

## **CONTACT GROUP ON PIRACY OFF THE COAST OF SOMALIA:**

### **WORKING GROUP 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 Vienna on 5<sup>th</sup> March 2009 and will form the basis for the report of the chair to the Contact Group Meeting in Cairo on 17th March 2009)

Based on the tasking by the Contact Group at its meeting in New York on January 14, 2009 the Working Group examined a variety of issues concerning promotion of a “judicial track to arrest, detain and prosecute pirates”. The Working Group focused on the issue of ensuring prosecution of suspected pirates.

#### **National legislation:**

Where States have not already done so, they should with respect to piracy or related offences as defined in UNCLOS art. 101:

- Secure that national legislation is in place criminalizing such acts.
- Establish appropriate jurisdiction.

Where they have not already done so, States that are parties to treaties that require criminalizing and establishing jurisdiction over relevant offences should implement such obligations.

#### **Exercise of jurisdiction**

All States should - while respecting their national legislation and taking into account their affected interests - consider prosecuting suspected pirates, e.g when:

- Their national(s) are victims of the offense.
- Their national(s) are suspected of committing the offense.
- The targeted ship(s) was flying their flag.
- Their ships apprehend pirate ships, ref. UNCLOS article 105 stating, that the courts of the State which carried out a seizure may i.a. decide upon the penalties to be imposed.

#### **Arrangements between States**

The Working Group noted that under UNCLOS art. 100 all States shall cooperate to the fullest possible extent in the repression of piracy. Against this background all States and

international organizations, including those with naval forces in the region, are encouraged to take the necessary steps to facilitate prosecution by States willing and able to prosecute pirates, e.g. by making use of existing bilateral arrangements or by concluding appropriate additional arrangements.

States and international organizations should cooperate in facilitating the arrest, detention and prosecution of suspected pirates, e.g. through making States with naval forces in the region aware of relevant evidentiary requirements.

All States should make their best efforts to provide appropriate assistance to facilitate the prosecution, such as:

- Ensuring availability of key witnesses.
- Assistance in gathering and transferring evidence

States, including those States with naval forces in the region, that are neither the apprehending nor the prosecuting State, should consider help facilitating the logistical arrangements necessary, including funding where appropriate, to transfer suspected pirates to States that will undertake prosecution.

### **Capacity-building**

States and relevant international organizations should - in close consultation with relevant regional and international organizations including the IMO and the UNODC – assess short and long term needs of affected regional States. Based on this, States should provide appropriate 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.

### **Future work**

The Contact Group is invited to take note of the above and task the Working Group:

- To report back to the Contact Group at its next meeting on the progress made by States in adopting necessary legislation and exercising jurisdiction to prosecute suspected pirates.
- To further consider issues relating to the transfer of suspected pirates to States willing and able to undertake prosecution and practical solutions to facilitate such prosecutions.
- To map relevant evidentiary standards in those States willing and able to prosecute pirates through the conclusion of bilateral arrangements and consider how to ensure

that these standards are met and facilitate, including through technical assistance, introduction of new evidentiary standards where appropriate.

- To consider further other medium- and longer-term options for assisting the prosecution of suspected pirates, such as:
  - The possible establishment of an international trust fund to help defray the expenses associated with prosecutions of suspected pirates, including facilitating the presence of necessary witnesses at trial,
  - The possible use of shiprider arrangements (posting law enforcement officials with naval forces of other states) noting that sophisticated bilateral arrangements are required and that the use of shiprider agreements in itself cannot replace other arrangements,
  - A regional or international mechanism for the prosecution of suspected pirates when national prosecution is not possible, giving due regard to the issue of proportionality between the effort/expense required to set up such a mechanism and the likely number of relevant suspects, the potential disincentive such a mechanism could create with respect to domestic prosecutions, the length of time it would take to establish such a mechanism and get it operational, and other relevant factors, and
  - A possible compilation of the international legal basis for prosecution of suspected pirates in order to ensure a common understanding of relevant provisions in international law. As part of this work the Working Group and its members may consider raising these issues in other relevant fora.

The Working Group expressed its gratitude to UNODC for facilitating the meeting at UNODC Headquarters in Vienna and for the preparatory work undertaken by UNODC.