

MARITIME CRIMES GOVERNANCE



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Maritime Crimes

- Maritime crime is an act which is illegal committed in the maritime belt, which can pose a threat to individual safety and property.
- It is necessary to adopt a comprehensive set of policies to ensure individuals' safety and maximize the availability of marine waters for legitimate purposes.



NINE MARITIME CRIMES

www.marineinsight.com



UNAUTHORIZED ENTRY

Sailing on a nation's waters **without permission** is a punishable maritime crime.



MARITIME PIRACY

Plundering, hijacking, or detention of ship in international waters.



DRUG TRAFFICKING

Bringing and distributing **illicit drugs** through ship is a serious maritime crime.



SMUGGLING EXOTIC PLANTS AND ANIMALS

Due to **quarantine reasons**, **smuggling** them is a punishable offence.



HUMAN TRAFFICKING

Stowing away is a grave marine crime.



ILLEGAL CARRYING OF WEAPONS AND ARTILLERY

Due to their sensitive nature, only certain ships are **authorized** to carry **arms**.



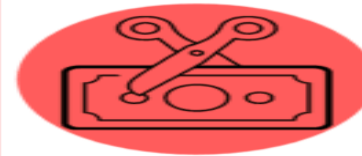
DISCHARGING IN OCEAN WATERS

Countries have strict policies against ships discharging **sewage, garbage** or **oil** into coastal waters.



ILLEGAL FISHING AND DEEP SEA RESOURCE EXPLOITATION

Exploiting **deep sea resource** or **fishing** in areas not allotted for it is a crime.



TAX EVASION

Ship owners try to evade taxes through **false documentation** or **incorrect representation** of cargo material.

Maritime Governance

- "Maritime Governance" refers to the capacity to enforce the framework of laws, regulations, policies, and institutions generated both within the legal jurisdictions of states and the international community that seek to establish "good order at sea" / ocean governance.
- The states have primary responsibility for governing the seas under the United Nations Convention on the Law of the Sea (UNCLOS), 1982.

Maritime Zones

- Under the United Nations Convention on the Law of the Sea (UNCLOS), vessels are endowed with different rights and obligations when they navigate through different maritime zones, e.g. internal waters, territorial seas, exclusive economic zones and high seas.
- Territorial seas (extending up to 12 nautical miles from the coastline), contiguous zones (up to 24 nautical miles), exclusive economic zones (EEZ) (up to 200 nautical miles) and continental shelves (up to 350 nautical miles based on seabed topography).

Maritime Institutional Cooperation

- After the end of the Cold War, numerous challenges in the field of the sea security, environment and economy with the big share of trans-boundary and trans-continental phenomena, have encouraged states to change own maritime policy and engage even deeper in institutional cooperation.
- The EU and China signed the ocean partnership agreement to improve international governance of the world's oceans, including through tackling illegal, unreported and unregulated (IUU) fishing and promoting a sustainable blue economy.

Maritime Institutional Cooperation

- In 1997, India was one of the member countries of the Indian Ocean Rim Association. In 2013, the US, Canada and the EU concluded the agreement on the creation of Atlantic Ocean Research Alliance (AORA) with a shared vision of Atlantic Ocean that is healthy, resilient, safe, productive.
- The Integrated Maritime Policy will enhance Europe's capacity to face the challenges of globalization and competitiveness, climate change, degradation of the marine environment, maritime safety and security, and energy security and sustainability.
- The Integrated Maritime Policy reflects the spirit of the Rio Conference 1992 and the UN Independent World Commission on the Oceans 1998 report. The report emphasizes six major challenges for human kind in the context of oceans: peace and security, equity, science and technology, economic value, public awareness and participation, *effective oceans governance*.

Divergent Approaches Towards Maritime Governance

- Bekkevold, Till, McDougal and Burke's views on maritime governance are world ocean as a battle field between great sea powers.
- Some other views are neo-liberalist approach i.e., all the elements of human activities and natural phenomena are interdependent. Thus, the international organizations, governmental and non-governmental, play crucial role in coordinating endeavours of state and non-state actors.

Maritime Governance - Stages of Discourse

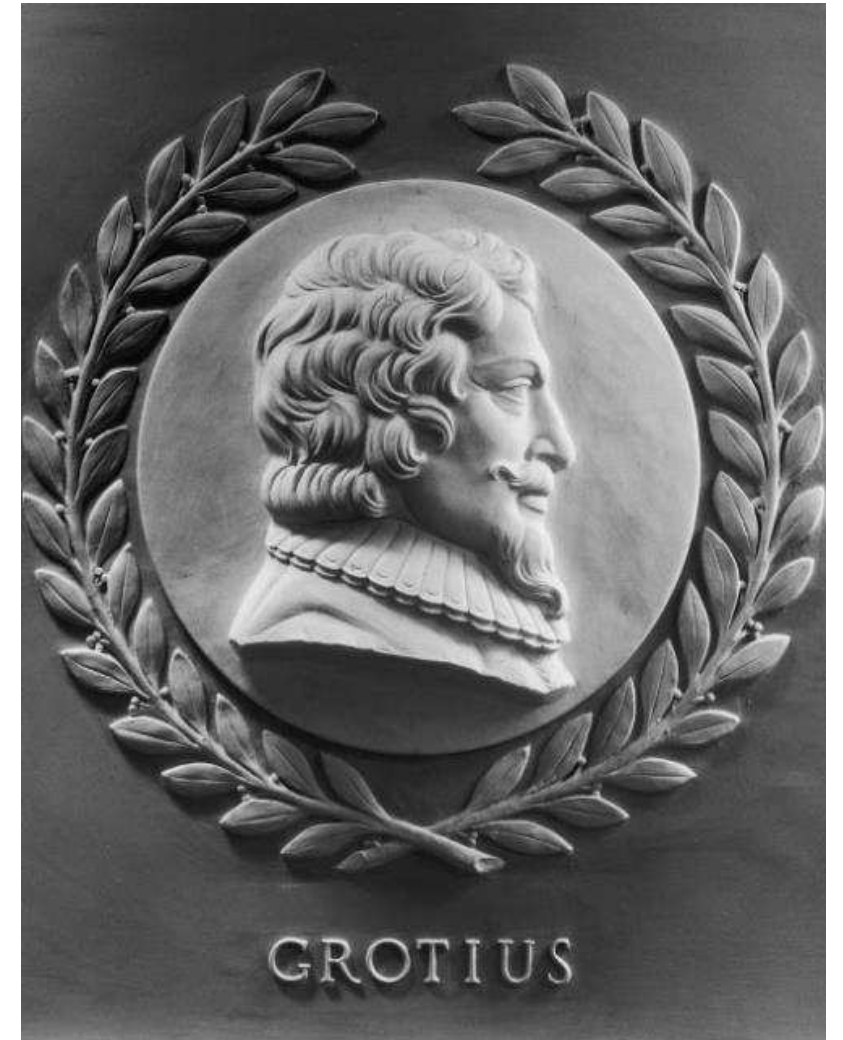
- 17th century until the end of World War I (1918)
- Post World War-I 1918 – 1958
- Mid 1950s until Mid 1990s
- Mid 1990s till Present

Maritime Governance – First Stage of Discourse

- **17th century until the end of World War I (1918)** – It was perceived that the seas off the coastlines belong to colonial powers which discovered the land and settled there, and all the vessels have the freedom to sail through other parts of the seas and oceans
- The modern concept of ***freedom of the seas*** originated in the struggle between the Dutch and Habsburg Spain in the 17th century.
- Defending Dutch merchants' right to ply the lucrative East Indies trade routes, still largely under the control of the navies of Spain and Portugal, the Dutch jurist Hugo Grotius published his book *Mare Liberum* in 1609.

Maritime Governance – First Stage of Discourse

- In *Mare Liberum*, he provided the legal justification for keeping the world's waterways open to the free transit of people, raw materials, and goods.
- Some forty years later, the Peace of Westphalia (1648) effectively limited European states' sovereignty to territories and coastal waters.



Maritime Governance – First Stage of Discourse

- The debate continued in the 18th century contributing to the development of customary rules at seas.
- Cornelius Bynkershoek and Ferdinando Galiani introduced the ***principle of a cannon shot*** in the delimitation of the territorial sea which recognized widely served as a rule until mid-20th century.
- The *principle of a cannon shot* states that a sovereign state has jurisdiction over its coastal waters up to the range of its cannons and other onshore artillery.

Maritime Governance – First Stage of Discourse

- Emmerich de Vattel also presented arguments to introduce to international practice the rule of the open and territorial sea.
- In the 19th century, rapidly movement of people between the continents and the competition between the United Kingdom and other regional and global powers through seas.
- Such movement led to the creation of international regimes and institutions at sea to better organize the movement of ships and the solve disputes between the states.

Maritime Governance – First Stage of Discourse

- The International Maritime Committee in 1897 in Brussels dealt with collision at sea.
- The creation of the League of Nations (1920), Permanent Court of International Justice (1922) and the codification conference in Hague (1930) were major steps towards liberal institutionalist approach towards sea with those institutions aimed at “limiting” the power of states.
- The Hague conference failed to agree upon territorial waters, the most important issue together with the passage through straits. It was to consider the size of territorial waters, questions pertaining to the rights of innocent passage of foreign vessels and the continuation on the high seas of pursuit begun within territorial waters.

Maritime Governance - Second Stage of Discourse

- **Post World War - I 1918 – 1958:** Exploration of the rules of conduct at sea, delimitation of borders, and peaceful solution to the disputes in maritime space.
- The world wars influenced the discourse to focus on military, naval dimension of maritime governance and peaceful solution of disputes, prevention of wars through legal instruments and security of civilian vessels carrying passengers and oil.
- At this stage, the Inter-Governmental Maritime Consultative Organization (IMCO) and the International Law Commission were formed.

Maritime Governance - Third Stage of Discourse

- **Mid 1950s and last till mid 1990s** – This scientific discourse was connected by various events like First Conference on the Law of the Sea (1958), Second Conference on the Law of the Sea (1960), Third Conference on the Law of the Sea (1973–1982), Adaptation of the United Nations Convention on the Law of the Sea (UNCLOS).
- UNCLOS is an international agreement that establishes a legal framework for all marine and maritime activities
- All these Conferences on Law of the Sea were convened leading to the further codification of the law of the sea.

Maritime Governance – Fourth Stage of Discourse

- **Mid 1990s till Present** - A new quality in the discourse at the beginning of the 1990s was testified by the fact that the term “order at sea” was gradually replaced by the term of “*ocean or oceans governance*” in connection with the Rio Conference, 1992.
- The United Nations Conference on Environment and Development (The Earth Summit) adopted Agenda 21, where chapter 17 was dedicated to the protection of oceans and introduction of the Integrated Oceans Management program.
- The Independent World Commission on the Oceans consisted of 43 scientists, representing the academic circles of all continents, from developed and developing countries.
- The Ocean, Our Future is the official report of the Independent World Commission on the Oceans summarized the problems affecting the ocean and its future management, and to provide solutions to these various and interlocking problems.

European Union's Integrated Maritime Policy

- The European Union is one of the most significant global actors in maritime affairs.
- Oceans and seas play important role for the EU – 23 out of 28 EU countries have a coastline, and the EU's maritime regions are home to 40% of its population and account for more than 40% of its GDP.
- EU promotes maritime governance within United Nations – the United Nations General Assembly adopted two resolutions concerning the oceans and the Law of the Sea and sustainable fisheries in line with the EU's agenda on ocean governance.

European Union's Integrated Maritime Policy

- In the 21st century, European Union introduced the Integrated Maritime Policy. But in 1983, the Common Fisheries Policy (CFP) was implemented to manage European fishing fleets and to conserve fish stocks.
- The EU's interest towards maritime policy was limited until its enlargement of several islands and littoral countries like Cyprus, Malta, Poland, Latvia and Estonia.
- The growing competition over maritime space, environmental challenges and fragmented decision-making process triggered the debate among old and new member states on the urgency of a new integrated approach towards maritime affairs.

Maritime Crime Governance

- Maritime crime governance has been on the agenda of policy makers particularly since the sudden rise of piracy and armed robbery in the Western Indian Ocean and the Gulf of Aden.
- In response, a variety of national and international measures has contributed to repression of piracy and armed robbery.
- Such measures include international naval operations, international cooperation of states and stakeholders through agreements such as the Djibouti Code of Conduct (DCoC).

Piracy and Armed Robbery

- Southeast Asia is heavily affected by on-board theft which suddenly increased from the early 2000s
- Gulf of Aden became notorious for hijacking vessels and holding crew hostage from 2008.
- Since 2011, the Gulf of Guinea has seen a sudden rise in incidents which are also termed ‘petro-piracy’, as most criminal acts take place in the context of Nigeria’s oil industry.

PIRACY AND ARMED ROBBERY AGAINST SHIPS

ICC INTERNATIONAL MARITIME BUREAU



TOTAL INCIDENTS PER REGION JANUARY - DECEMBER 2023

Region	Total Incidents Reported
East and SE Asia	70
S America	19
Africa (Gulf of Guinea)	22
India Sub-Continent	5



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Regional Agreements to counter Piracy and Armed Robbery

- The Djibouti Code of Conduct
- The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)
- The Yaoundé Code of Conduct (YCoC)

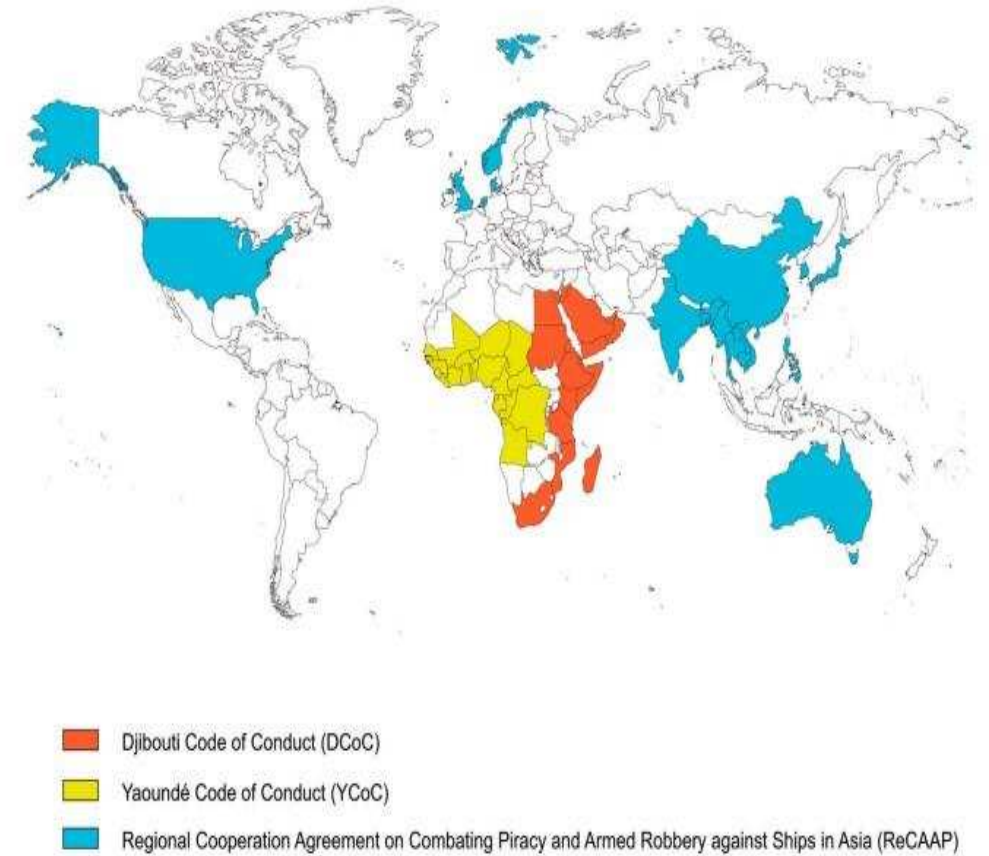


Figure 1. Signatories to the regional state-to-state agreements on countering piracy and armed robbery (own illustration, based on www.freevectormaps.com).

Why a policy model from another region may be adopted?

- When procedures established within another institutional domain that prove to be effective in addressing the maritime crimes may be adopted.
- Also, adopting a policy model from another region may be a ***time-saving option*** and thus increases the overall benefit of the institutional setup.

The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)

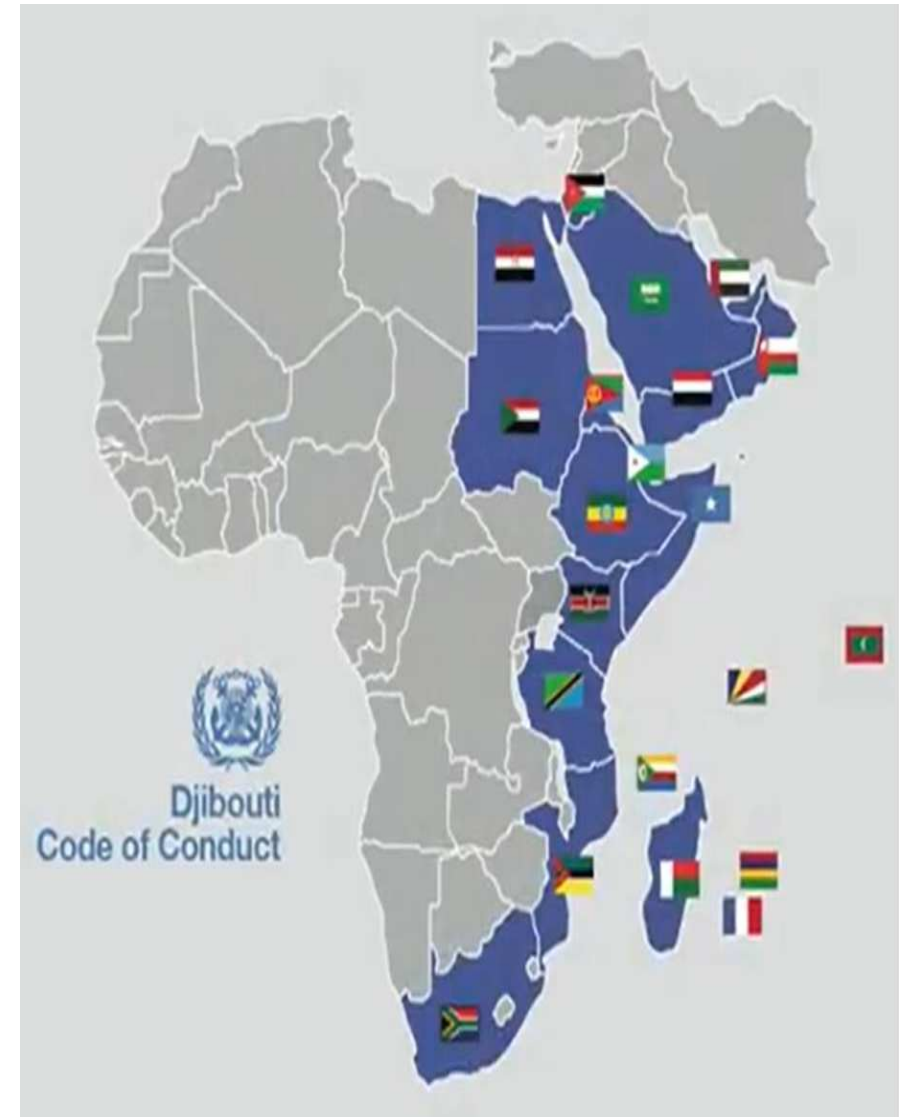
- The ReCAAP is a regional agreement working towards promoting and enhancing cooperation against maritime piracy and armed robbery in Asia and is often perceived as being a successful cooperation to combat piracy.
- In 2002, Negotiations of the ReCAAP had started to combat piracy and armed robbery which was finalized in the Tokyo Agreement, 2004.
- Thus, when negotiations on a state-to-state agreement in the Western Indian Ocean and the Gulf of Aden started in 2005, the ReCAAP agreement had already been established. The ReCAAP's membership is not limited to littorals from the region.

The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)

- The ReCAAP had established an Information Sharing Center (ISC) in 2006 to collect data and provide infrastructure for information exchange.
- A system of national focal points was introduced to coordinate the data.
- Focal points were identified and designated by each member state as the point of contact with the ISC.
- To facilitate national maritime law enforcement, national focal points manage piracy and armed robbery incidents within the state's territorial waters and coordinate surveillances with neighboring state

The Djibouti Code of Conduct

- In 2005, delegates of 10 states of the Gulf of Aden and the Red Sea areas as well as delegates from the IMO met for the first time to establish state-to-state cooperation on maritime safety, security, and the protection of the marine environment.
- In 2008, International Maritime Organization (IMO) sponsored a meeting in Djibouti for littoral states called for a deepened cooperation to combat illicit maritime activities in the region.
- This meeting resulted in the adoption of the Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden in 2009.



Signatory States

- The DCoC's membership is restricted to littoral states of the Indian Ocean region.
- By 2017, 20 of 21 eligible littoral states have signed the agreement: Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Jordan, Kenya, Madagascar, Maldives, Mauritius, Mozambique, Oman, Saudi Arabia, South Africa, Seychelles, Somalia, Sudan, the United Arab Emirates, the United Republic of Tanzania, and Yemen.
- France, an eligible littoral through its overseas department Réunion, has not signed the agreement, but extensively contributes to the DCoC's implementation by attending all meetings, contributing to its trust fund, and reporting to the DCoC information sharing center in Dar es Salaam.

Djibouti Code of Conduct

- The Djibouti Code of Conduct is aimed at improving regional co-ordination and co-operation based on 4 broad pillars -
 - 1) Information Sharing
 - 2) National Legislation Update
 - 3) Regional Training
 - 4) Capacity Building

Djibouti Code of Conduct

- Three information sharing centers have been established, located in Sana'a (Yemen), Dar es Salaam (United Republic of Tanzania), and Mombasa (Kenya)
- The International Maritime Organisation provided training of coastal guards and staff is a central activity carried out in the framework of the agreement.
- Additionally, the IMO sponsors the DCoC's capacity-building efforts by providing two staff members charged with training in Nairobi (Kenya).
- In 2015, a Regional Training Centre was opened in Doraleh (Djibouti) to implement further capacity-building initiatives in the region.

The Jeddah Amendment to the Djibouti Code of Conduct 2017

- The Jeddah Amendment calls on the signatory States to cooperate to the fullest possible extent to repress transnational organized crime in the maritime domain, maritime terrorism, illegal, unregulated and unreported (IUU) fishing and other illegal activities at sea.
- This will include information sharing; interdicting ships and/or aircraft suspected of engaging in such crimes; ensuring that any persons committing or intending to commit such illicit activity are apprehended and prosecuted; and facilitating proper care, treatment, and repatriation for seafarers, fishermen, other shipboard personnel and passengers involved as victims.

Similarities between ReCAAP and DCoC

- The adoption of ReCAAP structures into the DCoC goes beyond the information sharing mechanisms.
- Overall, 5 out of 22 ReCAAP articles were adopted more or less comprehensively.
- Articles that were inspired by the ReCAAP provisions include capacity building (ReCAAP, Art. 14.3 / DCoC, Art. 10.4), cooperative arrangements (ReCAAP, Art. 15 / DCoC, Art. 10.3), protection measures for ships (ReCAAP, Art. 16 / DCoC, Art. 3), and to some extent, the request for cooperation (ReCAAP, Art. 10 / DCoC, Art. 10).

Differences between ReCAAP and DCoC

DCoC	ReCAAP
1. The DCoC membership was limited to 21 littoral states	1. The ReCAAP is open to all states interested in combating maritime piracy and armed robbery.
1. The DCoC was created a non-binding agreement, although the possibility of a binding agreement was included into the agreement.	2. The ReCAAP is legally binding for its member states

The Yaoundé Code of Conduct (YCoC)

- DCoC acted as a policy model for a regional agreement on the combat of illicit maritime activities in West and Central Africa in response to a rising number of incidents in the Gulf of Guinea.
- Consequently, the YCoC was developed by the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS), the Gulf of Guinea Commission (GGC), and representatives from the IMO.
- In 2013, it was adopted in Yaoundé by 25 eligible West and Central African states.
- The YCoC is not legally binding, although it contains the prospect of a possible binding arrangement within three years of its effective date.

The Yaoundé Code of Conduct (YCoC)

- The YCoC's membership is geographically limited.
- The YCoC member states agree to cooperate not only on the prevention and repression of piracy and armed robbery against ships, but also on transnational organized crime in the maritime domain, maritime terrorism, IUU fishing, as well as other illegal activities at sea.
- Overall, 14 out of 17 DCoC articles were adopted into the YCoC, either entirely or in parts.
- The differences between the DCoC and the YCoC agreement texts can only be noted where the YCoC adds new aspects on the combat of maritime crimes, such as illegal fishing (Art. 8). Other deviations include the implementation on the national level (Art. 4), and matters of training and education (Art. 14).

The Yaoundé Code of Conduct (YCoC)

- The YCoC acted as a policy model when the DCoC was amended in 2017.
- Overall, the Jeddah Amendment adopted 8 YCoC articles either in parts or completely.
- It adopted the provisions on the definition of transnational organized crimes (Art. 1.4), the purpose and scope of the agreement (Art. 2), measures at the national level (Art. 3), asset seizure and forfeiture (Art. 10), training and education (Art. 14), and the review of national legislation (Art. 15).
- In conclusion, the regional combat of piracy, armed robbery, and other illicit maritime activities has been more and more institutionalized.