



MARITIME SAFETY COMMITTEE  
88th session  
Agenda item 18

MSC 88/18/5  
21 September 2010  
Original: ENGLISH

## PIRACY AND ARMED ROBBERY AGAINST SHIPS

### Call for more robust prosecution of pirates caught in the act of attacking merchant ships

Submitted by INTERCARGO, INTERTANKO, ITF and SIGTTO

#### SUMMARY

*Executive summary:* This document comments on the recently observed inability to prosecute suspected pirates even when apprehended in the act of attacking merchant ships and with witnesses available, and on the need for governments to take more robust action to enhance national laws to secure prosecution

*Strategic direction:* 6.2

*High-level action:* 6.2.1 and 6.2.2

*Planned output:* 6.2.1.4 and 6.2.2.4

*Action to be taken:* Paragraph 9

*Related documents:* None

#### Introduction

1 This document makes reference to recently reported incidents of attacks on merchant ships, or ships believed to be merchant ships, and the apparent inability by governments to bring to justice those caught in the act or suspected of piracy and armed robbery at sea by the use of the full force of the law.

2 The co-sponsors have frequently commended the protective services provided by the naval operation forces and centres and their many proven achievements, where attacks on merchant ships have been repelled thanks to the swift and effective efforts by those naval ships and aircraft. These operations are the key to the successful protection of world trade transiting this high-risk area and to the protection of our seafarers, ships and cargoes.

3 Despite this sterling service there have been several incidents which provided ideal opportunities to arrest and prosecute captured pirates but these opportunities were lost over an alleged lack of any legal framework and an apparent lack of political will to take action. Consequently pirates caught in the act have been set free. The incident involving the attack on the **Bow Saga** is a classic example. This incident again illustrates the need to determine appropriate mechanisms, laws and rules of engagement which will provide a robust

legislative environment, internationally and domestically, enabling effective prosecution and punishment of pirates apprehended in the act, or in any attempted act, of piracy or armed robbery at sea. The industry has expressed its extreme dismay at the failure to prosecute the pirates captured in this incident in view of the exceptionally strong case against them. The pirates were caught with firearms attacking the vessel and crew with a view to theft and further violence. Witnesses were readily available to give evidence of this to secure conviction of these criminals. However, they were set free.

4 The industry has seen several other examples where suspected pirates were not only set free but allegedly assisted back to Somalia only to re-group and resume their criminal activity. This can only be seen as a most discouraging signal to seafarers, who continue their dedicated service to uphold world trade. It is therefore the co-sponsors' firm view that the detention of all those engaging in piratical acts would contribute strongly; in parallel to actions on the ground in Somalia, to rid the region of the scourge of piracy.

5 On a similar note the co-sponsors point to their publicly expressed disappointment and frustration that the men who attacked the **Ashland** last April could avoid the severest penalty because of a technicality. This incident provides a further example that the law is too vague to ensure prosecution. It should be regarded as ample proof of a piracy attempt when attackers open fire on a merchant vessel. Whether they are able to board the ship or not, should be irrelevant to the ability of the law to sentence such attackers, when captured, to the maximum permissible under applicable law. Penal law must become an effective instrument to deal with the type of situations currently occurring and be adapted to effectively protect the seafarers and their ships rather than letting those who threaten the life of seafarers go free.

6 Governments must ensure they have robust national legislation covering all acts of modern piracy and associated offences. In addition, powers of detention of offenders must reflect the uniqueness of these crimes carried out many miles from shore without immediate access to law enforcers. Governments must also be encouraged to share information with national and international law enforcers to ensure that piracy networks can be broken and repeat offenders brought to justice.

7 Merchant ships and their seafarers undertaking their lawful business transporting the cargoes that maintain global commerce, which are strategically important to so many nations, should expect to have the full support of governments in the removal of any threat to these trades on the high seas and elsewhere. The arrest, prosecution and detention of captured pirates is vitally important as part of the process to solve the Somali piracy problem.

8 The co-sponsors and their respective Members are committed to assist in every way possible in bringing to justice those caught in the act of piracy and are prepared to co-operate with IMO and all other relevant bodies to this end.

#### **Action requested of the Committee**

9 The Committee is invited to consider the comments presented in this document and take action as deemed appropriate including encouraging, through an MSC Circular, all of its members to take all necessary action to ensure that captured pirates are prosecuted to the fullest extent in accordance with robust and adequate laws.