

NOTE

17 April 2009

Our reference:

Case 2009

File

Centre for Maritime

Regulation

/bsa

1. Danish national legislation with regard to offences related to piracy, including:

a. Piracy:

The Danish Criminal Code Section 183a on taking control of e.g. a ship by using unlawful coercion:

Section 183a A person who takes control of an aircraft, a ship or any other means of public passenger or cargo transport or interferes with its manoeuvring, by using unlawful coercion as described in section 260 of this Act, shall be liable to punishment for any term extending to imprisonment for life.

(2) The same penalty shall apply to a person who takes control of an offshore plant by using unlawful coercion as described in section 260 of this Act.

(Section 260 can be found in annex A)

b. Armed robbery at sea:

The Danish Criminal Code Section 183a on taking control of e.g. a ship by using unlawful coercion.

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

Inter alia, The Danish Criminal Code Section 114-114g on terrorism, Section 237 on homicide, Section 244-246 on acts of violence and Section 261 on deprivation on liberty.

(see Annex A for the full text of these sections)

2. National legislation on the following acts of piracy/armed robbery:

a. Attempts to commit piracy/armed robbery at sea:

The Danish Criminal Code Section 21 on attempt:

Section 21 Acts that are aimed to promote or accomplish an offence shall when the offence is not completed be punished as an attempt.

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(2) The penalty prescribed for the offence may be reduced in the case of attempt, particularly where the attempt bears evidence of little strength of or persistence in the criminal intention.

(3) Unless otherwise provided, an attempt shall only be punished when the offence carries a penalty that exceeds imprisonment for four months.

b. Conspiracy:

The Danish Criminal Code Section 23 on complicity:

Section 23 The penalty provisions laid down for an offence shall apply to all persons who have aided, abetted, counselled or procured the commission of the offence. The penalty may be reduced in the case of a person who has only intended to lend assistance of minor importance or strengthen a determined intent and in case the crime has not been completed or an intended contribution has failed.

(2) The penalty may moreover be reduced in the case of a person who has contributed to the breach of a duty in a special relationship in which he himself had no part.

(3) Unless otherwise provided, the penalty for aiding and abetting offences that do not carry sentences more severe than simple detention may be rescinded where the accomplice only intended to lend assistance of minor importance or strengthen a determined intent or where his complicity was due to negligence.

c. Aiding and abetting:

The Danish Criminal Code Section 23 on complicity.

d. Organizing:

The Danish Criminal Code Section 23 on complicity.

e. Facilitating or counselling:

The Danish Criminal Code Section 23 on complicity.

3. Prosecution of persons having committed/suspect-ted of committing acts of piracy/armed robbery. How does the following factors affect the legal assessment?

a. The Danish Criminal Code on Danish criminal jurisdiction

3) on board a Danish ship or aircraft which is outside the territory of another state shall be subject to Danish criminal jurisdiction.

Section 7 Any act committed within the territory of another state by a person who is a Danish national or has his abode or residence in the territory of the Danish state at the time when a charge is preferred shall be subject to Danish criminal jurisdiction in the following circumstances:

1) if the act is also a criminal offence under the laws of the country in which the act was committed (dual criminality); or
 2) if the offender also has such relations to Denmark when the act is committed, and the act:

(a) involves sexual abuse of children or female genital mutilation; or

(b) is aimed at another person who has such relations to Denmark when the act is committed.

(2) Any act committed outside the territory of another state by a person who has the relations to Denmark referred to in subsection (1) above when the charge is preferred shall also be subject to Danish criminal jurisdiction, provided that acts of the nature concerned may carry a penalty higher than imprisonment for four months.

(3) Subsections (1) and (2) above shall apply correspondingly to acts committed by a person staying in Denmark who is a national or resident of Finland, Iceland, Norway or Sweden at the time when the charge is preferred.

Section 7a Any act committed within the territory of another state and aimed at a person who was a Danish national or had his abode or residence in Denmark when the act was committed shall be subject to Danish criminal jurisdiction, provided that the act is also a criminal offence under the laws of the country in which it was committed (dual criminality) and punishable under Danish law by a penalty of imprisonment for a term of at least six years.

(2) Danish criminal jurisdiction under subsection (1) above shall solely apply to the following offences:

- 1) Wilful homicide;
- 2) Aggravated assault, deprivation of liberty or robbery;
- 3) Offences likely to endanger life or cause serious damage to property;
- 4) Sexual offences or incest;
- 5) Female genital mutilation.

(3) Acts committed outside the territory of another state but aimed at a person who has the relations to Denmark referred to in subsection (1) above, where the act committed is also subject to Danish criminal jurisdiction, provided that an act of the nature in question is punishable by a penalty higher than imprisonment for four months.

Section 8. A act committed outside the territory of the Danish state shall be subject to Danish criminal jurisdiction, irrespective of the nationality of the perpetrator,

- 1) where the act violates the independence, security, constitution or public authorities of the Danish state or official duties to the state;
- 2) where the act violates interests whose legal protection in the territory of the Danish state depends on special relations with this state;
- 3) where the act is contrary to an obligation which the perpetrator is required by law to observe abroad;

e. Nationality of the capturing nation/flag of war ship or other Government-authorized ship:

Such cases can be prosecuted if the requirements regarding Danish criminal jurisdiction, cf. The Danish Criminal Code Section 6-8b, is fulfilled.

f. Pirates/armed robbers being found on Danish territory:

See in particular The Danish Criminal Code Section 8b.

g. Pirates/armed robbers being captured on the high seas:

Such cases can be prosecuted if the requirements regarding Danish criminal jurisdiction, cf. The Danish Criminal Code Section 6-8b, is fulfilled.

h. Pirates/armed robbers being captured in Somali territorial waters:

Such cases can be prosecuted if the requirements regarding Danish criminal jurisdiction, cf. The Danish Criminal Code Section 6-8b, is fulfilled.

4. National legal requirements relevant to:

- Detention and investigation of persons who have committed piracy-related offences, including the use of ship-riders
- Prosecution of piracy-related offences, including relevant evidentiary rules
- Transfer of persons who have committed piracy-related offences
- International cooperation, including extradition and mutual legal assistance

Denmark has no legislation specifically aimed at pirates and/or piracy-related offences.

Detention, investigation, prosecution and extradition of pirates and/or regarding piracy-related offences are governed by the general Danish rules on the given area, including international agreements to which Denmark has acceded. Reference is made; inter alia, to the Danish Administration

Denmark is engaged in Good Governance programmes in Kenya and Tanzania, including initiatives aimed at the development of the judicial systems. In connection with possible bilateral agreements of transfer of persons suspected of having committed acts of piracy Denmark will look into the possibility of further contributions towards capacity building initiatives within relevant areas.

6. Status on your national ratification and implementation of relevant international conventions, including:

a. UN Convention on the Law of the Sea (UNCLOS):

Has been ratified

b. 1988 UN Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA):

Denmark has ratified the 1988 UN Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the SUA-Convention) and the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (the Protocol on fixed platforms).

Denmark has signed - subject to ratification - the Protocol of 2005 to the SUA-Convention and the Protocol of 2005 to the Protocol on fixed platforms and is considering ratification of these protocols.

c. UN Convention on Transnational Organized Crime (UNTOC):

Has been ratified

d. 1979 Hostages Convention:

Has been ratified

7. Standard Operation Procedures (SoPs/Rules of Engagement (RoEs) concerning detention and prosecution of pirates

The Danish directive for the ship participating in the currently ongoing maritime operation off the Horn of Africa centres on securing a humane treatment with respect for the inherent dignity of the human person as

A more elaborate SOP for the handling of apprehended pirates is under preparation by Admiral Danish Fleet.

ANNEX I

TRANSLATION: ONLY THE DANISH VERSION IS AUTHENTIC

Danish Ministry of Justice Consolidated Act no. 1068 of 6 November 2008

Promulgation of the Danish Penal Code (extracts)

Section 114. Any person who, by acting with the intent to frighten a population to a serious degree or to unlawfully coerce Danish or foreign public authorities or an international organisation to carry out or omit to carry out an act or to destabilise or destroy a country's or an international organisation's fundamental political, constitutional, financial or social structures, commits one or more of the following acts, when the act due to its nature or the context in which it is committed can inflict a country or an international organisation serious damage, shall be guilty of terrorism and liable to imprisonment for any term extending to life imprisonment:

- 1) Homicide pursuant to section 237.
- 2) Gross violence pursuant to section 245 or section 246.
- 3) Deprivation of liberty pursuant to section 261.
- 4) Impairment of the safety of traffic pursuant to section 184(1); unlawful disturbances in the operation of public means of communication, etc. pursuant to section 193(1); or gross damage to property pursuant to section 291(2); if these violations are committed in a way which can expose human lives to danger or cause considerable financial losses.
- 5) Seizure of transportation means pursuant to section 183a.
- 6) Gross weapons law violations pursuant to section 192a of the Act on Weapons and Explosives, section 10(2).
- 7) Arson pursuant to section 180; explosion, spreading of noxious gases, flooding, shipwrecking, railway or other traffic accident pursuant to section 183(1) and (2); health-endangering contamination of the water supply pursuant to section 186(1); health-endangering contamination of products intended for general use, etc. pursuant to section 187(1).
- 8) Possession or use, etc. of radioactive substances pursuant to section 192b.
 - (2) Similar punishment shall apply to any person who, with the 1, transports weapons or explosives.
 - (3) Similar punishment shall further apply to any person who, with the intent mentioned in subsection 1, threatens to commit one of the acts mentioned in subsections 1 and 2.

Section 114a. If one of the acts mentioned in items 1-6 below is

the punishment. If the highest punishment prescribed for the relevant act is shorter than 4 years' imprisonment, the punishment may, however, be increased to imprisonment for a term not exceeding six years.

- 1) Contravention of section 180, section 181(1), section 183(1) or (2), section 183a, section 184(1), section 192a(2), section 193(1), sections 237, 244, 245, 246, 250, section 252(1), section 266, section 288 or section 291(1) or (2) when the act is covered by article 1 of the Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft, article 1 of the Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation or article II of the Protocol of 24 February 1988 for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation.
- 2) Contravention of section 180, section 181(1), section 183(1) or (2), section 184(1), sections 237, 244, 245, 246, 250, section 252(1), section 260, section 261(1) or (2), section 266 or section 291(1) or (2) when the act is covered by article 2 of the Convention of 14 December 1973 on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.
- 3) Contravention of section 261(1) or (2) when the act is covered by article 1 of the International Convention of 17 December 1979 against the Taking of Hostages.
- 4) Contravention of section 180, section 181(1), section 183(1) or (2), section 186(1), sections 192a(2), 192b, 237, 244, 245, 246, 260, 266, 276, 278, 279, 279a, 281, 288 or section 291(2) when the act is covered by article 7 of the IAEA Convention (the Convention of the International Atomic Energy Agency) of 26 October 1979 on the Physical Protection of Nuclear Material.
- 5) Contravention of section 180, section 181(1), section 183(1) or (2), section 183a, section 184(1), section 192a(2), section 193(1), sections 237, 244, 245, 246, section 252(1), sections 260, 266, 288 or section 291(1) or (2) when the act is covered by article 3 of the I8(aSm)1283h.3(secgIA)-6IH Contravention of section 180, section 183(1), section 183a, section 184(1), section 192a(2), section 193(1), sections 237, 244, 245, 246, section 252(1), sections 260, 266, 288 or section 291(1) or (2) when the act is covered by article 3 of the

114 or section 114a, shall be liable to imprisonment for any term not exceeding ten years.

Section 114c. Any person who recruits a person to commit or advance acts covered by section 114 or section 114a or to join a group or an association to further the committing of acts of this nature by the group or the association shall be liable to imprisonment for a term not exceeding ten years. Under especially aggravating circumstances, the punishment may be increased to imprisonment for a term not exceeding 16 years. Especially cases involving contraventions of a systematic or organised nature shall be considered especially aggravating circumstances.

(2) Any person who recruits a person to commit or advance acts covered by section 114b or to join a group or an association to further the committing of acts of this nature by the group or the association shall be liable to imprisonment for a term not exceeding six years.

(3) Any person who allows himself to be recruited to commit acts covered by section 114 or section 114a shall be liable to imprisonment for a term not exceeding six years.

Section 114d. Any person who trains, instructs or in any other way educates a person to commit or further acts covered by section 114 or section 114a knowing that the person has the intention of using the skills for this purpose shall be liable to imprisonment for a term not exceeding ten years. Under especially aggravating circumstances, the punishment may be increased to imprisonment for a term not exceeding 16 years. Especially cases involving contraventions of a systematic or organised nature shall be considered especially aggravating circumstances.

(2) Any person who trains, instructs or in any other way educates a

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ganisation or group shall be liable to a fine or to imprisonment for a term not exceeding two years.

Section 237. Any person who kills another person shall be guilty of

Section 261. Anyone who deprives another person of his freedom shall be liable to punishment by fine or imprisonment for a term not exceeding four years.

(2) If such deprivation of freedom is intended to cause gain or if it has been long or consisted in somebody being held unjustified in custody as insane or mentally retarded or being enlisted in a foreign army or being imprisoned or in any other way kept in a foreign country, the contravener shall be liable to imprisonment for a term not exceeding 12 years.

(3) Any person who, through gross negligence, causes any kind of deprivation of freedom of the nature stipulated in section 2 shall be liable to punishment by fine or imprisonment for a term not exceeding six months.