

INTERNATIONAL MARITIME ORGANIZATION
4 ALBERT EMBANKMENT
LONDON SE1 7SR

Telephone: 020-7735 7611
Fax: 020-7587 3210
Telex: 23588 IMOLDN G



E

Ref. T1/13.01

MSC/Circ.984
20 December 2000

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

1 The Maritime Safety Committee, at its seventy-third session (MSC 73/21, paragraph 14.26), approved the proposed Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships, for circulation pending adoption by the twenty-second session of the Assembly in November 2001.

2 Member Governments are invited to use the Code when arranging for investigations into the crimes of piracy and armed robbery against ships to be conducted under their jurisdiction.

ANNEX

**DRAFT CODE OF PRACTICE FOR THE INVESTIGATION OF THE CRIMES
OF PIRACY AND ARMED ROBBERY AGAINST SHIPS****1 PURPOSE OF THIS DOCUMENT**

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

2 DEFINITIONS

For the purpose of this Code:

2.1 **“Piracy”** means unlawful acts as defined in Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

2.2 **“Armed robbery against ships”** means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of "piracy", directed against a ship or against persons or property on board such a ship, within a State's jurisdiction over such offences.

2.3 **“Investigators”** means those people appointed by the relevant State(s) to intervene in an act of piracy or armed robbery against a ship, during and/or after the event.

3 PRIOR CONSIDERATIONS**Legislation**

3.1 States are recommended to take such measures as may be necessary to establish their jurisdiction over the offences of piracy and armed robbery against ships, including adjustment of their legislation, if necessary, to enable those States to apprehend and prosecute persons committing such offences.

* The following definition of piracy is contained in article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS):

“Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).”

3.2 States are encouraged to ratify, adopt and implement the practical applications of the 1982 United Nations Convention on the Law of the Sea, the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Navigation and the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

Action by coastal/port States

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

Coastal State agreements

3.4 Coastal states are encouraged, where appropriate, to enter into bilateral or multilateral agreements to facilitate the investigation of piracy and armed robbery against ships.

4. TRAINING OF INVESTIGATORS

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

- .1 In any cases where persons on board have been abducted or have been held hostage, the primary objective of any law enforcement operation or investigation must be their safe release. **Their rescue must take precedence over all other considerations.**
- .2 Arrest of offenders.
- .3 Securing of evidence, especially if an examination by experts is needed.
- .4 Dissemination of information which may help prevent other offences.
- .5 Recovery of property stolen.
- .6 Co-operation with the authority responsible for dealing with any particular incident.

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

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

5 INVESTIGATIVE STRATEGY

5.1 It is essential that those employed by security force agencies to investigate piracy or armed robbery against ships have demonstrated investigation skills and competencies, as well as maritime knowledge/experience. Offenders are ultimately land-based, and it is likely that it is on land they will be most vulnerable to detection. Associates may be prepared to give information against them, for example, and it is there that they will be spending the proceeds of their crime. It is also probable that offenders will be involved in other offences such as carrying of illegal immigrants, and useful intelligence may be lost if investigators are too compartmentalised in their approach.

5.2 Conventional detective methods offer the best chance to identify and apprehend pirates and perpetrators of armed robbery.

5.3 It may be appropriate to link anti-piracy measures to anti-smuggling patrols or efforts to prevent drug smuggling or unlawful drug trafficking, so minimising duplication of effort and leading to saving of resources. Wherever possible, inter-agency approach to investigation should be adopted.

Overall management/other liaison/co-operation

5.4 It is important to identify the person and/or organisation in charge of an investigation. Confusion or delay in the early stages will, at best, result in delayed investigative opportunities and loss of evidence. At worst, it may increase the danger to any crewmen held captive by the offenders, possibly resulting in avoidable loss of life or injury.

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

5.6 It is important to involve relevant organizations (e.g. Interpol, ICC/International Maritime Bureau) at an early stage, where appropriate, to take account of the possibility that transnational organised crime may be involved.

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

6 DEALING WITH AN INITIAL REPORT

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

Preservation of life

- .1 They must secure medical treatment for all persons injured.

Prevention of the escape of offenders

- .2 They must be alert to the possibility that, in some circumstances, offenders may still be in the vicinity.

Warnings to other ships

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

Protection of crime scenes

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

Securing evidence

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

7 THE INVESTIGATION

Proportionality

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

Establishing and recording of all relevant facts

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

Recording of individual witness accounts

- .4 These should be recorded in a formal manner acceptable for use in subsequent court proceedings. These accounts will form the basis of any prosecution case and untrained personnel should not be used for this important task.
- .5 Witness accounts must be recorded at the earliest opportunity, as memories do fade and accounts may be influenced by contact with other witnesses and media reports.
- .6 Where witnesses speak different languages to the investigators, as will happen frequently in piracy cases, their accounts must be recorded in their own languages and through use of properly qualified interpreters when this can be done within a reasonable timescale. Investigators should be aware that an account signed by a witness, or indeed the suspect, in a language foreign to that person may be valueless in court proceedings. It is important, therefore, to establish the legal requirements for the validity of evidence in each case.

- .7 Experience has proved that witnesses in piracy cases, and particularly those who have been subjected to violence, are likely to be exceptionally distressed. Their experience will have been all the worse if they have been held captive for a long period and/or been in fear of death, and the situation will be exacerbated still further if they are far from home. Investigators should bear these factors in mind and deal with them sympathetically and patiently if they are to elicit all relevant facts.
- .8 Witnesses should be interviewed separately from each other when this can be done within a reasonable timescale to protect the integrity of the individual accounts of the incident.
- .9 Investigators should focus upon obtaining specific descriptions of the individuals involved in the piracy incident, particularly noting any distinguishing characteristics of the “leader”.
- .10 If more than one offender is involved, investigators should attempt to obtain particular information from the witnesses about the actions of each individual offender, rather than be satisfied with the general statements about what “the hijackers” or “the pirates” did on the ship.

Detailed forensic examination of scenes

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

Search of intelligence databases

- .15 Crimes must not be treated in isolation.
- .16 Offenders may be responsible for similar offences not yet solved, but when the evidence from all those cases is accumulated and considered opportunities to identify offenders may emerge. Appropriate databases, including those held by the International Maritime Bureau in Kuala Lumpur, Malaysia should be searched to identify series of offences. However, usage of private databases has to be compatible with the law governing the investigation. Consideration should be given to contacting Interpol in case they have any information on the offenders.

- .17 Equally, offenders may have convictions the details of which could link them to crimes under investigation.

Distribution of information and intelligence to appropriate agencies

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