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Second report on prevention and repression of piracy and armed robbery at sea, by Yacouba Cissé, Special Rapporteur*

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I. Introduction

1. The Special Rapporteur's first report on the topic "Prevention and repression of piracy and armed robbery at sea"¹ was limited to an examination of State practice at the legislative and judicial levels in the various regions of the world, namely, the legislative and judicial practices of various States in Africa, Asia, the Americas and the Caribbean, Europe and Oceania. The Special Rapporteur concluded that such State practice did not have the required features of generality, consistency and uniformity to pave the way for a codification exercise.

2. The Special Rapporteur's main objective in the present report is to describe and analyse regional approaches to addressing piracy and armed robbery at sea. After a brief review of the most relevant multilateral legal instruments on the topic, consideration is given to the General Assembly recommendations and Security Council resolutions on a range of issues relating to piracy and armed robbery at sea. In the present report, analysis will focus mainly on the issue of cooperation with regard to preventing and repressing the crimes in question. The aim will be to identify how States cooperate in addressing the commission of acts of piracy and armed robbery at sea, according to their various regional, subregional and multilateral approaches.

3. Chapter II addresses the practice of international organizations involved in combating piracy and armed robbery at sea, such as the United Nations, the International Maritime Organization (IMO) and the North Atlantic Treaty Organization (NATO). Chapter III covers the practice of regional and subregional organizations with regard to the prevention and repression of piracy and armed robbery at sea. The regions in question are Africa, Asia, Europe, the Americas and Oceania. In chapter IV, bilateral and multilateral or multinational practices related to the prevention and repression of piracy and armed robbery at sea are examined and analysed.

4. The United Nations Convention on the Law of the Sea of 1982² remains the starting point for the study of efforts to combat maritime piracy. In addition, some international agreements that do not specifically cover maritime piracy, or even maritime safety more generally, could in some circumstances apply to the repression of piracy. These include the Convention on the International Regulations for Preventing Collisions at Sea, 1972,³ the International Convention for the Safety of Life at Sea, 1974⁴ and the associated International Code for the Security of Ships and of Port Facilities,⁵ as well as the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988,⁶ which was adopted after the hijacking of the Italian ship *Achille Lauro* in 1985, an incident that had much more to do with maritime terrorism than maritime piracy, although the safety of navigation is the point in common between the two crimes. Another relevant legal instrument is the United Nations Convention against Transnational Organized Crime (Organized Crime Convention), adopted in 2000.⁷ At the regional level, consideration has also been

¹ A/CN.4/758.

² United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982), United Nations, *Treaty Series*, vol. 1833, No. 31363, p. 396 (entry into force: 16 November 1994).

³ Convention on the International Regulations for Preventing Collisions at Sea, 1972 (London, 20 October 1972), *ibid.*, vol. 1050, No. 15824, p. 17 (entry into force: 15 July 1977).

⁴ International Convention for the Safety of Life at Sea, 1974 (London, 1 November 1974), *ibid.*, vol. 1185, No. 18961, p. 277 (entry into force: 25 May 1980).

⁵ International Code for the Security of Ships and of Port Facilities (London, 12 December 2002), Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, resolution 2 (entry into force: 1 July 2004).

⁶ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988), United Nations, *Treaty Series*, vol. 1678, No. 29004, p. 201 (entry into force: 1 March 1992).

⁷ United Nations Convention against Transnational Organized Crime (New York, 15 November

given to regional agreements either addressing maritime piracy and armed robbery specifically or maritime safety more generally. These agreements are the Caribbean Community (CARICOM) Maritime and Airspace Security Cooperation Agreement of 2008,⁸ the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia of 2004,⁹ the Memorandum of Understanding on the Establishment of a Sub-Regional Integrated Coast Guard Function Network in West and Central Africa of 2008,¹⁰ the Code of Conduct concerning the Repression of Piracy, Armed Robbery against Ships and Illicit Maritime Activity in West and Central Africa (Yaoundé Code of Conduct) of 2013,¹¹ the Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden (Djibouti Code of Conduct) of 2009¹² and the Charter on Maritime Security and Safety and Development in Africa (Lomé Charter) of 2016.¹³ As for international organizations that play an essential role in combating piracy, the study has covered both initiatives undertaken by the United Nations through the General Assembly and the Security Council, as principal organs, and initiatives undertaken by IMO, acting as the specialized agency of the United Nations with responsibility for maritime safety, and by NATO, for practical reasons, in other words with regard to its operational responses at sea when acts of piracy are committed in maritime regions posing risks for the safety of navigation, as was the case in the Gulf of Guinea and off the coast of Somalia.

II. Practice of international organizations involved in combating piracy and armed robbery at sea

5. Norms and rules of international law to combat piracy and armed robbery at sea have been drawn up and adopted by States and various international organizations around the world, especially in regions particularly affected by these two forms of crime. Many legal instruments have in fact been adopted to combat piracy and armed robbery at sea. While some of them are universal in scope, others are of regional or subregional application. For example, many international conventions, protocols, recommendations, resolutions and decisions on the global issue of maritime safety, as well as on the fight against piracy and armed robbery at sea more specifically, have been adopted by the United Nations, through the Security Council, the General Assembly and IMO as a specialized agency of the United Nations for maritime safety,

2000), *ibid.*, vol. 2225, No. 39574, p. 209 (entry into force: 29 September 2003).

⁸ CARICOM Maritime and Airspace Security Cooperation Agreement (4 July 2008), *Law of the Sea Bulletin*, No. 68 (2008), p. 20 (entry into force: 2 December 2010).

⁹ Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (Tokyo, 11 November 2004, United Nations, *Treaty Series*, vol. 2398, No. 43302, p. 199 (entry into force: 4 September 2006).

¹⁰ Memorandum of Understanding on the Establishment of a Sub-Regional Integrated Coast Guard Function Network in West and Central Africa (Dakar, 31 July 2008), *Law of the Sea Bulletin*, No. 68 (2008), p. 51 (Maritime Organization of West and Central Africa, document MOWCA/XIII GA.08/8).

¹¹ Code of Conduct concerning the Repression of Piracy, Armed Robbery against Ships and Illicit Maritime Activity in West and Central Africa (Yaoundé, 25 June 2013). Available at: https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/code_of_conduct%20signed%20from%20ECOWAS%20site.pdf (entry into force: 25 June 2013).

¹² Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden (Djibouti, 29 January 2009), IMO, document C102/14, annex, attachment 1, annex to resolution 1. See also: <https://www.imo.org/en/OurWork/Security/Pages/DCoC.aspx>.

¹³ Charter on Maritime Security and Safety and Development in Africa (Lomé, 15 October 2016). Available at: <https://au.int/en/treaties/african-charter-maritime-security-and-safety-and-development-africa-lome-charter> (last signature: 26 September 2019).

in their respective areas of competence, or under their auspices. The various legal instruments play a vital role in combating those crimes, by establishing international rules, encouraging cooperation among States and setting out the general cooperation framework for preventing and repressing such illegal activities, and thereby helping to promote cooperation to ensure the safety of navigation. Under article 100 of the United Nations Convention on the Law of the Sea, the principle of the duty to cooperate is set out in the following terms: “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, the Convention does not provide any substantive content, nor are the means of fulfilling this duty specified therein. The task seems to fall primarily to States within the framework of regional and subregional organizations, as well as the United Nations, through the General Assembly and the Security Council, on the one hand, and IMO, as a specialized agency, on the other.

A. United Nations: the General Assembly and the Security Council

6. In his first report, the Special Rapporteur indicated that maritime piracy was a global issue affecting the security of the seas and oceans, and also the economic activities of States, and specified that the United Nations Convention on the Law of the Sea,¹⁴ also known as the Montego Bay Convention, which was adopted in 1982 and entered into force in 1994, was the applicable legal framework for addressing those issues. The Convention is now almost universally applied, and is recognized as the most comprehensive international agreement, since it covers all issues relating to the status and legal regime applicable to the various maritime spaces, the exploitation of marine resources, the conduct of maritime services and, more broadly, questions relating to maritime safety and security, including the specific issue of maritime piracy and armed robbery at sea. In his first report, the Special Rapporteur described how piracy was defined in article 101 of the Convention, and how the rules regarding the prosecution and repression of the acts making up that crime were set out in articles 100–107, 110 and 111 thereof. Based on those findings, it appeared that some elements of the definition contained in article 101 were difficult to apply and that clarifications were needed in order to adapt the classic definition of piracy in line with developments in the law of the sea, taking into account the impact of new technologies on the safety of navigation. The recent attacks by Houthi rebels on United States ships in the Red Sea have revived the debate on the issue of the safety of navigation, especially the very definition of piracy, given that the attacks in question were carried out using drones rather than ships.

7. To ensure the safety of navigation, several multilateral conventions through which States are called upon to strengthen international cooperation to address the commission of certain forms of crime at sea have been adopted under the auspices of the United Nations. Among them are the Organized Crime Convention and its Protocol against the Smuggling of Migrants by Land, Sea and Air,¹⁵ which also address the repression of maritime piracy as a form of transnational organized crime. Although the Organized Crime Convention is primarily focused on transnational organized crime, it contains provisions that might be relevant to combating maritime piracy. It defines transnational organized crime as criminal activity involving three elements: transnationality (crimes committed in more than one country), organization (organized criminal group) and economic or financial purpose (private ends). Some

¹⁴ United Nations Convention on the Law of the Sea, arts. 100–107.

¹⁵ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (New York, 15 November 2000), United Nations, *Treaty Series*, vol. 2241, No. 39574, p. 480.

groups of maritime pirates may be defined as transnational criminal organizations, in particular when their activities span national borders. Like article 100 of the United Nations Convention on the Law of the Sea, the Organized Crime Convention encourages international cooperation to combat transnational organized crime, including maritime piracy. The Organized Crime Convention also provides for mechanisms for judicial cooperation, extradition and mutual assistance in criminal matters among States parties, unlike article 100 of the United Nations Convention on the Law of the Sea which, as previously mentioned, does not contain any substantive or procedural content regarding cooperation to combat piracy and armed robbery at sea, implying that that task falls to States and regional and multilateral international organizations.

1. General Assembly

8. The United Nations General Assembly has repeatedly recalled the crucial role of international cooperation at the global, regional, subregional and bilateral levels in combating threats to maritime security in general and acts of piracy and armed robbery at sea¹⁶ in particular, and has called on States to fully implement the IMO resolutions on piracy and armed robbery,¹⁷ in particular the resolutions on the application of the revised guidance to shipowners, companies, ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships¹⁸ and the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships,¹⁹ and on the endorsement of best management practices with regard to piracy.²⁰

9. Various issues concerning international maritime affairs, including maritime piracy, armed robbery at sea and other crimes committed at sea, have been brought before the General Assembly as a plenary organ of the United Nations, comprising all 193 Member States. As early as 1958, under the auspices of the United Nations, the General Assembly adopted the Convention on the High Seas²¹ at the United Nations Conference on the Law of the Sea, which was held in Geneva in 1958. It defined acts of piracy and set out guidelines on how States should cooperate in the repression of such acts. The Convention on the High Seas was an important instrument for combating maritime piracy as it established norms and legal provisions for the repression of such criminal acts on the high seas. It was revised and supplemented by the 1982 United Nations Convention on the Law of the Sea, the relevant provisions of which were taken almost verbatim from the 1958 Convention.

10. In order to address crises related to the increased instances of acts of piracy and armed robbery at sea off the coast of Somalia and along the coasts of African States in the Gulf of Guinea, the General Assembly adopted several resolutions on the prevention and repression of these two forms of crime. In 1998, in its consideration of the agenda item entitled “Oceans and the law of the sea”, it expressed its deep concern at the threats to shipping from piracy and armed robbery at sea, being careful to underline, right from the start, the duty of States to cooperate in preventing and repressing such acts. It made clear that cooperation was incumbent on all States, but “in particular coastal States in affected regions”, urging them “to take all necessary and appropriate measures to prevent and combat incidents of piracy and armed robbery at sea and to investigate or cooperate in the investigation of such incidents

¹⁶ General Assembly resolution [63/111](#) of 5 December 2008, para. 61.

¹⁷ *Ibid.*, paras. 67 and 68.

¹⁸ IMO, document MSC.1/Circ. 1334, annex.

¹⁹ IMO, Assembly resolution A.1025(26) of 2 December 2009, annex.

²⁰ [A/CN.4/757](#), para. 348.

²¹ Convention on the High Seas (Geneva, 29 April 1958), United Nations, *Treaty Series*, vol. 450, No. 6465, p. 11.

wherever they occur and bring the alleged perpetrators to justice”.²² To that end, the General Assembly called upon States to implement the IMO guidelines²³ on best practices in the area of maritime safety and in particular with regard to cooperation in preventing acts of piracy and armed robbery at sea. Moreover, it established a series of measures and urged all States and relevant international organizations to cooperate in implementing them with a view to combating piracy and armed robbery at sea. Those prevention measures include, inter alia, assisting with capacity-building, reporting incidents, conducting investigations, opening court proceedings, training seafarers, port staff and enforcement personnel, acquiring enforcement equipment and guarding against fraudulent ship registration.²⁴ For the prevention and repression of piracy and armed robbery at sea, the General Assembly has given primary responsibility to the States concerned. In the case of the Gulf of Guinea, for example, it recognized that such responsibility lay primarily with the States of the region, which were responsible for combating the threat and addressing its underlying causes.²⁵ It also underscored the importance for States and regional organizations of entering into special agreements or arrangements, in particular those allowing the embarkment of security officers on board the vessels of the States concerned to prevent the commission of acts of piracy and armed robbery at sea.

11. As well as calling upon States and IMO to enhance international cooperation at the regional level through the development of a “common approach”,²⁶ the General Assembly broadened the range of participants involved in ensuring maritime security and the safety of navigation by underscoring the role that can be played by private entities concerned by the fight against piracy and armed robbery at sea, in cooperation with States, and with IMO in terms of submitting reports on incidents and implementing IMO guidelines.²⁷

12. Having broadened the range of participants involved in maritime security and the safety of navigation, the General Assembly then also expanded the scope of the definition of the concept of safety of navigation, by including piracy and armed robbery in the expression “maritime safety and security”, or safety of navigation. In fact, the concept of safety of navigation was thus expanded to encompass terrorist acts at sea,²⁸ the roles that the flag State is required to play in that regard²⁹ and the need for States to give attention to “promoting, concluding and implementing cooperation agreements, in particular at the regional level and in high-risk areas”.³⁰ In that connection, the General Assembly urged States to become parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.^{31,32} In order to ensure effective implementation of the international legal instruments applicable to maritime safety in general and to piracy in particular, States were urged to adopt appropriate national legislation,³³ thereby establishing the national law applicable to the apprehension and

²² General Assembly resolution 53/32 of 24 November 1998, para. 22.

²³ General Assembly resolution 54/31 of 24 November 1999, para. 21.

²⁴ General Assembly resolution 56/12 of 28 November 2001, para. 29.

²⁵ General Assembly resolution 68/70 of 9 December 2013, para. 114.

²⁶ General Assembly resolution 56/12, para. 30.

²⁷ Ibid., para. 31.

²⁸ General Assembly resolution 57/141 of 12 December 2002, para. 28.

²⁹ General Assembly resolution 58/240 of 23 December 2003, paras. 36 and 37.

³⁰ Ibid., para. 37.

³¹ Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10 March 1988), United Nations, *Treaty Series*, vol. 1678, No. 29004, p. 201.

³² General Assembly resolution 59/24 of 17 November 2004, para. 50.

³³ General Assembly resolution 63/111, para. 64.

prosecution of those alleged to have committed acts of piracy,³⁴ and to ensure effective implementation of international law applicable to piracy and armed robbery at sea, including other instruments consistent with the United Nations Convention on the Law of the Sea.³⁵

13. As well as noting the efforts made by the shipping industry to cooperate with the efforts by States regarding piracy,³⁶ the General Assembly mentioned the controversial issue of the legality of the use of private security companies at sea in the prevention and repression of piracy, noting the approval by IMO of revised interim guidance to shipowners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the high risk area.³⁷ It also highlighted the fundamental role of the International Criminal Police Organization (INTERPOL), whose global piracy database is designed to consolidate information about piracy and facilitate the development of actionable analysis for law enforcement by States.³⁸ It has been observed that the success of the operational pursuit at sea of pirates and those engaging in armed robbery at sea, and the successful conclusion of legal proceedings before national courts, are in general still largely dependent on cooperation between the various national authorities concerned by maritime safety, on the one hand, and between the regional, subregional and multilateral institutions responsible for matters of maritime safety and security, including efforts to combat piracy and armed robbery at sea, on the other. Furthermore, in 2017, thanks to international cooperation, the General Assembly welcomed the successful prosecution of piracy cases in Belgium, India, Mauritius and Seychelles in 2016, as well as the successful cooperation between China and Somalia in transferring suspected pirates.³⁹ Like the General Assembly, the Security Council, acting under Chapter VII of the Charter of the United Nations, has placed particular emphasis on the duty to cooperate, with a view to more effectively combating piracy and armed robbery at sea in the regions most affected by these forms of crime.

2. Security Council

14. The main legal issues addressed by the Security Council relate to the obligation to legislate, criminal proceedings, the transfer of suspected pirates, their detention, the need to legislate by adopting national laws, the conclusion of bilateral or regional agreements,⁴⁰ the preservation of evidence and the conduct of investigations, legal proceedings and the extradition of the perpetrators of acts of piracy and armed robbery at sea; however, action on these issues cannot be taken without cooperation among States.

15. On 31 May 2022, at the 9050th meeting of the Security Council, all 15 of its members unanimously adopted resolution [2634 \(2022\)](#), by which it condemned acts of piracy and armed robbery at sea, including acts of murder, kidnapping and hostage-taking in the Gulf of Guinea, and called upon States to cooperate to end these crimes. It has referred, among other issues, to the impact of piracy on security in Somalia,⁴¹ the need for protection of merchant shipping by Member States whose naval vessels and military aircraft are authorized to operate in Somali waters and on the high seas and the importance of understanding the underlying causes of piracy.

³⁴ Ibid., para. 63.

³⁵ General Assembly resolution [65/37](#) of 7 December 2010, para. 86.

³⁶ General Assembly resolution [67/78](#) of 11 December 2012, para. 104.

³⁷ Ibid., para. 103.

³⁸ General Assembly resolution [63/111](#), paras. 67 and 68.

³⁹ General Assembly resolution [72/73](#) of 5 December 2017, para. 136.

⁴⁰ Security Council resolution [2015 \(2011\)](#) of 24 October 2011, para. 8.

⁴¹ Security Council resolution [1676 \(2006\)](#) of 10 May 2006, ninth preambular para.

16. The Security Council has played a major role in combating acts of maritime piracy and armed robbery at sea, in particular those committed in the Gulf of Aden off the coast of Somalia. Unlike the General Assembly, the Security Council has an authoritative role, since, under the Charter of the United Nations, it has the power to adopt resolutions that are binding on Member States. As will be shown in the following paragraphs, the Security Council, as part of efforts to address acts of piracy and armed robbery at sea in the Gulf of Guinea and Somalia, adopted numerous resolutions under Chapter VII of the Charter, by means of which an ad hoc legal and operational framework for combating those crimes off the coast of Somalia was established. For example, the Security Council gave exceptional authorization to States cooperating with Somalia to enter its territorial waters and use within those waters all necessary means to repress acts of piracy and armed robbery at sea.⁴² However, the Security Council was careful to underscore that none of its resolutions on piracy in Somalia should be considered as reflecting customary international law and that the measures taken pursuant thereto should be consistent with international humanitarian law and international human rights law.⁴³ Cooperating States are those that are interested in the security of maritime activities and that operate in conformity with international law, specifically the United Nations Convention on the Law of the Sea.⁴⁴

17. Through its resolutions, the Security Council has authorized Member States to take coercive measures to combat maritime piracy, in particular by using military action to repress the commission of such crimes at sea. It has thereby established a legal framework that derogates from the United Nations Convention on the Law of the Sea by authorizing States to enter the territorial waters of Somalia in exercise of the right of hot pursuit. The first resolutions adopted by the Security Council, back in 2008, were resolutions [1814 \(2008\)](#) of 15 May 2008, [1816 \(2008\)](#) of 2 June 2008, [1838 \(2008\)](#) of 7 October 2008, [1844 \(2008\)](#) of 20 November 2008, [1846 \(2008\)](#) of 2 December 2008 and [1851 \(2008\)](#) of 16 December 2008. It subsequently adopted resolutions [1897 \(2009\)](#) of 30 November 2009, [1918 \(2010\)](#) of 27 April 2010, [1950 \(2010\)](#) of 23 November 2010, [1976 \(2011\)](#) of 11 April 2011, [2015 \(2011\)](#) of 24 October 2011, [2018 \(2011\)](#) of 31 October 2011, [2020 \(2011\)](#) of 22 November 2011 and [2039 \(2012\)](#) of 29 February 2012. In virtually all those resolutions, the Security Council called upon States, relevant international organizations and actors in the shipping industry to combat piracy, armed robbery at sea and other forms of maritime crime through cooperation at the regional and multilateral levels. In addition, the President of the Security Council made several statements in favour of cooperation among States to combat those illegal acts, including on 25 August 2010,⁴⁵ 25 April 2016⁴⁶ and 9 August 2021.⁴⁷

18. The Security Council has addressed the issue of piracy and armed robbery at sea by stressing the need to find global solutions that are in line with regional approaches to combating those forms of maritime crime. It has adopted almost all its resolutions on piracy in Somalia and the Gulf of Guinea under Chapter VII of the Charter of the United Nations, which authorizes the use of force; it has therefore continuously based its resolutions on the threats to regional and international security that are posed by pirates. Among the solutions envisaged, the Security Council has focused on the need to develop regional and national maritime security strategies⁴⁸ through “regional

⁴² Security Council resolution [1816 \(2008\)](#) of 2 June 2008, para. 7.

⁴³ Security Council resolution [1851 \(2008\)](#) of 16 December 2008, para. 6.

⁴⁴ Security Council resolution [1838 \(2008\)](#) of 7 October 2008, paras. 2 and 9.

⁴⁵ [S/PRST/2010/16](#).

⁴⁶ [S/PRST/2016/4](#).

⁴⁷ [S/PRST/2021/15](#).

⁴⁸ Security Council resolution [2039 \(2012\)](#), paras. 3 and 5.

cooperation and leadership in developing a comprehensive strategy to address that threat”,⁴⁹ referring to maritime piracy.

19. The Security Council has addressed the problem of piracy off the coast of Somalia from a more global perspective, simultaneously considering various political, legal, operational, social and institutional issues related to the prevention and repression of piracy and armed robbery at sea,⁵⁰ since it is well established that the solutions to the fight against piracy lie in a global approach pursued through the conclusion of “regional agreements [that] are an important element in any comprehensive approach against criminality at sea, but these are effective only when implemented together with a multitude of other measures and arrangements”,⁵¹ which necessarily includes the multidimensional nature of maritime piracy.

20. Furthermore, the Security Council has established a link between the increase in acts of piracy and the financing of terrorism. In its resolution [2383 \(2017\)](#) of 7 November 2017, it added a reference to terrorism as a third phenomenon fuelled by piracy⁵² and by criminal activities organized by armed groups,⁵³ establishing a clear link between piracy and the financing of terrorism⁵⁴ and between land-based activities and piracy.⁵⁵

21. To address these issues, the Security Council has stressed the need to advance cooperation at the regional level in prosecuting and detaining those suspected of having committed acts of piracy and armed robbery at sea⁵⁶ and to adopt a comprehensive strategy for combating terrorism and piracy.⁵⁷ For example, regional cooperation between States of the Gulf of Guinea, flag States and States of nationality of victims or of perpetrators of acts of piracy or armed robbery at sea has been found to be necessary for the prosecution of alleged perpetrators.⁵⁸ With regard to the question of the transfer of those suspected of having committed acts of piracy and armed robbery at sea, the Security Council has referred to the need for regional cooperation through regional agreements between States in and outside the region,⁵⁹ describing the means or modalities of “cooperation and coordination”,⁶⁰ including with regard to the conduct of patrols, land, maritime and air surveillance and other operations,⁶¹ as has been the case in the Gulf of Guinea where coordination centres for transnational and transregional maritime security have been established.⁶² In addressing the issue of Somali piracy, the Security Council has referred several times to the region,⁶³ and to regional authorities or organizations for the repression of acts of piracy and armed robbery at sea,⁶⁴ encouraging “States and regional organizations ... to assist Somalia in strengthening its coastguard capacity, in particular by supporting the development

⁴⁹ [A/CN.4/757](#), para. 226.

⁵⁰ *Ibid.*, para. 214.

⁵¹ Maximo Mejia, “Regional cooperation in combating piracy and armed robbery against ships: learning lessons from ReCAAP”, in *Sea Piracy Law: Selected National Legal Frameworks and Regional Legislative Approaches*, Anna Petrig, ed. (Berlin, Duncker & Humboldt, 2010), pp. 125–137, at p.133.

⁵² [A/CN.4/757](#), para. 286.

⁵³ Security Council resolution [1844 \(2008\)](#), fifth preambular para.

⁵⁴ [A/CN.4/757](#), para. 236, referring to [S/PRST/2016/4](#).

⁵⁵ Security Council resolution [1976 \(2011\)](#), para. 4.

⁵⁶ [A/CN.4/757](#), para. 222, referring to the report of the Secretary-General ([S/2010/394](#)).

⁵⁷ [A/CN.4/757](#), para. 224, referring to [S/PRST/2011/6](#).

⁵⁸ Security Council resolution [2018 \(2011\)](#), para. 5.

⁵⁹ Security Council resolution [2634 \(2022\)](#), para. 4.

⁶⁰ [A/CN.4/757](#), para. 329.

⁶¹ Security Council resolution [2634 \(2022\)](#), para. 6.

⁶² Security Council resolution [2039 \(2012\)](#), para. 7.

⁶³ Security Council resolution [1851 \(2008\)](#), para. 3.

⁶⁴ Security Council resolution [1976 \(2011\)](#), para. 4.

of land-based coastal monitoring and increasing their cooperation with the Somali regional authorities”.⁶⁵

22. In its memorandum on prevention and repression of piracy and armed robbery at sea, the Secretariat recognized that, throughout the Security Council’s consideration of the topic, one of the most important aspects of its resolutions had been its calls for international cooperation and coordination.⁶⁶ While article 100 of the United Nations Convention on the Law of the Sea seems to establish a duty to cooperate, it does not indicate the precise content of the concept, nor does it specify its legal scope,⁶⁷ leaving to States the task of defining such content and the means of implementing it. In fact, the wording by which the Security Council urged all States to cooperate with each other, with IMO and, where appropriate, with regional organizations, as well as with shipping and insurance companies,⁶⁸ was initially very general, though later the Council stressed the importance of sharing information not only through bilateral channels but also at the regional level,⁶⁹ by establishing an international cooperation mechanism to act as a common point of contact between States and regional and international organizations.⁷⁰ Furthermore, the Security Council requested the establishment, in the Indian Ocean region, of a centre to coordinate information relevant to piracy and armed robbery at sea and to increase the regional capacity of the United Nations Office on Drugs and Crime (UNODC) with regard to the arrangement of shiprider agreements or arrangements,⁷¹ the sharing of evidence and information,⁷² and the facilitation of coordination among States and international organizations, in cooperation with IMO, flag States and the Transitional Federal Government of Somalia⁷³ as part of the fight against piracy off the coast of Somalia.

23. While international cooperation is established at the institutional and legal levels through the conclusion of bilateral, subregional, regional and multilateral agreements or arrangements, it becomes operational at sea when foreign navies exercise the right of hot pursuit against suspected pirates. The Security Council called on States interested in the security of maritime activities to deploy their naval vessels and military aircraft on the high seas,⁷⁴ to seize boats, vessels and other related equipment suspected of being used for the commission of piracy and armed robbery off the coast of Somalia, to use all necessary means on the high seas or in their air space, to enter the territorial waters of Somalia and to use them in a manner consistent with international law.⁷⁵ This authorization also raises the question of the legality of the right of passage of the ships authorized to operate in Somali waters and on the high seas to combat piracy. On this point, the Security Council specifies that the right of innocent passage by ships of any third State,⁷⁶ when authorizations are granted to

⁶⁵ Ibid., para. 10.

⁶⁶ A/CN.4/757, para. 244.

⁶⁷ See Robert C. Beckman, “The piracy regime under UNCLOS: problems and prospects for cooperation”, in *Piracy and International Maritime Crimes in ASEAN – Prospects for Cooperation*, Robert C. Beckman and J. Ashley Roach, eds. (Cheltenham, Edward Elgar, 2012), pp. 17–37.

⁶⁸ Security Council resolution 1846 (2008), para. 4.

⁶⁹ Ibid., para. 7.

⁷⁰ Security Council resolution 1851 (2008), para. 4.

⁷¹ A/CN.4/757, para. 244 (f).

⁷² Security Council resolution 1976 (2011), para. 19; Security Council resolution 2020 (2011), para. 21; and Security Council resolution 2077 (2012), para. 25.

⁷³ Security Council resolution 1897 (2009), para. 4; and Security Council resolution 1950 (2010), para. 5.

⁷⁴ Security Council resolution 1838 (2008), para. 2.

⁷⁵ See Security Council resolution 1816 (2008).

⁷⁶ Ibid., para. 8.

States taking part in military operations, shall not be considered as arising under customary international law.⁷⁷

24. Military interventions at sea authorized by the Security Council thus raise the question of the exercise by States of their right of hot pursuit. On this point, the Security Council has broadened the scope of the powers of all key actors in the area of maritime safety and security, recognizing that this right can be exercised by all States, and in particular flag, coastal and port States, States of the nationality of victims and perpetrators of piracy and armed robbery at sea, and other States with relevant jurisdiction under international law and national legislation. The Security Council has called on all these actors to cooperate in determining jurisdiction and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with international law, including international human rights law, and to render assistance by providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such victims and witnesses and persons detained as a result of operations conducted under the resolution in question.⁷⁸ The Security Council has called on States to ensure that all pirates handed over to judicial authorities following the investigation and prosecution of the perpetrators of, and accomplices⁷⁹ to, acts of piracy and armed robbery at sea are subject to a judicial process.⁸⁰ It has established the prior obligation for States to criminalize these acts under their national law. On this point, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation may be a source of inspiration, in that it imposes on States parties the obligation to criminalize the act of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation, to establish its jurisdiction with regard to these infrastructures and to accept the delivery of persons responsible for, or suspected of, such acts. It is well established, interpreting the position of Henri Fouché, that cooperation or coordination between national navies can help to address the complicated matter of universal jurisdiction in relation to the prosecution of suspected pirates⁸¹ and that it can remedy in practical terms the shortcomings in international law applicable to piracy and armed robbery at sea or against ships, to the extent that cooperation seems to be the most realistic, if not the most pragmatic, way to address the transnational or cross-border nature of piracy. In order to be effective, such cooperation must be inclusive and as broad as possible, involving all actors concerned, namely, States and relevant international organizations such as IMO, UNODC, INTERPOL, the Food and Agriculture Organization of the United Nations and the United Nations Development Programme (UNDP), regional organizations and the private maritime sector (shipping and insurance companies). For example, in the context of the regulation of piracy and armed robbery in the Gulf of Guinea,⁸² the involvement of the international community⁸³ – through the assistance that organizations and institutions such as UNODC and UNDP have been called upon to provide in order to support the development of domestic legislation, agreements and mechanisms that would allow prosecution, transfer and imprisonment – has clearly been crucial.⁸⁴ Cooperation may also extend to the bilateral level and include special agreements or arrangements that may be concluded between two States, namely, the State apprehending the pirate and the State of jurisdiction of the

⁷⁷ Ibid., para. 9.

⁷⁸ Security Council resolution 1846 (2008), para. 14.

⁷⁹ Security Council resolution 1897 (2009), para. 12. See also A/CN.4/757, para. 269.

⁸⁰ Security Council resolution 1950 (2010), para. 12.

⁸¹ Henri Fouché, “Harmonized legal framework for Africa as an instrument to combat sea piracy” in *Sea Piracy Law*, Anna Petrig, ed. (see footnote 56), pp 139–159, at p. 145.

⁸² A/CN.4/757, para. 329.

⁸³ Security Council resolution 2020 (2011), paras. 1 and 9.

⁸⁴ Security Council resolution 2015 (2011), para. 8.

pirate, in other words, the State prosecuting the pirate in its courts of competent jurisdiction. Such bilateral agreements include those concluded between Kenya and some European States.

25. In several of its resolutions, the Security Council has raised the issue of national law as a prerequisite, or *sine qua non*, for any repressive measures against piracy and armed robbery at sea. In other words, a State that has arrested a pirate may only legitimately exercise jurisdiction if it has adopted legislation criminalizing the offence in question and thus satisfies the criminal law principle of *nullum crimen, nulla poena sine lege*, which means no crime and no penalty without a law in place. It is in reference to this principle that the Security Council called upon Member States in the region of the Gulf of Guinea to criminalize piracy and armed robbery at sea under their domestic laws, and to investigate, and to prosecute or extradite, perpetrators of such crimes.⁸⁵ With regard to piracy off the coast of Somalia, the option of establishing a specialized court to hear cases concerning piracy was proposed. In order for such a court to be made operational, it was found that it remained necessary for Somali law to be revised to provide a sound criminal and procedural basis for prosecutions and that “the key to increasing the number of States that were able to prosecute acts of piracy lay in national implementation of the international legal regime – as set out in the ... United Nations Convention on the Law of the Sea and customary international law, and complemented by a number of Council resolutions”⁸⁶ and the Security Council therefore encouraged States in the Gulf of Guinea to develop a comprehensive strategy, including through the following actions: (a) the development of domestic laws and regulations, where they were not in place, criminalizing piracy and armed robbery at sea; (b) the development of a regional framework to counter piracy and armed robbery at sea, including information-sharing and operational coordination mechanisms in the region; and (c) the development and strengthening of domestic laws and regulations, as appropriate, to implement relevant international agreements addressing the safety and security of navigation, in accordance with international law.⁸⁷

26. On the basis of that well-established criminal law principle, the Security Council, in its resolution 1918 (2010) and several others,⁸⁸ called on “all States, including States in the region” (that is, the Indian Ocean and off the coast of Somalia), to criminalize piracy under their domestic law, and also incitement, facilitation and attempts to commit acts of piracy.⁸⁹ On the basis of that principle, the African regional economic communities have played a key role in the fight against piracy by urging their member States to harmonize their national laws on combating piracy and prosecuting pirates. However, it has been observed that regional approaches to the harmonization of laws were effective when there were major similarities between the legal systems and socioeconomic and political conditions of States in the region.

27. It is for that reason that the Security Council, in order to promote better implementation of the principle, invited States, individually or in cooperation with regional organizations, UNODC and INTERPOL, among other entities, to examine their domestic legal frameworks for detention at sea of suspected pirates to ensure that their laws provided reasonable procedures, consistent with applicable international human rights law, and to examine domestic procedures for the preservation of evidence that might be used in criminal proceedings to ensure the admissibility of such evidence.⁹⁰ This call for a regional approach to the pursuit and

⁸⁵ Security Council resolution 2634 (2022), para. 3.

⁸⁶ A/CN.4/757, para. 300.

⁸⁷ Security Council resolution 2018 (2011), para. 2; see also A/CN.4/757, para. 314.

⁸⁸ A/CN.4/757, para. 281, in particular footnote 570.

⁸⁹ Ibid., para. 282.

⁹⁰ Security Council resolution 1976 (2011), para. 16.

transfer of suspected pirates, through assistance, might be reflected in the provision of support by international partners and regional organizations, with a view to building the capacity of affected States, in particular with regard to the conduct of bilateral or regional patrols.⁹¹

B. The United Nations and its specialized agency for maritime safety: the International Maritime Organization

28. Against the backdrop of the resurgence of piracy, IMO urged the Security Council to promote “a swift, coordinated national and international response, and to urge States to establish an effective legal jurisdiction to bring alleged offenders [suspected of acts of piracy] to justice”.⁹²

29. IMO, as a specialized agency of the United Nations, has been given the mission of ensuring the safety of navigation around the world. To manage and reduce any threats that could undermine maritime safety, it draws up rules and recommendations and develops international standards to regulate international shipping and prevent marine pollution and maritime piracy. IMO has played a major role in efforts to combat piracy and armed robbery at sea by adopting measures to protect ships and sailors. It has also helped to facilitate regional cooperation on combating both these forms of crime, which have been on its agenda since the early 1980s. In the late 1990s and early 2000s, its focus was on piracy in the South China Sea and the Straits of Malacca and Singapore, which were the world’s piracy hotspots at the time. Since 2005, it has turned its attention to piracy off the coast of Somalia, in the Gulf of Aden and throughout the Indian Ocean. It is also implementing a strategy to improve maritime security in West and Central Africa, in line with regional maritime security agreements. With support and cooperation from the shipping industry, IMO has developed and adopted a number of anti-piracy measures, thereby contributing to the mitigation of the negative impact of piracy worldwide.⁹³

30. In 1988, IMO adopted the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.⁹⁴ The Convention is aimed at combating various kinds of illegal acts at sea, including piracy, attacks against ships, the hijacking of ships and other criminal activities carried out at sea. It contains provisions on the prevention and suppression of such acts and cooperation in criminal proceedings. On 12 December 2002, IMO adopted the International Ship and Port Facility Security Code at a meeting of its Maritime Safety Committee. The Code was developed in response to growing concerns about maritime safety following the attacks perpetrated on 11 September 2001 in the United States of America, which highlighted the vulnerability of ships and port facilities to acts of terrorism. The International Ship and Port Facility Security Code establishes safety standards and measures to prevent acts of terrorism and threats to maritime safety and requires IMO member States to put in place national security regimes that are consistent with the Code. The Code has helped to strengthen safety in the maritime sector through the establishment of control procedures, security plans and training for crews and port personnel, with a view to the prevention of acts of piracy, terrorist attacks and other threats to the safety of navigation. Although the Code does not address piracy directly, it is indirectly linked

⁹¹ A/CN.4/757, para. 324; and Security Council resolution 2018 (2011), para. 3.

⁹² A/CN.4/757, para. 217.

⁹³ IMO, “Maritime Security”. Available at <https://www.imo.org/en/OurWork/Security>.

⁹⁴ Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10 March 1988), United Nations, *Treaty Series*, vol. 1678, No. 29004, p. 201.

to the issue, since its purpose is to establish and reinforce the general safety of navigation, in ports and on ships.

31. In December 2009, in response to the upsurge in acts of piracy off the coast of Somalia, IMO adopted resolution A.1025(26)⁹⁵ on the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships. The resolution provided a definition of armed robbery against ships, which the Special Rapporteur has reproduced without making any fundamental changes to its substance, thereby allowing for a clear distinction in the applicable international law between piracy, which is committed on the high seas, and armed robbery at sea, which occurs in territorial waters.⁹⁶

32. As part of its awareness-raising efforts, IMO also publishes incident reports on acts of piracy and armed robbery against ships,⁹⁷ on the basis of data transmitted by its member States and relevant international organizations. The first such report was published in 1982. Since July 2002, IMO has distinguished in its monthly and annual reports on piracy and armed robbery against ships between acts or attempted acts of piracy (in international waters) and armed robbery against ships (in territorial waters). These monthly reports include the names and types of the ships attacked; the position, date and time of each incident; any consequences for the crew, ship or cargo; and the action taken by the crew and coastal authorities.⁹⁸ While IMO is seen as a body that legislates on the safety of navigation, NATO is considered to be an operational body that takes military action at sea, through the navies of its member States.

C. North Atlantic Treaty Organization

33. NATO is an intergovernmental military alliance aimed at ensuring the security of its members through collective defence. The North Atlantic Treaty primarily addresses issues of collective security and mutual assistance in the event of armed aggression. NATO also plays an important role in the fight against maritime piracy and armed robbery at sea.⁹⁹

34. NATO has been involved in the fight against maritime piracy, with the authorization of the Security Council acting under Chapter VII of the Charter of the United Nations, notably in the Gulf of Aden and the surrounding area off the coast of Somalia. Maritime piracy in this region has been a major concern for international maritime trade, as pirate groups have attacked merchant ships and kidnapped sailors. Against that backdrop, between 2009 and 2016 NATO conducted Operation Ocean Shield¹⁰⁰ to combat piracy in the region, using warships belonging to its member States that had been authorized to patrol actively the Gulf of Aden and the surrounding waters in order to deter pirate attacks, escort vulnerable merchant ships and coordinate efforts with other international naval forces involved in the fight against piracy. These operations had a major impact in terms of reducing the number of pirate attacks in the region.

⁹⁵ IMO, Assembly resolution A.1025(26) of 2 December 2009. Available at <https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/A.1025.pdf>.

⁹⁶ See the first report of the Special Rapporteur (A/CN.4/758).

⁹⁷ IMO, "Piracy Reports". Available at <https://www.imo.org/en/OurWork/Security/Pages/Piracy-Reports-Default.aspx>.

⁹⁸ Ibid.

⁹⁹ Laurie R. Blank: "The use of force against pirates", in *Prosecuting Maritime Piracy – Domestic Solutions to International Crime*, Michael P. Scharf, Michael A. Newton and Milena Sterio, eds. (Cambridge University Press, 2015), pp. 103–118, at p. 116.

¹⁰⁰ NATO, "Counter-piracy operations (2008–2016)", 19 May 2022. Available at https://www.nato.int/cps/en/natohq/topics_48815.htm.

35. Practices for combating maritime piracy and armed robbery at sea derive from the domestic laws of States; from international law; from a combination of domestic and international law; or from regional or subregional law, through agreements between States of a region or subregion on cooperation to prevent and repress such crimes. States have implemented naval patrols and deployed warships to patrol areas at risk of piracy, with the aim of deterring pirates from acting and of reacting rapidly to incidents or alerts. Some States have also established systems whereby vulnerable merchant ships are escorted by warships or private security teams to deter pirate attacks. States have also put information-sharing systems in place, through piracy information and coordination centres. These centres are organizations that play a crucial role in the collection, dissemination and analysis of information concerning incidents of maritime piracy and other illegal acts at sea. They help States to monitor and respond to piracy threats in specific maritime zones.

36. Although international regulation is necessary, it has been found appropriate to consider regional approaches to addressing certain global challenges, such as maritime safety, in general, and piracy and armed robbery at sea, in particular.

III. Regional and subregional approaches to combating piracy and armed robbery at sea

37. The state of regional law concerning efforts to combat piracy and armed robbery at sea varies among the different maritime regions of the world. In some regions, regional and subregional organizations have negotiated and adopted agreements, protocols and cooperation mechanisms to overcome the general maritime safety problems that they face, and specifically to address effectively the crimes of piracy and armed robbery at sea. In Africa, Asia, the Americas, Europe and Oceania, regional approaches to combating various forms of maritime crime, including piracy and armed robbery at sea, have been based on the principle of cooperation as reflected in article 100 of the United Nations Convention on the Law of the Sea. The provisions of the Convention are too general to provide States with sufficiently objective guidelines for the effective operational implementation of cooperation. It is therefore up to States in the different maritime regions of the world to supply the meaning, the content and the substantive, conceptual and operational scope of the prevention and repression of piracy and armed robbery at sea. In other words, it seems to be up to States to make up for the shortcomings or lack of content of article 100 of the Convention through regional and subregional organizations, bilateral agreements and multilateral approaches or initiatives.

A. Africa and its regional approach to combating piracy and armed robbery at sea

38. The African continent is the region that has been most affected by piracy and armed robbery at sea over the past three decades. Such crimes have been particularly prevalent in the Gulf of Guinea and in the Indian Ocean off the coast of Somalia.

39. Piracy and armed robbery at sea have affected many countries in Africa. In several parts of the continent, States have recognized the need to cooperate to prevent and repress these transnational criminal acts, which undermine the safety of navigation as well as the economic development and social and political stability of the affected States. The Security Council unanimously adopted its resolution [2039 \(2012\)](#), in which it urged the States of the Gulf of Guinea to convene a summit to develop a regional anti-piracy strategy and to develop and implement maritime strategies, including for the establishment of a legal framework for the prosecution of

persons engaging in piracy and armed robbery at sea.¹⁰¹ In 2014, the African Union adopted the African Integrated Strategy for the Seas and Oceans (2050).

40. Given the extent of the negative impact of these crimes at sea for the States bordering the Gulf of Guinea and the Indian Ocean, particularly Somalia, over the past 15 years, the African States concerned have decided to take steps to curb these scourges. Several preventive and repressive measures have been taken, first at the national level, with individual States adopting domestic legislation to repress piracy and armed robbery at sea, and then at the regional level, through the establishment of regional cooperation instruments to combat the various forms of maritime crime.

41. At the continental level, the Lomé Charter,¹⁰² is the most recent instrument, although it is not yet in force. The Charter is intended to be a non-legally binding instrument. It was adopted at the extraordinary summit of the African Union on maritime security, safety and development in Africa held in Lomé in 2016. It is aimed at strengthening maritime security and safety cooperation between African States. It reaffirms the commitment of African States to combating maritime piracy and other illegal acts at sea, which threaten maritime security in the region, and encourages cooperation among African States and between African States and the international community to combat piracy and other forms of maritime crime. The Charter emphasizes the importance of cooperation through the exchange of information, the coordination of efforts and collaboration with relevant regional and international organizations. It recognizes the need to strengthen the capacities of African States in terms of maritime surveillance, the patrolling of maritime spaces and coasts, and prevention and repression as responses to piracy and other forms of maritime crime. It also encourages the establishment of regional information exchange centres to facilitate coordination. In the Charter, African States are also called upon to harmonize their national laws on piracy and encouraged to adopt appropriate laws and regulations to combat piracy and other illegal activities at sea and to implement the relevant international instruments. The Charter promotes the “blue economy” and emphasizes the sustainable development of marine and coastal resources in Africa, which could help to reduce the incentives for piracy by offering alternative economic opportunities to local populations whose members tend to become pirates as a result of lack of work and income.

42. It should be borne in mind that prior to the adoption of the Lomé Charter, several legal instruments concerning maritime safety had been adopted at the continental level in Africa, notably the African Maritime Transport Charter,¹⁰³ which was adopted in Durban at the second African Union Conference of Ministers Responsible for Maritime Transport, and a resolution on maritime safety, maritime security and protection of the marine environment.¹⁰⁴ Although not yet in force, the African Maritime Transport Charter defines the general framework for cooperation, insofar as it is aimed at the establishment of “harmonized policy, legal and institutional frameworks for the maritime sector in Africa”¹⁰⁵ and contains a call for the adoption of effective measures to combat piracy and other unlawful acts against shipping through cooperation with other international bodies.¹⁰⁶

¹⁰¹ Security Council resolution 2039 (2012), paras. 3 and 5.

¹⁰² See footnote 13.

¹⁰³ African Union, African Maritime Transport Charter, document AU/MT/MIN/1 (II), 16 October 2009.

¹⁰⁴ African Union, Durban resolution on maritime safety, maritime security and protection of the marine environment in Africa, document AU/MT/MIN/DRAFT/Res. (II), 16 October 2009.

¹⁰⁵ Paul Musili Wambua, “The legal framework for adjudication of piracy cases in Kenya: review of the jurisdictional and procedural challenges and the institutional capacity”, in *Sea Piracy Law*, Anna Petrig, ed. (see footnote 56), pp. 1–37, at p. 11.

¹⁰⁶ Ibid., citing art. 26 (2) of the draft African Maritime Transport Charter.

43. The Economic Community of West African States (ECOWAS) and the Economic Community of Central African States (ECCAS) have put in place institutions to combat various forms of maritime crime, including piracy and armed robbery at sea, and several other relevant regional and subregional organizations have been established. These include the Southern African Development Community (SADC), which has encouraged the secretariat of the Southern African Regional Police Chiefs Cooperation Organization to conduct, through its legal subcommittee, an audit of the laws of its member States relating to extradition in the region and to make recommendations on how to overcome impediments being experienced in the extradition of those guilty of committing acts of piracy in the region.¹⁰⁷

44. The same holds true for the East African Community, whose States members include Kenya, Uganda and the United Republic of Tanzania, which have taken up the issue of piracy and are aware of the need to harmonize their laws on the matter. The INTERPOL regional bureau for the East African Community had made the issue of piracy off the coast of Somalia a priority, and suggested that a harmonized legal framework for States on the east African coast be considered.¹⁰⁸ The Intergovernmental Authority on Development is a regional economic community comprising the East African countries Djibouti, Eritrea, Ethiopia, Kenya, Somalia, the Sudan, South Sudan and Uganda. Its member States have recognized the importance of harmonizing their anti-piracy laws as part of their efforts to combat piracy in Somalia.¹⁰⁹ The States of the Arab Maghreb Union (Algeria, Libya, Mauritania, Morocco and Tunisia) have also been made aware of the importance of harmonizing their laws.¹¹⁰ For the purposes of the present report, only the main legal instruments that deal primarily with maritime safety, including the combating of piracy and armed robbery at sea, namely the Djibouti Code of Conduct and the Yaoundé Code of Conduct, have been examined.

1. Djibouti Code of Conduct

45. In addition to the Lomé Charter, which remains a non-binding legal instrument, there are other regional anti-piracy instruments, including the Djibouti Code of Conduct.¹¹¹ The Code is an international agreement adopted in 2009 to combat maritime piracy off the Horn of Africa, particularly in the Gulf of Aden and western Indian Ocean region. Geographically, it includes not only the coastal States of the Indian Ocean and the Gulf of Aden but also those of the Red Sea. There are 20 States signatory to the Code, including some in East Africa and the Middle East. They are: Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Jordan, Kenya, Madagascar, Maldives, Mauritius, Mozambique, Oman, Saudi Arabia, Seychelles, Somalia, South Africa, Sudan, United Arab Emirates, United Republic of Tanzania and Yemen.¹¹² Since signing the Code, these States have established multi-institutional and multidisciplinary national maritime security and facilitation committees, with similar arrangements at the port level, to draw up action plans and implement effective security procedures. As a code of conduct, the instrument is not intended to be legally binding.

46. The Djibouti Code of Conduct is critical in the repression of acts of piracy and armed robbery against ships in the Gulf of Aden and the western Indian Ocean.

¹⁰⁷ Fouché, “Harmonized legal framework for Africa as an instrument to combat sea piracy” (see footnote 86), p. 154.

¹⁰⁸ Ibid., p. 155.

¹⁰⁹ Ibid., p. 156.

¹¹⁰ Ibid.

¹¹¹ See footnote 12.

¹¹² IMO, “The Djibouti Code of Conduct”. Available at <https://www.imo.org/en/OurWork/Security/Pages/Content-and-Evolution-of-the-Djibouti-Code-of-Conduct.aspx>.

Moreover, its scope has been expanded to cover other illegal maritime activities, such as human trafficking and illegal, unreported and unregulated fishing. At a high-level meeting held in Jeddah, Saudi Arabia, in January 2017, the signatories to the Code adopted a revised code, referred to as the Jeddah Amendment to the Djibouti Code of Conduct.¹¹³ The States parties to the Amendment agreed to engage in cooperation, with support from IMO and other stakeholders, to strengthen their national and regional capabilities and address other maritime security issues. The Jeddah Amendment to the Djibouti Code of Conduct was intended to make it possible to curb acts of piracy, armed robbery against ships and other illegal maritime activities, as well as fisheries crime, in the western Indian Ocean and the Gulf of Aden. In it, signatory States are invited to cooperate to the fullest possible extent in the repression of transnational organized crime in the maritime domain. Moreover, the Jeddah Amendment provides that signatory States should cooperate with a view towards sharing and reporting relevant information; interdicting ships and/or aircraft suspected of engaging in such crimes; ensuring that persons committing or attempting to commit illegal activities at sea are apprehended and prosecuted; and facilitating proper care, treatment and repatriation for seafarers, fishermen, other shipboard personnel and passengers subject to transnational organized crime in the maritime domain,¹¹⁴ while taking into account legal issues relating to the conduct of investigations, arrests, prosecutions and joint naval operations.

47. Several provisions of the Djibouti Code of Conduct particularly emphasize cooperation in combating piracy and armed robbery at sea in the region. The provisions of article 4 (7) of the Code include cooperation-related elements, notably consultation in the event of the seizure of a pirate ship or arrest of a pirate between the seizing or arresting State and other entities. The reference to “other ... entities” could imply that cooperation is required not only between States parties exercising their jurisdiction but also between States and non-State entities. When piracy takes place in the territorial sea of a State party to the Code, cooperation between the various entities involved in combating piracy and armed robbery at sea must be implemented with respect for the principle of State sovereignty.¹¹⁵ The Code also requires States parties to adopt laws criminalizing piracy and armed robbery against ships and to establish jurisdiction for the prosecution or extradition of the perpetrators of such crimes.

48. Shiprider agreements are also part of this approach of regionalizing the seizure of pirate ships and the arrest, detention and prosecution of pirates. They overcome, to a certain extent, the problem of conflicts of jurisdiction that may arise as a result of the transnational nature of crimes at sea, in particular piracy and armed robbery at sea. Cognizant of this issue, the Security Council has invited all States and regional organizations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials (“shipriders”) from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained for acts of piracy and armed robbery off the coast of Somalia.¹¹⁶ It has also

¹¹³ Revised Code of Conduct Concerning the Repression of Piracy, Armed Robbery against Ships, and Illicit Maritime Activity in the Western Indian Ocean and the Gulf of Aden Area. Available at <https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/A2%20Revised%20Code%20Of%20Conduct%20Concerning%20The%20Repression%20Of%20Piracy%20Armed%20Robbery%20Against%20Ships%20Secretariat.pdf>.

¹¹⁴ Ibid., art. 2 (1).

¹¹⁵ Djibouti Code of Conduct (see footnote 12), arts. 4 (8) and 5 (2).

¹¹⁶ Security Council resolution 1851 (2008), para. 3.

emphasized the role of “lawless areas where land-based activities related to piracy are taking place”.¹¹⁷

49. It should be noted, however, that the Djibouti Code of Conduct is not a legally binding instrument, as noted in various provisions of the text itself.¹¹⁸ Nevertheless, while the Code is not legally binding, its purpose is to strengthen cooperation between the navies of the States parties thereto in relation to the prosecution of pirates. It allows a participating State to have armed agents embark in the patrol vessels or aircraft of another participating State,¹¹⁹ for the sole purpose of facilitating prosecutions. This also resolves the issue of conflicts of jurisdiction during pursuits, arrests and trials. Such a provision could not be implemented without the States parties to the Code having a genuine desire to cooperate, such cooperation being essential if national courts are to initiate legal proceedings against those suspected of committing acts of piracy or armed robbery against ships. The exercise of jurisdiction in relation to the operational pursuit and prosecution of pirates presupposes the prior existence of a legal and institutional framework for regional cooperation. Such a framework can only be effective and efficient if laws are adopted and harmonized with one another, meaning that they have nearly the same normative value in enabling the lawful prosecution and punishment of persons suspected of committing acts of piracy and armed robbery at sea.

50. At least three observations regarding the exercise of jurisdiction by States parties may be drawn from an examination of the Djibouti Code of Conduct. First, States that have not yet adopted national laws on piracy must do so. Second, where such national laws do exist, they must be brought into harmony or conformity with the definition of piracy in article 101 of the United Nations Convention on the Law of the Sea and the definition of armed robbery at sea in IMO resolution A.1025(26). Third, such harmonization of national laws should be carried out in the light of the Djibouti Code of Conduct, in particular its provisions concerning the criminalization and repression of acts of piracy and armed robbery against ships, as well as the Memorandum of Understanding on the Establishment of a Sub-Regional Integrated Coast Guard Function Network in West and Central Africa and the guidelines for the exercise of jurisdiction, conduct of investigations and prosecutions of alleged offenders.¹²⁰

51. In this regional context, national laws that reflect the provisions of the Djibouti Code of Conduct and the guidelines contained in the Memorandum of Understanding on the Establishment of a Sub-Regional Integrated Coast Guard Function Network in West and Central Africa remain lawful once the Code has been ratified by a State party. The Code will henceforth form part of the domestic law of that State and, as such, will apply as law in due and proper form, enabling the State lawfully to exercise its judicial and legal jurisdiction, just as Kenya has done in the piracy cases brought before it.¹²¹

52. The duty to cooperate is well reflected in the Djibouti Code of Conduct, which requires States to participate in arrangements or agreements on the prosecution or extradition of persons committing acts of piracy or armed robbery at sea.¹²² An example of such cooperation is the use of embarked officials on board ships to arrest pirates,¹²³ particularly in situations where there is a conflict of jurisdiction between

¹¹⁷ Security Council resolution 1976 (2011), para. 4.

¹¹⁸ Djibouti Code of Conduct (see footnote 12), art. 15 (a).

¹¹⁹ Ibid., art. 7.

¹²⁰ Ibid., art. 11.

¹²¹ Musili Wambua, “The legal framework for adjudication of piracy cases in Kenya” (see footnote 113), pp. 10 and 11.

¹²² Djibouti Code of Conduct (see footnote 12), arts. 2 (1) and 4 (3) (a), (6) and (7).

¹²³ Ibid., art. 7.

participating States that, depending on the circumstances, may be in a position to claim jurisdiction to prosecute or jurisdiction to try.¹²⁴ Like the Djibouti Code of Conduct, the Yaoundé Code of Conduct is still to date a non-binding legal instrument, but it calls for the enhancement of cooperation at sea through a four-level institutional and operational architecture for combating piracy and other forms of maritime crime.

2. Yaoundé Code of Conduct and Yaoundé Architecture

53. The Yaoundé Code of Conduct¹²⁵ is the result of several agreements and protocols adopted at high-level meetings of countries of the West and Central Africa region. Its general objectives include combating piracy, illegal fishing, maritime pollution and other maritime threats. The Code establishes the general framework for cooperation between participating countries in the prevention and repression of piracy, armed robbery against ships and illicit maritime activity in West and Central Africa. The implementation of the Code is supported by the Yaoundé Architecture, the predecessor to which was the Maritime Organization of West and Central Africa, which was established in 1975 and was able to develop “an ‘integrated coastguard network’ and ... promote regional coordination” in the field of maritime transport and ports.¹²⁶

54. The Yaoundé Code of Conduct is an instrument for regional cooperation in the prevention and repression of piracy and armed robbery at sea. It applies to the States in West and Central Africa bordering the Gulf of Guinea. It is being implemented by the two main subregional organizations, ECOWAS and ECCAS. Within the frameworks of these two organizations, special agreements enable States parties to cooperate in facilitating the prosecution and trial of persons who commit acts of piracy or armed robbery at sea. Like the Djibouti Code of Conduct, the Yaoundé Code of Conduct is not legally binding on its States parties, and its primary purpose is to strengthen cooperation between signatory States in combating all maritime offences, including piracy, in the Gulf of Guinea.

55. Political and legal initiatives on piracy and armed robbery at sea began in earnest in 2013. In the light of the seriousness of the acts of piracy, armed robbery at sea and other forms of maritime crime committed in recent years off the coasts of African countries in the Gulf of Guinea and in Somali waters in the Indian Ocean, the Heads of State and Government of West and Central African States met on 23 June 2013 in Yaoundé with a view to strengthening cooperation in combating illegal activities in the Gulf of Guinea. Having become aware of the transnational nature of maritime piracy and its damaging effects on their economies, African States realized that cooperation in maritime governance was becoming necessary and agreed to define the content, or meaning, of such cooperation at the institutional, legal, political and operational levels. As a result, the missions of the three main existing institutions were adapted and broadened to take into account the emergence or resurgence of a variety of maritime crimes, most notably acts of piracy and armed robbery at sea off the coast of Africa. These institutions are ECOWAS, ECCAS and the Gulf of Guinea Commission.

56. In the specific context of the Gulf of Guinea, this structure forms what is known as the Yaoundé Architecture, the aim of which is to put into practice the concept of cooperation in the field of maritime safety. This operationalization of the concept of

¹²⁴ Musili Wambua, “The legal framework for adjudication of piracy cases in Kenya” (see footnote 113), p. 13.

¹²⁵ See footnote 11.

¹²⁶ Antonin Tisseron, “Lutte contre la piraterie dans le golfe de Guinée: l’architecture de Yaoundé: dix ans après au milieu du gué”, Institut de recherche stratégique de l’école militaire, Study No. 104, March 2023, p. 19.

cooperation is reflected in the establishment of regional centres for maritime safety: the Interregional Coordination Centre, based in Yaoundé; the Regional Coordination Centre for Maritime Security in Central Africa (CRESMAC), based in Pointe-Noire, the Congo; the Regional Centre for Maritime Security in West Africa (CRESMAO), which has its headquarters in Abidjan; and the multinational maritime coordination centres. In addition to these regional coordination centres, each coastal State in the Gulf of Guinea region is responsible for establishing a national maritime security centre as a point of contact.¹²⁷

57. ECOWAS comprises the following States: Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Sierra Leone, Senegal and Togo. It was originally intended to be an economic organization but has become increasingly involved in the peace and security domain. It is particularly active in the field of maritime safety and security, encouraging its States members to make their maritime policies part of integrated global approaches involving the pooling of resources and collective responsibility for maritime safety in the region.¹²⁸

58. Since its establishment in 2001, the Gulf of Guinea Commission has comprised the following States: Angola, Cameroon, Congo, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Nigeria and Sao Tome and Principe. Its objective is to contribute to “the harmonization of the policies of its States members on security and peace, oil and natural resource management, transport and the free movement of people and goods”.¹²⁹ It is open to other States of the Gulf of Guinea on the Atlantic coast.

59. ECCAS comprises the following States: Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Rwanda and Sao Tome and Principe. Its primary objective is to promote, among its members, “a common future, in an environment of peace, security and stability, ensured by sustainable development, good governance, the growing improvement of the living conditions of citizens, freedom and justice”.¹³⁰

60. In 2009, in response to growing maritime insecurity in Central Africa, ECCAS adopted the Protocol on the strategy to secure the vital interests of the member States of ECCAS in the Gulf of Guinea,¹³¹ which is being implemented by CRESMAC. That Centre, which has ECCAS as its institutional anchor, has been given six objectives related to safeguarding regional maritime safety, namely, to ensure: (1) the exchange and management of information; (2) joint surveillance of maritime areas through the implementation of joint operational procedures and the use of associated interoperational resources; (3) the legal and institutional harmonization of the activities of States at sea; (4) the introduction of an ECCAS maritime tax; (5) the acquisition and maintenance of major equipment; and (6) the institution of a regular maritime conference.

61. In addition to the political institutions involved in ocean governance in the Gulf of Guinea, regional coordination centres have been established to prevent and repress piracy, armed robbery at sea and other crimes in the region. These centres include the multinational maritime coordination centres, which plan and monitor operations in

¹²⁷ Ibid., p. 11.

¹²⁸ Ibid., p. 20.

¹²⁹ Ibid., p. 21.

¹³⁰ ECCAS, “ECCAS in brief”, 28 May 2023. Available at <https://ceeac-eccas.org/en/2023/05/28/eccas-in-brief/>.

¹³¹ Protocol on the strategy to secure the vital interests of the member States of ECCAS in the Gulf of Guinea (Kinshasa, 24 October 2009). Available at https://au.int/sites/default/files/documents/30854-doc-eccas_protocol_0.pdf (in French).

predefined maritime zones in respect of which bordering States have signed agreements on joint maritime surveillance and patrols, under the operational command of the relevant centre.¹³² Multinational maritime coordination centres in West Africa cooperate with CRESMAO, while those in Central Africa work with CRESMAC. Each centre is responsible for one of various maritime zones that have been defined in the Gulf of Guinea, as follows: Zone A (Angola, Congo and Democratic Republic of the Congo); Zone D (Cameroon, Equatorial Guinea, Gabon and Sao Tome and Principe); Zone E (Benin, Niger, Nigeria and Togo); Zone F (Burkina Faso, Côte d'Ivoire, Ghana, Guinea, Liberia and Sierra Leone); and Zone G (Cabo Verde, Gambia, Guinea Bissau, Mali and Senegal).

62. The fundamental purpose of the Yaoundé Architecture is to contribute to the establishment and strengthening of cooperation between African States of the Gulf of Guinea in the prevention and repression of maritime piracy, armed robbery at sea and other crimes committed off the coasts of the States concerned. There are four levels of implementation, as set out below.

63. The political level (level 1) is subregional and involves upstream engagement from subregional institutions such as ECCAS, ECOWAS and the Gulf of Guinea Commission, whose roles and missions are set out above. These institutions exercise “political oversight and management of the Yaoundé Architecture”.¹³³ ECCAS and ECOWAS have signed a memorandum of understanding with the Gulf of Guinea Commission on the implementation of the Yaoundé Code of Conduct.¹³⁴ The Commission’s role is to establish the framework for cooperation between the three institutions in a number of areas, including the conduct of joint activities and the monitoring and evaluation of regional cooperation.¹³⁵

64. The strategic level (level 2) concerns cooperation between the coastal States of West and Central Africa. This is implemented by the Interregional Coordination Centre, which ensures interregional coordination through “strategic oversight” of the Yaoundé Code of Conduct. The Interregional Coordination Centre serves as a link between the two regional centres, namely CRESMAO, covering the ECOWAS region, and CRESMAC, covering the ECCAS region. The Interregional Coordination Centre is responsible for coordinating actions with the multinational maritime coordination centres, coordinating exchanges with international partners in their respective areas of responsibility and implementing the two regional maritime strategies.¹³⁶ It has a number of mandates, including preparing and organizing meetings of senior officials; promoting a single strategic framework; supporting external partnerships and the strengthening of links between the two regions; harmonizing legal frameworks and training and education standards; collecting and sharing maritime information; carrying out advocacy with States; and monitoring maritime border issues.¹³⁷ It has also set itself the objectives of “strengthening the legal and judicial capacities of member States in relation to maritime safety and security, enhancing the professional skills of maritime law enforcement agencies, contributing to the sharing of information regarding the securing of maritime space, and contributing to the

¹³² Tisseron, “Lutte contre la piraterie dans le golfe de Guinée” (see footnote 135), p. 22.

¹³³ Ibid., p. 30.

¹³⁴ Memorandum of understanding among ECCAS, ECOWAS and the Gulf of Guinea Commission on maritime safety and security in Central and West Africa (Yaoundé, 25 June 2013). Available at https://au.int/sites/default/files/newsevents/workingdocuments/27463-wd-memorandum_version_anglaise.pdf.

¹³⁵ Tisseron, “Lutte contre la piraterie dans le golfe de Guinée” (see footnote 135), p. 30.

¹³⁶ Ibid.

¹³⁷ Ibid.

identification, delimitation and demarcation of maritime borders and to the peaceful resolution of disputes”.¹³⁸

65. The operational level (level 3) concerns the effective implementation of the two regional maritime strategies through cooperation between the regional maritime security centres – CRESMAO, for West Africa, and CRESMAC, for Central Africa – and the multinational maritime coordination centres. Regional maritime security centres thus “potentially [have] an operational role in terms of region-wide coordination ... to enable information to be exchanged more rapidly”.¹³⁹

66. At the national level (level 4), each coastal State of the Gulf of Guinea is recognized as having the authority to establish a national maritime operation centre as a point of contact for the alignment of its policy, strategy and operations with regional and interregional cooperation standards in the field of maritime safety, with a view to the effective coordination of actions to prevent and repress all forms of crime at sea, including maritime piracy and armed robbery at sea. National maritime operation centres serve as focal points to “facilitate the coordinated, efficient and rapid flow of information between signatories”.¹⁴⁰ They may be located within the maritime operations centres of national navies.¹⁴¹

67. In the context of the operationalization of the Yaoundé Architecture, it has been noted that cooperation is fundamentally focused on the sharing of maritime information, which is not without its difficulties in practice. It has become clear that the national maritime operation centres “vary greatly in capability and do not ... share or analyse maritime security information with each other or their respective [multinational maritime coordination centres]”.¹⁴² It has also been established that in this sharing of information, which lies at the heart of prevention, the other agencies involved in the actions of a State at sea are not taken into account.¹⁴³ Moreover, it has become clear that cooperation loses its effectiveness where there are no laws criminalizing piracy, or where laws do exist but the laws of different States in the same region contain different definitions of piracy and, above all, provide for the adoption of different repressive measures. Furthermore, the fact that the Lomé Charter has not entered into force appears to be a further obstacle to successful regional cooperation, particularly since only 3 of the 15 ratifications by States required for the Charter’s entry into force have been made. The implications are that, in the regional context of efforts to combat piracy and armed robbery at sea, it is becoming difficult for States to exercise their jurisdiction and pursue pirates beyond the 12 nautical miles of their territorial waters. To mitigate these shortcomings, recourse is made to community law, which takes the place of the laws of the various countries when such laws cannot have their full impact because an international treaty, such as the United Nations Convention on the Law of the Sea, has not been ratified. It is in this context that ECOWAS, following the meeting of Heads of State and Government on 3 July 2022, adopted the Supplementary Act on the Conditions of Transfer of Persons Suspected of Having Committed Acts of Piracy and their Associated Property and/or Evidence.¹⁴⁴ The Supplementary Act enables a seizing State that does not have laws on piracy to transfer a suspected pirate to another State that does have the necessary laws in place. While facilitating the transfer of suspected pirates, this Act of

¹³⁸ Ibid., p. 34.

¹³⁹ Ibid., p. 62.

¹⁴⁰ Ibid., p. 36.

¹⁴¹ Ibid.

¹⁴² Ibid., citing Ifesinachi Okafor-Yarwood and Maisie Pigeon, *Stable Seas: Gulf of Guinea*, March 2020, p. 78.

¹⁴³ Tisseron, “Lutte contre la piraterie dans le golfe de Guinée” (see footnote 135), p. 36.

¹⁴⁴ Ibid., p. 39, citing the report of the Secretary-General on the situation of piracy and armed robbery at sea in the Gulf of Guinea and its underlying causes (S/2022/818), para. 22.

community law also provides for guarantees, in particular respect for judicial procedures and international human rights law.¹⁴⁵

68. Cooperation is also taking place in the form of joint operations between the different maritime zones under the authority of CRESMAC and CRESMAO, as well as joint patrols conducted by the national navies of the States of the Gulf of Guinea, in order to strengthen maritime surveillance capacity.

69. Bilateral cooperation between the States of the Gulf of Guinea and international partners from European as well as non-European States has made it possible to strengthen the operational capacities of the African States concerned through the acquisition of new maritime¹⁴⁶ and air resources to combat piracy and all forms of crime at sea more effectively. These resources include naval and air platforms, patrol boats, rigid-hulled inflatable boats, drones, radars, helicopters, maritime surveillance aircraft, landing craft, cameras and electro-optical systems. However, a number of obstacles¹⁴⁷ are undermining the effectiveness of regional cooperation in Africa, particularly in the Gulf of Guinea, a place of choice for pirates over the past three decades. The first major obstacle is the fact that the Yaoundé Code of Conduct is not yet a binding legal instrument. While the ECOWAS Supplementary Act on the Conditions of Transfer of Persons Suspected of Having Committed Acts of Piracy and their Associated Property and/or Evidence made the Code binding on the States members of that Community, ECCAS has yet to adopt an Act with the same legal scope for the Central African region. As an Act of community law, the Supplementary Act is intended to apply directly in the legal systems of the States members of ECOWAS, without those States having to follow their national constitutional ratification procedures in order to implement it; as a self-executing Act, it is immediately applicable in domestic law.

70. The second obstacle is the persistence of maritime border disputes between several States of the Gulf of Guinea, which hampers the dynamics of cooperation.¹⁴⁸ A State may be hindered from exercising its adjudicative and enforcement jurisdiction in respect of persons committing acts of piracy or armed robbery at sea when such acts are committed in undefined maritime areas and the State in question is not precisely certain of its maritime limits and borders. The third obstacle is the absence of laws criminalizing piracy in several States of the Gulf of Guinea. Even where such laws do exist, they are far from being in harmony with one another. Furthermore, the fact that maritime limits and borders between States of the Gulf of Guinea are undefined complicates cooperation in common maritime governance, particularly with regard to the prevention and repression of piracy and armed robbery at sea in the region. In view of the transnational nature of these two forms of maritime crime, one of the remedies could be to bring about “the strengthening of maritime security, on the basis of greater support for the mobilization of State authorities and agencies, implementation of effective continuous surveillance of maritime spaces, improved internal coordination among the agencies involved and the continuance of the review of national legal frameworks”.¹⁴⁹

71. One of the most remarkable illustrations of the strengthening of cooperation between States signatories to the Yaoundé Code of Conduct pertains to article 9, “Embarked officers”, which provides that:

¹⁴⁵ Katja Lindskov Jacobsen, François Morizur and Tarila Marclint Ebiede, “Pirates of the Niger Delta II: An update on piracy trends and legal finish in the Gulf of Guinea”, Global Maritime Crime Programme of UNODC and the Ministry of Foreign Affairs of Denmark, p. 39.

¹⁴⁶ Tisseron, “Lutte contre la piraterie dans le golfe de Guinée” (see footnote 135), pp. 40 and 41.

¹⁴⁷ Ibid., pp. 47–52.

¹⁴⁸ Ibid., p. 47.

¹⁴⁹ Ibid., p. 70.

When duly authorized, embarked officers may:

- (a) embark on law enforcement vessels of any of the Signatories;
- (b) enforce the laws of the designating Signatory to suppress transnational organized crime in the maritime domain, maritime terrorism, [illegal, undeclared and unregulated] fishing, and other illegal activities at sea in the waters of the designating Signatory, or seaward of its waters in the exercise of the right of hot pursuit or otherwise in accordance with international law;
- (c) authorize the entry of the law enforcement vessels on which they are embarked into and navigation within the waters of the designating Signatory;
- (d) authorize the law enforcement vessels on which they are embarked to conduct patrols in the waters of the designating Signatory[.]¹⁵⁰

These four subparagraphs of article 9 concern operational elements at sea which, if implemented effectively with a clear demonstration of political will on the part of States, can only strengthen regional cooperation in efforts to combat piracy and armed robbery at sea. However, the legal scope of the article is still very weak, as it provides that States “may”, rather than “must”, take certain actions, making implementation highly voluntary.

3. Other African agreements relating to maritime safety in general and to piracy

72. Africa is also the location of the Interregional Maritime Security Institute in Abidjan and interregional centres for maritime safety and security. Some African States have also recently established a maritime collaboration framework for the Gulf of Guinea: the Shared Awareness and Deconfliction mechanism.¹⁵¹ The mechanism is an international forum for information-sharing and coordination that was established to combat maritime piracy in the Gulf of Aden and off the eastern coast of Africa. It was set up in 2008 in response to the rise of piracy in the region and is aimed at improving coordination between regional and international actors to combat maritime piracy. It allows for the real-time sharing of information on pirate activity, the movements of warships, naval convoy escorts and other developments relating to maritime safety. It brings together a variety of actors, including national navies, international organizations, shipping companies, government agencies and other parties involved in maritime safety in the region. The participants in the Shared Awareness and Deconfliction mechanism share information on ship movements, incidents of piracy, naval patrols, rescue operations and other activities relating to maritime safety. These centres play a crucial role in collecting and disseminating information, coordinating incident responses and promoting maritime safety in their respective regions. They contribute to international efforts to combat maritime piracy by improving surveillance and responses to threats at sea. The mechanism is aimed at building the capacity of the countries in the region in terms of maritime surveillance and application of the law. Thus, the regional organizations of the Gulf of Guinea, namely ECCAS, ECOWAS and the Gulf of Guinea Commission, have introduced initiatives to bolster maritime safety and security through capacity-building.

¹⁵⁰ Yaoundé Code of Conduct (see footnote 11), art. 9 (5) (a) to (d).

¹⁵¹ Indo-Pacific Defense Forum, “Shared Awareness and Deconfliction Initiative”, 23 February 2016. Available at <https://ipdefenseforum.com/2016/02/shared-awareness-and-deconfliction-initiative/>.

B. Asia and its regional approach to combating piracy and armed robbery at sea

73. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia is an international agreement concluded in 2004 by 16 Asian countries that is aimed at strengthening regional cooperation to combat piracy and armed robbery at sea in the Asia region.¹⁵² Unlike the Djibouti Code of Conduct and the Yaoundé Code of Conduct, the Regional Cooperation Agreement is a legally binding agreement by virtue of its name (“Agreement”) and the fact that it requires the contracting parties to take measures to suppress acts of piracy and armed robbery against ships through information-sharing and mutual legal assistance. The main purpose of the Regional Cooperation Agreement is to promote maritime safety in the Asia region by repressing maritime piracy and armed robbery against ships. It is aimed at coordinating the efforts of the contracting parties to prevent these criminal activities at sea and respond to them when they occur. Many countries in Asia have become parties to the Regional Cooperation Agreement, including the coastal States in the region and other actors with an interest in maritime safety in Asia. The Information Sharing Centre associated with the Agreement, which is based in Singapore, serves as a regional coordination centre for collecting and sharing information on piracy and armed robbery at sea. The Centre facilitates cooperation between the member countries with regard to maritime safety.

74. One of the key elements of the Regional Cooperation Agreement is the sharing of information in real time on incidents of piracy and armed robbery at sea. The contracting parties contribute to the database of the Information Sharing Centre, which facilitates a rapid response to incidents. In addition, training sessions, exercises and workshops are organized under the Regional Cooperation Agreement to build the capacities of the contracting parties with regard to combating maritime piracy. This includes training for maritime security forces and ship crews. The Centre encourages regional coordination in Asia to combat maritime piracy and works closely with other international and regional organizations, such as IMO and the Association of Southeast Asian Nations (ASEAN). The Agreement is an example of regional cooperation aimed at strengthening maritime safety in Asia by combating maritime piracy and armed robbery at sea.

75. It was after a number of meetings, communiqués, declarations and recommendations that the Regional Cooperation Agreement was finally adopted, on 11 November 2004, and entered into force on 4 September 2006. Although it covers the Asia region, it remains open for accession by other non-Asian States.¹⁵³ Under general obligations, the Agreement requires the contracting parties to take effective measures to prevent and suppress piracy and armed robbery against ships, arrest pirates or persons who have committed armed robbery against ships, seize ships under the control of pirates or persons who have committed armed robbery against ships, and provide assistance to persons and ships that are victims of piracy or armed robbery at sea.¹⁵⁴ On this point, it is noteworthy that the Agreement provides that, in the implementation of their general obligations as defined in article 3, nothing prevents the contracting parties from taking additional measures in their land territory.¹⁵⁵

76. Combating maritime piracy in Asia is a major challenge because of the large number of straits and maritime zones in the region that are heavily used by merchant

¹⁵² See footnote 9.

¹⁵³ Regional Cooperation Agreement, art. 18.

¹⁵⁴ Ibid., art. 3 (1).

¹⁵⁵ Ibid., art. 3 (2).

ships. Several Asian countries and regional organizations have put in place initiatives to combat maritime piracy and improve security at sea, and have established information centres on piracy to prevent pirate activities and share information on threats with other countries in the region. Examples are the Piracy Reporting Centre of the International Maritime Bureau, based in Kuala Lumpur.

77. Similarly, countries in Asia have concluded regional cooperation agreements to combat piracy. For example, the ASEAN code of conduct on piracy¹⁵⁶ was adopted to promote regional coordination in efforts to combat piracy. Furthermore, several Asian countries have deployed their naval forces to patrol areas at risk of piracy, such as the Strait of Malacca, the Gulf of Aden and the waters off the coast of Somalia. International efforts have also been made to improve cooperation for the protection of merchant ships. Some countries in Asia have also received international assistance to strengthen their capacity to combat piracy. This includes training for the security forces, the improvement of port infrastructure and the development of national maritime security strategies. The countries of Asia cooperate closely with other international actors, such as IMO and the United Nations. Efforts to combat maritime piracy in Asia are centred on regional and international cooperation, surveillance of pirate activities, deployment of naval forces, national capacity-building and the protection of ships and crews.

78. Some Asian countries have issued guidelines for the protection of ships and crews against piracy. These guidelines include recommendations for security measures on board ships. In addition, initiatives and measures have been put in place to combat maritime piracy and armed robbery at sea. These include the Singapore dialogues on maritime safety, a series of international meetings focused on maritime safety issues. The dialogues bring together representatives of governments, international organizations, maritime industries and other stakeholders to discuss and exchange ideas on issues relating to maritime safety in the Asia-Pacific region and beyond. The main objective of the dialogues is to promote maritime safety and discuss challenges and threats in the waters of the Asia-Pacific region, including maritime piracy, illegal fishing, the safety of shipping and the protection of the marine environment. The dialogues highlight the need for regional and international cooperation to resolve maritime safety issues. They encourage information-sharing, the coordination of operations and the establishment of effective response mechanisms.

79. Other initiatives have emerged, such as the Indian Ocean Naval Symposium. The Symposium was established with the aim of promoting maritime cooperation among the countries of the Indian Ocean region, strengthening maritime safety, fostering mutual trust and promoting cooperation with regard to security in the region. Its members include the navies of countries on the Indian Ocean rim, whether coastal countries or island countries. It is open to all the countries in the Indian Ocean region, and many of them are members. It is structured around different organs and working groups, including the Chiefs of Staff Committee, which meets regularly to discuss maritime safety issues and coordinate activities. It regularly organizes joint maritime exercises, seminars, training sessions and other activities aimed at strengthening cooperation among the navies of the member countries. These activities may include anti-piracy exercises, sea rescue exercises and other maritime safety scenarios. The Symposium maintains partnerships with other regional and national organizations.

80. The effectiveness or operationalization of cooperation among the contracting parties to the Regional Cooperation Agreement depends on the sharing of information, hence the establishment of the Information Sharing Centre, which

¹⁵⁶ Éric Frécon, "Géopolitique de la piraterie au Sud-Est asiatique: conflit de représentations", *Outre-terre*, vol. 25–26 (2010), pp. 101–123.

collects and analyses information and statistics relating to piracy and armed robbery against ships. The Centre also contributes to strengthening cooperation through capacity-building activities and assistance to member countries, and programmes for training and the sharing of experience and best practices.¹⁵⁷ The Regional Cooperation Agreement seems to prescribe an obligation to cooperate in that it provides that “each Contracting Party shall endeavor to cooperate to the fullest possible extent with other Contracting Parties which request cooperation or assistance”.¹⁵⁸

81. In conclusion, it is clear that cooperation within the Asia region has been strengthened through communication, including the sharing of information and best practices, and through capacity-building, and also serves as a vehicle for receiving external assistance.¹⁵⁹ The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia is an inclusive regional structure because it is open for accession by States that are not geographically part of the region, whereas the Djibouti Code of Conduct remains an exclusive regional structure because membership is not available to States that are not geographically part of the region concerned. One aspect of the Regional Cooperation Agreement that might need improvement is capacity-building in the areas of extradition and legal assistance.¹⁶⁰

C. Europe and its regional approach to combating piracy and armed robbery at sea

82. Europe has positioned itself as a “global actor in maritime security”¹⁶¹ at the international level, through its maritime security strategy adopted in 2014, followed by its action plan in 2018.¹⁶² While European waters are not infested with pirates, merchant ships sailing under the flags of European States have been victims of acts of piracy or armed robbery at sea in maritime zones classified as dangerous in terms of the safety of navigation and merchant shipping. Over the past 30 years, Europe has established its presence in the waters off the coast of Africa, specifically in the Gulf of Guinea and in the Indian Ocean off the coast of Somalia. States are developing more and more strategies for cooperation at the bilateral, regional, subregional and multilateral levels. At the multilateral level, for example, it is a “combination of international naval patrols, private security personnel and reforms of regional judicial systems”¹⁶³ that has resulted in a significant decline in acts of piracy and armed robbery at sea. The Maritime Information Cooperation and Awareness Center (MICA Center), based in Brest, France, plays a major role in these developments, since it is responsible for collecting data and statistics on acts of piracy and robbery occurring on all the seas and oceans of the world through a system of voluntary naval cooperation involving the shipping industry. The Center consists of several entities: the Centre for Naval Cooperation, responsible for the implementation of voluntary naval cooperation; Maritime Domain Awareness for Trade – Gulf of Guinea, a Franco-British virtual reporting mechanism; the Naval Control Cell; and the Maritime Security Centre – Horn of Africa. The international focus of the MICA Center has

¹⁵⁷ Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia, art. 14 (3).

¹⁵⁸ Ibid., art. 14 (1).

¹⁵⁹ Mejia, “Regional cooperation in combating piracy and armed robbery against ships” (see footnote 56), p. 134.

¹⁶⁰ Ibid., p. 136.

¹⁶¹ Marianne Péron-Doise, “Les espaces maritimes, nouveaux territoires de la sécurité internationale”, *Diplomatie*, Les grands dossiers No. 68 (June–July 2022), *Géopolitique des mers et des océans: tensions sur les mers du globe*, p. 30.

¹⁶² Ibid.

¹⁶³ Ibid., p. 31.

been demonstrated through the cooperation it has established with foreign maritime security centres, such as those in Singapore, New Delhi, Madagascar and Peru.¹⁶⁴

83. To combat acts of piracy in Africa, and as part of its international cooperation, Europe has adopted a set of preventive measures in the Gulf of Guinea. These include the Maritime Domain Awareness for Trade – Gulf of Guinea mechanism, which serves as a point of contact between merchant ships sailing in the Gulf of Guinea and the heads of shipping companies. The mechanism is based on the sharing of maritime information and allows ships to identify themselves before their entry into port and alerts ships to incidents that occur in a given maritime zone. It thus helps to establish a stable situation in the maritime zones of West and Central Africa by establishing contact between regional operational centres and the military forces present¹⁶⁵ in the zone concerned, such as the Gulf of Guinea.

84. In addition to the Maritime Domain Awareness for Trade – Gulf of Guinea mechanism, there is another tool for the prevention of maritime crime in the Gulf of Guinea: the Commander for the Atlantic Maritime Area. This institution is part of a more comprehensive approach to combating maritime insecurity in all its forms, including not only piracy but also such crimes as illegal fishing, drug trafficking and illegal immigration. The Commander for the Atlantic Maritime Area thus acts as the operational controller of the naval and air assets in the Gulf of Guinea through the Cormybe naval operation and organizes military exercises involving the navies of the States of the region and the mobilization of extraregional ocean-going military ships. A third instrument is Shared Awareness and Deconfliction – Gulf of Guinea, adopted in 2021 following the publication by the shipping industry of the Gulf of Guinea Declaration on Suppression of Piracy, which is aimed at supporting action by the States of the Gulf of Guinea for better implementation of *BMP West Africa*,¹⁶⁶ that is, the use of best practices relating to the safety of navigation, in particular measures to prevent piracy and armed robbery at sea.

85. European Union regulations on combating maritime piracy are mainly implemented by the States members of the European Union in coordination with other international and regional organizations. European activities at sea have been carried out chiefly as part of the deployment of the European Union Naval Force¹⁶⁷ and in accordance with the Common Security and Defence Policy, in particular Operation Atalanta,¹⁶⁸ and have played an essential role in the coordination of and support for action by member States to combat maritime piracy, in close collaboration with other organizations and States in the fight against piracy at the international level. This includes cooperation with IMO, the United Nations and other regional actors. The European Union also supports capacity-building programmes in countries vulnerable to piracy, takes different measures and adopts various regulations to combat piracy, armed robbery at sea and many other forms of maritime crime.

86. The European Union has thus been able to adopt several regulations to combat piracy, including provisions on maritime safety, the protection of ships and crews and cooperation with other international actors. These regulations are aimed at strengthening maritime security in European waters and ensuring the protection of ships sailing under the flags of States members of the European Union. In addition,

¹⁶⁴ MICA Center, Annual Report 2021: Maritime Security.

¹⁶⁵ Ibid., section 2.1, p. 21.

¹⁶⁶ BIMCO and others, *BMP West Africa: Best Management Practices to Deter Piracy and Enhance Maritime Security off the Coast of West Africa including the Gulf of Guinea*, March 2020.

¹⁶⁷ European Union Naval Force Operation Atalanta, at the following address: <https://eunavfor.eu/>.

¹⁶⁸ Council of the European Union, “EU NAVFOR Operation Atalanta: new Operation Commander appointed”, press release, 20 April 2021. Available at <https://www.consilium.europa.eu/en/press/press-releases/2021/04/20/eu-navfor-operation-atalanta-new-operation-commander-appointed/>.

in 2008 the European Union launched Operation Atalanta,¹⁶⁹ a naval operation aimed at combating piracy off the coast of Somalia. The Operation was conducted as part of the Common Security and Defence Policy of the European Union and contributed to a considerable reduction in the number of pirate attacks in the region.

87. Operation Atalanta is aimed at combating maritime piracy off the Horn of Africa, in particular in the Gulf of Aden, along the coast of Somalia and in the western Indian Ocean. It was launched in December 2008 in response to the rise of piracy in the region. As mentioned previously, this is one of the areas of the world most affected by maritime piracy. Several countries of the European Union have contributed to Operation Atalanta by deploying warships and maritime patrol aircraft. Other countries that are not members of the European Union have also participated in the Operation by providing resources and cooperating with European forces. Operation Atalanta works in close collaboration with other international actors involved in combating piracy, such as the United States naval forces, international coalition forces, NATO and other regional actors. The Operation also plays a role in training merchant ship crews in best practices for avoiding pirate attacks and for self-defence in the event of an attack.

88. Through the European Maritime Safety Agency, the European Union also plays a key role in sharing information to combat piracy. The Agency facilitates information-sharing and response to incidents at sea. The European Union has also put in place regulations aimed at strengthening the security of European ports, which helps to combat piracy by preventing unauthorized access to ships and port facilities. The Agency's main objectives are to support the States members of the European Union in the implementation of European Union maritime law, to strengthen maritime safety and to protect the marine environment. This includes the prevention of pollution, ship surveillance, coordination of responses to pollution incidents and the collection of data on maritime safety. The Agency carries out various missions and activities to achieve its objectives, such as maritime traffic surveillance, the supply of information on maritime traffic, ship inspections, coordination of measures to prevent pollution, the formation of relief teams when pollution occurs, and the collection of data on maritime safety. It collects and analyses data on maritime safety, marine pollution and other sea-related issues, and produces reports and analyses for the competent authorities of the European Union. It works in close collaboration with other agencies of the European Union, such as the European Environment Agency and the European Aviation Safety Agency, to ensure consistency and coordination of action in related areas. In addition to the European Union Naval Force, established in 2008, the European Union also set up, in 2011, the MARSUR maritime surveillance network, which involves the national navies of the member States through various maritime surveillance centres.

89. European Union regulations on combating maritime piracy include a set of measures aimed at strengthening maritime safety and security in European waters and contributing to the fight against piracy at the international level, in particular in critical areas such as the Gulf of Aden.

90. In the context of the international coalition against piracy, the European Union in 2014 adopted its strategy for the Gulf of Guinea, in addition to allowing for bilateral approaches between European States and African States whose maritime spaces pose risks for the safety of maritime navigation. This is the Coordinated

¹⁶⁹ Ministry of the Armed Forces of France, "Atalanta". Available at <https://www.defense.gouv.fr/operations/operations/atalante#:~:text=L'op%C3%A9ration%20ATALANTE%20est%20une,pirates%20partant%20des%20c%C3%B4tes%20somaliennees>.

Maritime Presences initiative,¹⁷⁰ the aim of which is to ensure coordination between European navies in the Gulf of Guinea and the north-west Indian Ocean.

91. In addition to the European Union's involvement, the international dimension of cooperation to combat piracy is illustrated by the political commitment of the most industrialized countries within the Group of Seven Group of Friends of the Gulf of Guinea, established in 2013 under the chairmanship of the United Kingdom of Great Britain and Northern Ireland, the purpose of which is to support the Yaoundé Architecture. In addition to the Group of Seven countries (Germany, Canada, United States, Italy, Japan, United Kingdom and France), the Group of Friends of the Gulf of Guinea consists of Belgium, Brazil, Denmark, India, Morocco, Netherlands (Kingdom of the), Norway, Portugal, the Republic of Korea, Spain, Switzerland, the European Union, UNODC, INTERPOL, ECOWAS and ECCAS.¹⁷¹ While IMO has a mandate to ensure the safety of navigation through the drafting and adoption of resolutions, UNODC is responsible for implementing the Global Maritime Crime Programme, emphasizing the legal frameworks that need to be created and contributing to the harmonization of the laws of the States concerned and to capacity-building for actors involved in combating maritime piracy and all crimes committed at sea.

92. Bilateral cooperation between African States of the Gulf of Guinea and European States should be mentioned because it helps to strengthen the operational capacities of African States with regard to combating piracy. For example, there are bilateral initiatives between France and certain African States, such as the African Navy Exercise for Maritime Operations, which is led by France.¹⁷² To ensure the safety of their coasts and of maritime navigation in the face of acts of piracy and armed robbery at sea, several States of the Gulf of Guinea (Benin, Equatorial Guinea, Ghana, Nigeria and Togo) have used private security companies to escort merchant ships.

D. The Americas and Oceania: their regional approaches to combating piracy and armed robbery at sea

93. The Americas in general, and Latin America in particular, do not face the same challenges as South-East Asia and East and West Africa with regard to acts of piracy. However, there are some concerns relating to maritime safety in different parts of the Americas. The Caribbean region, for example, has historically been associated with problems of piracy, although it was by nature very different from the piracy occurring in other parts of the world. Today, piracy in the Caribbean is generally linked to armed robbery at sea, robbery from small pleasure craft or fishing boats, and illicit trafficking. The States of the region cooperate to combat these threats. In addition, some parts of the coasts of South America and Central America, in particular in the Gulf of Mexico, have faced cases of piracy and illegal acts at sea, often involving the theft of cargoes or fuel. The countries of the region have taken steps to strengthen maritime safety and surveillance of their waters. In North America, the United States and Canada have put in place regulations and established agencies responsible for maritime safety, such as the United States Coast Guard and the Canadian Coast Guard. These agencies are responsible for surveillance of the territorial waters and for the safety of maritime operations. In addition, there are several regional cooperation initiatives to strengthen maritime safety in the Americas. These initiatives are aimed at coordinating action among the countries of the region. In addition, there is the

¹⁷⁰ Tisseron, "Lutte contre la piraterie dans le golfe de Guinée" (see footnote 135), pp. 53 and 54.

¹⁷¹ Ibid., p. 54.

¹⁷² Ibid., p. 53.

CARICOM Maritime and Airspace Security Cooperation Agreement¹⁷³ of 2008, which, in the Americas and the Caribbean region, is intended to be a binding agreement on cooperation against piracy, with an emphasis on the exchange of information and also covering other forms of cooperation. In addition to this Agreement, the States of the region set up the Operative Network of Regional Cooperation of Maritime Authorities of the Americas to combat various forms of crime at sea, including piracy.

94. Overall, although maritime piracy is not a major problem in the Americas as in other regions, maritime safety remains an important concern for many countries on the continent, which are putting in place regulations and measures to protect their waters and promote the sustainable use of marine resources.

95. Oceania is a vast and diverse geographical region comprising multiple islands and island States, each with its own challenges and concerns relating to maritime safety. Although maritime piracy is not generally as widespread in Oceania as in other regions of the world, there are some specific maritime safety problems and regulations to address them. Some parts of Oceania, in particular the South Pacific, have experienced incidents of piracy and armed robbery at sea, generally involving criminal acts against small fishing boats and other small boats.

96. Island nations and regional organizations collaborate to combat these threats. Because of the geography of Oceania, which is made up of multiple scattered islands and islets, the safety of maritime navigation is a significant concern. Regulations and navigational aids are in place to ensure the safety of ships operating in the region. Several regional organizations, such as the Pacific Islands Forum and the Pacific Community, work on the coordination of maritime safety and the management of marine resources in Oceania. Overall, maritime safety in Oceania is a complex issue encompassing challenges linked to piracy, the management of marine resources, the safety of navigation and the impacts of climate change. The island States in the region work together to tackle these challenges and promote sustainable use of the vast expanses of water surrounding them.

IV. Bilateral practices for combating piracy and armed robbery at sea

97. This section covers the different extradition agreements between States and their implementation. It also highlights practices related to bilateral agreements. Efforts to combat maritime piracy and armed robbery at sea require close international cooperation, which may take the form of multilateral and bilateral agreements. Some States establish bilateral agreements to strengthen cooperation on maritime safety. These agreements may include provisions on joint patrols in territorial waters, exchanges of information on suspicious activities at sea, the prosecution of suspected pirates, and their extradition for trial.

98. Bilateral agreements are concluded so as to enable States to cooperate with regard to prevention, repression and management of incidents of piracy at sea. For example, the United States has concluded several bilateral agreements with African countries, including Ghana, Kenya and Seychelles, to facilitate the transfer and prosecution of pirates captured by United States naval forces in the Indian Ocean region. These agreements have made it possible to detain, try and convict suspected pirates. There is also a bilateral agreement between the United States and Kenya for the detention, prosecution and transfer of pirates captured in the Gulf of Aden and Indian Ocean region. The agreement allows the United States to hand pirates over to

¹⁷³ See footnote 8.

the Kenyan authorities for trial.¹⁷⁴ In addition, France and Seychelles have signed a bilateral agreement for the prosecution of pirates captured in the region. The agreement has led to the establishment of a specialized court in Seychelles for trying pirates. India and Sri Lanka have also concluded a bilateral agreement to strengthen cooperation with regard to maritime safety and combating piracy. It provides for exchanges of information, coordination of maritime patrols and other cooperation measures. Japan and the Philippines have signed a bilateral agreement on combating piracy at sea. It is aimed at strengthening cooperation with regard to maritime safety, including surveillance of waters and coordination of responses to incidents of piracy. Singapore and Indonesia concluded an agreement in 1992 to combat acts of piracy in the Strait of Singapore by strengthening cooperation through direct communication between their respective navies and through joint patrols.¹⁷⁵ Indonesia and Malaysia have also concluded an agreement relating to maritime operation planning in the context of their maritime cooperation in the Strait of Malacca.¹⁷⁶ Germany and Kenya have concluded a bilateral agreement for the detention, prosecution and transfer of pirates captured in the Gulf of Aden and Indian Ocean region. The agreement has allowed Germany to hand pirates over to the Kenyan authorities for trial. These examples show how States may conclude bilateral agreements to facilitate cooperation in combating maritime piracy and to ensure the prosecution of captured pirates. These agreements facilitate the coordination of surveillance, patrol and repression activities at sea and promote the exchange of information and the prosecution of suspected pirates. In fact, States and maritime agencies regularly share information on potential threats, suspicious activities and incidents of piracy through information-sharing mechanisms. This may include agreements for the exchange of information in real time, for example, through the Piracy Reporting Centre of the International Maritime Bureau.

V. Conclusion

99. Whether in Africa, Asia, Europe, the Americas or Oceania, cooperation within the meaning of article 100 of the United Nations Convention on the Law of the Sea may take several forms. Such cooperation may be bilateral, trilateral, regional, subregional and multilateral or multinational. The Special Rapporteur has noted that, in the various regions studied, these different forms of cooperation have made it possible to reduce significantly the number of acts of piracy and armed robbery at sea, and that regional regulations are absolutely vital to strengthen cooperation at sea and more effectively combat these two forms of maritime crime. However, the Special Rapporteur has observed that the efficiency and effectiveness of all cooperation with regard to the prevention and repression of piracy and armed robbery at sea have greatly depended on national laws criminalizing these acts, which must be harmonized and comply with the rules of applicable general international law and the rules adopted by the States members of regional organizations combating all forms of maritime crime, in particular piracy and armed robbery at sea. In fact, it is regional, subregional and multinational practices or approaches that give content or meaning to cooperation between States in a given region with a view to more effective prevention and repression of piracy and armed robbery at sea. In Africa – the region most affected by acts of piracy and armed robbery at sea –, the States of West and Central Africa, and those of East Africa, have opted for the adoption of codes of

¹⁷⁴ Marianne Péron-Doise, “Piraterie et insécurité maritime dans l’ouest de l’océan Indien: quelles perspectives régionales ?”, *Revue Défense Nationale*, No. 792 (summer 2016), pp. 99–104.

¹⁷⁵ Robert C. Beckman, Carl Grundy-Warr and Vivian L. Forbes, “Acts of Piracy in the Malacca and Singapore Straits”, *Maritime Briefing*, vol. 1, No. 4 (1994), p. 15.

¹⁷⁶ *Ibid.*

conduct that are non-legally binding and whose implementation presents a problem in that they are not yet in force. Provisions relating to cooperation are purely aspirational. On the other hand, the States of Asia that have been affected by the same forms of crime have adopted an agreement that is genuinely legally binding on States and that contributes to the strengthening of regional cooperation on combating piracy and armed robbery at sea. While European countries, the United States and many other developed States do not experience acts of piracy and armed robbery at sea, those countries have made their operational capacities, expertise and financial and human resources available to the regions that are victims of these crimes, thus contributing to a significant reduction in cases of maritime piracy.

VI. Future work

100. In his future work, the Special Rapporteur will conduct a detailed study of the doctrine on different issues relating to the prevention and repression of piracy and armed robbery at sea. This will involve reviewing doctrinal approaches to various matters relating to conceptions of the definition of piracy, questions concerning prevention and repression, regional and international cooperation, issues relating to domestic jurisdiction and the universal jurisdiction of States with regard to the prosecution and trial of suspected pirates, and matters relating to bilateral or regional agreements. The study will also cover the transfer of suspected or convicted pirates, their extradition or prosecution, and mutual legal assistance. Other questions to be considered will be those relating, inter alia, to abduction or admissibility of evidence before the courts, imposition of penalties, respect for international human rights law in the context of court proceedings against suspected pirates and individuals suspected of committing armed robbery at sea, competent courts, enforcement measures and provisions on liability and compensation.

VII. Draft articles

Article 4

General obligations

1. Each State has the obligation to cooperate to the fullest possible extent in the prevention and repression of piracy on the high seas or in any other place outside the jurisdiction of a State.
2. Each State undertakes to prevent and to repress piracy and armed robbery at sea, which are crimes under international law, whether or not committed in time of armed conflict.
3. No circumstances of any kind whatsoever may be invoked as a justification of piracy or armed robbery at sea.

Article 5

Obligation of prevention

Each State undertakes to prevent and to repress piracy and armed robbery at sea, in conformity with international law, through:

- (a) Effective legislative, administrative, judicial or other appropriate preventive measures in any territory under its jurisdiction and on the high seas; and
- (b) Cooperation with other States, competent intergovernmental organizations, and, as appropriate, other organizations or non-State actors with an interest in the safety of maritime navigation.

Article 6
Criminalization under national law

1. Each State shall take the necessary measures to ensure that piracy and armed robbery at sea constitute criminal offences.
2. Each State shall take the necessary measures to ensure that the following acts are criminal offences:
 - (a) Committing acts of piracy or armed robbery at sea;
 - (b) Attempting to commit such crimes; and
 - (c) Ordering, soliciting, inducing, aiding, abetting or otherwise assisting in or contributing to the commission or attempted commission of such crimes.
3. Each State shall also take the necessary measures to ensure that financiers, sponsors, superiors or other persons giving orders are criminally responsible for acts of piracy and armed robbery at sea committed by their subordinates.
4. Each State shall take the necessary measures to ensure that, under its criminal law, the fact that an offence referred to in this draft article was committed pursuant to an order of a Government, whether military or civilian, is not a ground for excluding criminal responsibility of a subordinate.
5. Each State shall take the necessary measures to ensure that, under its criminal law, the fact that an offence referred to in this draft article was committed by a person performing an official function is not a ground for excluding criminal responsibility.
6. Each State shall take the necessary measures to ensure that, under its criminal law, the offences referred to in this draft article shall not be subject to any statute of limitations and that they shall be punishable by appropriate penalties, taking into account their grave nature.

Article 7
Establishment of national jurisdiction

1. Each State shall take the necessary measures to establish its jurisdiction over the offences covered by the present draft articles in the following cases:
 - (a) When the offence is committed in a territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - (b) When the alleged offender is a national of that State or, if that State considers it appropriate, a stateless person who is habitually resident in that State's territory;
 - (c) When the victim is a national of that State if that State considers it appropriate.
 2. Each State shall also take the necessary measures to establish its jurisdiction over the offences covered by the present draft articles in cases where the alleged offender is present in a territory under its jurisdiction and it does not extradite or surrender the person in accordance with the present draft articles.
 3. The present draft articles do not exclude the exercise of any criminal jurisdiction established by a State in accordance with its national law.
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