

# [DRAFT]

## MODEL NATIONAL LAW ON MARITIME CRIMINAL ACTS

### *Preamble*

The following Model National Law is the result of deliberation by a Joint International Working Group on Uniformity of the Law regarding Maritime Crime.<sup>1</sup> It proposes to confront the scourge of serious maritime crime, including piracy, acts of terrorism and facilitation of the proliferation of weapons of mass destruction, by systematically dealing with these crimes by means of national law, recognizing that the great majority of such incidents fall under national admiralty and maritime jurisdiction. The following presentation is a series of provisions adaptable to different legal systems rather than draft legislation which might be in conflict with varying national legislative styles and traditions. The aim, however, remains a greater degree of international uniformity in maritime criminal law.

Specific penalties for offences are not suggested, but while consistent with human rights they must obviously be severe in the context of national criminal law in order to discourage commission of these acts. The Group fully recognizes that the governments undertaking review of their criminal laws in light of the Model National Law have expertise in dealing with their particular national problems. However, by highlighting the growing problems of maritime criminal acts in the international context, the Group hopes to bring the attention of national legislators to international considerations that have a direct bearing upon national jurisdiction and prosecution.

The way in which the Model National Law is presented is not intended to govern the format of any national legislation; the content rather than the form of national legislation is the matter of importance. While the Group's aim has been to present a balanced and coherent model for consideration, States are encouraged to consider adapting *any* of the suggested provisions; even incremental progress toward international legal uniformity in dealing with maritime criminal acts will be beneficial to international maritime commerce and consequently to the world community as a whole.<sup>2</sup>

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<sup>1</sup> The Working Group is composed of representatives of the following international organizations: the Comité Maritime International (CMI), the Baltic and International Maritime Council (BIMCO), the International Chamber of Shipping (ICS), the International Criminal Police Organization (INTERPOL), the International Group of P&I Clubs (IGP&I), the ICC International Maritime Bureau (IMB), the International Maritime Organization (IMO), the International Transport Workers Federation (ITF), and the International Union of Marine Insurance (IUMI).

<sup>2</sup> The Working Group also specifically urges accession to and adoption into national law of the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("SUA Convention") as amended by its 2005 Protocol, and (where applicable) the 1988 Protocol on Fixed Platforms as amended by its 2005 Protocol, as well as the 1982 Convention on the Law of the Sea. The Group notes that many existing national laws *do not directly track* the provisions of these international conventions, and urges that care to do so be taken in the drafting of enabling legislation. Attention is also drawn to the IMO *Code of Practice/Instruments/Guidance Note for the Investigation of the Crime of Piracy and Armed Robbery Against Ships* (2001), developed by the Maritime Safety Committee, to the IMO *Draft Regional Agreement on Co-operation in Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships* (MSC/Circ.622/Rev.1, Annex, Appendix 5), and to the IMO *Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships* (MSC/Circ. 623/Rev.2(2001)).

## ***Section I: Definitions***

1. A ***maritime criminal act*** is committed when, for any unlawful purpose, any person or persons, intentionally or knowingly and recklessly:
  - a) injures or kills any person or persons in connection with the commission or the attempted commission of any of the offences set forth in sub-Sections I (1) (b)-(i); or
  - b) performs an act of violence against a person or persons on board a ship; or
  - c) seizes or exercises control over a ship or any person or persons on board by force or any other form of intimidation; or
  - d) destroys or causes damage to a ship or ship's cargo, an offshore installation, or an aid to navigation; or
  - e) employs any device or substance which is likely to destroy or cause damage to a ship, its equipment or cargo, or to an aid to navigation; or
  - f) destroys or causes damage to maritime navigational facilities, or interferes with their operation, if that act would be likely to endanger the safe navigation of a ship or ships; or
  - g) engages in an act involving interference with navigational, life support, emergency response or other safety equipment, if that act would be likely to endanger the safe operation or navigation of a ship or ships or a person or persons on board a ship; or
  - h) communicates false information, endangering or being likely to endanger the safe operation or navigation of a ship or ships; or
  - i) endangers or damages the marine environment, or the coastline, maritime installations or facilities, or related interests of any State; or
  - j) engages in an act constituting an offence under the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 2005; or
  - k) engages in an act constituting an offence under the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 2005; or
  - l) engages in any of the acts described in sub-Sections I (1) (a)-(j), to the extent applicable, where such acts involve an offshore installation or affect a person or persons on an offshore installation.
  
2. An act of ***piracy*** is committed when any person or persons:
  - a) engages in piracy as the act is defined by Article 15 of the 1958 Convention on the High Seas; or
  - b) engages in piracy as the act is defined by Article 101 of the 1982 Convention on the Law of the Sea.<sup>3</sup>

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<sup>3</sup> The act of piracy defined in sub-Section I (2) and the acts defined in sub-Sections I (3) and (4) are separate offences; none of the latter includes piracy as defined in sub-Section I (2).

3. An act of *piracy* is also committed when any person or persons, for any unlawful purpose, intentionally or recklessly:
  - a) engages in an act constituting piracy under the criminal code of (name of enacting State); or
  - b) engages in an act held to constitute piracy by a decision of the (name of the highest judicial court of the enacting State) currently in force; or
  - c) engages in an act deemed piratical under customary international law.
4. An attempt to commit any of the offences listed in sub-Sections I (1), (2) or (3), or any unlawful effort intended to organize, direct, aid, abet, counsel or procure the commission of any of these offences, or threats to commit any of them, shall constitute a *maritime criminal act*.<sup>4</sup>
5. Notwithstanding the definitions in sub-Sections I (1), (2), (3) and (4), reasonable acts to rescue a person or to recover stolen property or to regain lawful control of a ship or offshore installation shall not be held to constitute maritime criminal acts or acts of piracy.
6. Notwithstanding the definitions in sub-Sections I (1), (2), (3) and (4), reasonable or proportionate acts to protect a person, ship or offshore installation, or related property, against a maritime criminal act or act of piracy shall not be held to constitute maritime criminal acts or acts of piracy.
7.
  - a) The term *ship* as used in this law includes any type of vessel or other water craft.<sup>5</sup>
  - b) The term *person* as used in this law includes, where applicable, entities having juridical personality and associations of persons whether or not having juridical personality, as well as individual natural persons.

## ***Section II: Jurisdiction***

1. The offences defined in sub-Sections I (1), (3) and (4) shall be prosecuted if committed within the territory, internal waters or territorial sea of (name of enacting State), and to the degree that the exercise of national jurisdiction is permitted by the 1958 Geneva Conventions on the High Seas and Contiguous Zone or the 1982 Convention on the Law of the Sea, within the exclusive economic zone, continental shelf, contiguous zone or archepelagic waters of (name of enacting State), and on the high seas or in any place outside the jurisdiction of any State.
2. The offences defined in sub-Sections I (1), (3) and (4) shall also be prosecuted if committed:
  - a) on board or against a ship registered in or entitled to fly the flag of (name of enacting State), wherever located; or

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<sup>4</sup> As applied in respect of an offence under sub-Section I (2), a *maritime criminal act* as defined in sub-Section I (4) is an act separate from “inciting” or “intentionally facilitating” an act of *piracy* as defined in sub- Section I (2).

<sup>5</sup> It is suggested that seaplanes when afloat, “wig” craft and hovercraft in the marine environment should fall within this definition.

- b) on or against an offshore installation licensed by or operating within the jurisdiction of (name of enacting State); or
  - c) on board a foreign flag vessel within waters under the national jurisdiction of (name of enacting State) when the act or its commission has disturbed the peace and tranquillity of (name of enacting State).
3. Jurisdiction to prosecute shall also lie when the person accused of committing an offence defined in sub-Sections I (1), (3) and (4) is a citizen or national of (name of enacting State), or is a foreign national resident in (name of enacting State), or is a stateless person.
  4. Jurisdiction to prosecute shall also lie when an offence defined in sub-Sections I (1), (3) and (4) is committed against a seafarer, passenger or shipowner who is a citizen or national of, or is a foreign national resident in (name of enacting State), or is a stateless person.
  5. Jurisdiction to prosecute an act of *piracy* as defined in sub-Sections I (2) (a) and (b) shall lie as set forth in the relevant Convention.
  6. Trial of an alleged offender *in absentia* shall be allowed as permitted under the law of (name of enacting State).
  7. When the appropriate authorities of (name of enacting State) effect the boarding of a foreign flag vessel to investigate and/or exercise jurisdiction in respect of a maritime criminal act, such boarding if taking place outside waters under its national jurisdiction shall be carried out in accordance with the Annex to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 2005.
  8. Investigation of a maritime criminal act by the appropriate authorities of (name of enacting State), and the handling of any suspects, shall be undertaken in accordance with the IMO Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships (Res. A.922 (22)).

### ***Section III: Extradition***

1. Extradition from (name of enacting State) may take place when another State has jurisdiction over the offences defined in sub-Sections I (1), (2), (3) or (4). The possession of jurisdiction by (name of enacting State) shall not preclude the extradition of an alleged offender to another State under appropriate circumstances.
2. If another State claims jurisdiction with regard to a *maritime criminal act* or an act of *piracy*, and the alleged offender is not promptly brought to trial in (name of enacting State), the alleged offender shall, subject to the provisions of (relevant national law(s) of enacting State), be extradited to the requesting State. If multiple States with reasonable jurisdictional claims make requests for extradition in the absence of a trial in (name of enacting State), the alleged offender shall, subject to the provisions of (relevant national law(s) of enacting State), be extradited to one of the requesting States.

#### ***Section IV: Prosecution, Punishment, Forfeiture and Restitution***

1. An individual found guilty of a *maritime criminal act* shall be subject to imprisonment for a term of not more than \_\_\_\_ years and/or a fine of not more than \_\_\_\_, in addition to any restitution or forfeiture which may be required, or any other penalties which might be imposed under \_\_\_\_ (relevant national law(s) of enacting State) .<sup>6</sup>
2. An individual found guilty of the crime of *piracy* shall be subject to imprisonment for a term of not more than \_\_\_\_ years and/or a fine of not more than \_\_\_\_, in addition to any restitution or forfeiture which may be required, or any other penalties which might be imposed under \_\_\_\_ (relevant national law(s) of enacting State) .<sup>6</sup>
3. An entity with juridical personality found guilty of a *maritime criminal act* or the crime of *piracy* shall be subject to a fine of not more than \_\_\_\_, in addition to any restitution or forfeiture which may be required, or any other penalties which might be imposed under \_\_\_\_ (relevant national law(s) of enacting State) .<sup>6</sup>
4. In cases where any person is injured or killed, or property is lost or damaged, in connection with an incident of piracy or maritime violence, the person found guilty of the crime shall *also* be liable to whatever criminal penalties exist under \_\_\_\_ (relevant national law(s) of enacting State) .<sup>6</sup> for the injury, death, loss or damage.
5. In cases where any person is injured or killed, or property is lost or damaged, in connection with an incident of piracy or maritime violence, the person found guilty of the crime shall *also* be liable to whatever civil remedies are available.
6. Where ships, cargo, goods, or equipment have been employed in or were the subject of *maritime criminal acts* or acts of *piracy*, such property shall be liable to forfeiture to the State. However, in the case of stolen or misappropriated property, any person having title to or legal custody of the property may assert a claim under \_\_\_\_ (relevant national law(s) of enacting State) for return of the property. Any mortgagee of the property may likewise assert a claim under \_\_\_\_ (relevant national law(s) of enacting State) for payment of the current mortgage obligation.
7. Where ships, cargo, goods, or equipment employed in or the subject of *maritime criminal acts* or acts of *piracy* are liable to forfeiture to the State, such property shall be restored as expeditiously as possible to the person having lawful title to or custody of the property, unless the State proves the wilful complicity of such person in those *maritime criminal acts* or acts of *piracy*. If such person is denied return of such property, any mortgagee of the property shall be entitled to recover payment of the current mortgage obligation out of the proceeds of sale of the property at a public judicial sale under \_\_\_\_ (relevant national law(s) of enacting State), with the remaining balance being forfeit to the State, unless the State proves the wilful complicity of such mortgagee in those *maritime criminal acts* or acts of *piracy*.

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<sup>6</sup> Penalties should take into account the grave nature of these offences and must be severe enough to deter such acts.

8. Where ships, cargo, goods or equipment wrongfully taken by person(s) convicted of *maritime criminal acts* or acts of *piracy* have *not* been employed in such crime(s):
  - a) Such property if unconverted shall be returned to its owners or custodians upon proof of ownership or lawful custody.
  - b) Converted property shall be sold at public judicial sale and the proceeds distributed to the lawful claimants according to admiralty and maritime law, with any balance remaining being forfeited to the State.
  - c) Items not claimed within the period established by law may be subject to public judicial sale, or transfer to a fund for financing State or regional action to fight *maritime criminal acts* or acts of *piracy*.
9. Owners of ships or cargo shall not be charged for port expenses incurred during investigation or prosecution for *maritime criminal acts* or acts of *piracy*.
10. Nothing in sub-Sections IV (1) through (9) shall compromise or affect any rights or remedies which a person injured by a *maritime criminal act* or act of *piracy* might otherwise assert against any perpetrator of the act or acts.
11. If damage or injury is caused by disproportionate use of force when the authorities of (name of enacting State) effect the boarding of a foreign flag vessel to investigate and/or exercise jurisdiction in respect of a maritime criminal act, such damage or injury shall be compensated in accordance with the Annex to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 2005.
12. Any other provisions of this Section to the contrary notwithstanding, a first preference shall be given out of the proceeds of sale of any vessel or property in connection with a maritime criminal act to ensure payment of outstanding wages and costs of repatriation of any crewmember of a ship lost, delayed, detained or forfeited in connection with that maritime criminal act unless the wilful complicity of such crewmember in that maritime criminal act is proven.

### ***Section V: Reporting of Incidents***

1. Any incident which may constitute a *maritime criminal act* or act of *piracy* shall be reported by the following, as applicable: (a) the Master,<sup>7</sup> (b) ship security officer (“SSO”), (c) company security officer (“CSO”),<sup>8</sup> (d) shipowner or manager, (e) the crew representative or seafarers trade union, (f) cargo representative, (g) the insurers, (h) the investigating authorities, (i) the relevant Rescue Co-ordination Centre (“RCC”), (j) the flag State Administration, or (k) any other persons having knowledge of the incident. Reports shall be made without delay and as soon as possible following receipt of knowledge of the incident. Reports shall be sent to (name of relevant national authority) and shall be in the form provided for by that authority.<sup>9</sup>

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<sup>7</sup> The Master is to report without delay to the police and/or maritime authorities of the State in which the incident occurred or which is the coastal State nearest to the position of the incident, and also to the Administration of the Flag State.

Each person or entity listed above has an obligation to report every known incident. This obligation may be met by filing a joint report, or by forwarding and commenting upon a report on the occurrence made by another listed person or entity.

2. The (name of relevant national authority) shall be under a continuing duty to make reports without delay and in the required formats to the ICC International Maritime Bureau (ICC-IMB)<sup>10</sup> and the International Maritime Organization (IMO).<sup>11</sup>
3. All incident reports made under (1) shall be open to the public. However, addenda marked “CONFIDENTIAL” and containing sensitive operational information shall *not* be open to the public.<sup>12</sup>

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<sup>8</sup> Note the requirements contained in Chapter XI-2 of the Annex to SOLAS 74 as amended (in particular Regulations 6 and 7), and the International Ship and Port Facility Security Code (“ISPS”).

<sup>9</sup> See the forms in IMO MSC/Circ.622/Rev.1, Annex, Appendices 3 and 4, and MSC/Circ.623/Rev.2, Annex, Appendices 2 and 4.

<sup>10</sup> Maritime House, 1, Linton Road, Barking, Essex, United Kingdom IG11 8HG. See [www.icc-ccs.org.uk](http://www.icc-ccs.org.uk)

<sup>11</sup> Refer to IMO MSC/Circ.622/Rev.1, Annex, Appendix 4, and MSC 59/33, paragraph 19.22.

<sup>12</sup> In the absence of appropriate legal action, where available, to compel disclosure of such information.