

CONTACT GROUP ON PIRACY OFF THE COAST OF SOMALIA

2nd MEETING OF WORKING GROUP 2 ON LEGAL ISSUES

Chairman's Conclusions

(These conclusions are the sole responsibility of the chairman of the Working Group. They constitute a summary of the outcome of the discussion at the meeting of the Working Group in Copenhagen on 5 – 6 May 2009 and will form the basis for the report of the chair to the Contact Group Meeting in New York on 29 May 2009).

Based on the initial tasking by the Contact Group at its meeting in New York on 14 January 2009 and the request from the Contact Group at its meeting in Cairo 17 March 2009 that the Working Group continue its work along the lines listed in the Chair's conclusions from the 1st Meeting, the Working Group continued its efforts to identify practical and legally sound solutions to ensure prosecution of persons suspected of piracy.

The Working group discussed a wide range of practical legal questions and challenges with regard to the prosecution of suspected pirates.

National prosecution

The UNODC presented key points in its matrix (based on a questionnaire previously circulated to Member States) on legal and practical challenges with regard to prosecution. The Working Group expressed its gratitude for the work the UNODC had undertaken and for the excellent overview it provided of individual States' legal regulations and procedures. This work also helped the process of identifying possible regulatory or procedural gaps.

Interventions showed that significant progress had been made with regard to adoption and implementation of relevant national legislation. Discussions, however, also showed that challenges remain, in particular with regard to questions concerning the establishment and exercise of jurisdiction, the fulfillment of evidentiary requirements and the attribution of law enforcement powers to military personnel.

States reported on recent incidents/cases of piracy off the Coast of Somalia and shared lessons learned. Within the last few weeks several cases had been rejected by domestic judicial systems, in part because evidentiary standards were not met.

The United States circulated a Counter –Piracy Operations Incident Report and Documentation Template for inspiration to other delegations and the future work in this field of the Working Group.

Representatives from INTERPOL gave the Working Group an overview of the law enforcement tools it can provide (database, analytical support etc.). The IMO referred to its general guidelines on the handling of piracy.

Based on the presentation by the UNODC and the recent cases the Working Group:

- took stock of Member States’ progress in adopting necessary legislation and exercising jurisdiction,
- noted the rising overall awareness among Member States of the necessity to adapt to the situation and adjust procedures for dealing with attacks of piracy,
- developed the annexed list of impediments to prosecution as well as a “check list” regarding the prosecution of apprehended pirates.

It was noted that the Chair has tasked Dr. Douglas Guilfoyle, University College London, with preparing a compilation of the international legal basis for prosecution of suspected pirates in order to ensure a common understanding of relevant provisions in international law. The compilation will be finished before the summer.

Arrangements and agreements between States

The Working Group noted that - besides prosecution by States directly affected by the piracy incident - bilateral arrangements and agreements between states may be a way to secure prosecution.

The Working Group stressed the importance of sharing responsibilities and the need for cooperation to the fullest possible extent with all States and international and regional organizations concerning facilitation of arrest, detention and prosecution of suspected pirates.

Based on presentations by the European Union on its bilateral agreement with Kenya, the Working Group welcomed the work carried out by States willing and able to prosecute pirates, e.g. by making use of existing bilateral arrangements or by concluding appropriate additional arrangements.

The Deputy Prime Minister of the Transitional Federal Government of Somalia addressed the Working Group (see annexed statement).

The Working Group briefly discussed the ship rider concept based on a presentation by the US and noted that further examination of this concept was warranted.

Supporting prosecution and capacity-building

The capacity of regional States to prosecute pirates was discussed based on an intervention by Kenya on needs assessment. The Working Group strongly supports the work taken forward by Kenya in prosecuting suspected pirates apprehended off the coast of Somalia.

The UK provided a status concerning the work undertaken in cooperation with the UNODC to identify needs for support in the region in order to facilitate prosecution.

The Working Group reiterated the importance of appropriate financial assistance to build enduring capacity of regional States willing to enter into bilateral arrangements to prosecute pirates, including in Somalia, to prosecute and incarcerate pirates, and establish long term working relations inter alia between prosecuting authorities.

The Working Group stressed the importance of coordinating judicial and penal capacity building.

The Working Group agreed on a concept note (see annex) presented by Germany on the legal framework for a possible International Trust Fund to help defray the expenses associated with prosecution of suspected pirates, as well as other activities related to implementing GGPCS objectives regarding combating piracy in all its aspects. It was suggested creating such a vehicle would enable States to make a tangible contribution to combat piracy off the coast of Somalia with a view to fulfilling the conditions of membership of the Contact Group.

Apprehension and detention

The Commander of the Danish navy vessel Absalon provided the Working Group with a practical perspective of the handling of apprehended and detained pirates. The Working Group had a first discussion of the legal challenges with regard to apprehension and detention, including the relevant applicable standards.

Based on a presentation by a Danish shipowner (Per Gullestrup, Clipper Projects A/S) the Working Group had a first exchange of views on of the use of private armed guards, including its legal implications.

Delegations noted a need for developing a template for obtaining flag state consent when placing military personnel on commercial vessels flagged to other States.

International or regional mechanism for prosecution of suspected pirates

The Working Group continued its discussion of possible international or regional mechanisms for the prosecution of suspected pirates as an addition to options for national prosecution. During the discussion views both in favour of and against such mechanisms were expressed.

Future action

The Contact Group is invited to distribute the annexed list of impediments to prosecution as well as the annexed “check list” to all members of the Contact Group and urge members to make use of the list in identifying and closing possible gaps in national legislation, procedures etc.

Furthermore, the Contact Group is invited to task the Working Group to:

- Report back to the Contact Group at its next meeting on the further progress made by States in efforts to facilitate prosecution of pirates,
- Draw up detailed Terms of Reference for an International Trust Fund to help defray the expenses associated with prosecution of suspected pirates, as well as other activities related to implementing GGPCS objectives regarding combating piracy in all its aspects, based on the attached concept paper, taking into account policy guidance from the Contact Group,
- Develop a generic template for use by interdicting states in collecting evidence in a piracy incident (in order to assist states in fulfilling the relevant evidentiary standards),
- Further examine the concept of “ship riders”,
- Share information about relevant bilateral arrangements and agreements between states with a view to assessing their functioning at a relevant point in time,
- Continue consideration of possible international or regional mechanisms for the prosecution of suspected pirates as an addition to options for national prosecution,
- Invite the UNODC to continue gathering information on relevant national legal systems, including in coastal states,

- Continue discussions on issues relating to detention of suspected pirates, including compliance with relevant human rights instruments etc.,
- Launch discussions within the Working Group on the projected final outcome of the activities of the Group.