

**IMO
INTERNATIONAL MARITIME LAW INSTITUTE
1997/98**

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THE PIRACY BILL

The object of the Bill is to provide for-

- (a) the suppression of piracy of ship, cargo and property; and
- (b) the co-ordination and monitoring of anti-piracy activities.

EXPLANATORY NOTE

BACKGROUND

Piracy in the conventional sense is theft, or attempted theft, upon the high seas, and which “[piracy] by law of nations, in its jurisdictional aspects, is *sui generis*.”¹ Although statutes may provide for its punishment it is an offence against the law of nations. Piracy has been a serious impediment to the proper conduct of shipping and trade activities of the international community. While it is despicable in nature, it inflicts both a huge material and human costs on States. The *Anna Sierra* is a case in point for modern piracy.² According to the Lloyd’s Shipping Economist³ ‘[a] great number of attacks go unreported and the financial costs estimated at around \$200 million a year are but a drop in the ocean within the greater scheme of things.’

Since early 1980's the incidence of pirate attacks on vessels calling the port of Colombo has been a regular feature. Notwithstanding the various steps taken by the Government to eradicate piracy it recorded an increase. The statistics provided by the Lloyd’s Shipping Economist with regard to the pirate attacks in the Indian Sub-continent are as follows:

	1991	1992	1993	1993	1994	1995	1996
Sri Lanka	-	-	-	01	01	-	05 ⁴

¹The Lotus Case; P.C.I.J., Ser. A, No.10 (1927) at p.70.

²The *Anna Sierra* which was hijacked by pirates off the west coast of Cambodia on September 13, 1995, and a crew of 23 were handcuffed and locked in the engine room for two days.

³November 1996 issue

⁴Source: International Maritime Bureau

India	-	-	-	-	-	01	03
Bangladesh	-	-	-	-	01	-	02
Iran	-	-	-	-	-	03	-
Arab Se	01	-	-	-	-	-	-

The attacks on the Bay of Bengal and Bangladesh territorial waters are categorised by the Working group on the Malacca Strait Area⁵ as Low-Level Armed Robbery. However, the number of pirate attacks on the territorial waters of Sri Lanka as recorded by the Security Division of the Sri Lanka Ports Authority is as follows:

1993	1994	1995	1996 ⁶
40	70	46	58

It is also true that the absence of effective legislation in this sphere has sometimes discouraged the victims from reporting pirate attacks to the Authorities. These statistics, being an unhealthy signal to the international shipping community, have put paid to the Government policy to develop the Colombo port as a regional hub of container transshipment.

INADEQUACY OF THE LAW

Currently ‘piracy’ is not treated as a distinct criminal offence under the Sri Lankan law in like manner hijacking of aircraft is treated. An act of piracy is dealt with under the provisions of ‘theft’ or ‘robbery’ in the Penal Code. This has several inherent shortcomings. Serious among them is the definitions of these terms and associated general procedure presently in place being grossly out-of-tune with ‘piracy’ as manifested in modern times.

⁵Ref: (MSC 62/INF 3 annex)

⁶Source: Sri Lanka Ports Authority

THE TERM ‘PIRACY’

A study of various legislation and Articles of Conventions on this regime reveals that a fundamental problem the legislators face in many part of the world is the lack of a uniform and precise definition that is capable of being adopted as the basis of a substantive offence of piracy. It further reveals even from an international perspective, that many countries have been slow to deal with piracy with such force of the law as it deserves to be dealt with primarily because the crime of piracy lacks precision and uniformity. Article 101 of the UN Convention on the Law of the Sea (UNCLOS) defines ‘piracy’ in the following words:

‘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 person or property on board such ship or aircraft;
- (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

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

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).’

Further, article 103 goes on to define a pirate ship in the following words:

‘A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.’

These articles as in the Tokyo Convention were, with minor variation, adopted as

part of the English Law.⁷ However, the above definition of piracy is as inapt as it is incomprehensive for the purpose of practical domestic application. It is rightly pointed out in the Lloyd's Shipping Economist (November 1996) that the definition '... spawns some horrendous complication when dealing with this form of crime in the real world.' For practical purposes, the words '...on the high seas' and 'outside the jurisdiction of any State' make the law applicable to only a tiny percentage of what most victims would regard as piracy' and therefore would not make the domestic legislation adequate.

International Maritime Bureau proposed an alternative definition in the following lines:

'Piracy is the act of boarding any vessel with the intent to commit theft or other crime and with the capability to use force in furtherance of the act.'

This definition is much broader and may be more realistic for the purposes of domestic law than the definition provided by UNCLOS. However, some consider that any attempt to define 'piracy' as the basis of a substantive offence may not yield the desired result. This is in view of the probability that 'piracy' in whatever way it is defined will still be associated with its origins, of armed bandits boarding ships on the high seas. The scope of piracy is too narrow and restrictive in its historical and literal setting and therefore is inadequate to deal with its modern equivalents. Further, it would not serve much purpose restricting offences against ships and cargo to acts accompanied by force or violence. Fraud and deception too may well be the *modus operandi* for the commission of the offence of piracy in modern times.

In the circumstance, the term 'piracy' will be used in the proposed draft only for the purpose of identification and not for the purpose of definition and to create substantive offences.

⁷Tokyo Convention Act 1967- Halsbury's Statutes, Fourth Edition, Volume 4

DRAFTING INSTRUCTION

A proposal for a new legislation to suppress piracy at sea within Sri Lankan waters has been approved by the Cabinet of Ministers at its meeting held on April , 1998.

Pursuant to the Cabinet decision No.54/CM/1998 the Legal Draftsman is hereby instructed to prepare a draft Bill providing for, *inter alia*-

- (a) the creation of new substantive offences to deal with acts of piracy at sea;
- (b) an effective and efficient enforcement procedure;
- (c) special provisions to enable the admission and reception of evidence;
- (d) the monitoring and coordination of anti-piracy activities;
- (e) expeditious disposal of inquiries, and
- (f) enhanced penalty.

STATEMENT OF LEGAL EFFECT

- clause 1 provides for a short title and date of operation.
- clause 2 provides for the Sri Lanka Ports Authority to be responsible for all measures towards the suppression of piracy.
- clause 3 provides for the constitutive elements of the offence of piracy of ship and for punishment.
- clause 4 provides for the constitutive elements of the offence of piracy of property and for punishment.
- clause 5 makes boarding a ship without due permission an offence.
- clause 6 makes retention, possession, transportation etc. of pirated ship and property an offence.
- clause 7 makes attempt to commit an offence under clause 3, 4, 5 or 6 an offence.
- clause 8 provides for enhanced punishment for use of force in the commission of an offence.
- clause 9 provides for enhanced punishment for the use of weapon in the commission of an offence.
- clause 10 provides for enhanced punishment for causing hurt in the commission of an offence.
- clause 11 provides for the forfeiture and disposal of ship, motor vehicle or any mode of conveyance used in the commission of an offence.
- clause 12 makes the offence under the Act cognisable and non-bailable.
- clause 13 specifies the authorized officers and their powers.
- clause 14 provides for the Code of Criminal Procedure Act to apply in respect of investigation, trial and disposal of cases under the Act.
- clause 15 prescribes the powers of the authorized officers.
- clause 16 provides for the High Court of Colombo to have jurisdiction to try offences under the Act.

- clause 17 grants power to the Attorney General to indict persons in the High Court without a preliminary inquiry by a Magistrate Court and provides for the modality.
- clause 18 provides for the admission of statements of ship officers etc. as evidence at any proceeding; and of any statement of any fact or relevant matter in a document of certain persons and the presumption the court is authorised to draw.
- clause 19 makes obstructing an authorized officer in the performance of his duties under the Act an offence.
- clause 20 provides for the protection of authorised officer for any act done by him under the Act.
- clause 21 provides for the Minister to make regulations.
- clause 22 provides for the resolution of inconsistency between the two official text of the Act.
- clause 23 interpretation of certain terms.

ARRANGEMENT OF SECTIONS

sections

1. Short title and date of operation

PART I - ADMINISTRATION

2. The Sri Lanka Ports Authority to be responsible for measures to suppress piracy

PART II - OFFENCES

3. Piracy
4. Taking of property from ship
5. Boarding a ship without lawful authority
6. Retention, possession, transportation etc. of pirated ship and property
7. Attempt
8. Use of Force or Intimidation while committing an offence
9. Use of weapon while committing an offence
10. Causing hurt while committing an offence
11. Forfeiture

PART III - INVESTIGATION OF OFFENCE

12. Offences under this Act to be cognisable and non-bailable
13. Authorised officer to be deemed a peace officer

14. Code of Criminal Procedure Act to apply
15. Powers of an authorized officer

PART IV - TRIAL OF OFFENCES

16. Jurisdiction of High Court to try offences under this Act
17. Power of Attorney General to indict
18. Evidence

PART V - GENERAL

19. Obstructing Authorized officers etc.
20. Protection of authorized officers
21. Regulations
22. Sinhala text to prevail in case of inconsistency
23. Interpretation.

A BILL

FOR

**An Act to provide for the suppression of piracy
on the seas and for matters connected therewith
or incidental thereto.**

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:

Short title and date
of operation.

1. This Act may be cited as the Piracy Act, No. of
1998, and shall come into operation on such date as the Minister
may appoint by Order published in the *Gazette*.

PART I

ADMINISTRATION

The Sri Lanka Ports
Authority to be
responsible for
measures to
suppress piracy.

2.(1) The Sri Lanka Ports Authority shall be responsible for
coordinating all measures for the suppression of piracy and for
monitoring the implementation of such measures.

(2) It shall be the duty of the Sri Lanka Ports Authority to
gather, collate and disseminate information relating to piracy, both
locally and overseas and to provide such assistance as may be
necessary for the implementation of measures for the suppression
of piracy.

PART II

OFFENCES

Piracy.

3. Any person who-

(a) dishonestly takes or appropriates any ship for private
ends by means of theft, force, intimidation, deception,

fraud or by other similar means; or

(b) commits any illegal acts of violence or detention, or any act of depredation against any ship,

shall be guilty of the offence of piracy and shall on conviction be liable subject to the provisions of sections 8, 9, and 10, to imprisonment of either description for a term not less than two years and not exceeding seven years and to a fine not less than one hundred thousand and not exceeding ten million rupees or of an amount equal to the value of the ship, whichever is greater.

Taking of property from ship.

4. Any person who dishonestly takes or appropriates any property from any ship for private ends by means of theft, force, intimidation, deception, fraud or other similar means shall be guilty

5. Any person who without due permission of the captain, master or person in charge of a ship or without lawful authority enters or boards any ship while at sea or while berthed at a port or harbour or on the sea-front shall be guilty of an offence and shall on conviction be liable subject to the provisions of sections 8, 9 and 10, to imprisonment for a term not exceeding one year and to a fine not exceeding five hundred thousand rupees.

of an offence and shall on conviction be liable subject to the provisions of sections 8, 9 and 10, to imprisonment of either description for a term not less than two years and not exceeding five years and to a fine no less than one hundred thousand rupees and not exceeding five million rupees or of an amount equal to the value of the property, whichever is greater. Boarding a ship without

lawful authority.

Retention,
possession,
transportation etc.,
of pirated ship and
property.

6. Any person who dishonestly commandeers, receives, retains or transports any ship or property taken or appropriated by committing an offence under section 3 or section 4 of this Act shall be guilty of an offence and shall on conviction be liable subject to the provisions of sections 8, 9 and 10, to imprisonment of either description for a term not exceeding two years and to a fine not exceeding one million rupees or the value of the property, whichever is greater.

Attempt.

7. (1) Any person who attempts to commit an offence under section 3 or 4 of this Act or who causes such offence to be committed shall be guilty of an offence and shall on conviction be liable subject to the provisions of sections 8, 9 and 10, to imprisonment of either description for a term no exceeding three years and to a fine not exceeding one million rupees.

(2) Any person who attempts to commit an offence under section 5 or 6 of this Act shall be guilty of an offence and shall on conviction be liable subject

8. Where any person uses force or intimidation in the commission of an offence under this Act, the term of imprisonment to which such person shall be sentenced may extend to ten years.

to the provisions of sections 8, 9 and 10, to imprisonment of either description for a term not exceeding one year and to a fine not exceeding one million

rupees. Use of Force or Intimidation while committing an offence.

Use of weapon while committing an offence.

Causing hurt while committing an offence.

9. Where it is proved that any person was armed with a deadly weapon while committing an offence under this Act, the term of imprisonment to which such person shall be sentenced may extend to twelve years.

10. Where any person voluntarily causes hurt while committing an offence under this Act, such person and any other person jointly concerned in committing such offence shall, in addition to any fine which may be imposed for such offence be liable to imprisonment for a term which may extend to fifteen years.

Forfeiture.

11. (1) Where any person is convicted of an offence under section 3, 4, 5 or 6, the Court may make Order that any ship, motor vehicle or mode of conveyance used in, or in connection with, the commission of such offence, to be forfeited to the State.

(2) Any ship, motor vehicle or mode of conveyance forfeited by an Order made under subsection (1), shall vest absolutely in the State. Such vesting shall take effect-

- (a) after the expiration of the period within which an appeal may be preferred to the Court of Appeal or the Supreme Court, as the case may be, against the order of forfeiture; or
- (b) where an appeal has been preferred to the Court of Appeal or Supreme Court as the case may be, against the order of forfeiture, upon the determination of such appeal affirming or upholding the order of forfeiture.

(3) Where any ship, motor vehicle or mode of conveyance is vested in the State by an Order made under subsection (1), the Court shall cause such ship, motor vehicle or mode of conveyance to be sold by public auction and the proceeds of sale credited to the Sri Lanka Ports Authority.

PART III

INVESTIGATION OF OFFENCE

Offences under this

Act to be cognisable and non-bailable.

12. Notwithstanding anything to the contrary in the Code of Criminal Procedure Act, No.15 of 1979, every offence under this Act shall be a cognisable offence and a non-bailable offence, within the meaning of that Act.

Authorized officer to be deemed a peace officer.

13. (1) Every police officer, officer of the Sri Lanka Customs or other public officer specially designated in writing by the Minister shall be an authorized officer for the purposes of this Act.

(2) Every authorized officer shall be deemed to be a peace officer and an inquirer within the meaning of the Code of Criminal Procedure Act, No.15 of 1979, for exercising for the purposes of this Act, any powers and duties conferred or imposed on a peace officer, or on an inquirer with respect to cognisable offences, by that Act.

Code of Criminal Procedure Act to apply.

14. Except as otherwise provided by this Act, all offences under this Act shall be investigated, tried or otherwise dealt with, in accordance with the provisions of the Code of Criminal Procedure Act, No.15 of 1979.

Powers of an authorized officer.

15.(1) When an authorized officer has reasonable grounds to suspect that an offence under this Act has been committed, is being committed, or is about to be committed, he may-

(a) stop and board any ship, motor vehicle or other

mode of conveyance;

(b) enter any premises;

(c) search any person or property found on any such ship, motor vehicle, mode of conveyance or premises;

(d) make such inquiries from any person found on such ship, motor vehicle, mode of conveyance or premises as may be necessary to ascertain whether any offence under this Act is being, or has been, committed;

(e) seize any ship, motor vehicle, mode of conveyance or property in respect of which an offence under this Act has been committed, or used in, or in connection with, the commission of an offence under this Act.

(2) In effecting the seizure of any ship, motor vehicle, mode of conveyance or property in the exercise of the powers conferred on him by subsection (1), an authorized officer may use such force as may reasonably be necessary.

(3) Where any ship, motor vehicle, mode of conveyance or property is seized by any authorized officer in the exercise of the powers conferred on him, by subsection (1), such authorized

officer shall as soon as practicable, produce such ship, motor vehicle, mode of conveyance or property before, or make it available to inspection by, the Judge of the High Court, established by Article 154P of the Constitution for the Western Province who shall make such orders as he may deem fit relating to the detention or custody thereof, pending the conclusion of any prosecution in respect thereof.

(4) The Judge shall make an Order causing any ship or property in respect of which an offence under this Act is alleged to have been committed to be returned to the person entitled thereto, as soon as practicable.

PART IV TRIAL OF OFFENCES

Jurisdiction of High Court to try offences under this Act.

16.(1) Notwithstanding anything to the contrary in any other law, the High Court established under Article 154P of the Constitution for the Western Province shall have jurisdiction to hear and determine any offence under section 3, 4, 5 or 6 of this Act, where such offence was committed on board any ship registered in Sri Lanka is on the territorial waters of Sri Lanka.

(2) Where, in any proceedings under this Act, a question arises whether any ship or person is or is not governed by the provisions of this Act or of some part thereof, the ship or person

shall be deemed to be governed by those provisions unless the contrary is proved.

Power of Attorney
General to indict.

17.(1) Anything in the Code of Criminal Procedure Act, No.15 of 1979 or any other written law to the contrary notwithstanding, the Attorney-General may indict a person for an offence under this Act committed by reason of a contravention of any of the provisions of sections 3, 4, 5, 6 or 7 before the relevant High Court, without a preliminary inquiry by a Magistrate's Court as provided for in Chapter XV of that Act.

(2) The following provisions shall apply in any case where the Attorney-General indicts a person before the High Court under subsection (1):

(a) An indictment prepared in the manner prescribed by section 162 of the Code of Criminal Procedure Act, No.15 of 1979 shall be transmitted by the Attorney-General to the High Court. He shall at the same time transmit to the Fiscal of the Court in which the trial will take place a copy or copies of the indictment for service on the accused person or each of the accused persons who will be tried upon the indictment. The Fiscal shall forthwith and at least fourteen days before the day specified for trial serve or cause to be served on the accused person or each of the accused persons, the copy or a copy of the indictment received by him from the Attorney-General and shall make a return of such service to the High Court and to the Attorney-General or any

officer appointed by the Attorney-General to represent him.

(b) The High Court shall forthwith upon the receipt of the indictment cause to be served on the accused person a notice specifying the date fixed for his trial.

(c) Service on an accused person of any indictment or notice of trial shall be effected in the manner prescribed for the service of summons in sections 45 and 46 of the Code of Criminal Procedure Act, No.15 of 1979, and the provisions of section 49 of that Act shall apply accordingly for the purpose of proving such service:

Provided, however, that if service cannot be effected in such manner by the exercise of due diligence, the indictment or notice shall be affixed to some conspicuous part of the house in which the accused person ordinarily resides, and in such case the indictment or notice shall be deemed to have been duly served.

(d) The Attorney-General shall, before the date of trial, cause to be furnished to that person-

(i) a concise statement of the particulars of the charge and a list of witnesses who are likely to

be called to give evidence and a list of documents that may be used by the prosecutor; and

(ii) a summary of such of the facts as are proposed to be relied on by the prosecutor.

(e) At the trial of that person, the High Court or the prosecutor may, notwithstanding anything to the contrary in any other written law, call any such witness, or use or produce any such document, as is not specified in the indictment.

Evidence.

18. (1) Notwithstanding anything to the contrary in the Evidence Ordinance or any other law, the provisions of this section shall apply with respect to proceedings for offences under this Act. (2) Any statement not amounting to a confession made by any officer, employee or passenger of any ship and recorded during an investigation or inquiry under this Act and touching any fact in issue or relevant matter in any proceeding for an offence under this Act of which direct oral evidence by him would be admissible, shall be admissible as evidence at such proceeding.

(3) Any statement made by any person in a document or other record touching any fact in issue or relevant matter in any proceeding for an offence under this Act shall be admissible in such proceeding if-

(a) direct oral evidence by him of such fact in issue

or relevant matter would be admissible; and

(b) the person who made the statement is dead or by reason of his bodily or mental condition is unfit to attend as a witness; or

(c) the person who made the statement is outside Sri Lanka or that reasonable steps have been taken to find such person, but he cannot be found or that there are reasonable grounds to believe that the person who made the statement does not wish to give oral evidence through fear or that he is being prevented from giving evidence; and

(d) the statement does not amount to a confession made by a person accused of an offence under this Act.

(4) Any statement in a document or other record made, compiled, received or obtained during the course of any business, trade or profession or other regularly conducted activity and touching any fact in issue or relevant matter in any proceeding for an offence under this Act shall be admissible in such proceeding if-

(a) direct oral evidence of the fact in issue or relevant matter would be admissible;

(b) the statement does not amount to a confession made by a person accused of an offence under this Act.

The Courts shall unless the contrary is proved, presume the truth of such statement in the document or other record and in the case of a document or record made, compiled, received or obtained by a person, that the document or record was made, compiled, received or obtained by the person who is purported to have made, compiled, received or obtained it and shall presume the genuineness of any signature or distinctive identification mark therein.

(5) Subject to the preceding provisions of this section, any statement amounting to a confession made by any person suspected of having committed an offence under this Act shall be admissible against him in any proceeding for any offence under this Act if the statement is not made to a Police Officer and is not irrelevant under section 24 of the Evidence Ordinance.

PART V

GENERAL

Obstructing
Authorized
officers etc.

19. (1) Any person who, resists or obstructs any authorized officer in the exercise, by such authorized officer, of any power conferred on him by this Act, or fails to comply with any lawful order given to him by an authorized officer shall be guilty of an offence under this Act and shall on conviction after summary trial by a Magistrate be liable to imprisonment to a term not exceeding two years.

(2) Every person who contravenes any regulation made under this Act shall be guilty of an offence under this Act and shall on conviction after summary trial by a Magistrate, be liable to a fine not exceeding five thousand rupees.

Protection
authorized
officers.

of
20. An authorized officer shall not be liable to any action or prosecution, civil or criminal, for anything done, or omitted to be done, by him, *bona fide*, under this Act.

Regulations.

21. (1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for or in respect of all or any of the following matters:

(a) the measures to be taken for the purpose of preventing, detecting and investigating offences under this Act;

(b) the determination of any zones as restricted or

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(c) the issue of permits to enter any restricted zones;

(d) the coordinating and monitoring functions of the Sri Lanka Ports Authority;

(e) the establishment of a reward scheme for persons furnishing information concerning, or

detecting and investigating, offences under this Act and for persons monitoring the implementation of measures for the suppression of piracy.

(3) Every regulation made by the Minister shall be published in the *Gazette*, and shall come into operation on the date of such publication, or on such later date as may be specified in the regulation.

(4) Every regulation made by the Minister shall as soon as convenient after its publication in the *Gazette* be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.

(5) Notification of the date on which any regulation is so deemed to be rescinded shall be published in the *Gazette*.

Sinhala text to prevail in case of inconsistency.

22. In the event of any inconsistency between the Sinhala and Tamil text of this Act, the Sinhala text shall prevail.

Interpretation.

23. In this Act, unless the context otherwise requires-

“confession” and “fact in issue” have the respective meaning assigned to them by the Evidence Ordinance;

“deadly weapon”, “dishonestly”, “force”, “theft”, “voluntarily causing hurt” shall have the same meanings as in the Penal Code;

“Minister” means the Minister appointed under Article 44 of the Constitution, to whom the subject of Ports and Shipping is assigned;

“motor vehicle” has the same meaning as in the Motor Traffic Act;

“port” means a place appointed, or deemed to be appointed, a port under section 11 of the Customs Ordinance;

“ship” means every description of ship or vessel or boat, or any other description of vessel used in navigation and not exclusively propelled by oars, paddles or poles, and includes all equipment, apparel and appurtenances (excluding supplies for sustenance) which are necessary for the navigation and conduct of the business of the ship;

“Sri Lanka Ports Authority” means the Sri Lanka Ports Authority established by the Sri Lanka Ports Authority Act, No. 51 of 1979.