

# The Legal Support to the Chinese Navy Regular Escort Missions

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**Abstract:** With the rapid development of China's economy and international trade, China's national interests are expanding globally, the Sea Lines of Communication (SLOCs) have become lifeline of China's economy. Rampant piracy in some major sea areas around the world has become one of the major security threats to China's sea transportation. So in the future, the Chinese Navy will more frequently undertake regular ocean-going escort missions. But in carrying out such mission, the Chinese Navy faces various legal challenges, such as lack of domestic and international legal bases, difficulties in judicial trial of maritime criminals and absence of Standing Rule of Engagement or Standing Rule of Use of Force (SROE/SRUF) for escort missions, etc. so China must make necessary legal preparation through domestic legislation, strengthening international judicial cooperation and making SROE/SRUF in order to provide effective legal support to the escort missions and other overseas operations by the Chinese Navy.

**Keywords:** legal, support, Chinese, Navy, regular, escort, missions.

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## 1. INTRODUCTION

Escort is one of basic missions of the modern navies, but the Chinese Navy failed to carry out the escort missions in the open seas in the past due to lack of long-distance projection capacity. In line with the relevant resolutions of the United Nations Security Council (UNSC), and with the consent of the Transitional Federal Government of Somalia, the Chinese government dispatched a combined naval task force to conduct escort operations in the Gulf of Aden and waters off Somalia on December 26, 2008. The combined Chinese task forces are mainly charged with safeguarding the security of Chinese ships and personnel traversing those waters, and cooperate with multiple naval forces in the area to safeguard international Sea Lines of Communication (SLOCs) and the security of ships delivering humanitarian supplies for the World Food Programme (WFP) and other international organizations, and shelter passing foreign vessels as far as possible. In the past decade, over 100 vessels and 26,000 officers and sailors have been regularly deployed in 31 convoys, each consisting of three to four ships, in vessel protection operations. They have provided security protection for over 6,600 Chinese and foreign ships, and rescued, protected or assisted over 70 ships in distress. This is the first time that the Chinese Navy carries out escort missions and protects sea transportation routes and in the open seas.

Since the United Nations Security Council (UNSC) called upon States, regional and international organizations to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia on 16 December 2008, through the joint anti-piracy efforts of international members including China, piracy attacks at sea off the coast of Somalia have been greatly reduced. But more efforts are required to completely eradicate the piracy in that area, so UNSC has extended the authorisation of fighting piracy at sea off the coast of Somalia 8 times at the request of the Transitional Federal Government of Somalia (TFG).

Despite the success in curbing piracy in the Gulf of Aden, Seafarers continue to face diversified threats, from acts of piracy, armed robberies and kidnappings. The International Chamber of Commerce (ICC) International Maritime Bureau (IMB) has over the period been tracking and reporting on threats to crews in the world seas. The reduction of piracy incidents in the Gulf of Aden is mainly attributed to the joint efforts of Major power Navies to protect Sea lines of

communications. However, these gains have not benefitted other trouble waters. The Gulf of Guinea region is the new frontier of world piracy activities. Piracy, armed attacks, robbery and kidnapping for ransom are pervasive in the region. These threats are not limited to coastal waters alone but also high seas. IMB Director Michael Howlett attested in his latest comments that despite Navy patrols, onboard security measures, cooperation and information sharing, the threat to crews are still real. Armed gangs mostly use speedboats to forcibly board ships to steal stores, cargo or abduct crewmembers to demand for ransom. These attacks affect all types of vessels. For instance, the 2019 IMB report on piracy indicated more than 50% increase of crew kidnapping in the Gulf of Guinea alone, from 78 reported incidents in 2018 to 121. Similarly, 21 attacks were also recorded in the first quarter of 2020 in the same region. This is an indication of the vulnerability of crews and vessels to acts of piracy, armed robbery and kidnapping at sea. The global financial cost of piracy is estimated at \$ 7billion through cargo theft, payment of ransom for kidnapping, insurance premiums and security cost. Modern day threats to internal waters has therefore not been adequately or holistically address by the UN nor major powers to protect Sea lines of communication.

### **Conclusion of the Literature Review, Statement of Problem and Methodology used in this Research Work.**

This research work adopts the game theory, the choice of game theory in this research is borne out of the fact that the subject under review is predicated on international engagement and the expansion of trade with other nations, and game theory can best explain the concept of international trade. The research work attempts to examine and analyze efforts made by the Chinese government through her navy in an attempt to deliver goods across the oceans with a view to put in place a mechanism to fight criminality and counter attacks on her supply ships. As postulated by games theorists, “*The formal theory defines a game as consisting of a set of players, a set of pure strategies for each player, an information set for each player, and the players’ payoff functions. A player’s pure strategy specifies her choice for each time she has to choose in the game. If a player’s strategy requires choices at more than one time, we say that the strategy contains a number of actions*”. This assertion is very true in game theory, hence the need to adopt it in this research work. The absence of legal instrument to protect Chinese ships at sea and the lack of cooperation from other players to bring perpetrators to book is an impediment to the safe movement of the Chinese goods across the oceans. However, it is on this backdrop that the problem of this research is stated as follows: criminals tend to attack Chinese ships at sea. Because of the fact that there is little or no legal support to bring the attackers to justice, they always escape justice. It is upon this background that this work set out to assess the process of legal support for the Chinese ships on the high seas. Due to the peculiar nature of this study, the research design adopted is the descriptive survey design where information were collected and collated. This implies that historical and descriptive method was used. This study also adopted a qualitative investigative approach. This approach involved the use of scientific literature. The literature is not intended to provide a priori theories that could be tested, but rather to stimulate fruitful guiding questions. This is done by the extensive use of secondary sources. Data were collected from textbooks, journals, official publications. Others are policy documents. These include library in China. While some materials were gotten in hard copy, others were gotten via website. The reason why the researcher visited the library is to gather up-to-date relevant materials on the topic under review.

## **2. DISCUSSION**

With the quick development of China’s economy and expansion of Chinese overseas interests, China is facing increasingly complicated maritime security situations. As the largest trading country and one of main investors in the world, China’s investment and international trade are expanding all over the world, 70% of China’s international trade rely on sea transportation, now China has 178,000 ocean-going transportation vessels with 180 million tons carriage, China ocean-going fleet now is the third biggest fleets in the world, SLOCs are becoming the lifeline of China. So even the piracy at sea off the coast of Somalia no longer poses serious threat to international maritime transportation, Chinese navy still will shoulder heavy escort missions in the future.

The white paper on China’s Military Strategy issued by the State Council Information Office of the People’s Republic of China in May 2015 pointed out: “In line with the strategic requirement of offshore waters defence and open seas protection, the PLA Navy (PLAN) will gradually shift its focus from ‘offshore waters defence’ to the combination of ‘offshore waters defence’ with ‘open seas protection’, and build a combined, multi-functional and efficient marine combat force structure.” While the white paper on China’s National Defence in the New Era issued in July 2019 further indicates: “One of the missions of China’s armed forces is to effectively protect the security and legitimate rights and interests of

overseas Chinese people, organizations and institutions.” It further highlights: “Committed to the principle of win-win cooperation, China’s armed forces will fulfil their international responsibilities and obligations, and provide more public security goods to the international community to the best of their capacity. They actively participate in the UN peacekeeping operations (UNPKOs), vessel protection operations, and international efforts in humanitarian assistance and disaster relief (HADR), strengthen international cooperation in arms control and non-proliferation, play a constructive role in the political settlement of hotspot issues, jointly maintain the security of international passages, and make concerted efforts to respond to global challenges such as terrorism, cyber security and major natural disasters, thus making a positive contribution to building a community with a shared future for mankind.” So escort missions will become regular task of Chinese navy in the future.

Among various maritime security challenges and threats such as naval blockade by other major powers, maritime terrorism, piracy and sea robbery, piracy is one of the major threats China will face in the future. So this article will mainly focus on the possible legal challenges to Chinese navy’s fight against piracy during its regular escort missions.

### **Theoretical Framework: Game Theory**

Game theory is the study of mathematical models of strategic interaction among rational decision-makers. It has applications in all fields of social science, as well as in logic, systems science and computer science. Originally, it addressed zero-sum games, in which each participant's gains or losses are exactly balanced by those of the other participants. Game theory is a theoretical framework for conceiving social situations among competing players. In some respects, game theory is the science of strategy, or at least the optimal decision-making of independent and competing actors in a strategic setting. The key pioneers of game theory were mathematicians John von Neumann and John Nash, as well as economist Oskar Morgenstern.

Consider the following situation: when two hunters set out to hunt a stag and lose track of each other in the process, each hunter has to make a decision. Either she continues according to plan, hoping that her partner does likewise (because she cannot bag a deer on her own), and together they catch the deer; or she goes for a hare instead, securing a prey that does not require her partner’s cooperation, and thus abandoning the common plan. Each hunter prefers a deer shared between them to a hare for herself alone. But if she decides to hunt for deer, she faces the possibility that her partner abandons her, leaving her without deer or hare. So, what should she do? And, what will she do?

Situations like this, where the outcome of an agent’s action depends on the actions of all the other agents involved, are called interactive. Two people playing chess is the archetypical example of an interactive situation, but so are elections, wage bargaining, market transactions, arms races, international negotiations, and many more. Game theory studies these interactive situations. Its fundamental idea is that an agent in an interactive decision should and does take into account the deliberations of the other players involved, who, in turn, take her deliberations into account. A rational agent in an interactive situation should therefore not ask: “what should I do, given what is likely to happen?” but rather: “what will they do, given their beliefs about what I will do; and how should I respond to that?”

In this article, we discuss philosophical issues arising from game theory. We can only sketch the basic concepts of the theory in order to discuss some of their philosophical implications and problems. We will thus assume that our readers have some familiarity with the basic concepts. For those who are primarily looking for an introduction to the basics of game theory, we recommend Binmore [2007; 2008] or Kreps [1990], both of which also consider philosophical issues. Osborne and Rubinstein [1994] and Fudenberg and Tirole [1991] are textbooks that put more emphasis on the mathematical proofs. Hargreaves-Heap & Varoufakis [2001], Ross [2006b] and Grune-Yanoff [2008b] provide philosophical accounts of game theory.

Philosophy and game theory are connected in multiple ways. Game theory has been used as a tool in philosophical discussions, and some crucial game theoretical concepts have been developed by philosophers. Game theory also has been the object of philosophical inquiry itself. Our discussion will concentrate on the latter. Since game theory relies heavily on mathematical models, the standard epistemic issues concerning modeling and unrealistic assumptions in philosophy of economics are also relevant for game theory. But since game theory transcends economics, a number of other philosophical issues also arise. Perhaps the most important of these is the interpretation of the theory: is game theory to be understood mainly as a tool for recommending rational choices, for predicting agents’ behaviour, or for merely providing

an abstract framework for understanding complex interactions (e.g., [Blackburn, 1998; Aydinonat, 2008])? If we settle for the first interpretation, the issue of whether the rationality concept employed by the theory is justifiable becomes pressing. Is it intuitively rational to choose as the theory prescribes? If the second interpretation is adopted, one must ask whether the theory can in principle be a good predictive theory of human behavior: whether it has empirical content, whether it is testable and whether there are good reasons to believe that it is true or false. If the third interpretation is adopted, the question arises concerning which qualities of the theory contribute to this understanding, and to what extent these qualities are different from the prescriptive or predictive function discussed in the first two interpretations.

Decision theory, as well as game theory, assesses the rationality of decisions in the light of preferences over outcomes and beliefs about the likelihood of these outcomes. The basic difference between the two lies in the way they view the likelihood of outcomes. Decision theory treats all outcomes as exogenous events, ‘moves of nature’. Game theory, in contrast, focuses on those situations in which outcomes are determined by interactions of deliberating agents. It proposes that agents consider outcomes as determined by other agents’ reasoning, and that each agent therefore assesses the likelihood of an outcome by trying to figure out how the other agents they interact with will reason. The likelihoods of outcomes therefore become “endogenous” in the sense that players take their opponents’ payoffs and rationality into account when considering the consequences of their strategies.

The formal theory defines a game as consisting of a set of players, a set of pure strategies for each player, information set for each player, and the players’ payoff functions. A player’s pure strategy specifies her choice for each time she has to choose in the game. If a player’s strategy requires choices at more than one time, we say that the strategy contains a number of actions. Games in which players choose between actions simultaneously and only once are called static games. In dynamic games players choose between actions in a determined temporal order. All players of a game together determine a consequence. Each chooses a specific strategy, and their combination (which is called a strategy profile) yields a specific consequence. The consequence of a strategy profile can be a material prize — for example money — but it can also be any other relevant event, like being the winner, or feeling guilt. Game theory is really only interested in the players’ evaluations of this consequence, which are specified in each players’ payoff or utility function.

The part of the theory that deals with situations in which players’ choice of strategies cannot be enforced is called the theory of non-cooperative games. Cooperative game theory, in contrast, allows for pre-play agreements to be made binding (e.g. through legally enforceable contracts). This article will not discuss cooperative game theory. More specifically, it will focus — for reasons of simplicity — on non-cooperative games with two players, finite strategy sets and precisely known payoff functions. The first philosophical issue with respect to these games arises from the interpretation of their payoffs.

## THE MAIN LEGAL CHALLENGES

But in carrying out such mission, the Chinese Naval faces various legal challenges, such as lack of domestic and international legal bases, difficulties in judicial trial of maritime criminals and absence of Standing Rule of Engagement or Standing Rule of Use of Force (SROE/SRUF) for escort missions, etc.

### 1. Inadequate Legal Bases

#### (1) Domestic Legal Bases

Russian Federation, Republic of Korea, Japan and some other countries have enacted relevant laws on the overseas operations, which provides a powerful legal basis for sending military abroad to fight piracy. The main domestic legal bases for Chinese Navy’s escort missions in the Gulf of Aden and waters off Somalia are two: A. Article 29, the Constitution of the People’s Republic of China: “The armed forces of the People’s Republic of China belong to the people. Their tasks are to strengthen national defence, resist aggression, defend the motherland, safeguard the people’s peaceful labour, participate in national reconstruction, and work hard to serve the people.”; B. Article 2, the Law of the People’s Republic of China on National Defence: “This Law is applicable to military activities the country takes to guard against and resist aggression, prevent military subversion, safeguard the sovereignty, unification, territorial integrity and security of the county, as well as activities in such fields as politics, economy, diplomacy, science and technology and education that concern military affairs.” and Article 66: “The People’s Republic of China supports activities relevant

to military affairs that are taken by the international society to contribute to maintaining peace, security and stability in the world and areas.” The above relevant articles of the Constitution and the National Defence Law are only general guidance, are not strong legal bases for the future regular escort missions.

## **(2) International Legal Bases**

There are mainly three international legal bases for the world navies to fight piracy in the Gulf of Aden and waters off Somalia: (1) the United Nations Convention on the Law of Sea (UNCLOS). UNCLOS stipulates: “All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.” (2) the authorisation of the Security Council of the United Nations (UNSC). UNSC calls upon: “States, regional and international organizations that have the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution, resolution 1846 (2008), and international law, by deploying naval vessels and military aircraft and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use.” (3) the requests from the Transitional Federal Government (TFG). According to international laws, sovereignty of states must be fully respected, the invitation or permission of the governments of coastal states must be secured before foreign warships or law enforcement ships enter into their territorial seas to fight against the piracy. The President of Somalia wrote several letters to the Secretary-General of the United Nations to request the international community to assist the TFG in taking all necessary measures to interdict those who use Somali territory and airspace to plan, facilitate or undertake acts of piracy and armed robbery at sea.

But none of these legal bases can be directly applied in Chinese Navy’s fight against piracy in its future regular escort missions: firstly, UNCLOS only grants universal jurisdiction over piracy, not over armed robbery at sea, and UNCLOS has very strict definition of the piracy: 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).

According to UNCLOS definition of piracy: (1) the subject of crime should be the crew or the passengers of a private ship or a private aircraft or the crew of a warship, government ship or government aircraft, who has mutinied and taken control of that ship or aircraft; (2) the purpose of crime should be for private ends, not for political or other ends; and the criminals should commit the piracy intentionally and know the facts making it a pirate ship or aircraft. He or she should voluntarily participates in the operations of piracy, if he or she is forced to participate in the operations, he or she is not pirate; (3) the location of piracy is on the high seas or in a place outside the jurisdiction of any State. If the crime is committed in a place within the jurisdiction of a State, it is not piracy; it is sea robbery to which domestic laws, not UNCLOS, should be applied. Only the coastal states have the jurisdiction over the sea robbery. But UNCLOS does not clearly define which waters are within the jurisdiction of a state? They are internal waters? Territorial waters? Or they also include Exclusive Economic Zone (EEZ) and Continental Shelf? It is still controversial whether EEZ are within or outside the jurisdiction of coastal states. Some scholars argue the coastal states has the sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources and jurisdiction with regard to artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment, so EEZ is under the jurisdiction of the coastal states, other countries do not have the jurisdiction over piracy in EEZ according to UNCLOS. According to this interpretation, other countries can fight against piracy only on high seas and in the waters in the north and south Polar Regions (Arctic and Antarctic). In the future, the Chinese navy warships which carry out escort missions will face the problem of identifying who are pirates? Whether they have the jurisdiction over the crime?

Secondly, UNSC authorisation is not universal, but for the fight against piracy at sea off the coast of Somalia only. UNSC Resolution 1851 (2008) affirms: “the authorization provided in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law,



including any rights or obligations under UNCLOS, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law.”

Thirdly, UNSC authorisation is based upon the consent and request of Somali government. Resolution 1851 (2008) affirms “such authorizations have been provided only following the receipt of the 9 December 2008 letter conveying the consent of the TFG.” It will be difficult to get the consent of the coastal states to fight piracy in the waters off their coast.

## **2. difficult to bring pirates to trial**

There are mainly three approaches to bring pirates captured at sea off the coast of Somalia to justice: (1) hand over them to TFG for trial; (2) extradite them to a third country, such as Kenya and other neighbouring countries of Somalia, for trial; (3) bring them back home for trial.

But none of these approaches are easy to be conducted. The first two approaches are difficult because Somalia has been a war-torn country for many years, it is difficult for the Transitional Federal Government (TFG) of Somalia to put the pirates on trial. While some of its neighbouring countries also face the threats of rampant piracy and unstable internal situations, so they are also unable or unwilling to bring those arrested pirates to trial.

The last approach is also very difficult: firstly, it is costly to bring the pirates back to home country for trial by the escort warships after travelling a long distance; secondly, it will be more complicated to try foreign pirates, for example, interpretation maybe required, different religious belief have to be considered; thirdly, it is difficult for a foreign court to get sufficient evidence of piracy crime which took place in a sea area far away.

It is even more complicated to try pirates in China because there is no Crime of Piracy in the Criminal Law of China. The Crime of Piracy includes various criminal activities, such as illegal detention, robbery, injury, murder, etc. so the Crime of Piracy has to be convicted and sentenced according to other crimes in the Criminal Law, such as the Crime of Robbery, the Crime of Intentional Homicide, the Crime of Intentional Injuries, the Crime of Kidnapping, etc. while none of these crimes can cover all the criminal activities of the Crime of Piracy. Some scholars believe that according to Article 9 of the Criminal Law of the People's Republic of China, which stipulates: “This law is applicable to the crimes specified in international treaties to which the PRC is a signatory state or with which it is a member and the PRC exercises criminal jurisdiction over such crimes within its treaty obligations.”, so China can exercise universal jurisdiction over any person who commits the crimes stipulated in the international treaties China has concluded or entered into, no matter that person is Chinese or foreigner, and no matter the crime takes place in or outside China, so China can try and punish pirates despite the fact that there is no Crime of Piracy in China's Criminal Law.

While some other scholars argue that Article 3 of China's Criminal Law clearly stipulates: “Any act deemed by explicit stipulations of law as a crime is to be convicted and given punishment by law and any act that no explicit stipulations of law deems a crime is not to be convicted or given punishment.” This article embodies one of the most important principles of law -- the principle of legality, which is based upon three concrete principles of criminal law-- nullum crimen sine lege, nulla poena sine lege, and no ex post facto application of laws. So Article 9 is in contradiction with Article 3 and violates one of most important principle of law.

## **3. Absence of Standard Rules of Engagement or Rules of Use of Force (SROE/SRUF)**

Today's pirates are well-equipped and well-organised, it is inevitable for the naval forces to use force in self defence and protection of other ships during escort missions and the fight against pirates. The use of force against pirates is not armed conflicts in terms of international law, so the Law of Armed Conflicts or the International Humanitarian Law are not applicable, but some fundamental principles, such as the principles of proportionality and necessity, still apply. Since the Standard Rules of Engagement or the Rules of Use of Force (SROE/SRUF) are still absent in the armed forces of China, so clear legal authorisation for use of force is required for the escort force, which should clearly stipulate under what conditions force can be used? What type of force or weapons can be used? Who has the authority to make decision and issue order?

## **THE PERFECTION OF LEGAL SYSTEM TO SUPPORT THE CHINESE NAVY REGULAR ESCORT MISSIONS**

### **Strengthen Domestic Legislation**

#### **(1) Enact the Overseas Operations Law**

The National People's Congress—the Parliament of China or its standing committee should enact the Overseas Operations Law as the main domestic legal basis for deploying armed forces abroad. The Law should clearly stipulate the procedure to follow in deploying armed forces, the organisation who has the authorities to make the decision, the responsibilities of different organisations and departments. The Law also can authorise the Central Military Commission of China to make the relevant military regulations to implement the law in details. The formulation of the Regulations on Vessel Protection Operations (Trial) is a major step forward.

#### **(2) Add the Crime of Piracy in China's Criminal Law**

The Security Council of the United Nations also requested states to criminalize piracy under their domestic law and to favourably consider the prosecution, in appropriate cases, of suspected pirates, consistent with applicable international law. So we should add new Crime of Piracy, the Crime of Maritime Terrorism, the Crime of Endangering the Safety of Navigation, etc in the Criminal Law, and clearly stipulate the names, types of the crimes and punishment.

### **Enhance International Judicial Cooperation**

#### **(1) Conclude specific international convention on piracy crime**

Although there are several conventions including the articles concerning piracy, there is no specific treaty or convention on the Crime of Piracy. So it is necessary to draft a specific convention or treaty on the Crime of Piracy: (1) give a standard and universal definition of the Crime of Piracy, which clarifies the key elements of the Crime of Piracy, such as the aims, location and targets of crime, etc.; (2) stipulate the basic principles of fighting piracy, the rights and obligations of states where piracy happens, the states whose nationals are pirates or victims, the mechanism of coordination among states and code of conduct of international community in fighting piracy, making the fight against piracy a mandatory obligation, not voluntary choice.

#### **(2) Set Up a Special International Tribunal to Prosecute Pirates.**

Just as the above analysis shows that it is difficult to try the Somali pirates in Somalia, its neighbouring countries or the third country, so it is necessary to set up a special international tribunal to try pirates. Such tribunal can be a regional tribunal established by regional organisations, a "hybrid tribunal" jointly established by regional organisations and relevant countries, or an international tribunal established by UNSC according to the Chapter 7 of the United Nations Charter.

If it is difficult to set up a special tribunal, the jurisdiction of the International Criminal Court (ICC) can be extended to cover the Crime of Piracy by putting the crime as part of crimes against humanity, one of the four gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression. Then pirates can be brought to trial in ICC.

### **3. Formulate Standing Rules of Engagement or Standing Rules of Use of Force (SROE/SRUF)**

Standing Rules of Engagement or Standing Rules of Use of Force (SROE/SRUF) should be formulated. SROE/SRUF should clearly stipulate two conditions for using force: (1) self-defence: the suspected pirates resist with weapons and threaten the safety of naval personnel; (2) protection of the safety of hostage: the hostage's life is under immediate threat of the pirates.

SROE/SRUF should also establish the fundamental principles which should be followed in use of force, including the principles of legality, necessity, proportionality, and early warning:

(1) the principle of legality: force should be used according to law. The legal conditions should be met, necessary authorisation should be granted, and the legal procedure should be followed when force is used.

(2) the principle of necessity. UN Code of Conduct for Law Enforcement Officials clearly stipulates: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." This means that the use of force should be exceptional and be considered an extreme measure; while it implies that the naval force may be authorized to use force as is reasonably necessary under the circumstances for the prevention of piracy crime or in effecting or assisting in the lawful arrest of pirates.

(3) the principle of proportionality. Necessary balance should be stricken between public maritime order and basic human rights, between the rights and interests of victims, that of warships and that of pirates. No force which is disproportionate to the legitimate objective to be achieved should be used. In general, firearms should not be used except when a pirate offers armed resistance or otherwise jeopardizes the lives of hostages and less extreme measures are not sufficient to restrain or apprehend the pirates. So minimum force should be used, while lethal weapons should be avoided.

(4) the principle of early warning. The Hague Convention (II) with Respect to the Laws and Customs of War on Land stipulates: "The commander of an attacking force, before commencing a bombardment, except in the case of an assault, should do all he can to warn the authorities." The Standing Rules of Engagement of U.S. Military also clearly requests, in self-defence, if time and circumstances permit, enemy should be given early warning and opportunities of retreat and stopping threatening activities. So in the anti-piracy operations, if circumstances permit, early warning is required before actual force is used against the pirates.

### 3. RECOMMENDATIONS

- There should be a proper legal instrument in place for the prosecution of pirates attacking Chinese ships on the High seas.
- Cooperation among players should be encouraged to serve the interest of all the parties
- The Rule of engagement should be clear enough to avoid misconception
- The rule on the use of force to protect the ships needs to be enacted

### 4. CONCLUSION

With the increase of national strength and expanding of national interests globally, China will definitely face more and more threats and challenges from piracy, sea robbery, maritime terrorism and other maritime crimes, so Chinese Navy will definitely be entrusted to fulfil more escort missions.

But if the Chinese Navy implements regular escort missions, it will face various legal challenges, such as inadequate domestic and international legal bases, difficulties in judicial trial of maritime criminals and absence of Rule of Engagement or Rule of Use of Force (ROE/RUF) for escort missions, etc.

In order to provide strong legal support and guarantee for the Chinese Navy to carry out escort missions, and conduct evacuation operations, international humanitarian operations and other overseas operations, it is necessary and urgent to strengthen domestic legislation by formulating and perfect the relevant laws, rules and regulations on overseas operations and adding relevant crimes in the Criminal Law and enhance international judicial cooperation by concluding specific convention on piracy and setting up international tribunal, and formulate SROE/SRUF based upon the fundamental principles of legality, necessity, proportionality, and early warning.

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