

LEGISLATIVE COUNCIL BRIEF

**Fugitive Offenders Ordinance
(Chapter 503)**

**FUGITIVE OFFENDERS (PIRACY AND
ARMED ROBBERY AGAINST SHIPS) ORDER**

INTRODUCTION

At the meeting of the Executive Council on 22 April 2008, the Council ADVISED and the Chief Executive ORDERED that the Fugitive Offenders (Piracy and Armed Robbery against Ships) Order, at **Annex**, should be made under section 3 of the Fugitive Offenders Ordinance (Cap. 503) to implement the extradition arrangements under the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (the Regional Agreement).

JUSTIFICATIONS

2. Cap. 503 is the statutory framework for surrender of fugitive offenders (SFO) arrangements. It provides for the surrender to certain places outside Hong Kong of persons wanted for prosecution, or for the imposition or enforcement of a sentence, and for the treatment of persons surrendered to Hong Kong.

The Order

3. Section 3(1) of Cap. 503 provides that the Chief Executive in Council may, in relation to any SFO arrangements, by order direct that the procedures in Cap. 503 shall apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate, subject to the limitations, restrictions, exceptions and qualifications contained in the order.

4. The Regional Agreement is a multilateral agreement concluded by 16 Asian countries on 11 November 2004 to enhance regional cooperation in preventing and suppressing piracy and armed robbery against ships. It came into force for China, including Hong Kong, on 26 November 2006. Other Contracting Parties include Japan, Singapore, South Korea and the Philippines.

5. Article 12 of the Regional Agreement specifies that a Contracting Party shall, subject to its national laws and regulations, endeavor to extradite pirates or persons who have committed armed robbery against ships, and who are present in its territory, to the other Contracting Party which has jurisdiction over them, at the request of that Contracting Party. The Fugitive Offenders (Piracy and Armed Robbery against Ships) Order to be made under section 3 of Cap. 503, which includes the Regional Agreement as a schedule, will enable the extradition arrangements under the Regional Agreement to be brought into force and provide that the procedures in Cap. 503 shall apply as between Hong Kong and the foreign Contracting Parties to the Regional Agreement, subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the arrangements.

Conformity and Commencement

6. Section 3(9) of Cap. 503 provides that the Chief Executive in Council shall not make an order under the Ordinance unless the arrangements to which the order relates are substantially in conformity with the provisions of the Ordinance. The extradition arrangements under the Regional Agreement do so conform.

7. The commencement date of the Order will be appointed by the Secretary for Security by notice in the Gazette.

LEGISLATIVE TIMETABLE

8. The legislative timetable for the Order will be -

Publication in the Gazette	2 May 2008
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Tabling in the Legislative Council	7 May 2008
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IMPLICATIONS OF THE ORDER

9. The Order is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of Cap. 503 and has no sustainability, economic, financial or civil service implications.

PUBLIC CONSULTATION

10. We briefed the Legislative Council Panel on Security on the legislative proposal to implement the extradition arrangements under the Regional Agreement in January 2008.

PUBLICITY

11. We have issued this Legislative Council brief. A spokesman will be available to answer enquiries.

BACKGROUND

12. Ten Orders in relation to the extradition arrangements under multilateral agreements have been made under section 3 of Cap. 503.

ENQUIRES

13. Enquires on this brief should be directed to –

	<u>Telephone No.</u>
Ms Manda Chan Principal Assistant Secretary for Security	2810 2329
Miss Jane Lee Assistant Secretary for Security	2810 3523

Security Bureau
30 April 2008

**FUGITIVE OFFENDERS (PIRACY AND ARMED
ROBBERY AGAINST SHIPS) ORDER**

(Made by the Chief Executive in Council under section 3 of the Fugitive Offenders Ordinance (Cap. 503))

1. Commencement

This Order shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

**2. Procedures in Ordinance to apply between
Hong Kong and certain places outside Hong
Kong**

In relation to the arrangements for the surrender of fugitive offenders the terms of which are recited in the Schedule, it is directed that the procedures in the Ordinance shall apply as between Hong Kong and the places outside Hong Kong to which the arrangements relate subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the arrangements.

SCHEDULE

[s. 2]

**REGIONAL COOPERATION AGREEMENT ON COMBATING
PIRACY AND ARMED ROBBERY AGAINST SHIPS IN ASIA**

The Contracting Parties to this Agreement,

Concerned about the increasing number of incidents of piracy and armed robbery against ships in Asia,

Mindful of the complex nature of the problem of piracy and armed robbery against ships,

Recognizing the importance of safety of ships, including their crew, exercising the right of navigation provided for in the United Nations Convention on the Law of the Sea of 10 December 1982, hereinafter referred to as “the UNCLOS”,

Reaffirming the duty of States to cooperate in the prevention and suppression of piracy under the UNCLOS,

Recalling “Tokyo Appeal” of March 2000, “Asia Anti-Piracy Challenges 2000” of April 2000 and “Tokyo Model Action Plan” of April 2000,

Noting the relevant resolutions adopted by the United Nations General Assembly and the relevant resolutions and recommendations adopted by the International Maritime Organization,

Conscious of the importance of international cooperation as well as the urgent need for greater regional cooperation and coordination of all States affected within Asia, to prevent and suppress piracy and armed robbery against ships effectively,

Convinced that information sharing and capacity building among the Contracting Parties will significantly contribute towards the prevention and suppression of piracy and armed robbery against ships in Asia,

Affirming that, to ensure greater effectiveness of this Agreement, it is indispensable for each Contracting Party to strengthen its measures aimed at preventing and suppressing piracy and armed robbery against ships,

Determined to promote further regional cooperation and to enhance the effectiveness of such cooperation,

Have agreed as follows:

Part I Introduction

Article 1

Definitions

1. For the purposes of this Agreement, “piracy” means any of the following acts:
 - (a) any illegal act 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 against persons or property on board such ship;
 - (ii) against a ship, 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).

2. For the purposes of this Agreement, “armed robbery against ships” means any of the following acts:
 - (a) any illegal act of violence or detention, or any act of depredation, committed for private ends and directed against a ship, or against

- persons or property on board such ship, in a place within a Contracting Party's jurisdiction over such offences;
- (b) any act of voluntary participation in the operation of a ship with knowledge of facts making it a ship for armed robbery against ships;
 - (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 2

General Provisions

1. The Contracting Parties shall, in accordance with their respective national laws and regulations and subject to their available resources or capabilities, implement this Agreement, including preventing and suppressing piracy and armed robbery against ships, to the fullest extent possible.
2. Nothing in this Agreement shall affect the rights and obligations of any Contracting Party under the international agreements to which that Contracting Party is party, including the UNCLOS, and the relevant rules of international law.
3. Nothing in this Agreement shall affect the immunities of warships and other government ships operated for non-commercial purposes.
4. Nothing in this Agreement, nor any act or activity carried out under this Agreement shall prejudice the position of any Contracting Party with regard to any dispute concerning territorial sovereignty or any issues related to the law of the sea.

5. Nothing in this Agreement entitles a Contracting Party to undertake in the territory of another Contracting Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Contracting Party by its national law.
6. In applying paragraph 1 of Article 1, each Contracting Party shall give due regard to the relevant provisions of the UNCLOS without prejudice to the rights of the third Parties.

Article 3 General Obligations

1. Each Contracting Party shall, in accordance with its national laws and regulations and applicable rules of international law, make every effort to take effective measures in respect of the following:
 - (a) to prevent and suppress piracy and armed robbery against ships;
 - (b) to arrest pirates or persons who have committed armed robbery against ships;
 - (c) to seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and under the control of pirates or persons who have committed armed robbery against ships, and to seize the property on board such ships; and
 - (d) to rescue victim ships and victims of piracy or armed robbery against ships.
2. Nothing in this Article shall prevent each Contracting Party from taking additional measures in respect of subparagraphs (a) to (d) above in its land territory.

Part II Information Sharing Center

Article 4

Composition

1. An Information Sharing Center, hereinafter referred to as “the Center”, is hereby established to promote close cooperation among the Contracting Parties in preventing and suppressing piracy and armed robbery against ships.
2. The Center shall be located in Singapore.
3. The Center shall be composed of the Governing Council and the Secretariat.
4. The Governing Council shall be composed of one representative from each Contracting Party. The Governing Council shall meet at least once every year in Singapore, unless otherwise decided by the Governing Council.
5. The Governing Council shall make policies concerning all the matters of the Center and shall adopt its own rules of procedure, including the method of selecting its Chairperson.
6. The Governing Council shall take its decisions by consensus.
7. The Secretariat shall be headed by the Executive Director who shall be assisted by the staff. The Executive Director shall be chosen by the Governing Council.

8. The Executive Director shall be responsible for the administrative, operational and financial matters of the Center in accordance with the policies as determined by the Governing Council and the provisions of this Agreement, and for such other matters as determined by the Governing Council.
9. The Executive Director shall represent the Center. The Executive Director shall, with the approval of the Governing Council, make rules and regulations of the Secretariat.

Article 5

Headquarters Agreement

1. The Center, as an international organization whose members are the Contracting Parties to this Agreement, shall enjoy such legal capacity, privileges and immunities in the Host State of the Center as are necessary for the fulfillment of its functions.
2. The Executive Director and the staff of the Secretariat shall be accorded, in the Host State, such privileges and immunities as are necessary for the fulfillment of their functions.
3. The Center shall enter into an agreement with the Host State on matters including those specified in paragraphs 1 and 2 of this Article.

Article 6
Financing

1. The expenses of the Center, as provided for in the budget decided by the Governing Council, shall be provided by the following sources:
 - (a) Host State financing and support;
 - (b) Voluntary contributions from the Contracting Parties;
 - (c) Voluntary contributions from international organizations and other entities, in accordance with relevant criteria adopted by the Governing Council; and
 - (d) Any other voluntary contributions as may be agreed upon by the Governing Council.

2. Financial matters of the Center shall be governed by a Financial Regulation to be adopted by the Governing Council.

3. There shall be an annual audit of the accounts of the Center by an independent auditor appointed by the Governing Council. The audit report shall be submitted to the Governing Council and shall be made public, in accordance with the Financial Regulation.

Article 7
Functions

The functions of the Center shall be:

- (a) to manage and maintain the expeditious flow of information relating to incidents of piracy and armed robbery against ships among the Contracting Parties;
- (b) to collect, collate and analyze the information transmitted by the Contracting Parties concerning piracy and armed robbery against ships, including other relevant information, if any, relating to individuals and transnational organized criminal groups committing acts of piracy and armed robbery against ships;
- (c) to prepare statistics and reports on the basis of the information gathered and analyzed under subparagraph (b), and to disseminate them to the Contracting Parties;
- (d) to provide an appropriate alert, whenever possible, to the Contracting Parties if there is a reasonable ground to believe that a threat of incidents of piracy or armed robbery against ships is imminent;
- (e) to circulate requests referred to in Article 10 and relevant information on the measures taken referred to in Article 11 among the Contracting Parties;
- (f) to prepare non-classified statistics and reports based on information gathered and analyzed under subparagraph (b) and to disseminate them to the shipping community and the International Maritime Organization; and
- (g) to perform such other functions as may be agreed upon by the Governing Council with a view to preventing and suppressing piracy and armed robbery against ships.

Article 8

Operation

1. The daily operating of the Center shall be undertaken by the Secretariat.

2. In carrying out its functions, the Center shall respect the confidentiality of information provided by any Contracting Party, and shall not release or disseminate such information unless the consent of that Contracting Party is given in advance.
3. The Center shall be operated in an effective and transparent manner, in accordance with the policies made by the Governing Council, and shall avoid duplication of existing activities between the Contracting Parties.

Part III Cooperation through the Information Sharing Center

Article 9

Information Sharing

1. Each Contracting Party shall designate a focal point responsible for its communication with the Center, and shall declare its designation of such focal point at the time of its signature or its deposit of an instrument of notification provided for in Article 18.
2. Each Contracting Party shall, upon the request of the Center, respect the confidentiality of information transmitted from the Center.
3. Each Contracting Party shall ensure the smooth and effective communication between its designated focal point, and other competent national authorities including rescue coordination centers, as well as relevant non-governmental organizations.

4. Each Contracting Party shall make every effort to require its ships, ship owners, or ship operators to promptly notify relevant national authorities including focal points, and the Center when appropriate, of incidents of piracy or armed robbery against ships.
5. Any Contracting Party which has received or obtained information about an imminent threat of, or an incident of, piracy or armed robbery against ships shall promptly notify relevant information to the Center through its designated focal point.
6. In the event that a Contracting Party receives an alert from the Center as to an imminent threat of piracy or armed robbery against ships pursuant to subparagraph (d) of Article 7, that Contracting Party shall promptly disseminate the alert to ships within the area of such an imminent threat.

Article 10

Request for Cooperation

1. A Contracting Party may request any other Contracting Party, through the Center or directly, to cooperate in detecting any of the following persons, ships, or aircraft:
 - (a) pirates;
 - (b) persons who have committed armed robbery against ships;
 - (c) ships or aircraft used for committing piracy or armed robbery against ships, and ships taken by and under the control of pirates or persons who have committed armed robbery against ships; or
 - (d) victim ships and victims of piracy or armed robbery against ships.

2. A Contracting Party may request any other Contracting Party, through the Center or directly, to take appropriate measures, including arrest or seizure, against any of the persons or ships mentioned in subparagraph (a), (b), or (c) of paragraph 1 of this Article, within the limits permitted by its national laws and regulations and applicable rules of international law.
3. A Contracting Party may also request any other Contracting Party, through the Center or directly, to take effective measures to rescue the victim ships and the victims of piracy or armed robbery against ships.
4. The Contracting Party which has made a direct request for cooperation pursuant to paragraphs 1, 2 and 3 of this Article shall promptly notify the Center of such request.
5. Any request by a Contracting Party for cooperation involving extradition or mutual legal assistance in criminal matters shall be made directly to any other Contracting Party.

Article 11

Cooperation by the Requested Contracting Party

1. A Contracting Party, which has received a request pursuant to Article 10, shall, subject to paragraph 1 of Article 2, make every effort to take effective and practical measures for implementing such request.
2. A Contracting Party, which has received a request pursuant to Article 10, may seek additional information from the requesting Contracting Party for the implementation of such request.

3. A Contracting Party, which has taken measures referred to in paragraph 1 of this Article, shall promptly notify the Center of the relevant information on the measures taken.

Part IV Cooperation

Article 12

Extradition

A Contracting Party shall, subject to its national laws and regulations, endeavor to extradite pirates or persons who have committed armed robbery against ships, and who are present in its territory, to the other Contracting Party which has jurisdiction over them, at the request of that Contracting Party.

Article 13

Mutual Legal Assistance

A Contracting Party shall, subject to its national laws and regulations, endeavor to render mutual legal assistance in criminal matters, including the submission of evidence related to piracy and armed robbery against ships, at the request of another Contracting Party.

Article 14

Capacity Building

1. For the purpose of enhancing the capacity of the Contracting Parties to prevent and suppress piracy and armed robbery against ships, each

Contracting Party shall endeavor to cooperate to the fullest possible extent with other Contracting Parties which request cooperation or assistance.

2. The Center shall endeavor to cooperate to the fullest possible extent in providing capacity building assistance.
3. Such capacity building cooperation may include technical assistance such as educational and training programs to share experiences and best practices.

Article 15

Cooperative Arrangements

Cooperative arrangements such as joint exercises or other forms of cooperation, as appropriate, may be agreed upon among the Contracting Parties concerned.

Article 16

Protection Measures for Ships

Each Contracting Party shall encourage ships, ship owners, or ship operators, where appropriate, to take protective measures against piracy and armed robbery against ships, taking into account the relevant international standards and practices, in particular, recommendations adopted by the International Maritime Organization.

Part V Final Provisions

Article 17

Settlement of Disputes

Disputes arising out of the interpretation or application of this Agreement, including those relating to liability for any loss or damage caused by the request made under paragraph 2 of Article 10 or any measure taken under paragraph 1 of Article 11, shall be settled amicably by the Contracting Parties concerned through negotiations in accordance with applicable rules of international law.

Article 18

Signature and Entry into Force

1. This Agreement shall be open for signature at the depositary referred to in paragraph 2 below by the People's Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People's Republic of China, the Republic of India, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, the Socialist Republic of Viet Nam.
2. The Government of Singapore is the depositary of this Agreement.
3. This Agreement shall enter into force 90 days after the date on which the tenth instrument of notification by a State listed in paragraph 1, indicating the completion of its domestic requirements, is submitted to the depositary. Subsequently it shall enter into force in respect of any other State listed in

paragraph 1 above 30 days after its deposit of an instrument of notification to the depositary.

4. The depositary shall notify all the States listed in paragraph 1 of the entry into force of this Agreement pursuant to paragraph 3 of this Article.
5. After this Agreement has entered into force, it shall be open for accession by any State not listed in paragraph 1. Any State desiring to accede to this Agreement may so notify the depositary, which shall promptly circulate the receipt of such notification to all other Contracting Parties. In the absence of a written objection by a Contracting Party within 90 days of the receipt of such notification by the depositary, that State may deposit an instrument of accession with the depositary, and become a party to this Agreement 60 days after such deposit of instrument of accession.

Article 19 Amendment

1. Any Contracting Party may propose an amendment to this Agreement, any time after the Agreement enters into force. Such amendment shall be adopted with the consent of all Contracting Parties.
2. Any amendment shall enter into force 90 days after the acceptance by all Contracting Parties. The instruments of acceptance shall be deposited with the depositary, which shall promptly notify all other Contracting Parties of the deposit of such instruments.

Article 20
Withdrawal

1. Any Contracting Party may withdraw from this Agreement at any time after the date of its entry into force.
2. The withdrawal shall be notified by an instrument of withdrawal to the depositary.
3. The withdrawal shall take effect 180 days after the receipt of the instrument of withdrawal by the depositary.
4. The depositary shall promptly notify all other Contracting Parties of any withdrawal.

Article 21
Authentic Text

This Agreement shall be authentic in the English language.

Article 22
Registration

This Agreement shall be registered by the depositary pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Clerk to the Executive Council

COUNCIL CHAMBER

2008

Explanatory Note

The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (“the Agreement”) entered into force in respect of China, including Hong Kong, on 26 November 2006.

2. The Fugitive Offenders Ordinance (Cap. 503) (“the Ordinance”) provides for the surrender to certain places outside Hong Kong of persons who are wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of certain offences against the laws of those places. It also provides for the treatment of persons wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of certain offences against the law of Hong Kong who are surrendered from certain places outside Hong Kong.

3. The objective of this Order is to apply as between Hong Kong and the places outside Hong Kong to which the Agreement relates the procedures for the surrender of fugitive offenders set out in the Ordinance. Those procedures are

subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the Agreement as recited in the Schedule to the Order.