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Your ref

Our ref  
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### **National legislation on piracy**

Reference is made to Circular letter No. 2933.

### **Norwegian legislation on armed robbery and piracy**

Armed robbery and piracy at sea is punishable under the general provisions on armed robbery and aggravated armed robbery in section 267 and 268 of the Norwegian General Civil Penal Code.

*Attempts* to commit piracy/armed robbery at sea are punishable pursuant to section 49 of the General Civil Penal Code.

*Conspiracy* to armed robbery is punishable pursuant to Section 269 first paragraph of the Norwegian General Civil Penal Code.

*Aiding and abetting* in armed robbery and aggravated armed robbery is punishable pursuant to sections 266 first paragraph and 267 third paragraph respectively. Aiding and abetting under Norwegian penal law also includes organizing, facilitating and counselling.

Other criminal offences that may be relevant to piracy-related activities:

- Preparatory acts to piracy; a person who for the purpose of committing robbery equips or begins to equip any vessel is punishable pursuant to Section 269 nr. 2.
- According to section 151a a person who on board a ship by violence, threats or otherwise unlawfully and forcibly takes control of the vessel or otherwise interferes with its sailing shall be liable to imprisonment for a term of not less than two years and not exceeding 21 years. The same is applicable for anyone who aids and abets such an offence. Attempts are similarly punishable within the

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### **Prosecution of persons having committed/suspected of committing acts of piracy/armed robbery**

According to the jurisdiction clause in the Penal Code (section 12), the applicability of Norwegian criminal law is based on where the act is committed (in the realm, including inter alia Norwegian flagged vessels on the high seas or abroad) and by whom (Norwegian nationals and persons domiciled here or foreigners). The jurisdiction clause implies that Norwegian criminal law applies to all acts that can be punished pursuant to the Penal Code section 266, 267 and 269 regardless of where the act is committed and by whom. However, due to the international character of such cases, prosecution in Norway against foreigners for acts committed abroad can only be instituted after thorough consideration if the King (in council) so decides. In general, prosecution in Norway should be reserved for cases where Norwegian investigation and prosecution would be comparatively advantageous compared to prosecution elsewhere.

The nationality of the victim is generally not a relevant factor for determining jurisdiction according to Norwegian criminal law, even if the nationality of the victim could be a relevant element in the consideration of whether Norwegian investigation and prosecution would be comparatively advantageous.

The flag of the ship attacked is, however, a relevant factor for determining jurisdiction according to Norwegian criminal law in the sense that acts committed on Norwegian flagged vessels are considered as committed in the realm, and acts committed on ships sailing under foreign flags are considered committed abroad. Nationality of the capturing ship is generally not relevant for determining jurisdiction according to Norwegian criminal law. Neither is where the pirates/armed robbers are found/captured, but this may affect the practical possibilities for prosecution in Norway.

### **Detention and investigation of persons who have committed piracy-related offences, including the use of ship-riders**

According to Section 224 of the Criminal Procedure Act, a criminal investigation shall be carried out when, as a result of a report or other circumstances, there are reasonable grounds to inquire whether any criminal matter requiring prosecution by the public authorities subsists.

A person may, pursuant to section 171 of the Criminal Procedure Act, be detained if he with just cause is suspected of one or more acts punishable pursuant to statute by imprisonment for a term exceeding six months when:

- There is reason to fear that he will evade prosecution or the execution of a sentence or other precautions,
- There is an imminent risk that he will interfere with any evidence in the case, e.g. by removing clues or influencing witnesses or accomplices

- It is deemed to be necessary to prevent him from again committing a criminal act punishable by imprisonment for a term exceeding six months
- He himself requests it for reasons that are found to be satisfactory

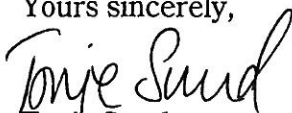
Norwegian procedural law contains no special regulations applicable during the investigation of armed robbery at sea. An individual suspected of or charged with armed robbery at sea enjoys the same rights and obligations as individuals suspected of or charged with other serious crimes. Further, the police are in general vested with the same investigative powers and police methods during the investigation of such offences, as they are during the investigation of other offences. Please note that unless international law directs otherwise, the Norwegian police and the Norwegian prosecuting authority cannot exercise power outside the Norwegian realm, including Norwegian flagged vessels on the high seas.

On the other hand, one has to differentiate between the national legal requirements for decisions by the prosecuting authorities on arrest of persons according to domestic criminal procedures, and the detention of suspected pirates/armed robbers at sea by military forces according to legal authority under international law (e.g. specific mandate by the UN Security Council). With regard to the latter, no specific national legal requirements are needed as detentions in these cases are based directly on that international legal authority. Detention by military forces does not imply intent to exercise national jurisdiction for prosecutorial purposes. Such intent requires a formal decision by the prosecuting authority.

#### **Prosecution of piracy-related offences, including relevant evidentiary rules**

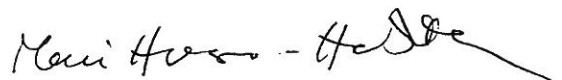
Norwegian procedural law contains no specific rules on the prosecution of armed robbery or aggravated armed robbery offences. An individual suspected of or charged with armed robbery at sea enjoys the same rights and obligations as individuals charged with other serious crimes. There are no special evidentiary rules on armed robbery etc. The applicable general criminal evidentiary rules are based on a civil law approach implying unrestricted presentation of evidence. There are, however, certain limitations in the obligation to give evidence. Furthermore, certain limitations follow from decisions by the European Human Rights Court, cf. the European Human Rights Convention article 6 (fair trial).

Yours sincerely,



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Acting Deputy Director General



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Adviser

