



## **OCCASIONAL PAPER 1**

A CODE OF CONDUCT FOR THE INDIAN OCEAN

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CENTRE FOR THE LAW OF THE SEA

PATHFINDER FOUNDATION

# Proposal for a Code of Conduct for the Indian Ocean

## Introduction

### I. The Indian Ocean

The economic, strategic, and ultimately political, importance of the Indian Ocean has been recognized for centuries. Mariners from Arabia, East Asia and the Pacific, while plying their trade, studied weather patterns in the Indian Ocean and explored and traversed it regularly, laying the foundation of the rules of orderly maritime conduct. Intrepid mariners from Europe ventured through the Indian Ocean to the furthest reaches of East Asia and the Pacific in search of spices, as well as land and treasure to be acquired for their patrons, adding to the corpus of rules and practices that would become, over time, the Law of the Sea.

Today, the countries surrounding the Indian Ocean are home to some 2.7 billion people, or some 35% of the world's population. The Indian Ocean provides vital access to the powerful economies of South Asia, East and South-East Asia for supplies of energy from countries of the Persian Gulf and Africa. Some 70% of world trade and 50% of crude oil reaches their destinations through the Indian Ocean. More than 80% of the world's maritime trade in crude oil passes through the "choke points" of the Indian Ocean, with 40% passing through the Strait of Hormuz, 8% via Bab el-Mandab and 35% through the Straits of Malacca.

### II. Sri Lanka and the Indian Ocean

Sri Lanka's geographically central location and its proximity to the major sea routes traversing the Indian Ocean may have inspired the nation's political leaders to be pro-active in initiating, from time to time, imaginative and broadly conservationist measures to protect and preserve this Ocean's resources, as well as their concern that peace, order and good governance be maintained among the communities that surround it, to promote their well-being.

Thus, in 1971, at the initiative of Sri Lanka's Prime Minister Sirima Bandaranaike, later joined by the President of Tanzania, the United Nations General Assembly declared:

*"The Indian Ocean, within limits to be determined together with the air space above and the ocean floor subjacent thereto ... designated for all time as a Zone of Peace".*  
(A/RES/2832 (XXVI))

Adopted by the General Assembly at its Twenty-sixth Session by a vote of 61 in favour to none against, but with some 55 abstentions, the Declaration called on the "great Powers" (a) to halt further escalation and expansion of their "military presence" in the Indian Ocean, and (b) to remove from the Indian Ocean all fixed elements of their rivalry, such as military bases, installations and logistical supply facilities, and even warships and aircraft, to the extent that they were intended to maintain a "military presence" in the area, and were not merely in transit on their lawful occasions. Implementation of the Declaration was to be through conclusion of an international agreement that would include (1) prohibition of the use of ships and aircraft against the littoral and hinterland States of the

Indian Ocean in contravention of the U.N. Charter; and (2) guarantee the right of ships and aircraft, whether military or other, of all nations “free and unimpeded” use of the Indian Ocean and its air space in accordance with international law”.

Efforts to implement the Declaration by its proponents supported by the Non-Aligned Group and some other States continued within the U.N. General Assembly until by the close of the Twentieth Century. Since then, such efforts seemed to have lost all momentum.

While the “great Power rivalry” that caused concern in the decade of the 1970s might have receded, there are new developments of concern to some and the prevalence of illegal and criminal activity in the Indian Ocean, which moved President Maithripala Sirisena, when addressing the States of the Indian Ocean Rim at the Group’s Twentieth Anniversary Meeting in Jakarta in March 2017, to call on them to work out a stable legal framework that would put an end to trafficking of illicit drugs and other criminal activity in the Indian Ocean, while maintaining freedom of navigation in accordance with international law.

In February 2017, Prime Minister Ranil Wickremesinghe, in an address at Deakin University in Australia expressed concern that the post-Cold War multi-polar world had brought about:

*“a massive transition of economic and military power to Asia within the Indian Ocean and the Pacific” and conclude that, “the global political order, which produced the United Nations Convention on the Law of the Sea is radically different from the current global dynamics...”. He warned that “current agreement ambiguities could generate global economic disruption”, and said “The ideal solution for the Indian Ocean is for all parties to agree on a code of conduct for military vessels traversing the Indian Ocean” and said “the Code on the Freedom of navigation in the Indian Ocean must include an effective and realistic mechanism on dispute resolution...”. He concluded saying “any agreement, also needed to recognize the escalation in human smuggling, illicit drug trafficking and the relatively new phenomenon of maritime terrorism.”*

The need to keep the vital sea lanes open for all and to maintain peace and stability in the Indian Ocean Region, which ensures the right of all states to the freedom of navigation and overflight was expressed by Prime Minister Wickremesinghe once again at the 2<sup>nd</sup> Indian Ocean Conference held in Colombo in September 2017.

Meanwhile, at the same event, the Indian External Affairs Minister Sushma Swaraj said “The Indian Ocean is prone to non-traditional security threats like piracy, smuggling, maritime terrorism, illegal fishing, and trafficking of humans and narcotics. We realize that to effectively combat transnational security challenges across the Indian Ocean, including those posed by non-state actors, it is important to develop a security architecture that strengthens the culture of cooperation and collective action.”

While waiting for further developments in the South China Sea negotiations between the ASEAN and China, as well as negotiations between the U.S and China relating to safety in the air and maritime encounters that could serve as inspiration to the 21 States currently members of IORA, Pathfinder Foundation offers herewith a preliminary draft of a Code of Conduct aimed at organizing co-operative efforts to take action to meet security challenges in the Indian Ocean, including those posed by non-state actors. The draft which, where appropriate, follows the structure of Codes of Conduct designed for East Africa (Djibouti Code of Conduct) and West Africa (Yaoundé Code of Conduct) concluded under the auspices of IMO, is offered for review and comment.

A “Code of Conduct”, as commonly conceived, is not a legally binding document, but would prescribe rules to be observed in organizing co-operation in the pursuit of a common set of objectives. It should be noted that, in contrast, the U.N. Convention on the Law of the Sea is legally binding on States Parties to it, which include the States participating in Indian Ocean Rim Association (IORA).

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## CODE OF CONDUCT

### CONCERNING THE REPRESSION OF PIRACY, ARMED ROBBERY AGAINST SHIPS, AND ILLICIT MARITIME ACTIVITY IN THE INDIAN OCEAN

The Governments of Australia, Bangladesh, the Comoros, India, Indonesia, Iran, Kenya, Madagascar, Malaysia, Mauritius, Mozambique, Oman, Seychelles, Singapore, Somalia, South Africa, Sri Lanka, Tanzania, Thailand, the United Arab Emirates and Yemen, (hereinafter referred to as "the Signatories");

**CONSIDERING** the relevant provisions of the United Nations Millennium Declaration 55/2, in particular Section II on Peace, Security and Disarmament; Section III on Development and poverty eradication; section IV on Protecting our common environment;

**INSPIRED BY** Resolution 2018 (2011) and 2039 (2012) of the United Nations Security Council in relation to piracy and armed robbery at sea to develop a comprehensive strategy designed to eradicate such activity in the Indian Ocean including through:

(a) the development of domestic laws and regulations, where these are 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;

(c) the development and strengthening of domestic laws and regulations, as appropriate, to implement relevant international agreements addressing the security of navigation, in accordance with international law;

(d) the need for enhancing international cooperation at all levels in the fight to ensure maritime security and safety of offshore oil infrastructures;

**NOTING IN PARTICULAR** that the General Assembly of the United Nations, at its six-seventh session, adopted, on 5 December 2012, resolution 67/78 on Oceans and the Law of the Sea which, inter alia:

(a) Notes with concern the continuing problem of transnational organized crime committed at sea, including illicit traffic in narcotic drugs and psychotropic substances, the smuggling of migrants and trafficking in persons, and threats to maritime safety and security, including piracy, armed robbery at sea, smuggling, and terrorist acts against shipping, offshore installations and other maritime interests, and deploring the loss of life and adverse impact on international trade, energy security, and the global economy resulting from such activities,

(b) Recognizes the crucial role of international cooperation at the global, regional, sub-regional, and bilateral levels in combating, in accordance with international law, threats to maritime security, including piracy, armed robbery at sea, terrorist acts against shipping, offshore installations and other maritime interests, through bilateral and multilateral instruments and mechanisms aimed at monitoring, preventing and responding to such threats, the enhanced sharing of information among States relevant to the detection, prevention and suppression of such threats, and the prosecution of offenders with due regard to national legislation, and the need to sustainably build capacity which permits the attainment of these objectives,

(c) Underscores the importance of enhancing international cooperation at all levels to fight transnational organized criminal activities, including illicit traffic in narcotic drugs and psychotropic substances within the scope of the United Nations instruments against illicit drug trafficking, as well as the smuggling of migrants, and trafficking in persons and illicit trafficking in firearms and criminal activities at sea falling within the scope of the United Nations Convention against Transnational Organized Crime;

**RECALLING** that the United Nations General Assembly, in its resolution 67/79 on sustainable fisheries of December 11, 2012 expressed its serious concern that illegal, unreported and unregulated fishing remains one of the greatest threats to fish stocks and marine ecosystems and continues to have serious and major implications for the conservation and management of ocean resources, as well as the food security and the economies of many States, particularly developing States, and renews its call upon States to comply fully with all existing obligations and to combat such fishing and urgently to take all necessary steps to implement the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;

**RECALLING** that the Assembly of IMO, at its twenty-sixth regular session, adopted on 2 December 2009 resolution A.1025(26) on the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships which amongst others invited Governments to develop, as appropriate, agreements and procedures to facilitate co-operation in applying efficient and effective measures to prevent acts of piracy and armed robbery against ships;

**TAKING INTO ACCOUNT** the Special measures to enhance maritime security adopted on 12 December 2002 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 as amended, including the International Ship and Port Facility Security Code;

**RECALLING IN PARTICULAR** the provisions of the United Nations Convention on the Law of the Sea and **REAFFIRMING** their determination to act in accordance therewith;

**RECALLING** that the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 provide, inter alia, for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation;

**WELCOMING** the initiatives of the United Nations, United Nations Office on Drugs and Crime, and the United Nations Development Programme, the International Maritime Organization, to provide training, technical assistance and other forms of capacity building to assist Governments, upon request, to adopt and implement practical measures to apprehend and prosecute those persons engaged in transnational organized crime in the maritime domain, maritime terrorism, and illegal, unreported, and unregulated (IUU) fishing;

**CONVINCED** that the following transitional Code of Conduct will promote regional maritime cooperation and a stable maritime environment, contribute to the peace, good order and continuing prosperity among the Signatories;

Have agreed as follows: **Article 1**

## **DEFINITIONS**

For the purposes of this Code of Conduct, the following terms, expressions, and acronyms are understood as specified below unless the context otherwise requires:

1. "Signatory" is a State having signed this present Code of Conduct.
2. "Host Signatory" is a State having signed this Code of Conduct and that receives the embarked officers of another Signatory State with that State's authorization.
3. "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 of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).
4. "Armed robbery at sea" consists of any of the following acts:
  - (a) unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters or territorial sea;
  - (b) any act of inciting or of intentionally facilitating an act described in subparagraph (a).
5. "Transnational organized crime in the maritime domain" includes but is not limited to any of the following acts when committed at sea:
  - (a) money laundering,
  - (b) illegal arms and drug trafficking,
  - (c) piracy and armed robbery at sea,
  - (d) illegal oil bunkering,
  - (e) crude oil theft,
  - (f) human trafficking,
  - (g) human smuggling,
  - (h) maritime pollution,
  - (i) IUU fishing,
  - (j) illegal dumping of toxic waste,
  - (k) maritime terrorism and hostage taking,
  - (l) vandalisation of offshore oil infrastructure.

6. IUU: Illegal, undeclared and unregulated fishing;

7. "Embarked Officers" consists of law enforcement officers or other authorized officials embarked on ships or patrol aircraft;

8. "Pirate ship" means a vessel effectively controlled by people who intend to use it to commit an act of piracy, or used it to commit such an act, as long as it remains under the control of such persons;

9. "Indian Ocean" means.....

10. "IORA" means the Indian Ocean Rim Association, an international organisation consisting of coastal states bordering the Indian Ocean

## **Article 2: PURPOSE AND SCOPE**

1. Consistent with their available resources and related priorities, their respective national laws and regulations, and applicable rules of international law, including the UN Convention on the Law of the Sea of 10 December 1982, (UNCLOS) the Signatories intend to co-operate to the fullest possible extent in the repression of transnational organized crime in the maritime domain, maritime terrorism, IUU fishing and other illegal activities at sea with a view towards:

(a) sharing and reporting relevant information;

(b) interdicting ships and/or aircraft suspected of engaging in transnational organized crime in the maritime domain, maritime terrorism, IUU fishing and other illegal activities at sea;

(c) ensuring that persons committing or attempting to commit in transnational organized crime in the maritime domain, maritime terrorism, IUU fishing and other illegal activities at sea are apprehended and prosecuted; and

(d) facilitating proper care, treatment, and repatriation of seafarers, fishermen, other shipboard personnel and passengers subjected to transnational organized crime in the maritime domain, maritime terrorism, IUU fishing, and other illegal activities at sea, particularly those who have been subjected to violence.

2. The Signatories intend this Code of Conduct to be applicable in relation to combatting transnational organized crime in the maritime domain, maritime terrorism, IUU fishing and other illegal activities in the Indian Ocean.

3. The Signatories should carry out their obligations and responsibilities under this Code in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States; and in accordance with their responsibilities and obligations as Parties to the United Nations Convention on the Law of the Sea of 10 December 1982.

4. Operations to suppress transnational organized crime in the maritime domain, maritime terrorism, IUU fishing and other illegal activities at sea in and over the territorial sea of a Signatory are the responsibility of, and subject to the sovereign authority of that Signatory.



### **Article 3: Guiding Principles**

1. The Signatories intend that any measures taken pursuant to this Code of Conduct should be carried out by law enforcement or other authorized officials from warships or military aircraft, or from other ships or aircraft clearly marked and identifiable as being in government service and authorized to that effect.
  
2. The Signatories recognize that multiple States, including the flag State, State of suspected origin of the perpetrators, the State of nationality of persons on board the ship, and the State of ownership of cargo may have legitimate interests in cases arising pursuant to Articles 4 and 5. Therefore, the Signatories intend to liaise and co-operate with such States and other stakeholders, and to coordinate such activities with each other to facilitate the rescue, interdiction, investigation, and prosecution.
  
3. The Signatories intend, to the fullest possible extent, to conduct and support the conduct of investigations in cases of transnational organized crime in the maritime domain, maritime terrorism, IUU fishing and other illegal activities at sea taking into account the relevant international standards and practices, and, in particular, recommendations adopted by IMO.
  
4. The Signatories intend to co-operate to the fullest possible extent in medical and decedent affairs arising from operations in furtherance of the repression in transnational organized crime in the maritime domain, maritime terrorism, IUU fishing and other illegal activities at sea.
  
5. The Signatories intend to ensure that, in seeking the fulfilment of the above objectives, a balance is maintained between the need to enhance maritime security and facilitation of maritime traffic and to avoid any unnecessary delays to international maritime trade when navigating through the Indian Ocean.

### **Article 4: MEASURES AT THE NATIONAL LEVEL**

1. The Signatories intend to develop and implement, as necessary:
  - (a) Appropriate national maritime security policies to safeguard maritime trade from all forms of unlawful acts;
  - (b) National legislation, practices and procedures, which together provide the security necessary for the safe and secure operation of port facilities and ships at all security levels; and
  - (c) National legislation which ensures effective protection of the marine environment,
  
2. The Signatories intend to establish, as necessary, a national maritime security committee or other system for coordinating the related activities between the departments, agencies, control authorities, and other organizations of the State, port operators, Companies and other entities concerned with, or responsible for the implementation of, compliance with, and enforcement of, measures to enhance maritime security and search and rescue procedures,
  
3. The Signatories intend to establish, as necessary, a national maritime security plan with related contingency plans (or other system) for harmonizing and co-ordinating the implementation of measures designed to enhance security in the international maritime transport sector with those of other modes of transport,

4. The Signatories intend to prosecute, in their domestic courts and in accordance with relevant domestic laws, perpetrators of all forms of piracy and unlawful acts against seafarers, ships, port facility personnel and port facilities,

5. The organization and functioning of this national system is exclusively the responsibility of each State, in conformity with applicable laws and regulations.

#### **Article 5: PROTECTIVE MEASURES FOR SHIPS**

The Signatories intend to encourage States, ship owners, and ship operators, where appropriate, to take protective measures against transnational organized crime in the maritime domain, maritime terrorism, and other illegal activities at sea, taking into account the relevant international Conventions, Codes, Standards and Recommended Practices, and guidance adopted by IMO. The Signatories intend to cooperate in the implementation of measures to protect ships.

#### **Article 6: MEASURES TO REPRESS PIRACY**

1. Consistent with Article 2, each Signatory to the fullest possible extent intends to cooperate in:

(a) arresting, investigating, and prosecuting persons who have committed piracy or are reasonably suspected of committing piracy;

(b) seizing pirate ships and/or aircraft and the property on board such ships and/or aircraft; and

(c) rescuing ships, persons, and property subject to piracy.

2. Any Signatory may seize a pirate ship beyond the outer limit of any State's territorial sea, and arrest the persons and seize the property on board.

3. Any pursuit of a ship, where there are reasonable grounds to suspect that the ship is engaged in piracy, extending in and over the territorial sea of a Signatory is subject to the authority of that Signatory. No Signatory should pursue such a ship in or over the territory or territorial sea of any coastal State without the permission of that State.

4. Consistent with international law, the courts of the Signatory which carries out a seizure pursuant to paragraph 4 may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ship or property, subject to the rights of third parties acting in good faith.

5. The Signatory which carried out the seizure pursuant to paragraph 4 may, subject to its national laws, and in consultation with other interested entities, waive its primary right to exercise jurisdiction and authorize any other Signatory to enforce its laws against the ship and/or persons on board.

6. Unless otherwise arranged by the affected Signatories, any seizure made in the territorial sea of a Signatory pursuant to paragraph 5 should be subject to the jurisdiction of that Signatory.

7. The signatories intend to encourage states, ship owners and ship operators, as deemed appropriate, to take measures to protect against pirates, taking into account international conventions, codes, standards and recommended practices and in particular, the recommendations adopted by IMO.

## **Article 7: MEASURES TO REPRESS ARMED ROBBERY AGAINST SHIPS**

1. The Signatories intend for operations to suppress armed robbery against ships in the territorial sea and airspace of a Signatory to be subject to the authority of that Signatory, including in the case of hot pursuit from that Signatory's territorial sea or archipelagic waters in accordance with UNCLOS.

2. The Signatories intend for their respective focal points and Centres (as designated pursuant to Article 8) to communicate expeditiously alerts, reports, and information related to armed robbery against ships to other Signatories and interested parties.

## **Article 8: MEASURES TO REPRESS ILLEGAL, UNREGULATED AND UNREPORTED FISHING**

1. The Signatories shall consult at the bilateral and sub-regional levels in the formulation and harmonization of policies for the conservation, management and sustainable use of marine living resources that straddle maritime zones, or which are highly migratory, or occur in the high seas.

2. The Signatories shall co-operate and collaborate with the sub-regional fisheries bodies and the Food and Agriculture Organization on preventing and combating illegal, unregulated and unreported fishing, and protecting fisheries resources for sustainable long term utilization to sustain livelihoods in the littoral and International States of the Indian Ocean.

## **Article 9: EMBARKED OFFICERS**

1. In furtherance of operations contemplated by this Code of Conduct, a Signatory may nominate law enforcement or other authorized officials (hereafter referred to as "the embarked officers") to embark in the patrol ships or aircraft of another Signatory (hereafter referred to as "the host Signatory") as may be authorized by the host Signatory.

2. The embarked officers may be armed in accordance with their national law and policy and the approval of the host Signatory.

3. When embarked, the host Signatory should facilitate communications between the embarked officers and their headquarters, and should provide quarters and messing for the embarked officers aboard the patrol ships or aircraft in a manner consistent with host Signatory personnel of the same rank.

4. Embarked officers may assist the host Signatory and conduct operations from the host Signatory ship or aircraft if expressly requested to do so by the host Signatory, and only in the manner requested. Such request may only be made, agreed to, and acted upon in a manner that is not prohibited by the laws and policies of both Signatories.

5. 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, IUU 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;

(e) authorize law enforcement officials of the vessel on which the embarked officer is embarked to assist in the enforcement of the laws of the designating Signatory to suppress transnational organized crime in the maritime domain, maritime terrorism, IUU fishing, and other illegal activities at sea; and

(f) advise and assist law enforcement officials of the other Signatory in the conduct of boardings of vessels to enforce the laws of the other Signatory to suppress transnational organized crime in the maritime domain, maritime terrorism, IUU fishing, and other illegal activities at sea.

#### **Article 10: ASSET SEIZURE AND FORFEITURE**

1. Assets seized, confiscated or forfeited in consequence of any law enforcement operation pursuant to this Code, undertaken in the waters of a Signatory, should be disposed of in accordance with the laws of that Signatory.

2. Should a flag State Signatory have consented to the exercise of jurisdiction by another Signatory pursuant to Article 18, assets seized, confiscated or forfeited in consequence of any law enforcement operation of any Signatory pursuant to this Code should be disposed of in accordance with the laws of the boarding Signatory.

3. To the extent permitted by its laws and upon such terms as it deems appropriate, a Signatory may, in any case, transfer forfeited property or proceeds of their sale to another Signatory or an intergovernmental body specialising in the fight against piracy, armed robbery, and other illicit maritime activity.

#### **Article 11: COORDINATION AND INFORMATION SHARING**

1. Each Signatory should designate a national focal point to facilitate coordinated, effective, and timely information flow among the Signatories, consistent with the purpose and scope of this Code of Conduct. In order to ensure coordinated, smooth, and effective communication between their designated focal points, the Signatories intend to use the piracy information sharing centres. Each Centre and designated focal point should be capable of receiving and responding to alerts and requests for information or assistance at all times.

2. Each Centre and designated focal point should be capable of receiving and responding to alerts and requests for information or assistance at all times.

3. Each Signatory intends to:

(a) declare and communicate to the other Signatories its designated focal point at the time of signing this Code of Conduct or as soon as possible after signing, and thereafter update the information as and when changes occur;

(b) provide and communicate to the other Signatories the telephone numbers, telefax numbers, and e-mail addresses of its focal point, and, as appropriate, of its Centre and thereafter update the information as and when changes occur; and

(c) communicate to the Secretary-General of the International Maritime Organization, and the Secretary-General of IORA, the information referred to in subparagraphs (a) and (b) and thereafter update the information as and when changes occur.

4. Each Centre and focal point should be responsible for its communication with the other focal points and the Centres. Any focal point which has received or obtained information about an imminent threat of, or an incident of, piracy or armed robbery against ships should promptly disseminate an alert with all relevant information to the Centres. The Centres should disseminate appropriate alerts within their respective areas of responsibility regarding imminent threats or incidents to ships.

5. Each Signatory should ensure the smooth and effective communication between its designated focal point, and other competent national authorities including search and rescue coordination centres, as well as relevant non-governmental organizations.

6. Each Signatory should make every effort to require ships entitled to fly its flag and the owners and operators of such ships to promptly notify relevant national authorities, including the designated focal points and Centres, the appropriate search and rescue coordination centres and other relevant contact points, of incidents of piracy or armed robbery against ships.

7. Each Signatory intends, upon the request of any other Signatory, to respect the confidentiality of information transmitted from a Signatory.

8. To facilitate implementation of this Code of Conduct, the Signatories intend to keep each other fully informed concerning their respective applicable laws and guidance, particularly those pertaining to the interdiction, apprehension, investigation, prosecution, and disposition of persons involved in piracy and armed robbery against ships. The Signatories may also undertake and seek assistance to undertake publication of handbooks and convening of seminars and conferences in furtherance of this Code of Conduct.

## **Article 12: INCIDENT REPORTING**

1. The Signatories intend to undertake development of uniform reporting criteria in order to ensure that an accurate assessment of the threat of piracy and armed robbery in the Indian Ocean is developed taking into account the recommendations adopted by IMO. The Signatories intend for the Centres to manage the collection and dissemination of this information in their respective geographic areas of responsibility.

2. Consistent with its laws and policies, a Signatory conducting a boarding, investigation, prosecution, or judicial proceeding pursuant to this Code of Conduct should promptly notify the results thereof to any affected flag and coastal States and the Secretary-General of the International Maritime Organization and the Secretary-General of IORA.

(a) the offer of places on national training courses to other States, subject to payment of relevant costs;

3. The Signatories intend for the Centres to:

(a) collect, collate and analyse the information transmitted by the Signatories concerning piracy and armed robbery against ships, including other relevant information relating to individuals and transnational organized criminal groups committing transnational organized crime in the maritime domain, maritime terrorism, IUU fishing or other illegal activities at sea in their respective geographical areas of responsibility; and

(b) prepare statistics and reports on the basis of the information gathered and analyzed under subparagraph (a), and to disseminate them to the Signatories, the shipping community, and the Secretary-General of the International Maritime Organization and the Secretary-General of IORA.

### **Article 13: ASSISTANCE AMONG SIGNATORIES**

1. A Signatory may request any other Signatory, through the Centres or directly, to cooperate in detecting:

(a) persons who have committed, or are reasonably suspected of committing, transnational organized crime in the maritime domain, maritime terrorism, IUU fishing, and other illegal activities at sea;

(b) pirate ships, where there are reasonable grounds to suspect that those ships are engaged in piracy;

(c) other ships or aircraft, where there are reasonable grounds to suspect that those ships or aircraft are engaged in transnational organized crime in the maritime domain, maritime terrorism, IUU fishing, or other illegal activities at sea; and

(d) ships or persons who have been subjected to piracy or armed robbery against ships.

2. A Signatory may also request any other Signatory, through the Centres or directly, to take effective measures in response to reported transnational organized crime in the maritime domain, maritime terrorism, IUU fishing or other illegal activities at sea.

3. Co-operative arrangements such as joint exercises or other forms of co-operation, as appropriate, may be undertaken as determined by the Signatories concerned.

4. Capacity building co-operation may include technical assistance such as educational and training programmes to share experiences and best practices.

## **Article 14: TRAINING AND EDUCATION**

1. The Signatories intend to co-operate on the development and promotion of training and educational programs for the management of the marine environment, particularly for the maintenance of safety and law and order at sea, the preservation and protection of the marine environment, and the prevention, reduction and control of marine pollution. Such cooperation might include:

- a) the offer of places on national training courses to other States, subject to payment of relevant costs;
- b) sharing curriculum and course information;
- c) the exchange of naval and law enforcement personnel, scientists and other experts;
- d) the exchange of views on maritime issues;
- e) holding conferences, seminars, workshops and symposia on maritime subjects of common interest; and
- f) fostering cooperation among maritime training institutions and research centres and the offer of places on national training courses to other States, subject to payment of relevant costs and training provided by the International Seabed Authority;

2. Signatories are invited to institute regular meetings to enhance cooperation and coordination in their maritime enforcement activities.

## **Article 15: INDICTMENT, PROSECUTION AND CONVICTION**

Signatories are encouraged to incorporate in national legislation, transnational crimes in the maritime domain, as defined in Article 1 (3) of this Code of Conduct, in order to ensure effective indictment, prosecution and conviction in the territory of the Signatories. Signatories are encouraged to develop adequate guidelines for the exercise of jurisdiction, conduct of investigations and prosecution of alleged offenders.

## **Article 16: DISPUTE SETTLEMENT**

The Signatories intend to settle by consultation and peaceful means amongst each other any disputes that arise from the implementation of this Code of Conduct.

## **Article 17: CONSULTATIONS**

Within three (3) years of the effective date of this Code of Conduct, the Signatories intend to consult, at the invitation of the Inter-Regional Coordination Centre to:

- a) Eventually transform this Code of Conduct into a binding multi-lateral agreement.
- b) Assess the implementation of this Code of Conduct.

- c) Share information and experiences and best practices.
- d) Review activities which National Maritime Security Centres have carried out and recommend actions to be taken thereafter.
- e) Review all other issues concerning Maritime Security in the Indian Ocean.

#### **Article 18: CLAIMS**

Any claim for damages, injury or loss resulting from an operation carried out under this Code of Conduct should be examined by the Signatory whose authorities conducted the operation. If responsibility is established, the claim should be resolved in accordance with the national law of that Signatory, and in a manner, consistent with international law, including Article 106 and paragraph 3 of Article 110 of UNCLOS.

#### **Article 19: MISCELLANEOUS PROVISIONS**

Nothing in this Code of Conduct is intended to:

- (a) create or establish a binding agreement, except as noted in Article [13];
- (b) affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag;
- (c) affect the immunities of warships and other government ships operated for noncommercial purposes;
- (d) apply to or limit boarding of ships conducted by any Signatory in accordance with international law, beyond the outer limit of any State's territorial sea, including boardings based upon the right of visit, the rendering of assistance to persons, ships and property in distress or peril, or an authorization from the flag State to take law enforcement or other action;
- (e) preclude the Signatories from otherwise agreeing on operations or other forms of co-operation to repress piracy and armed robbery against ships;
- (f) prevent the Signatories from taking additional measures to repress piracy and armed robbery at sea through appropriate actions in their land territory;
- (g) supersede any bilateral or multilateral agreement or other co-operative mechanism concluded by the Signatories to repress piracy and armed robbery against ships;
- (h) alter the rights and privileges due to any individual in any legal proceeding;
- (i) create or establish any waiver of any rights that any Signatory may have under international law to raise a claim with any other Signatory through diplomatic channels;



(j) entitle a Signatory to undertake in the territory of another Signatory the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Signatory by its national law;

(k) prejudice in any manner the positions and navigational rights and freedoms of any Signatory regarding the international law of the sea;

(l) be deemed a waiver, express or implied, of any of the privileges and immunities of the Signatories to this Code of Conduct as provided under international or national law; or

(m) preclude or limit any Signatory from requesting or granting assistance in accordance with the provisions of any applicable Mutual Legal Assistance Agreement or similar instrument.

**Article 20: SIGNATURE, ENTRY INTO FORCE AND DEPOSITORY**

This Code of Conduct is open for signature on..... at the Headquarters of IORA.

2. This Code of Conduct shall enter into force upon date of signature by two or more Signatories.

3. It becomes effective for subsequent Signatories upon the respective date of deposit of a signature instrument with the Secretary-General of IORA.

4. IORA shall be the depository and shall transmit the signed copy to the IMO and to any other organizations agreed upon by the Signatories.

**Article 21: LANGUAGES**

This Code of Conduct is established in the English, French, and Portuguese languages, each text being equally authentic.

DONE at ....., this.....day of.....