting to evaluate all those topics but I'm afraid it will be difficult to obtain sufficient in-depth answers at such short notice.

When piracy was first discussed at the CoE 2010 and the Parliamentary Assembly asked to tackle some issues, most of the member states did not have much experience and there had not been other fora which allow sharing best practices and developing standards in this field. The situation had changed since then.

Therefore I would recommend that we try to identify specific topics which are not discussed elsewhere and where the input of the Council of Europe would be welcome. That might not cover all issues mentioned by the Parliamentary Assembly. Nevertheless that could provide a more useful result.

Questionnaire

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

Answer to questions 1 – 3

Section 316c of the German Criminal Code (assaults against air and maritime transport) is the main criminal provision relevant to the fight against piracy. Pursuant to this section, any person who uses force or attacks the freedom of decision of a person or engages in other conduct in order to gain control of, or influence the navigation of, an aircraft employed in civil air traffic which is in flight or a ship employed in civil maritime traffic incurs criminal liability. Furthermore, any person who uses firearms or undertakes to cause an explosion or a fire, in order to destroy or damage such an aircraft or ship or any cargo on board, also incurs criminal liability under this provision. The offence is punishable by a prison sentence of not less than five (and up to fifteen) years. An aircraft which has already been boarded by members of the crew or passengers or the loading of the cargo of which has already begun or which has not yet been deboarded by members of the crew or passengers or the

unloading of the cargo of which has not been completed shall be equivalent to an aircraft in flight. The punishment is imprisonment for life or for not less than ten (and up to fifteen) years if by the act the perpetrator at least recklessly causes the death another person. Criminal liability is also incurred by a person who, in preparation of such an offence, produces, procures for himself or another, stores or supplies to another firearms, explosives or other materials designed to cause an explosion or a fire. This offence is punished with a prison term of between six months and five years.

This provision, as well as the other general criminal provisions that may be applicable, provide for the criminal prosecution of the offence of piracy as defined in section 316 c of the German Criminal Code. There is thus no need for legislative action.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

Answer

Yes, there have been such cases. As German warships operate under ATALANTA command the decision on follow up measures have not been taken by German authorities. German public prosecutors started in general more than 200 investigative procedures in piracy cases but in none of the cases involving a German warship persons have been transferred to Germany.

10 pirates have just been sentenced in Germany to imprisonment. They have been captured by a Dutch warship and extradited to Germany.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

Answer

Some persons have been released. They have to be released if there is not enough evidence to prove that they committed a crime.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

Answer

German warships operate under the ATALANTA command. There were no cases in which the German State conducted such operations.

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

Answer

As soon as an investigation is started against a person he has the same rights as any suspect in German criminal proceedings. He is informed about his rights. He is not obliged to cooperate with any investigator. He has the right to contact a lawyer. He has the right to get sufficient translations. Still, it is difficult to exercise such rights on board of a vessel or after an arrest in a foreign country. Modern communication facilities have to be used.

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

Answer

No. The only agreement with respect to specific investigations is the agreement on establishing a Joint Investigation Team with the Netherlands – but that agreement was signed by a public prosecutor and not by Germany.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

Answer

No persons have been returned to Germany.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

Answer

Yes.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

ITALY / ITALIE

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

Italy is bound by the international legal Framework concerning the fighting of maritime piracy and other illegal acts at sea which consist of :

- United Nation Convention on high sea adopted in Ginevra 29th April 1958
- United Nations Convention on the Law of the Sea (UNCLOS) adopted in Montego Bay on 10 December 1982.
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988.

As a Member State of European Union Italy is also bound by the following EU instruments:

- Joint Action 2008/851/CFSP on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (ATALANTA)
- Council Decision 2009/293/PESC concerning the 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 and detained by the European Union-led naval force (EUNAVFOR), and seized property in the possession of EUNAVFOR, from EUNAVFOR to Kenya and for their treatment after such transfer
- Council decision 2009/88/PESC concerning the conclusion of the Agreement between the European Union and the Republic of Djibouti on the status of the European Union-led forces in the Republic of Djibouti in the framework of the EU military operation Atalanta
- Commission Recommendation 2010/159/UE on measures for self-protection and the prevention of piracy and armed robbery against ships.

This recommendation provides Members State with best practice to deter piracy in the Gulf of Aden and off the coast of Somalia.

These instruments represent an important international framework that aims to fight and prevent sea piracy and other illegal acts at sea.

However the question could be raised about the effective and full implementation by all States of this instruments.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

Italy has implemented ATALANTA decision by Law n. 12 of 24 th February 2009.

At art. 2 of the law states that crimes committed by foreigners in the territories or on the high seas where interventions and international missions take place, against the State or Italian citizens

participants in the interventions and the missions, are punished always at the request of the Minister of Justice and after consulting the Minister defense for crimes committed against members of the Armed Forces.

Art. 5, paragraph 5, states that the offenses of piracy and ship suspected of piracy, whether committed on the high seas, whether committed in the territorial waters affected by ATALANTA mission, against the State, its properties or Italian citizens, are punished by the Italian judicial authority. In this cases it is not necessary the presence of the offender in the national territory nor the request of procedure from Ministry of Justice.

Except for this cases, the exercise of jurisdiction is provided by the international agreements and rules contained in Joint Action 2008/851/PESC and Decision 2009/293/PESC.

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

Italian navigation code at articles 1135 and 1136 describes and criminalize the offence of "Piracy" and "Vessel suspected of piracy".

According to art. 1135 of the Italian navigation code (Piracy) the vessel captain or a commanding officer of a National or foreign ship that commits acts of piracy in order to damage a national or foreign ship or commits violence on people on board of a national or foreign ship, is punished with the detention from 10 to 20 years.

For the other members of the crew and unrelated people the penalty is reduced.

According art. 1136 of the Italian navigation code (Vessel suspected of piracy), the vessel captain or a commanding officer of a National or foreign vessel, that owns illegally weaponry, sails without

ship's paper, is punished with the detention from 5 to 10 years. For the other members of the crew and unrelated people the penalty is reduced.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

On 30th September 2012 an Italian Navy warship called "Libeccio", under the ATALANTA mission in the Indian Ocean, arrested 10 Somali nationals who had committed acts of piracy against a Maltese and an Iranian vessels with the subsequent kidnapping of the crew. After the capture the judge for preliminary investigations authorized the application of custodial measures in prison.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

N/A

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

N/A

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

Italian legislation (Law 24 th February 2009, n. 12 concerning the Italian participation in international missions; law 31 January 2002, n. 6 urgent provision concerning the participation of military staff in the international operation called "Enduring Freedom"; law 22 July 2009, n. 100 urgent provision for the contrast of piracy) is the legal basis for such a case.

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

According art. 5 of the law 24th February 2009, n. 12 the arrest on board of a person suspected of piracy or robbery at sea maintains its efficacy if the report is transmitted to the public prosecutor and the hearing take place with the participation of the defender by 48 hours.

The defender or his substituted and the arrested may consult in confidence, by means of technical devices. The arrested has also the right to be assisted, in the place where is located, by another defender of confidence or by an officer present at the place. After entry into the national territory, the accused has the right to be further interrogated in the usual forms.

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

According art. 5 of the law 24th February 2009, n. 12, the arrest on board of a person suspected of piracy or robbery at sea maintains its efficacy if the report is transmitted to the public prosecutor and the hearing take place with the participation of the defender by 48 hours. Public prosecutor has the due to inform the defender of the arrested.

The prosecutor proceeds to a distance interrogation and hearing of validation before the judge for preliminary investigations by means of a video a link or audiovisual link, connecting the office of the public prosecutor with the court where the hearing takes place and the place where the accused is detained, in order to ensure the contextual effective and mutual visibility of the people in both places.

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

In the absence of specific provisions about the maximum duration of custody in this cases, the general rules of the Criminal Procedural Code find application.

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

No specific provision are provided

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

No.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

Italy has not signed such agreements. However, as a Member State of the European Union it participates in the agreements concluded by UE with Seychelles, Mauritius and Kenya.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

N/A

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

Yes

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

N/A

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

N/A

LATVIA / LETTONIE

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

Response: The existing international legal framework is not sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

Response: In the criminal law there is no specific clause for the piracy and robbery at sea. However, current legislation prescribe penalties for criminal actions which correspond classification of piracy and robbery.

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

Response: In the criminal law there is no specific clause for the piracy and robbery at sea.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

Response: No such cases.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

Response: No such cases.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

Response: Such operation was conducted. More details could not be given.

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

Response: All actions are conducted in accordance with IMB (International Maritime Bureau) and IMO (International Maritime Organisation) recommendations and BMP (best management practice).

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

Response: All actions are conducted in accordance with IMB (International Maritime Bureau) and IMO (International Maritime Organisation) recommendations and BMP (best management practice).

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

Response: Latvian legislation does not prescribe such exactly actions and are considered as any other offence according to respective legislation.

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

Response: Latvian legislation does not prescribe such exactly actions and are considered as any other offence according to respective legislation.

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

Response: Latvia does not ensure participation of military vessels in the piracy-prone areas of the high seas.

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the*

investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?

Response: Latvia does not ensure participation of military vessels in the piracy-prone areas of the high seas.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

Response: Due to confidential status of the issue we do not have rights to provide you with additional information.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

Response: Due to confidential status of the issue we do not have rights to provide you with additional information.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

Response: During the last 12 months ships flying the Latvian flag have not crossed piracy-prone parts of international trade routes.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

Response: Latvian legislation does not prescribe such activities and procedures.

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

Response: Latvian legislation does not prescribe such activities and procedures. In case the number of ships flying the Latvian flag in the piracy-prone parts of international trade routes will increase the appropriate amendments to the national legislation will be considered.

LITHUANIA / LITUANIE

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

International legal framework lacks certainty. There is the United Nations Convention on the Law of the Sea (further in the text – UNCLOS) which defines piracy as an extraterritorial crime that targets crews and vessels which the transgressor commits on the high seas. But while the nature of the crime of piracy has evolved dramatically in recent decades, the international piracy law remains largely unchanged over the last two centuries. Of course, modern treaties now govern maritime law, along with a number of the United Nation Security Council resolutions but the substance remains firmly rooted in the earlier legal treatment of piracy. After the *Achille Lauro* incident it was realized that UNCLOS has gaps, because the UNCLOS' limitations are obvious: there is a restriction of the definition of piracy to “private” ends, the geographical restriction of piracy to the high seas (and the related issues of hot pursuit), the two ship requirement, etc. After the *Achille Lauro* incident, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (further in the text – SUA) was adopted. At first it seemed like a promising solution in the fight against piracy but in practice it has been a legal tool of limited effectiveness because SUA does not explicitly criminalize piracy, is not sufficiently specific regarding sanctions, the state has to have direct relation with the offence in order to confiscate the ship in territorial waters, there is no right of visit when there is a suspicion that a ship is controlled by pirates, SUA cannot be invoked if the state has not signed it.

Armed robbery can only be committed in the territorial sea but in practice the distinction between piracy and armed robbery is quite slight: armed robbery can easily turn to piracy because it might be a question of several meters.

The legal framework could be improved bringing more legal certainty, uniformity and effectiveness in a fight against piracy and armed robbery.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

In the Criminal Code of Lithuania (further in the text – CC) robbery is criminalized under the Article 180. According to it:

1. A person who, through the use of physical violence or by threatening the immediate use thereof or by otherwise depriving of a possibility of resistance or by taking advantage of the helpless state of the victim, seizes another's property shall be punished by arrest or by imprisonment for the term of up to six years.

2. A person who commits the robbery by breaking into premises or using a weapon other than a firearm, a knife or another item specially designed to injure a person shall be punished by imprisonment for a term of up to seven years.

3. A person who commits a robbery by using a firearm or an explosive or, having committed a robbery, seizes a property of a high value or the valuables of a considerable scientific, historical or cultural significance or commits the robbery by participating in an organized group shall be punished by imprisonment for a term of two up to ten years.

As far as piracy at sea is concerned Lithuania does not have any specific provision in CC, but there are particular articles which in one or another way “cover” certain aspects of piracy at sea (Article 180 of CC – Robbery (as it was mentioned already), Article 251 of CC – Hijacking of an Aircraft, Ship or Fixed Platform on a Continental Shelf, Article 252 of CC – Hostage Taking). Having the aim to implement the provisions of UNCLOS, Draft Amendments to CC were drawn up (supplementing CC with the additional Article 252¹ criminalizing actions of piracy at sea). This Draft Amendment to CC has already been approved after delivering it in the Parliament (Seimas) and is being further analyzed in certain Committees of the Parliament (Seimas).

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

See the answer to question No. 2.

The definition of piracy is not provided in national legislation directly. Nevertheless, the Draft Amendment to CC implements the provisions of the UNCLOS where in Article 101 the definition of piracy is provided.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

Lithuania does not have cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of Lithuania.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

Lithuania does not have information about cases when persons suspected of piracy were released.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

Lithuania has not conducted operations to release a captured vessel flying the flag of Lithuania, members of a crew who were citizens of Lithuania; neither has Lithuania taken part in freeing the vessels flying the flags of foreign states but having Lithuanian citizens among their crew.

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

According to the provisions of the Code of Criminal Procedure of Lithuania (further in the text – CCP) a vessel captain has a right to fulfill the functions of pretrial investigation (Article 165, part 2 of CCP).

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

The package of enjoyed rights by person arrested on suspicion of robbery at sea is declared in Article No. 44 of CCP (including the right to defence, interpreting services, etc.).

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

Duration of custody of a person suspected of robbery at sea is governed according to general provisions of CCP (Article 140, part 4), which declares that duration of custody cannot last more than it is necessary for ascertaining the identity of a person and for fulfilling other required procedural actions. The maximum duration of custody is 48 hours. <...> if the person who is in custody has to be arrested, during the period of 48 hours he has to be delivered to the judge which decides the question of an arrest.

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

See the answer to question No. 9.

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

There are no specific provisions in legislation of Lithuania on ensuring the participation of investigators, prosecutors and judges on board of military vessels escorting commercial vessels and patrolling piracy-prone areas of the high seas.

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

Lithuania is a party to the European Convention on Mutual Assistance in Criminal Matters of 1959, which has a provision of participation of officials and interested persons if the requested Party consents in the execution of the letters rogatory (Article 4). Lithuania is also a party to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 2001 (further in the text – Second Additional Protocol). Article 2 supplemented Article 4 of the European Convention on Mutual Assistance in Criminal Matters of 1959 by the provision “requests for the presence of such officials or interested persons should not be refused where that presence is likely to render the execution of the request for assistance more responsive to the needs of the requesting Party and, therefore, likely to avoid the need for supplementary requests for assistance”. According to Article 20 of the Second Additional Protocol there is also a possibility by mutual agreement for the competent authorities of two or more Parties to set up a joint investigation team for a specific purpose and a limited period to carry out criminal investigations in one or more of the Parties setting up the team.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

On 12 June 2012, the Parliament (Seimas) of Lithuania adopted a resolution No. XI-2059, regulating sending of military and civilian personnel to operations “Atalanta” and “Ocean shield”.

When the personnel is sent, the military personnel involved in the operation "Atalanta" can arrest, detain and transfer persons suspected of having committed or who have committed acts of piracy or armed robbery in the areas where they are present. In such case the suspects could be prosecuted by an EU member state or by Kenya under the agreement signed with the EU on 6 March 2009 giving the Kenyan authorities the right to prosecute. An exchange of letters concluded on 30 October 2009 between the EU and the Republic of Seychelles allows the transfer of suspected pirates and armed robbers apprehended by "Atalanta" in the operation area.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

There is no case practice of the transfer of persons suspected of piracy to coastal States for further criminal prosecution, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

There is no practice when commercial vessels flying the flag of Lithuania use the services of private military and security companies available for escorting vessels through piracy-prone parts of international trade routes.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

Irrelevant.

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

Irrelevant.

NORWAY / NORVEGE

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

Norway considers the existing legal framework to be satisfactory as it provides the necessary legal basis for effectively combating piracy. In our view, the main challenge facing the international community today is not lack of rules and regulations. Rather, there is a potential to strengthen the national implementation and compliance with the existing rules. Moreover, other efforts of a more practical and political nature should be strengthened, such as international cooperation and dialogue, capacity building and mobilization of political will to address the piracy issue.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

The Norwegian legislation is not especially adapted to prosecute persons suspected of piracy and robbery at sea, but see answer to question no.8

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

The general Civil Penal Code has no specific article on piracy. Piracy falls within the article on aggravated theft (article 258). Contravention is liable even when conducted abroad, regardless of the perpetrators citizenship.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

Yes, in connection with the national contribution to the EU-led operation Atalanta. Suspected pirates released.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

Yes. Due to lack of evidence to support prosecution.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

No

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

UNCLOS articles 100-107. Relevant resolutions of the UN Security Council. (Latest nr. 2020). National legislation and human rights obligations under relevant international law.

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

The Norwegian legislation is not especially adapted to prosecute persons suspected of piracy and robbery at sea, but our Act on Criminal Procedure (1981) is assumed to apply also to persons arrested on such suspicion when they undergo legal proceedings on board a Norwegian vessel, as far as it can be practised.

Under the Act on Criminal Procedure a suspect has the right to defense (articles 94-100b), and the act also implies the right to interpreting services, but some of the requirements are difficult to fulfil on board a vessel at sea. For example, according to article 98 a suspect is entitled to a defense counsel as soon as it is clear that he will not be released within 24 hours after the arrest, a requirement which normally will be difficult to meet in this situation.

The application of the Act on Criminal Procedure is confined by international customary law and agreement with another state (article 4).

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

According to the Act on Criminal Procedure an arrested person shall be brought before a judge ("the district court") as soon as possible and at the latest the third day after the arrest (article

183). If the accused is a minor, the time limit is the day after the arrest. Again, the distance from the vessel to the nearest district court complicates the fulfilment of the requirements of the act.

A possible delay can be remedied to some extent by seeking the court's decision without the accused present, based on the available documentary evidence, and later make the accused to appear before the court as soon as possible.

The duration of custody can not exceed four weeks at the first arraignment (article 185). The custody can be prolonged however, by decision of the court, for up to four weeks at a time.

10) How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?

The Act on Criminal Procedure does not establish a maximum period of custody as such, but the court shall release the accused if it finds that the investigation lacks due speed and that continued custody is unreasonable (article 185). Furthermore, custody can only take place as long as it is not deemed a disproportionate intervention (article 170a).

11) How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?

Norwegian military vessels escorting commercial vessels and patrolling piracy-prone areas of the high seas are not manned with civil investigators or prosecutors, and their participation will have to take place by call-out from case to case (see next paragraph). Judges will not be deployed to national warships.

Trained military personnel are deployed aboard warships conducting anti-piracy operations to provide investigatory expertise. A legal officer will be deployed to support the legal process and provide information to the national prosecutor's office. National police and prosecutors may assist this process when needed.

12) Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?

Norway has not signed any international agreements that address cooperation in law enforcement and investigation matters in piracy situations in particular.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

No. Norway is not a party to any such agreements.

14) *.Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

No, hence not applicable.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

Yes, some do.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

Norwegian flagged ships are permitted to use PCASPs under certain conditions. This is regulated in Regulation No. 972 of 22 June 2004 as amended. The Regulation entered into force 1 July 2011. The regulation only applies when Norwegian flagged ships are sailing in, to or from areas subject to alert level 2 or 3 when sailing south of 30 degrees north latitude.

The Security Regulation provides detailed rules for ship operators who employ PCASPs and does not regulate the activities of the security companies as such. The requirements in the Regulation are based on the IMO guidelines for ship operators.

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

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POLAND / POLOGNE

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

International legal framework existing can be considered sufficient to effectively combat maritime piracy and other illegal acts at sea. The efforts should be focused on implementation of existing instruments regulating the issue of piracy, as well as on improvement of cooperation between the states involved in a prevention and a combat against this kind of criminal activity.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

The most general regulation with regard to the Polish jurisdiction in the case of piracy is the principle of universal prosecution (also called the principle of universal repression) as provided for in Article 113 of the Penal Code and referring to any offences that Poland is obliged to prosecute under international agreements. However, the principles determining Polish jurisdiction also depend on the circumstances of an offence, nationality of the perpetrator and the issue of exercising the authority over the seized perpetrator.

1. If an offence was committed on board of a Polish ship:

If as a result of piracy an offence was committed on board of a Polish ship, Polish jurisdiction is a rule. Pursuant to Article 5 of the Penal Code, Polish penal law shall be applied to a perpetrator who committed a forbidden act on board of a Polish vessel, unless an international agreement to which Poland is a party stipulates otherwise. Any offender who perpetrated an offence on board of a Polish ship, regardless of his nationality and waters on which the ship was at the moment when offence was committed, unless that issue was otherwise specified in the international agreement ratified by Poland.

2. If the perpetrator of piracy is a Polish national:

In such cases, pursuant to Article 113 of the Penal Code, Polish jurisdiction is always applied – regardless of the provisions that are in force in the place when offence was committed and which state has seized the perpetrator.

3. If a perpetrator is a foreign national subject to the authority of the Polish state authorities:

Pursuant to Article 113 of the Penal Code, a Polish criminal act shall be applied with regard to any perpetrator of piracy who is a foreign national with respect to whom no decision on extradition has been taken. Since for criminal repression in case of an offence stipulated in the convention, the provisions that are in force in the place where an offence was committed are irrelevant, it should be assumed that Article 113 of the Penal Code is applicable to both: piracy perpetrated at the open sea

and the piracy at the internal waters and territorial sea of any state. A foreign perpetrator must be subject to the authority of the Polish authorities – i.e. he must be arrested by a Polish warship.

There are no grounds for applying Polish jurisdiction to foreign pirates seized by the navy of other states and kept on foreign warships or in the territory of other states. Polish jurisdiction is only when a foreigner is subject to the Polish authority so that a Polish side has a legal and physical capability of extraditing him to another state if extradition is requested or criminal proceedings involving his participation were carried out.

Pursuant to Article 92 (1) of the United Nations Convention on the law of the sea, done at Montego Bay on 10 December 1982, ships sail under the flag of only one state and, as a rule, are subject to its exclusive jurisdiction at the open sea. Article 105 of the same convention stipulates that on high seas or in any other place that is not subject to jurisdiction of any state, every state may seize a pirate ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith. Analogous provisions are stipulated in Articles 6 and 19 of the Geneva Convention on high seas of 29 April 1958. This means that if a foreign pirate has been seized in the high seas by a Polish ship, the exercise of Polish jurisdiction has its grounds also in international agreements to which Poland is a party, while if it has been seized by a foreign ship, Polish jurisdiction does not apply to it.

4. If the perpetrator is a foreigner seized by the authorities of another state:

As regards foreigners seized by other states and falling under the authority of those states, the Polish penal law may be applied in the following cases:

— pursuant to Article 110 § 1 of the Penal Code — if the piracy was targeted against the interests of the Republic of Poland, of a Polish national, of a Polish legal person or a Polish organizational unit having no legal personality or was of a terrorist nature. If such an act has been committed in a place that is not subject to any state authority, it is subject to the Polish jurisdiction in any case, however if the piracy was committed in the territory that is subject to jurisdiction of another state, e.g. on its internal waters or at the territorial sea, the accountability before the Polish court is conditioned of whether that act was also considered an offence by the act that was in force in the place where that act was committed.

— pursuant to Article 112 item 2 of the Penal Code – if the offender perpetrated against Polish officers. It could also be the case of pirates attacking a Polish warship and soldiers who are on board. In such a situation Polish jurisdiction is always applied, regardless of the provisions that are in force in the place the act was committed.

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

The Polish Penal Code contains in Chapter XX detailed provisions regarding the acts of hijack, destruction or arming of a vessel committed under Polish jurisdiction.

Piracy as a crime is defined in art. 166 of the Polish Penal Code:

Article 166. § 1. Whoever, using a deceit or violence, or a threat to use such violence, takes control of a ship or an aircraft, shall be subject to the penalty of the deprivation of liberty for a term of between 2 and 12 years.

§ 2. Whoever, acting in the manner specified in § 1, brings about a direct danger to the life or health of many persons shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

§ 3. If the consequence of the act specified in § 2 is the death of a person, or grievous bodily harm to many persons, the perpetrator shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.

There are other provisions of the Polish Penal Code related to piracy and robbery at sea:

Article 167. § 1. Whoever places on a ship or aircraft a device or substance threatening the safety of persons or a property of high value shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 2. The same punishment shall be imposed on anyone, who destroys, damages or renders unfit for use a navigational equipment or prevents operating thereof, when this may threaten the safety of persons.

Article 168. Whoever makes preparations for the offence specified in Article 163 § 1, Article 165 § 1, Article 166 § 1 or in Article 167 § 1, shall be subject to the penalty of deprivation of liberty for up to 3 years.

Article 169. § 1. Whoever voluntarily removed the impending danger shall not be subject to the penalty for the offence specified in Article 164 or 167.

§ 2. If the perpetrator of the offence specified in Article 163 § 1 or 2, Article 165 § 1 or 2 or in Article 166 § 2, voluntarily averted the impending danger to the life and health of many persons, the court may apply an extraordinary mitigation of the penalty.

§ 3. The court may apply an extraordinary mitigation of the penalty to the perpetrator of the offence specified in Article 166 § 1, if he transferred the control of vessel to an authorised person.

Article 170. Whoever arms or adapts a sea vessel designed to perform an act of piracy on the high seas, or agrees to serve on such a vessel shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

There have been no cases of capture of persons suspected of piracy (both in the open sea by a warship and civilian vessel flying the flag of our state) as far as Poland is concerned.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

In Poland there have been no cases when persons suspected of piracy were released.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

Poland has never conducted such operations.

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

According to the Polish Maritime Code:

Article 68 § 1 The captain may detain in a separate room, while traveling, a person whose behavior threatens the safety of the ship, people or property. Detention can last long until the arrival of the vessel to the nearest Polish port or to the port of state whose citizen is a detained person.

§ 2 In a case of dock of the vessel to a state other than specified in § 1, the captain shall inform Polish consular office and appropriate local authorities about a detention.

Article 72 § 1 If there is a crime committed on a ship, the captain is obliged to draw up a detailed notice of an offence, take appropriate measures to prevent the repeal of criminal responsibility a person suspected of committing a crime, secure evidences and, if appropriate,

transfer a person suspected of committing a crime and a notice of an offense to the competent authority in the first Polish where the ship docks or to the craft of Polish Navy, Border Guard or Police.

According to the Regulation of the Minister of Infrastructure of 23 February 2005 *on the master course of action against a person suspected of having committed an offense against the safety of maritime navigation* if there was a crime committed on a ship or a person suspected of committing a crime was detained on a ship, the master informs a prosecutor at the home port of the ship about it. If the ship's destination is not the Polish port, the master shall, if there is such a possibility, transfer a suspected person and evidence to the captain of another ship flying the Polish banner which is heading to the Polish port or to a commander of a vessel belonging to the Polish Navy or Polish Border Police or Polish Border Guards.

If a detained person suspected of committing a crime is not a Polish citizen, the master shall inform the Minister of Justice by the agency of Director of the Maritime Office about the detention. The Minister of Justice takes a necessary action to provide information about the fact of detention to the competent authority of the state of citizenship of a suspected person. If a detained person is stateless, the Minister of Justice provides such information to the competent authority of the state a suspected person is a resident of.

The ship's captain, within its technical resources, allows a detained person to stay in contact with a representative of the state of citizenship of a suspected person; if the person is a stateless person - a representative of the state a person is a resident of. Such a representative has a right to visit a detained person on a ship. Determination of contact procedure requires the assistance of the Ministry of Justice.

If the vessel with a detained person docks a port of a foreign state before it docks a Polish port, the master notifies the Polish Consul about the detention, so he could pass this information to the competent authorities of this foreign state. The provisions of the Code of Criminal Procedure on the transfer of evidence abroad are applied.

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

There are no legal proceedings on board a vessel under Polish law.

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

See: answer to question 7.

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

See: answer to question 7.

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

Poland has had no experience in this field.

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

Poland has not signed such international agreements.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

Poland is not a party to such agreements.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

In Poland there have been no cases of such transfer.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

Currently there is only one commercial vessel flying Polish flag which is operating in high risk area and there are no PCASP groups on board.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

There are no such legislative regulations yet, but some steps have been taken to establish such provisions. Poland is a member of International Maritime Organization (IMO), which on 8 march 2012 issued a note entitled ‘Piracy and armed robbery against ships” and called upon the Member States to analyze and discuss the handling and treatment of firearms and privately contracted armed security personnel (PCASP) under their national laws. The Ministry of Transport, Construction and Maritime Economy of Poland began such a discussion and elaborated a respective communication with the assistance of the Ministry of Justice, Ministry of Foreign Affairs, Ministry of Internal Affairs, Ministry of Finance and Ministry of National Defense.

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

So far Poland has not had experience in this field.

PORTUGAL

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

Article 101 of the United Nations Convention on the Law of the Sea defines Piracy as consisting in 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 subparagraph (a) or (b)”

We find this definition to be inadequate, especially considering the excessive restrictiveness of its territorial application. In fact, the restriction of the concept of piracy to the High Seas, to places not subject to the jurisdiction of any State and (arguably) the Exclusive Economic Zone, excludes from sanction by international law the practice of similar acts in other maritime areas.

The exclusion of the concept of piracy of actions committed, attempted or threatened in inland, territorial and archipelagic waters leads to a situation of potential conceptual schizophrenia.

In fact, the restriction on the coastal State to criminalize, prosecute and punish acts of piracy practiced in waters under its jurisdiction undermines the effectiveness and efficiency of international law, meaning that when an act of violence or detention, or depredation takes place on the high waters it is forbidden, repressed and condemned, but when such act takes place a few meters away, in another sea area, international sanction is ceased upon and may even be legal under the legal system of the coastal State.

However, criticism of the Montego Bay Convention on this matter is not limited to the definition of piracy, but may also be extended to other articles that prove to be insufficient in the fight against piracy.

Article 100 establishes a duty to cooperate in the repression of piracy stating that all States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

However Article 105 on the seizure of a pirate ship or aircraft states that on the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

It is unfortunate that the UNCLOS does not recommend its parties to criminalize acts of piracy when committed in waters under their sovereignty. To do so, would suffice to impose on states a duty to repress piracy, but without the restriction on high waters and areas outside the jurisdiction of a State, as exhaustively listed in Article 100.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

Having ratified the United Nations Convention on the Law of the Sea on the 14th October 1997, the Portuguese criminal law does not, however, criminalize piracy as a crime *per se*, but rather the substantial actions that such a pirate attack may integrate.

In this regard, several actions undertaken by pirates may constitute a crime, as the crimes against the security of communications, capture or diversion of ship or aircraft (foreseen in article 287 of the Portuguese Criminal Code) or attack on the safety of transportation (article 288 of the Portuguese Criminal Code) together with crimes against property as robbery (article 210) or damage (articles 212), crimes against freedom as threat (article 153), coercion (article 154), kidnapping (article 158), slavery (article 159), trafficking in human beings (article 160) or abduction (article 161), offenses to the physical integrity (article 143) or crimes against life as murder (article 131).

As noted above, the United Nations Convention on the Law of the Sea does not oblige its Parties to prosecute crimes of piracy in high sea, but only allows them to do so. Considering this, the fact is that, under present circumstances, the Portuguese criminal law is not applicable to crimes of piracy committed in high seas.

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

Please see answer to the previous question.

As stated before, except for the crime of rape, Portugal has no universal jurisdiction on any of the offences that could in essence integrate a pirate attack. As a consequence, Portuguese courts would

only have jurisdiction if the crime is committed on board a ship with the Portuguese flag, or a Portuguese citizen is its agent or victim and the perpetrator is found in Portugal.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

Portugal was integrated in two operations of the NATO Standing Maritime Group 1: with the frigate Corte-Real between March 24 and June 29, 2009 in Operation Allied Protector, and the frigate Álvares Cabral between 9 November 2009 and January 25, 2010 in operation Ocean Shield. Portugal commanded the naval force in the former.

The Portuguese war vessels detained some individuals in the Somalia region. However they have been released due to the fact that they cannot be prosecuted, according to the reasons explained before.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

Yes. Please see the previous answer.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

No.

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

Portuguese criminal law is not applicable to crimes of piracy committed in high seas.

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

(...)

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

(...)

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

(...)

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

(...)

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

No.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

No.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

(...)

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

No.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

(...)

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

No incidents have been reported regarding the access to vessels flying the Portuguese flag.

SERBIA / SERBIE

1) *Can the international legal framework existing today be considered sufficient to effectively combat maritime piracy and other illegal acts at sea, including armed robbery? Should the existing international legal framework on such an issue be improved (modernized) or supplemented?*

Yes, it can.

2) *To what extent is the legislation of your State adapted to prosecute persons suspected of piracy and robbery at sea?*

The Criminal Code of The Republic of Serbia proscribes the criminal offence of Piracy (Article 294) and criminal offence Hijacking of Aircraft, Ships or Other Conveyances (Article 293.).

3) *What measures are provided for in the national legislation of your State to criminalize piracy and robbery at sea? How is piracy defined in the legislation of your State?*

In The Criminal Code of The Republic of Serbia are three articles about piracy and robbery at sea:

Applicability of Criminal Legislation to the Territory of the Republic of Serbia

Article 6

(1) Criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence on its territory.

(2) Criminal legislation of the Republic of Serbia shall also apply to anyone committing a criminal offence on a domestic vessel, irrespective of the location of that vessel at the time of commission of the offence.

(3) Criminal legislation of the Republic of Serbia shall also apply to anyone committing a criminal offence on a domestic civil aircraft while in flight, or on a domestic military aircraft, irrespective of the location of that aircraft at the time of commission of the criminal offence.

(4) Where in the cases referred to in paragraphs 1 to 3 of this Article criminal proceedings were instituted or concluded in a foreign state, criminal prosecution in Serbia shall be initiated only with the consent of the Republican Public Prosecutor.

(5) Criminal prosecution of foreign nationals in the cases referred to in paragraphs 1 to 3 of this Article may be ceded to a foreign state, under the condition of reciprocity.

Hijacking of Aircraft, Ships or Other Conveyances

Article 293

(1) Whoever by force or threat of force takes control of an aircraft in flight, or a ship while navigating, or another public conveyance in motion, shall be punished by imprisonment of from two to ten years.

(2) If the offence referred to in paragraph 1 of this Article results in grievous bodily harm or caused substantial damage, the offender shall be punished by imprisonment of from two to twelve years.

(3) If the offence referred to in paragraph 1 of this Article results in the death of one or more persons, the offender shall be punished by imprisonment of from five to fifteen years.

Piracy

Article 294

(1) A crew member or passenger of a ship who while at open sea or a location not under authority of any state commits violence or robbery against persons on another ship, halts, hijacks, damages or destroys the other ship or goods therein, or causes damage of substantial extent, shall be punished by imprisonment of from two to twelve years.

(2) If the offence referred to in paragraph 1 of this Article results in death of one or more persons, the offender shall be punished by imprisonment of from five to fifteen years.

4) *As far as your State is concerned, have there been cases of capture of persons suspected of piracy in the open sea by a warship or civilian vessel flying the flag of your State? If so, what measures were taken to detain and/or subsequently prosecute or punish them?*

No, it has not.

5) *As far as your State is concerned, have there been cases when persons suspected of piracy were released? If so, what was the reason for that?*

No, it has not.

6) *Has your State ever conducted operations to release a captured vessel flying the flag of your State, members of a crew who were citizens of your State (or foreign citizens) or, using its naval forces, has taken part in freeing the vessels flying the flags of foreign States, but having citizens of your State among their crew? Have there been any legal consequences caused by the actions of representatives of your State aimed at freeing the vessels or crew members?*

No, it has not.

7) *What is the legal foundation for the rights and obligations and procedural authority of a vessel captain or a commanding officer of a military vessel in relation to the arrest, interrogation, detention and possible transfer of persons suspected of piracy for the administration of justice?*

The United Nations Convention on The Law of The Sea, ratified by The Republic of Serbia since March 12th 2001 and United Nations Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation, ratified by The Republic of Serbia since March 13th 2004 and Protocol to The Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation ratified 29th March 2010.

8) *Which rights are enjoyed by persons arrested on suspicion of piracy or robbery at sea (including the right to defense, interpreting services, etc.) under your State's law when they undergo legal proceedings on board a vessel?*

Persons arrested on suspicion of piracy or robbery at sea are provided rights guaranteed by The Criminal Procedure Code of The Republic of Serbia, accordingly The United Nations Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Protocol to The Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation in case if they are arrested by the commanding officer of the ship flying the flag of The Republic of Serbia.

9) *How does your State's law govern the order and duration of custody of a person suspected of piracy or robbery at sea on board a vessel and during his or her transfer either for the administration of justice or to another party for criminal prosecution?*

Duration of custody is not specific proscribed in case if person suspected of piracy and robbery sea is arrested on the ship flying the flag of The Republic of Serbia. According to Article 176 of Law of Maritime navigation of The Republic of Serbia commanding officer of the ship flying the flag of The Republic of Serbia has right to keep in custody suspected person till the extradition to the administration of justice or to another State Party of The United Nations Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation for criminal prosecution and Protocol to The Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation.

10) *How does your State ensure that the maximum duration of custody standards established by law for such persons are observed in cases of their transfer for the administration of justice from remote areas of the high seas?*

The Republic of Serbia applies Article 10 para. 2 of The Convention for the Suppression of Unlawful Acts Against Safety of Maritime Navigation for criminal prosecution and Protocol to The Convention.

11) *How does your State ensure the participation of investigators, prosecutors and judges on board of military vessels of your State escorting commercial vessels and patrolling piracy-prone areas of the high seas?*

The Republic of Serbia is landlocked country and does not have any military vessels navigate areas of the high seas.

12) *Has your State signed any international agreements (arrangements) that govern the participation of foreign law enforcement officers in the investigations or provision of assistance in the investigations on vessels arrested by a military vessel of your State in the course of an operation to rescue the former from pirates?*

No, it has not.

13) *Is your State a party to any international agreements (arrangements) governing the transfer of persons suspected of piracy to coastal States for further criminal prosecution of such persons?*

No, it is not.

14) *Have there been any cases of such transfer, when the receiving side had to return persons suspected of piracy to the transferring side because of the lack of evidence of their crime/act of piracy? What actions were taken in such cases by the transferring side?*

No, it has not.

15) *Do commercial vessels flying the flag of your State use the services of private military and security companies (PMSC) available for escorting vessels through piracy-prone parts of international trade routes?*

No, they do not.

16) *What legislative regulations apply to the activities of PMSC not subject to the jurisdiction of your State, including such aspects as licensing and control of their activities, the use of weapons and entering the ports of foreign States with guards and arms on board?*

The Republic of Serbia is landlocked country and does not have any military vessels navigate areas of the high seas and does not have any regulation according to that question.

17) *Has your State had any legal or administrative problems in ensuring access of vessels flying the flag of your State with armed guards on board to the ports of foreign States? If so, how (through what channels) were they addressed?*

No, it has not.