

**International Expert Group
on Piracy off the Somali Coast**

Piracy off the Somali Coast

Workshop commissioned by the Special Representative of the
Secretary General of the UN to Somalia
Ambassador Ahmedou Ould-Abdallah

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Final report

Assessment and recommendations

1. The situation in Somalia
2. Piracy around the world
3. Understanding piracy in Somalia
4. The Legal Framework
5. The costs of piracy
6. The costs of doing nothing on land
7. What has already been done
8. Recommendations

The contents of this report represent the opinions and views of the experts, and do not necessarily represent the views of the SRSG or any UN agency, government organization and/or civil society group involved in Somalia.

Nairobi, 21 November 2008

INTRODUCTION

In order to develop a coordinated response to the challenge of maritime piracy along the Somali coast¹, the United Nations Political Office for Somalia (UNPOS) commissioned an international expert consultation on the issue. The consultation took place in Nairobi from the 10th to the 21st of November. It was supported by the United Nations Development Programme (UNDP) Somalia and hosted by the International Organization for Migration (IOM) in Nairobi.

The international group consisted of private experts, national officials and representatives of international organizations covering expertise in organized crime, maritime law, Navy operations, risk management, migration management, marine contingency management, state of law, development and livelihoods, humanitarian relief, peace keeping and security sector reform. Many of the experts possess expertise and experience in Somalia as well as in neighboring countries and seas.

The assessment aimed at providing a practical interdisciplinary overview on piracy rather than a comprehensive analysis of all aspects of piracy in Somalia. The expert group had limited time to prepare and consult, which in combination with the difficult access to local knowledge in Somalia has constrained the scope of the assessment and its recommendations. The report was prepared on the basis of information available as of 20 November 2008.

The report demonstrates that piracy off the Somali coast is only one manifestation of the tragic events this country has experienced for almost 20 years. The long human tragedy that the Somali people have endured, has led the experts to remain careful in their recommendations, propose solutions that can be locally driven and supported, and provide ideas to strengthen local resilience of predominant livelihoods in Somalia. Having said this, the report has a clear focus: to present an assessment and appropriate recommendations to guide a coordinated response to the challenges of maritime piracy off the Somali coast.

The report starts off with a short history on Somalia (chapter 1) and a general chapter on piracy in international waters (chapter 2). This is followed by an assessment on the piracy situation off the Somali coast (chapter 3), its legal framework (chapter 4), and the costs associated with the phenomenon (chapter 5). Chapter 6 lists the additional costs to Somalia, the region and the international community, of allowing the situation to escalate without international intervention, on land and sea. Chapter 7 summarizes what is currently being done to address the problem and the final chapter (chapter 8) provides a summary of recommendations for short-, medium- and long-term impact. The detailed recommendations are listed in an Appendix and should receive your full attention and support.

The experts have concluded that piracy cannot be curbed off the Somali coast in the short term without establishing minimum law and order in Puntland and the other coastal areas of Somalia. This must be supported by disruption of the pirate revenues and indeed by more determined efforts to minimize the risks for new attacks on ships at sea. Due to the unlawfulness in Somalia, the experts expect that any success on the ground needs some form of external security input.

At the same time, piracy will not be suppressed without providing coastal populations with alternative occupation and revenue; the goals should include the establishment of a minimum state of law in the whole of Somalia to allow business, trade and other economic activities to flourish. One of the most powerful levers for establishing this new order would be the

¹ See the International Conference Working Group project proposal and the International Conference Working Group minutes 6/10/08.

cooperation of regional countries including Somalia in their political, economic and security environment.

The international community wishes not only to curb and suppress piracy but also to sustainably up-root it. In order to eradicate this activity and prevent it from arising again, we need the reconstruction of Somalia as a fully respected member of the community of Nations.

ACRONYMS

AIS	Automatic Identification System
AS	Al Shabaab
CFW	Cash-For-Work
CTF	Combined Task Force
DRC	Danish Refugee Council
DWT	Dead Weight Tonnage
EU	European Union
FFW	Food-For-Work
ICC	International Chamber of Commerce
IGAD	Intergovernmental Authority on Development in East Africa
IMB	International Maritime Bureau
IMO	International Maritime Organization
IOM	International Organization for Migration
ISPS	International Ship and Port Facility Security
LOSC	Law of the Sea Convention
MCS	Monitoring, Control and Surveillance
MMTF	Mixed Migration Task Force
MOU	Memorandum of Understanding
NATO	North Atlantic Treaty Organization
NRC	Norwegian Refugee Council
OCHA	UN Office for the Coordination of Humanitarian Affairs
OHCHR	UN Office of the High Commissioner on Human Rights
ONI	US Navy Office of Naval Intelligence
PRC	Piracy Reporting Center (of ICC's IMB)
RDP	Reconstruction and Development Programme
ReCAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
SME	Small and Medium-sized Enterprises
SNMG	NATO Standing Naval Maritime Group
SSR	Security Sector Reconstruction Strategy
SUA	Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988)
TFG	Somali Transitional Federal Government
TOC	Transnational Organized Crime
UAE	United Arab Emirates
UIC	Union of Islamic Courts
UN	United Nations

UNDP UN Development Programme
UNICEF UN Children's Fund
UNHCR Office of the UN High Commissioner for Refugees
UNODC UN Organization for Organized Crime
UNSC UN Security Council
UNSCR UN Security Council Resolution
UNSG UN Secretary-General
UNTOC UN Convention on Transnational Organized Crime
UNTP United Nations Transitional Plan
US United States
USCG United States Coast Guard
WFP UN World Food Programme

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1 THE SITUATION IN SOMALIA

Ethnically and culturally, Somalia may have appeared to be, before the civil war, one of the most homogeneous countries in Africa. The great majority of people are ethnic Somalis who speak dialects of the same language, Af-Somali, and who practice the same religion, Islam. However, clan, territorial and economic identities stratify Somali society. Islamic practice varies somewhat countrywide, and has over the years been influenced in varying degrees by Arab culture.

1.1 RECENT HISTORY

A former British (Somaliland) and Italian (the remainder of the country) protectorates, Somalia became independent and unified in 1960. In October 1969, the Somali President was assassinated, and a few days later, the army under Major General Mohamed Siad Barre took power.

By the end of December 1990, the capital Mogadishu was rocked by serious fighting. Large zones of the country were already outside the control of any authority. Finally, in January 1991, Siad Barre was forced out of Mogadishu, and the Somali State collapsed. No armed faction was able to provide a national solution, and years of fighting continued in various parts of the country. In May, 1991, Somalia's North-western region declared itself independent Somaliland and in 1998 local authorities in the North-eastern region set up the semi-autonomous Puntland State of Somalia. Local leaders based in Baidoa, in April 2002, announced the formation of a South-western State of Somalia.

1.2 HUMANITARIAN SITUATION

The human rights situation in Somalia continues to be characterized by indiscriminate violence and frequent attacks against civilians, including arbitrary detention of human rights defenders, arbitrary arrests and extrajudicial killings of journalists, as well as sexual and gender-based violence. Since 19 April the renewal of intense violence in Mogadishu between the Ethiopian-backed Transitional Federal Government troops and the insurgent groups has resulted in serious violations of international humanitarian and human rights law.

Both the Ethiopian-backed Transitional Federal Government troops and the insurgent groups are using artillery in urban areas inhabited by civilians, causing hundreds of civilians to be killed or injured. Both Governments are obliged to take measures to provide protection from impairment of the human rights of civilians by non-State actors, including armed groups.

On 28 March the United Nations Human Rights Council, expressing serious concern about the deteriorating human rights situation, renewed the mandate of the independent expert on the situation of human rights in Somalia for another year. In its resolution the Human Rights Council also requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to strengthen its presence in Somalia with a view to providing technical assistance and advisory services to the relevant Somali institutions and requested a report before the end of 2008.

Efforts are under way to establish an effective human rights capacity within UNPOS to monitor and enhance the protection of human rights in Somalia and to ensure coordination between UNPOS, OHCHR and the independent expert appointed by the Human Rights Council, as requested in Security Council resolution 1814 (2008). In June 2008, OHCHR deployed one human rights officer to UNPOS.

The strengthened human rights unit will play a critical role in monitoring human rights violations, advising the Special Representative of the Secretary-General and the United Nations country

team on capacity-building and institution building, providing input for mainstreaming human rights as part of police, judicial and legal reform, and providing support for the establishment of a national human rights institution and the integration of human rights into potential future agreements.

1.3 ONGOING POLITICAL PROCESS

The general condition of central government and public institutions in Somalia has been the subject of a number of assessments over the past five years, ranging from the Joint Needs Assessment (2005) to the UNDP consultations conducted in south-central Somalia, Puntland and Somaliland in May, June and July 2008.

The effectiveness of central government and public institutions in these three regions is severely limited by weaknesses in policy and law-making and in implementation. Without coherent and public service-oriented policies and laws (and their implementation) – and without the financial and human resources to sustain these – effective and accountable central government in Somalia is a mirage. In some areas, core governance institutions are in place and elements of policies are being drafted and bills prepared. But the frameworks for cabinet-led policy development and planning are far from robust and clear, and the transition to laws, regulations and standards is not assured. Even less assured is that policies and laws will actually be implemented and that measures will be taken to deal with non-compliance.

1.4 RELIGION, WOMEN, YOUTH AND ELDERS

Sunni Islam is the religion of Somalia. In the last eighteen years this has been their main social cohesion factor. However, over the past three years, a more fundamentalist form of Islam has entered Somalia and is taking over from the traditional practices of Islam.

The traditional organization of the society and the increasing role of Islam, did not give women the opportunity to reach any important political role in Somalia. Despite the capital role of women in the traditional family and the influence of some notable women in all aspects of Somali life, there is no powerful women movement as it can be observed in West Africa, where there could be used to counteract the actions of militias. However, many local women organization exists, and are supported by international humanitarian organizations, in preference to organizations managed by men.

The rate of high unemployment of young people forces many of them to join militias and other armed groups including piracy, in order to earn a basic income. Like in other parts of Africa, the Somali youth and coastal people have become active in piracy as a new means of earning large amounts of income. This activity is undermining the traditional leadership influence of many clan elders.

Many of the elders, as well as Muslim imams, are actively encouraging the youth not to become involved in piracy.

1.5 KEY ASPECTS OF SITUATION AS OF MID-2008

Despite the formation of the Transitional Federal Government (TFG) of 2004 and the efforts of the TFG to establish itself in Mogadishu, Somalia still does not have an effective central national government which controls the entire country. Instead it has three administrations with differing objectives: i) the TFG which aims to be the national government; ii) Government of Somaliland which aims to be the government of an independent Somaliland; and iii) Government of Puntland which aims to be the government of the semi-autonomous region of Puntland.

The TFG has still not managed to establish itself fully in Mogadishu and has completed few of the tasks prescribed by the 2004 Transitional Federal Charter. By the end of 2009, national elections are due to be held and a new constitution to replace the TFC. In Puntland, in the capital Garowe, the governing administration is better established than South-Central, but it remains weak and delivers few public services. In Somaliland, in the capital Hargeisa, the government is relatively better established than either the TFG or the Government of Puntland, but it still struggles to deliver public services. In 2008, presidential elections were postponed until April 2009.

Four fundamental shortcomings affect all three governments:

Inadequate governance systems: Formal government structures and systems are weak, especially below the top level of ministries and senior officials. At the same time, informal systems of governance are excessively influential, at the expense of the development of the formal systems.

Inadequate human resources: The skills base of civil servants and government appointees is low, due partly to a 'brain drain' of skilled Somalis to the private sector and abroad. Government and public institutions tend to be top heavy and have too few capable mid-level or junior staff. The TFG civil service, for example, has a ratio of approximately one junior or subordinate member of staff for every two managers.

Inadequate delivery of public services: Levels of public service delivery are very low in all sectors, most importantly in health and education as well as in employment generation, due to a combination of small budgets, high spending on security and a lack of emphasis on service delivery. In 2003 and 2004, government expenditure was equivalent to less than US\$10 per person per year in Somaliland and Puntland. In 2008 the Somaliland budget increased by 27% to US\$51m, but this was still equivalent to only about US\$15 per person. Approximately half of the budget was allocated to security and defence.

Inadequate physical infrastructure: Government and institutional infrastructure is weak, especially in south-central Somalia and Puntland. Too few government buildings are adequately furnished and equipped. Only about a quarter of the some 235 government-owned buildings in Mogadishu are furnished.

2 PIRACY AROUND THE WORLD

Piracy has long been one of the main activities of “people of the sea” against merchant nations, perhaps most famously in the Mediterranean Sea where, at the beginning of the 19th century, it triggered the “Barbary Coast wars”. The struggle against piracy was a constant concern of merchant countries which very early led to the adoption, against pirates, of the first example in history of an extraterritorial law and an universal crime. This stern approach made piracy almost disappear until 1990. Then piracy staged a comeback. It reached a peak between 1999 and 2003, because of the activity of pirates in South China Sea and in the Malacca Strait. Thanks to the efforts of the coastal states, piracy almost disappeared in the Straits of Malacca and Singapore and decreased in the South China Sea.

In its annual report (MSC.4/Circ.115 dated 10 April 2008) IMO stated that 206 attacks were allegedly committed and 76 attempted in 2007. According to IMO “ *the areas most affected in 2007 were the Far East, in particular the South China Sea and the Malacca Strait, West Africa, South America and the Caribbean, the Indian Ocean and East Africa. Over the period under review, the number of acts reported to have occurred or to have been attempted increased (...) in East Africa and (...) West Africa. Most of the attacks worldwide were reported to have occurred or to have been attempted in the coastal States’ concerned territorial waters while the ships were at anchor or berthed.*” IMO report adds: “*during 2007, twenty (20) crew members were killed, over one hundred and fifty-three (153+) crew members were reportedly injured/assaulted. About one hundred and ninety four (194) crew members were reportedly taken hostage/kidnapped. A vessel and crew and another three (3) crew members were reportedly still unaccounted for, and sixteen ships (16) were reportedly hijacked.*”

According to the Commercial Crime Services of the International Chamber of Commerce, 2008 seems to be the year of a new surge of piracy. A total of 199 worldwide incidents were reported to the Piracy Reporting Centre (PRC) of the International Maritime Bureau in the first nine months of 2008. The third quarter of 2008 saw reported incidents spike to 83, compared to the 53 reported in the first quarter and the 63 reported in the second quarter.

Few such efforts were made on the African side of the Indian Ocean and, in 2007, more than half of the total piracy incidents occurred off the African coasts and in the Indian Ocean. According to the IMO report, 27 attacks were successfully carried out and 33 attempted off East Africa during this period. During the first nine months of 2008, much of the increase in piracy can be directly attributed to the Gulf of Aden and east coast of Somalia. This region appears as the most dangerous zone with the 63 incidents reported there by IMB Piracy Reporting Centre, almost a third of the overall reported attacks. When presenting these figures, Captain Mukundan, the head of the Piracy Reporting Centre, added: “*The number of piracy attacks off the coast of Somalia is unprecedented. Pirates in the Gulf of Aden are growing increasingly brazen, attacking vessels, including tanker and large bulk carriers, with impunity. This major international seaway requires immediate increased protection and naval intervention.*”

For many years, various government, international organizations, inter-governmental organizations and non-governmental organizations have provided advice, guidance and warnings regarding piracy off Somalia. These include the International Maritime Organization, Maritime Port Authority of Singapore, U.S. Maritime Administration, the U.S. Navy’s Office of Naval Intelligence (ONI) in Washington and Maritime Liaison Office in Bahrain (MARLO Bahrian), the UK Maritime Trade Organisation Dubai (UKMTO), the ReCAAP Information Sharing Centre Singapore, the International Maritime Bureau’s Piracy Reporting Centre Kuala Lumpur, and BIMCO.

3 UNDERSTANDING PIRACY IN SOMALIA²

Piracy in Somalia is deeply rooted in a number of socio-economic factors, predominantly poverty, hunger and civil insecurity of the coastal population. Puntland is currently the epicenter of piracy. This is due in no small part to the fact that vessels can be identified and targeted much more easily as they travel through the Gulf of Aden.

3.1 ORIGINS OF PIRACY IN SOMALIA

Prior to 1990, piracy was not a major issue off the coast of Somalia, but like most coastal nations there were irregular incidences of armed robbery against small fishing or leisure craft that fell prey to an armed group, or ships that foundered off the coast. A more structured form of piracy began in the mid 1990's when some armed groups, claiming they were authorised coast guards charged with protecting Somalia's fishing resources, attacked vessels they claimed were fishing illegally in their territorial waters and held them for ransom. This slowly expanded after 2000 to any vessel that sailed within or close to, Somali territorial waters. Both vessels and crews would be held hostage and ransom demanded. During 2005 an increase was noted in the number of attacks being attempted against vessels sailing in the Indian Ocean off the coast of Somalia. By 2006 some of the pirate attacks were extending as far as 350 nm off the coast of Somalia. During 2006 piracy escalated as more attempts were made to hijack ships not only in the Indian Ocean but also in the Gulf of Aden and the mouth of the Red Sea. The phenomenon grew through 2007 from the major pirate bases of Eyl, Hobyo and Harardheere concentrated along the east coast of Somalia. By 2008 this reached outlandish proportions with ships being attacked seemingly at random and whenever the pirates decide. Consequently marine travel off the northern coast of Somalia, known as Puntland, has become the most dangerous region in the world for pirate attacks.

3.1.1 WHY PIRACY IN SOMALIA?

Compared to pirate operations in other parts of the world, namely the Java Sea, South China Sea and off the coast of Nigeria, Somalia does not have the natural coastal terrain so required by pirates, namely numerous forested inlets and islands, where ships can be hidden from aerial and maritime surveillance. Somali pirates do not need this type of terrain because their piratical aims are very singular and straight forward, ransom for hostages only. They are not interested in stealing the cargo and/or reusing the ship for other purposes, where there is a need to have a secure location hidden from view where a ship can be concealed while it is renamed and repainted. They are interested in ransom only.

When a ship is taken by Somali pirates it and the crew are held for ransom. It is in effect a hostage situation. The ship is sailed to one of the bases where the pirates can be supplied with food, water, qat, weapons and ammunition and other resources while the negotiations take place. This is all done very openly with the ship visibly anchored off the Somali coast. The pirates are fully aware that they are relatively secure from any rescue mission being launched directly against them while on the ship. The only alternative remaining to guarantee a secure and safe conclusion to the hostage situation is the payment of the requested ransom.

One striking aspect of piracy along the Somali coast is that despite differences of location and clan, the methodology used for the targeting, attack and capture of ships, the detention of crews,

² The information contained in this chapter is based on the experts knowledge of the country and their contacts and connections for information.

the progress of negotiation, the amounts of ransom demands, the methods of receiving payments and ultimately release of ship and hostages are all identical. Some experts believe that this identical procedures come from a coordination of the pirates activities. Others believe that there is little or no central coordination.

These experts think that the basic operational procedures were organically developed either in Puntland or in Central Region and transferred to other groups along the coast. It is also known that there is a fundamental operational directive, or base code of practice, among the pirates that once a ship has been ransomed and is released that it cannot be further targeted by any other group of pirates.

3.1.2 WHAT DRIVES PIRACY IN SOMALIA?

There are many factors that drive piracy in Somalia. One should not be surprised that piracy has taken root in Somalia given the social upheavals, human hardship, environmental degradation and the entrepreneurial spirit of the Somali. Piracy is flourishing in Somalia as it is a quick way for all involved to earn a large amount of money way beyond any other means of income generation. While the action of piracy involves some risk the benefits far outweigh that risk, a fact indicated by the few arrests made and less deaths and injury suffered by pirates to date.

Poverty, lack of employment, environmental hardship, pitifully low incomes, reduction of pastoralist and maritime resources due to drought and illegal fishing and a volatile security and political situation all contribute to the rise and continuance of piracy in Somalia. This situation will remain so until there is an effective and simultaneous action taken against the pirate trade and an alternative means of income support mechanism implemented to replace it; otherwise criminal activity, in some shape or form, will continue to take priority as a means of generating income among the armed militias of Somalia.

The pirates also firmly believe³ that they have every right and entitlement to attack illegal fishing vessels operating in their territorial waters as their fishing resources are being pillaged daily by international shipping vessels from Asia and Europe. The international community is fully aware that this illegal activity has been going on for nearly seventeen years but has taken no action against it. The pirates believe they are the only option to curtailing this injustice. Equally the pirates did admit that the initial idea of protecting their coast line has been hijacked to the current situation where any vulnerable vessel is a target. Targeting other ships is supposed to highlight the illegal shipping but has now become such a huge international problem that the origins for the initial actions have been forgotten. However, they do admit that humanitarian aid and other supporting commercial vessels should not be targeted for piratical gain.

3.2 REPORTED INCIDENTS

Piracy has been on the increase off the coast of Somalia since 2000. If we look at incidents reported since 2006 we get some interesting data. Between January and April there were 72 pirate incidents reported. Between April and December there were 10 incidents reported. This large difference between the first quarter of the year and the remaining three quarters of the year is often accredited to the anti-piracy work of the Union of Islamic Courts (UIC) who were in the ascendancy in Somalia at that time (June to December 2006) and reputedly clammed down on piracy. While there is a certain accepted level of credence to this it should also be borne in mind that this period coincides with the monsoon period along the East African coast where attacks by the type of skiffs used by the pirates would be impractical and dangerous in the high seas between late April and September.

³ As told to one of the UN Monitoring Group when interviewing imprisoned pirates in Bosasso in October 2008.

Yet in 2007 45 incidents of piracy were reported, (2 in January, 14 in May, 1 in July, 28 in September). In 2008 the statistics reflect a total of 63 incidents in the first nine months, with 51 in the Gulf of Aden, the major shipping lane linking Asia and Europe.

At the time of writing this report pirates had officially hijacked a total of 32 vessels and taken more than 540 crew hostage up to November 2008 with 81 attacks reported. Armed with a selection of weaponry they have fired on a further 21 vessels in unsuccessful attempts to hijack them. The indiscriminate firing on vessels by the pirates has killed one crew member and the use of rocket propelled grenades damaged the hull of a tanker causing minor pollution.

ACTUAL AND ATTEMPTED SHIP HIJACKS OFF SOMALIA, 2006-2008						
	2006*		2007		2008 to 30 th Sept.	
	Actual	Attempted	Actual	Attempted	Actual	Attempted
Gulf of Aden	10		1	12	18	51
Indian Ocean	10		11	20	8	12
TOTAL	20		12	32	26	63

*Break down of actual and attempted attacks for 2006 is not available.

Statistics provided by the International Maritime Bureau, Kuala Lumpur

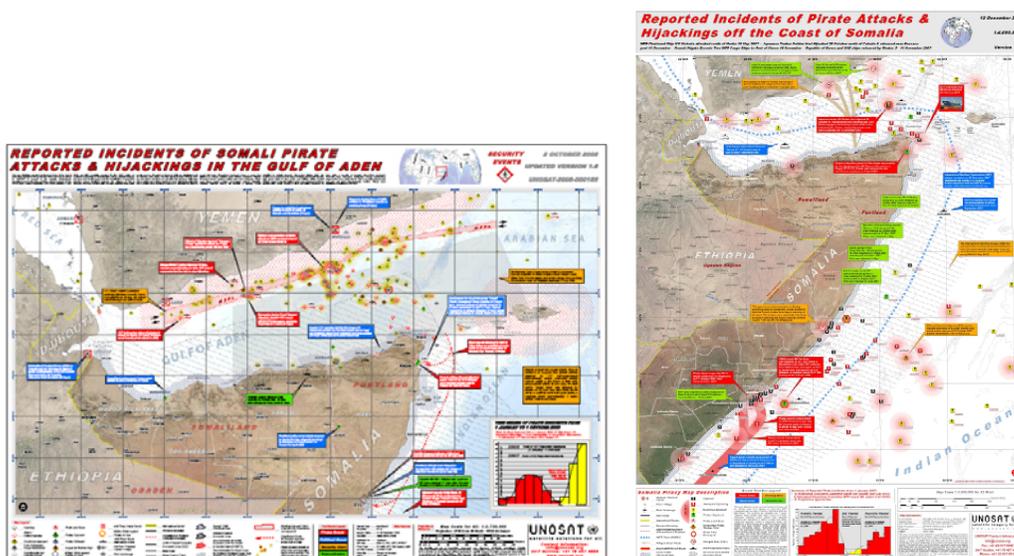
As at 30th September, 2008, Somali pirates were holding 12 ships at gun point for ransom and 259 crew members as hostages.

It has been reported that one crew has died in captivity, apparently as a result of a heart attack.

Types of ships targeted have included general cargo ships, bulk carriers, tankers, ROROs, fishing boats, sailing yachts and tug boats

Based on recent updates from the IMB, 92 attacks on vessels were carried out between January and mid-November 2008, of which 36 were successfully hijacked. Eleven of these attacks were mounted between 10 and 16 November, with 3 vessels hijacked and a further four fired upon.

The following maps show the location of pirate attacks and the type of vessels targeted and taken



3.3 THE GROUPS

There are a number of groups involved in piracy. These revolve around clan and sub-clan lines but are not exclusively so with members from other clans accepted into the groups if they have a particular skill that may be required or they need extra numbers. Pirates also entice *bona fide* fishermen to forego using their skiffs at sea and use them to assist the pirates, who will be paid far more than they can earn at fishing. There are also reports of fishermen being bullied into assisting the pirates who generally have little or no knowledge of the sea.

The most active groups involved in piracy include the following:

- Eyl Isse Mahmuud and Leelkase of the Darood clan
- Garad Omar Mahmuud of the Darood clan
- Hobyo Habargedir (Saad, Ayr, Suleiman) of the Hawiye clan
- Hardheere Habargedir (Ayr, Sarur, Suleiman) of the Hawiye clan
- Mogadishu Habargedir (Ayr) of the Hawiye clan

At present the epicentre of piracy is Puntland where it is penetrating all levels of society including government, including government structures at both senior and junior level. A number of Puntland ministers are suspected of being involved in piracy and its attendant activities.

3.3.1 MANPOWER AND RECRUITMENT

The pirates raise their manpower from the coastal localities of their bases, surrounding villages and other clan members from the interior. Due to the lack of employment there is no shortage of willing recruits for the business. Most of the operatives involved in piracy have very little education and would not find employment with any commercial operation or humanitarian agency except as an armed guard. From information received from a convicted pirate a single armed pirate can earn anywhere from \$6,000 to \$10,000⁴ for an \$US 1,000,000 ransom. This is approximately equivalent to a two to three year salary for an armed guard at a humanitarian agency and much better than a local commercial enterprise would pay. The pirates also encourage fishermen to join their operations with the enticement of payments outlined above. By enticing fishermen to join their gangs they get marine and boat handling knowledge and the use of their skiffs.

It is evident from the numbers of ships hijacked at any one time that there is an almost endless supply of recruits available. These numbers do not include the support groups on land that support the pirates at sea once they have pirated the vessel. These would include local traders supplying food, water, soft drinks, tea, qat and whatever other necessities are required during a long drawn out negotiation.

3.3.2 LOGISTICAL SUPPORT

The pirates rely for logistical support upon the fishing communities where they live or from which they are temporarily operating. These communities provide them with food, water and shelter. Where on board food supplies prove inadequate for the crew and the pirates, provisions are supplied from ashore. Supplies of weapons and equipment (including ladders and grappling hooks) are judged to be easily obtainable whilst the more sophisticated equipment including satellite phones and GPS navigation systems are likely to be the result of investing profits to increase capability.

⁴One captured and tried pirate explained the breakdown of the ransom as he understood it as follows; 20% goes to the bosses of the organisation, 20% investment in future missions (guns, fuel, cigarettes, food etc) 30% to the gun men and 30% to government officials.

Interesting, in terms of other 'victims of Piracy', the pirates are strongly reliant on the traditionally lower caste groups of fisherman to provide technical support to the operations. The pirates from nomadic, land based clans cannot swim and know very little about the ocean. Some are said to receive a basic salary only and some are forced into the work.

While some members and businesses of the communities benefit from the acts of piracy either intentionally or be default, other members of the communities speak out openly and directly against piracy. These include the religious leaders who have condemned piracy and advised their communities not to support this action. They advise people not to be attracted by the wealth of the pirates and have declared that any marriage to a pirate is regarded in their eyes as null and void and therefore breaking strict Islamic law.

3.4 INTELLIGENCE AND TARGETING

When piracy begun in earnest in 2000, the only means of targeting vessels was for pirate skiffs to sit some 50nm off the East coast of Somalia and wait for a suitable (low speed, low freeboard, small crew) vessels to come into view. This still remains a principle means of targeting merchant vessels, whether in the Gulf of Aden or in the Indian Ocean. However, there are also reports of pirates being equipped with GPS and tracking ships through the use of on board navigation information systems. They are also believed to have built up a large network of coastal and port informers who are able to pass on relevant information to them when required.

3.5 PIRATE METHODOLOGY

The most active and renowned pirate bases are scattered along the Indian Ocean coast of Central Somalia and Puntland, Eyl, Hobyo and Haradheere. These bases are well equipped and strongly armed. It is currently beyond the capacity of the local authorities to carry out raids on these bases.

The methodology of the pirate attacks, from transport preparation, weapons preparation, target identification and subsequent hostage negotiation has improved with practice and reinvestment of funds from ransom payments.

Initially pirate attacks were launched from beach heads in open 20' long skiffs⁵, with high free boards and powered by 75 to 85 horse power outboard motors whose range and safety was dictated by the state of the sea, amount of fuel on board and engine power. The most highly regarded outboard motor along the east coast is the Yamaha 85 horsepower outboard motor. This allows a skiff to attain speed of 30 knots in relatively calm seas with four people aboard. More recent reports indicate that these skiffs are now being powered by as much as two 150 hp motors.

These skiffs move about looking for slow moving vulnerable commercial or fishing vessels ideally travelling under 15 knots with a low freeboard. Once the vessel is targeted the skiffs form a two or three pronged attack depending upon the number of skiffs in the attack group. Attacking from a number of directions simultaneously usually allows one of the skiffs to approach a vessel unnoticed and enable a number of armed pirates to board the vessel. Once this is accomplished the crew are easily captured and the remaining pirates came on board. The pirated vessel is then brought to one of the main bases of operation, Eyl, Hobyo or Haradheere, depending upon the origin of the pirate's sub-clan, and negotiations begun for the release of the vessel.

In the late 1990's and early 2000, the number of hijacked vessels was very few, and consisted of an equal representation of fishing vessels, commercial traders or private yachts. When these relatively rare incidences occurred, they were viewed somewhat sensationally and often involved the local support capability of the clan elders to assist in opening negotiations with the correct

⁵ These skiffs are primarily manufactured in the Yemen and cost between \$2,500 to \$3,500 each.

representatives of the identified pirates. In these early cases the priority was the release of the crew as the vessels and their contents were looted by the pirates as part of their *modus operandi*.

In mid 2000 a new breed of piracy was noted, one that started targeting and holding bigger commercial vessels for longer periods and demanding higher ransoms. With little to fear from local or international law, the trade mushroomed incrementally to the state it is today.

The step to this stage was founded on an interim period of targeting fishing vessels accused of fishing illegally in Somali territorial waters. The pirates called themselves 'Somali coastguards' with such names as the Kismayo Volunteer Coastguards and the Somalia Marines for Hobyo and Haradheere and sanctioned their actions by stating they were protecting Somali fishing resources. When the rewards of these actions began to bear financial returns, attacks quickly ranged well beyond Somali territorial waters into the Indian Ocean looking for targets. With the extension of the operational area their *modus operandi* also changed. No longer could beach head launches give them the range they needed for deep ocean operations. The pirates began to use 'mother ships', larger ships or dhows already pirated that could move inconspicuously into the ocean carrying pirates weapons and skiffs. When a targeted ship was spotted the skiffs were released close by and raced towards the targeted ship with pirates armed with automatic weapons and RPG's. These were used to threaten the crew into submission either by waving their weapons or by firing volleys against the bridge or in some cases firing an RPG into the vessel. The pirated vessel was then taken to one of the land bases, and held off-shore during the negotiations.

In late 2007 the pirates realised that the rewards of captured vessels would increase for less danger and trouble if they targeted vessels exiting the choke point in the immediate region, principally the Gulf of Aden as ships exited the Red Sea out of the Suez Canal. This resulted in many more vessels being attacked and increased hijacked vessels. This situation exists until the current time, even with the existence of the Combined Task Force (CTF) warships and the arrival of a number of NATO and EU warships and warships from other countries.

While the pirates still use the 'mother ship' system, many observers now believe that some of the pirate groups combine AIS interception and satellite positioning systems to identify and track their intended target. Others also believe that the pirates are receiving information from "spotters" who are working in ports around the region and providing advanced knowledge on the routes and physical details of potential targeted vessels

Regardless of what system the pirates are using they are still able to hijack ships within the tight operational confines of the Gulf of Aden and amidst the increasing number of foreign warships.

3.6 RANSOM

Ransom amounts demanded by the pirate groups over the past few years have risen from the tens of thousands of US\$ to hundreds of thousands. In 2008 the average ransom is estimated between US\$500, 000 to US\$ 2 million. Estimated income from piracy for 2008 is projected at between US\$18 - \$US 30 million.

Ransom demands are now negotiated directly between the pirates on the seized vessel and the ship owners or companies, using the ship's communication equipment. In most instances ransoms are paid in cash and are delivered to the pirates aboard the seized ship. The cash is usually transported by a representative of the ship owners. Upon receipt of the money, the pirates wait until the money courier has departed before leaving the ship. To reduce the chance of identification, capture and loss of the ransom, they will leave individually, travel separately and divide the money amongst members of the group.

Reports of other payment methods indicate that ransoms are paid to a trusted third representative at a regional location outside of Somalia. Upon receipt of the money, a call is placed to the pirates and the ship and hostages released.

3.6.1 DISPERSION OF RANSOM INCOMES

At present piracy has an air of respectability about it with pirates much sought after due to their new found wealth. At present the revenues for ransoms are being diffused into various sectors of the communities with a sizeable proportion being spent in Puntland. Garoowe, in Puntland, is one place which appears to be benefiting from the new found income with the construction of large homes, and increase in the price of marriage dowry's and more and more expensive vehicles appearing on the streets.

As a result of this spending many ancillary businesses are reaping the rewards of increased income thus improving their livelihood and standard of living. This spending is confined exclusively to Garoowe but penetrates throughout the Puntland economy. With a projected income of nearly thirty million dollars expected from piracy this year the activity dwarfs the Puntland government income of ten million dollars by three times.

No authority can compete with this easy and untaxed income. As long as a favourable size of the ransom money stays within Puntland one can argue that the benefits of piracy is supporting a new and relatively vibrant economy and presumably raising the living standards of a number of business interests, their families and extended families. One of the concerns about this input of easy cash is that it could be used for a more disruptive practice of affecting the outcome of upcoming elections in Puntland where the money could be used to ensure that government representatives favourable to piracy activities or not willing to interfere with their operations remain in power to allow them to continue their activities undisturbed.

3.6.2 THE SOMALI DIASPORA

The expert group can find no evidence that there is any involvement of the diaspora in financing or directly benefiting from piracy.

However, many pirates undertake one or two pirate contracts to raise sufficient money to leave Somalia for a European destination. This usually involves travelling to Addis Ababa in Ethiopia or Kampala in Uganda, which still accepts Somali passports, and from there try and make arrangements to move into Europe either directly or through some of the UAE countries. Some pirates are reported to have been successful in reaching their desired destinations.

There are also interesting reports, as yet unverified, which cast interesting new angles on how the tentacles of piracy spread globally. Some Somali women, aware of who are involved in piracy from their sub-clans, offer to assist the pirate with offers of temporary marriage in order to gain legal papers in their country of residence. In exchange for this assistance the pirate is agrees to pay a fee from his share of the ransom payment.

3.7 PIRACY AND AL SHABAAB

Some countries consider Al Shabaab as a terrorist movement. Al Shabaab is suspected of recent terrorist activities in Somalia. There is much recent discussion among Somali experts as to whether the Al Shabaab (AS) is becoming involved in piracy or not or whether they will take action against piracy if they take control of coastal regions, specifically the notorious northern Puntland locations. This discussion is still underway though there appears to be growing indications from locally sourced reports that there is a developing link between some pirate groups and AS members. This stems from the fact that both groups need the sea for similar objectives, but divergent reasons - uncontrolled access for one to continue plundering passing maritime trade and the other, to allow relatively secure movement of illegal weapons, manpower and other material support.

The idea that the AS may be against piracy is based on the assumption that they would take a hard line against pirates as the (UIC) did in the second half of 2006 when they took control of two of their bases, Haradheere and Hobyo in the Mudug Province and issued declarations against

those involved in piracy to desist or they would impose Sharia law on those found active in piracy. The UIC launched an operation against a pirated vessel in August 2006 which was carrying illegal weapons. It was reported again in 2007 that a small group of UIC entered Haradheere from bases in mid Galgadud and during a four hour occupation stated that they would return and execute by decapitation any person found guilty of piracy. This threat and action has not materialised to date.

Latest reports indicate that the AS may have a different approach to piracy, at least for the moment, as it appears that both the pirates and the AS are sharing resources, training and manpower for similar objectives. Reports suggest that the pirates approached the AS for combat training as a result of two defeats they suffered by French Marines on their land bases. This has involved pirates visiting AS training camps in the south and south central for this upgraded training. Although there is no reported suggestion of this it would be prudent that this training is provided in part by foreign fighters currently with the AS units. If this is the case then the pirates may pick up more advanced training than merely defensive actions but also education in the art of bomb making and also some ideological tenets.

Equally the AS reputedly have approached the pirates for training and knowledge in maritime operations as they seek to become independent of smugglers to carry out their own illegal trade in arms smuggling for their movement. This issue has grown in priority with the capture of the southern port of Kismayo when the AS routed the Marehan from their coastal source of revenue in 2008. The pirates are reportedly paying the AS protection money to be left alone to practice their trade without interference.

It should be noted that at present the AS are in the ascendancy in south/central Somalia and have very recently taken control of all the coastline south of Mogadishu, approximately a fifth of the entire Somali coastline. While there maybe operational synergies between some of the pirates and the AS it is believed that this connection relates only to the pirates of Haradheere who are from the same clans as many of the AS. Due to clan rivalry the pirates north of this location would have very little connections with the AS at this present time.

While most piratical acts are occurring off the coast of Puntland, either into the Indian Ocean or the Gulf of Aden there have been instances of attacks in the past from bases in Mogdishu, Merka and Kismayo. A recent attempt at hijacking occurred on October the 23rd when a small group of skiffs failed to hijack a vessel sailing off the coast of Kismayo. This was the first attack along this stretch for a long time. If the AS are intent on becoming operational in the field of piracy it is quite plausible that they would look for ships carrying specific nationals or cargo to raise the threat level further during the hostage negotiation.

3.8 HUMAN TRAFFICKING AND SMUGGLING⁶

There has been no control over Somalia's borders for more than a decade. In many places the borders are porous and easily breached. This has greatly contributed to the instability and insecurity of Somalia and continues to pose a serious threat to Somalia itself and to neighbouring states, including Kenya, Ethiopia and Yemen.

Human trafficking and smuggling are as endemic as piracy, and has been going on for much longer. Like piracy, human trafficking and smuggling are just another manifestation of the syndicates of organized crime in Somalia and the region.

⁶ Ref: UNDP Project Proposal on *Strengthening Protection and Security in South Central Somalia*, March 2008

3.8.1 SMUGGLING AND TRAFFICKING IN SOMALIA⁷⁸

The overwhelming majority of trafficked persons are women and children, often for the purpose of prostitution. A smaller number of males are trafficked to work under slave-like conditions. Children are also conscripted as child soldiers.

Approximately 20,000 people are smuggled out of Somalia each year. Most are from Ethiopia and South Central Somalia and they cross the Gulf of Aden into Yemen from where many move on to Saudi Arabia and Europe. Many of the smuggled people are asylum seekers (Somalis are accepted as prima facie refugees in Yemen) and illegal migrants. The boats that take them across the Gulf are often inadequate and it is common for passengers to be thrown into the sea in rough seas to lighten the load, or when the Yemeni Coast Guard is spotted.

A smaller number of people travel from Somaliland to Djibouti and then to Yemen by air. This is safer but reportedly much more expensive.

Large numbers of Somalis and Ethiopians are also being smuggled to South Africa. Many travel from Bosaso overland and into Kenya, while an estimated 20-30% travel by sea from Mogadishu to Mombassa.

The human trafficking trade out of Somalia has been described as one of the busiest, most lucrative and the most lethal in the world⁹. Information about the trade is limited but it is known that significant numbers of women and girls are being trafficked inside Somalia and to Saudi Arabia, for sexual exploitation or as domestic labourers.

The absence of border control in most parts of Somalia is clearly a significant factor in facilitating the illegal flow of people to neighbouring states. For example, an estimated 10,000 asylum seekers cross into Kenya from Somalia each year.

3.8.2 REQUIREMENTS FOR CHANGE

Somalia is not a party to either the Trafficking or Smuggling Protocol. In order to assist Somalia develop the necessary capability to tackle smuggling and trafficking (and other forms of organised crime) requires the adoption of an integrated plan of action involving reestablishment of law and order – effective judicial systems, a functioning national police force, infrastructure facilities for the detention of criminal elements, appropriate facilities to cater for the reception and protection of victims of trafficking, establishment of a comprehensive framework for migration management supported with the necessary policies and legislation, appropriate capacity building and provision of relevant equipment and facilities, promotion of inter-agency cooperation among all the agencies with migration-related functions and cross-border agreements with neighbouring states.

⁷ The *Trafficking Protocol* defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation.

⁸ The *Smuggling Protocol* defines smuggling in migrants as the procurement in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person of a State Party into a State Party of which the person is not a national or a permanent resident.

⁹ *HUMAN TRAFFICKING: GREED AND THE TRAIL OF DEATH*, 5/25/2006, AT: <http://www.crin.org/violence/search/closeup.asp?infold=8393>

4 THE LEGAL FRAMEWORK

This chapter summarizes the components of the legal framework for combating piracy off Somalia. The framework consists both of the relevant international law and of the necessary domestic implementation.

The full extent of domestic implementation was not readily available to the experts.

Detailed legal analysis may be found in Appendix 2.

4.1 LEGAL FRAMEWORK AT SEA

The legal framework for combating piracy and related criminal acts at sea involves several international treaties and the necessary implementing legislation.

4.1.1 *TREATIES*

4.1.1.1 The law of the sea

The traditional international law proscribing piracy is contained in the 1982 Law of the Sea Convention and its predecessor the 1958 Geneva Convention on the High Seas, which is itself expressly declaratory of customary international law (collectively, the law of the sea).

4.1.1.1.1 *Definitions*

4.1.1.1.1.1 Piracy

The law of the sea defines “piracy” as:

- 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;
- any act of voluntary participation in the operation of a ship or of an aircraft with the knowledge of facts making it a pirate ship or aircraft; and
- any act of inciting or of intentionally facilitating an act described in the two bullets above.

4.1.1.1.1.2 Armed robbery at sea

Other acts involved in the hijacking of ships off Somalia not meeting the definition of “piracy” are included in the phrase “armed robbery at sea”.

4.1.1.1.2 *Limitations on definition of piracy*

The traditional international law of piracy is not itself adequate to address all factors involved in the criminal prosecution of acts of piracy off Somalia. For example, the traditional law of piracy does not expressly address acts preparatory to piracy or acts which for technical legal reasons may not be provable as piracy but nevertheless may amount to criminal acts by those individuals against ships and the persons on board.

4.1.1.1.3 Right of visit

The law of the sea provides that a vessel suspected of piracy may be boarded without needing the consent of the flag State. That is an exception to the general rule that the consent of the flag State is necessary before a foreign flag vessel on the high seas may be boarded by a foreign warship.

4.1.1.2 Modern Criminal Law Treaties

The more modern and comprehensive international legislation addressing the criminal acts involved in piracy and armed robbery at sea do not include the motive element (private ends vs. political purpose), thus facilitating the use of each instrument in combating the consequences of piracy at sea.

4.1.1.3 Summary

International law provides adequate authority for warships to prevent, deter, and respond to acts of piracy and armed robbery at sea, i.e., on the high seas and in exclusive economic zones seaward of the outer limit of the territorial sea. The international law of piracy does not apply in the territorial sea.

4.1.2 UN SECURITY COUNCIL

4.1.2.1 Piracy

UN Security Council Resolution 1816 (2008) extends to the territorial sea of Somalia the law of piracy and the law relating to armed robbery at sea. However, that authority is limited to those States cooperating with the TFG that the TFG has notified to the UN. So far the TFG has notified the following States: Canada, Denmark, France, Russian Federation, Spain, and the United States of America. The TFG has also notified the UN that the NATO Standing Naval Maritime Group and the European Union Member States naval vessels have been permitted to enter the territorial waters of Somalia for the purpose of their mandated anti-piracy functions. (The authority contained in Resolution 1816 is expected to be renewed before it expires on 1 December 2008.)

4.1.2.2 Arms Embargo

A Security Council general arms embargo has been in place on Somalia since 1992. All States are required to implement a general and complete arms embargo on all deliveries of weapons and military equipment to Somalia until the Council decides otherwise.

There is increasing evidence that the weapons, ammunition and military equipment being employed by the Somali pirates are imported into Somalia in violation of the arms embargo.

Exceptions to the arms embargo are set out in paragraphs 2 and 3 of resolution 1356 (2001), paragraph 5 of resolution 1725 (2006) and in paragraph 6 of resolution 1744 (2007), and reiterated in paragraphs 11 and 12 of resolution 1772 (2007).

Paragraphs 11(b) and 12 of resolution 1772 (2007) provide that States providing supplies of weapons and military equipment, and technical training and assistance, solely for the purpose of helping qualified sector security institutions are exempt from the arms embargo, provided they provide five working days advance notification in each case to the Sanctions Committee and it does not during that period take a negative decision.

Accordingly, efforts to combat the piracy problem on land covered by the exemptions to the embargo will need to advise the Sanctions Committee pursuant to resolution 1772 (2007).

The Security Council is expected to adopt a new resolution on the Somali arms embargo before the end of November 2008.

4.1.3 NATIONAL LEGISLATION

Somalia is not a party to any of the relevant international treaties and does not have any domestic legislation directly applicable to piracy or environmental protection. However, the countries currently providing naval forces to combat piracy at sea off Somalia are parties to one or more of the relevant treaties.

In addition, neighbouring countries such as Djibouti, Kenya, Tanzania and Yemen are also party to all or most of these treaties. Many of these countries have enacted legislation necessary to implement one or more of these treaties; however, the full extent of their legislation implementation is not readily available.

4.1.4 NATIONAL LEGAL POLICY CAVEATS

Notwithstanding the international and domestic law powers that exist, regard must be had to national caveats. These may arise as a result of constitutional issues (e.g., a constitutional or statutory restriction on military personnel engaging in law enforcement activity), legal issues (e.g., restrictive national laws on the use of force or limits on the delay in bringing suspects before a judicial authority) or policy issues (e.g., restrictions on the deployment of Special Forces). These caveats need to be understood and taken into account when planning multi-national operations.

4.1.5 EXTRATERRITORIAL APPLICABILITY OF NATIONAL LAW

For many states, criminal law does not apply beyond the edge of the territorial sea. Clearly a state that wishes to prosecute pirates and other such criminals needs to ensure that the relevant laws apply on the high seas too. If they wish to pursue pirates into another state's territorial sea with a view to prosecuting them in their domestic courts, then the law will need to apply there too.

4.1.6 LAW ENFORCEMENT POWERS

Consideration of issues related to the authority of naval forces at sea to enforce domestic law should be considered separate from those issues related to prosecution.

4.1.6.1 Shipriders/Embarked officers

One framework that may offer a solution to the complexity of enforcement powers and subsequent prosecutions in piracy operations is that of shipriders. This framework involves the embarkation of a detachment of persons, with the requisite law enforcement powers required by the state that is to prosecute, in a warship of another state. The pirates are detained, arrested, and prosecuted under the laws of a single state, notwithstanding that the operation is mounted from a warship of another state.

4.1.7 ENFORCEMENT JURISDICTION

Law enforcement powers (which may be placed in domestic law or judged to be implicit in the international law provisions) will include a power to stop, board, make inquiries, search, seize, detain, and in some cases arrest. The power to detain must include consideration of any national legal requirement to review that detention.

4.1.8 PROSECUTION JURISDICTION

In addition to the requirement to have an offence enacted in national criminal law, states must also be satisfied that those who conduct the counter-piracy operations are

producing not just the pirates but also an evidence bundle that is sufficient to support the prosecution. In some cases, warships will find themselves detaining or arresting pirates without a decision having been made about if or where they are to be prosecuted.

4.2 LEGAL FRAMEWORK FOR TRANSFER OF PIRATES ASHORE

4.2.1 SHIPRIDERS/EMBARKED OFFICERS

Where a shiprider arrangement is in place, transfers of suspects from sea to shore are straightforward: they remain subject to the jurisdiction of the shiprider's government throughout.

4.2.2 TREATY BASES

The law of the sea does not adequately address what to do with persons committing acts of piracy who have been detained at sea. Many believe this gap has been filled by the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA).¹⁰

4.2.3 OPERATIONAL CONSTRAINTS

The retention on board a warship for indefinite periods of persons taken under control (pirates) at sea significantly impairs the ship's ability to carry out its other missions. Accordingly it is necessary that arrangements be in place for the rapid transfer ashore of pirates captured at sea. On 18 November 2008, the Royal Navy transferred to Kenyan police in Mombasa eight suspected Somali pirates interdicted at sea on 11 November in the Gulf of Aden.

4.2.4 LEGAL MECHANISMS FOR TRANSFER ASHORE

4.2.4.1 Treaties or other arrangements

The SUA Convention provides a legal basis to effect the rapid transit ashore of pirates captured at sea where both the flag State and the receiving State are States Parties to SUA. The receiving State Party to SUA is required to make an immediate inquiry into the facts, and to notify other State Parties that might have jurisdiction as to whether it intends to exercise its jurisdiction. The receiving State Party is required to extradite such offenders to another State Party with jurisdiction or to submit the case to its competent authorities for the purpose of prosecution.

Where one or both of the States concerned are not Parties to SUA, ad hoc arrangements would have to be made to effect the transfer ashore.

If the receiving State is unwilling to accept the offender from the ship, the compulsory dispute settlement provisions of SUA are unlikely to provide a timely resolution.

¹⁰ Some believe the 1988 SUA Convention is an inappropriate instrument because it was prepared in a counter-terrorism context. Others point out that the articles of the SUA Convention make no reference to terrorism and that the acts proscribed by SUA include all of those acts committed by pirates off Somalia, and other acts not covered by the traditional law of piracy. The 2005 SUA Protocols are not relevant as they proscribe acts not involved in the hijackings off Somalia, and are not in force.

4.2.4.2 UN Security Council

UN Security Council express endorsement of SUA as a viable counter-piracy consequence delivery mechanism is recommended.

4.2.5 HUMAN RIGHTS CONSIDERATIONS

Nevertheless it must be kept in mind that human rights law is most likely to be engaged when considering issues of transfer ashore, particularly the standard of treatment that a suspected pirate would experience both in custody and at trial. Some human rights treaties will place obligations on States parties to satisfy themselves of adequate treatment before effecting a transfer ashore.

4.3 LEGAL FRAMEWORK ON LAND

4.3.1 TREATIES

The law of the sea only contains a narrow provision dealing with disposition of pirates ashore. It provides authority for the courts of the State that has seized the pirated ship and arrested the pirates on board to decide on the penalties to be imposed on them and action to be taken with regard to the ship.

Modern instruments such as the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, and the 2000 UN Convention against Transnational Organized Crime and its three protocols, apply more broadly to any State party that has the pirates in its custody. Each contains useful provisions relating to mutual legal assistance, assistance in prosecution and extradition, matters not addressed in the law of the sea.

4.3.2 NATIONAL LEGISLATION

Appropriate national legislation must be in place for the prosecution of pirates. The experts were not able to assess fully the adequacy of the national legislation of relevant countries.

4.4 ENVIRONMENTAL PROTECTION

Many pirates believe their actions are justified in response to illegal fishing in Somali waters and in the dumping of toxic wastes in Somali waters. Their actions are not consistent with the applicable international law.

4.4.1 FISHING

The law of the sea accords coastal States sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of its jurisdictional waters. Coastal States have the right to enforce, consistent with the law of the sea, their fishing laws by taking such measures such as boarding, inspection, arrest and judicial proceedings as may be necessary to ensure compliance with their laws and regulations.

4.4.2 DUMPING

The law of the sea defines dumping as pollution of the marine environment by the deliberate disposal of wastes or other matter from vessels. The law of the sea requires the coastal State to adopt laws and regulations to prevent, reduce and control pollution

of the marine environment by dumping and to ensure that dumping within its waters is not carried out without the express prior approval of the competent authorities of the coastal State. The law of the sea also requires the coastal State to enforce its laws and regulations with regard to dumping within its waters.

5 THE COSTS OF PIRACY

5.1 COSTS FOR SOMALIA

5.1.1 THE ECONOMY

Somalis have been traders throughout history – not least along the African coast and across the waters to the Arabian peninsula.

Prior to the onset of civil war that started in 1990, Somalia was a major exporter of agricultural produce (in particular livestock, molasses and fruit) and also sea foods and it was an importer of manufactured goods and petroleum products. Its traders were also active in transit trades of goods and foodstuffs to Ethiopia and northern Kenya.

The civil war has destroyed much of Somali's physical infrastructure, brought an end to the production of fruit and molasses for export and significantly reduced other economic activities as well.

Nevertheless, Somalia's trade, its economy, customs revenue for local and federal government and access to resources necessary for the eventual reconstruction of its economy all remain significantly dependant on unimpeded access to the sea and to international shipping and trade. All of these are threatened by the existence of rampant piracy along Somali coast.

In particular, piracy:

- Imposes additional or 'friction' costs on business, inter alia:
 - Massive increases in the costs of ship insurance, which can run to hundreds of thousand of US\$ dollars per voyage or more;
 - Higher shipping freight costs necessary to persuade international ship owners to deploy ships to the country's ports;
 - Security measures – deploying armed or unarmed security teams to protect ships upon arrival in Somali waters
- Makes Somalia a 'no-go' area for international shipping which in turn,
 - Discourages potential overseas business partners / investors;
 - Reduces port revenues and funds available for investment in port and related transport infrastructure;
 - Reduces incomes of communities dependent on port revenues;
 - Reduces customs revenues for local and central governments.
- Contributes to currency inflation as a result large inflows of US\$ earned by pirates through ransoms paid by ship owners to release hijacked ships.

5.1.2 HUMANITARIAN AID

Civil war has deprived millions of Somalis of their homes and livelihoods. At the same time, Somalia is suffering from four years of recurrent drought considered to be the worst the region has experienced in decades. An estimated three million Somalis are already dependent on regular and unimpeded supplies of humanitarian food aid by sea. WFP transports by sea between 30 and 40,000 tons of food aid into Somalia every month.

The very real risk of a pirate attack has led to additional high insurance premiums for ship owners. It has become impossible for WFP to secure vessels delivering food aid to Somalia ports without securing naval escort.

The cost of maintaining enough warships in the area to provide escort cover for as many ten humanitarian aid shipments each month is enormous and arguably not sustainable in the long term.

5.1.3 GOVERNANCE AND SOCIETY

Not only is piracy a criminal and parasitic activity but it also creates an alternative parallel economy with a revenue that exceeds that currently available to Somalia's regional and local governments.

Unopposed and rampant piracy is therefore corrosive to:

- The credibility and authority of legitimate government and institutions of the State;
- Traditional clan and other societal structures and morals;
- State building and the re-establishment of civil society; and ultimately to the ...
- ... prospects of Somalia's early reintegration into international trade and the international community of nations.

5.2 COSTS FOR REGIONAL STATES

The regional States, defined here as countries from the Horn of Africa and the Arabic Peninsula, have suffered from the continued threat of hijack and the additional costs of shipping (such as insurance premiums and ship security measures). In fact, international ship owners and traders have started to boycott the Suez Canal and Gulf of Aden. This is obviously a cost factor that leads to higher trading costs and reduced trade, for Egypt (and the Suez Canal), the Sudan, Saudi Arabia, Eritrea, Ethiopia, Djibouti and Yemen that will inevitably:

- Result in reduced port and State Customs revenues and
- Economic decline

As of now, it is difficult to assess to what extent piracy revenues have fuelled the emergence and strengthening of alternative, criminal elements in society that will challenge the credibility, authority and influence of both governments and traditional societal structures. Sources available to the experts suggest that contacts already exist between pirates, the Al Shabaab and criminal groupings engaged in human trafficking, drug, migrant and arm smuggling, who make use of the same sea corridor. Chapter 6 explores the effects piracy may have on the region if the international community does not act. These effects are likely to have far greater impact than currently is the case, and cover all areas in the economic, political and social spectrum.

5.3 COSTS FOR THE INTERNATIONAL COMMUNITY

5.3.1 SHIP OWNERS

Ship owners with ships transiting the Gulf of Aden are exposed to:

- Significant additional insurance costs – up to about 0.5 per cent of ship values (which are typically between US10 and 100 million) per transit.
- Demands by ships' crews for bonus payments or 'danger money'
- Demands by ships' crew to be allowed to disembark before entering high risks areas
- The risk that their ships will be hijacked, resulting in
 - Loss of use of the ships and revenue and
 - The need to pay substantial ransoms in order to obtain the safe recovery of ships and crews.
 - Theft of 'easy to carry' ship's equipment

5.3.2 SHIPS' CREWS

The immediate and long term physical and mental traumas suffered by crews on ships which are attacked as well as captured are self evident.

The traumas suffered by ships' crews' families and loved ones at home may be even worse.

5.3.3 NATIONAL GOVERNMENTS

Governments whose citizens are crew members on hijacked ships can come under very considerable public, political and media pressure to do whatever is necessary to secure their early and safe release.

These same governments will often and at the same time incur considerable diplomatic pressure from other governments and the international community *not* to take actions likely to give encouragement to hijackers or the wider criminal fraternity.

Whichever way governments choose to act, the political costs for them in terms of domestic and international trust and credibility are often very high.

5.3.4 WIDER INTERNATIONAL COMMUNITY

Although the international community has universally condemned piracy activity off the Somali coast, the signals it has sent to the pirates, to the Somali federal and regional governments and indeed to ordinary Somalis have been mixed. Inter alia:

- It has tolerated the payment of ransoms by failing to provide support and/or alternatives for ship owners who wish to do otherwise.
- It has sanctioned the deployment of naval warships to the region but failed to give these warships the authority necessary to take robust action against pirates. Indeed the warships of some countries have variously
 - Demonstrated an unwillingness to arrest pirates;
 - Released captured pirates ashore in Somalia; and even
 - Delivered ransom payments to pirates.

The overall impression, even if unjustified, is one of impotence and moral ambiguity and this carries costs of its own in the sense that it will undermine the authority and credibility of the international community, demoralise people of goodwill and empower the criminals and other groups around the world who are intrinsically hostile to civil society and the rule of law.

5.4 CAVEATS

5.4.1 EXPERTS STRESS THE IMPACT ON INTERNATIONAL SHIPPING AND THE WORLD ECONOMY SHOULD NOT BE OVERSTATED.

Most international shipping companies have insurance, which covers ransom payments and loss of profit. If as a result of the levels of pirate activity in the Gulf of Aden ship owners choose or are forced to order their ships to sail from Asia to Europe around South Africa (rather than through the Suez Canal) then the longer durations for each voyage will create a market shortage of ships which will result in increased freight rates and therefore revenue for ship owners. The effect of increased freight rates on retail consumer costs is likely to be small.

5.4.2 EXPERTS ALSO NOTE THAT FROM A SOMALI PERSPECTIVE, THE EFFECTS OF PIRACY ON SOMALIA'S ECONOMY ARE NOT ALL NEGATIVE.

Piracy offers real employment and revenue earning opportunities in a country where civil war has brought almost all legitimate economic activity to a standstill and where federal, regional and local governments appear to regularly lack funds necessary to pay the salaries of its soldiers, police and other employees.

As reported above, piracy, especially in 2008, has generated revenues that reportedly exceed the budget of the Puntland government.

These revenues have clearly provided, in relative terms, a massive and otherwise unavailable cash injection into the local economy.

Although the distribution of this money is unclear, the balance of evidence suggests that most of it stays inside Somalia.

There is anecdotal evidence that as many 1400 Somalis men are now actively engaged in piracy and that revenue from piracy are fuelling a construction boom in parts of Puntland. In Eyl, it is widely reported that a whole support industry has developed to provide logistics and catering services to militias on board the captured ships that are predominantly held in this area.

6 THE COSTS OF DOING NOTHING ON LAND

For nearly twenty years, Somalia has been a failed state, a virtual black hole in the international community, divorced from the world economy, regional and global institutions, and the rule of law. So long as its problems were confined within its borders, the rest of the world could ignore the problem. A new consequence of this problem is international piracy based along the coastline Somalia. This contagion is now spreading externally which has made the coastline one of the most dangerous in the world.

If the problem continues to be largely ignored, Somalia's downward spiral will continue – probably exponentially. This will very quickly have impacts on countries within the region. In the longer term, economic and political instability will surely spread beyond this in ways which will have consequences for the wider Middle East, Africa and in due course the wider world.

6.1 COSTS FOR SOMALIA

- **A parallel criminal economy, driven by piracy** but with links to human trafficking, migrant smuggling, illegal arms and drug trades, money laundering and potentially terrorism will continue to grow, displacing legitimate economic activity and starving the state coffers of the revenues necessary to finance good governance and the rule of law, education, health, welfare and social infrastructure
- **The peace process will be affected** because it cannot take root or succeed in an environment where criminal elements are the predominant influence in society. The economic power of organized crime translates into political power and, therefore, the ability to dictate public policy. This power, once gained, will not lightly be relinquished to nascent state institutions
- **Humanitarian relief operations** within the territory of Somalia will continue to be impeded. The human despair that results will create further space for criminal activity which in turn will impose additional challenges for the humanitarian response in an ever downward spiral.
- **The rampant illegal fishing and the dumping of toxic wastes** in Somali coastal waters will continue to be perpetrated by foreign companies operating under informal and illegal licences issued by warlords and officials acting for personal gain. This will continue to undermine the livelihoods of fishing communities and provide local recruits for piracy.

6.2 THE COSTS FOR THE REGION

- **If international shipping boycotts the region** – specifically the Suez Canal, the Gulf of Aden and ports in Sudan, Saudi Arabia, Eritrea, Djibouti, Yemen and possibly Oman and Kenya – then this will destabilise the region's already fragile economies and fuel regional and unpredictable, political instability.

- **Saudi Arabia's oil and gas exports** from the Red Sea and Yemen's potential LNG exports from the Gulf of Aden will be endangered.
- **Regional States' authority** will be weakened by expanding regional crime networks fuelled by piracy.
- **The risks of an environmental catastrophe** will become ever greater as pirate groups increasingly set their sights on larger ships, often carrying oils and toxic chemicals which, if spilled, could destroy fragile ecosystems in the region. Ships navigating under less than the full control of their crews are dangerous ships.
- **Humanitarian relief to regional countries** (Sudan, Ethiopia, Eritrea and Yemen) will also be hampered if shipping boycotts the region.

6.3 THE COSTS FOR THE INTERNATIONAL COMMUNITY

- **Regional instability could spread** to the wider Middle East and beyond through increased migration (driven by human misery), expanding crime networks and possibly terrorism.
- **The effect on the world economy through increased energy prices** will be dramatic if international shipping boycotts Arabian Gulf's oil and gas exporting facilities.

7 WHAT HAS ALREADY BEEN DONE

As an immediate reaction against piracy, a lot has been done at sea by the international community, but little has been done on land, as it will be shown below. This resulted in a total failure, not only to suppress but even to contain the phenomenon.

7.1 WHAT HAS ALREADY BEEN DONE AT SEA

The international community has done a lot in the legal area, as described in chapter 4 and detailed in the Legal Appendix. This legal work apart, the international community has provided, to assist in combating piracy off Somalia, guidance, information, naval protection and escort for vessels transiting in the area.

7.1.1 IMO GUIDANCE AND INITIATIVES

The IMO has issued guidance to flag States¹¹ and ship owners¹² on measures to take to deter incidents of piracy. These guidance documents are currently under review by the IMO. The IMO has also promulgated a code of practice for the investigation of the crimes of piracy and armed robbery against ships.¹³

The IMO is currently sponsoring the development of an arrangement to facilitate additional cooperation among affected States, particularly those in the East African region.¹⁴

In the wake of the 9-11-01 attacks, the IMO hosted the conference that adopted the International Ship and Port Facility Security (ISPS) Code and Chapter XI-2 to SOLAS that became effective 1 July 2004. Merchant ships greater than 500 tons were required to take significant steps to enhance onboard physical security, which if implemented, would go a long way to deterring or frustrating piratical acts of the sort recently experienced in the Gulf of Aden. It is unknown to what extent the ships recently hijacked by Somali pirates were fully ISPS Code compliant at the time of their capture.

7.1.2 IMB

The Piracy Reporting Center (PRC)¹⁵ of the International Chamber of Commerce's International Maritime Bureau,¹⁶ based in Kuala Lumpur, Malaysia, provides a

¹¹ MSC circular 622/Rev.1, Recommendations to Governments for preventing and suppressing acts of piracy and armed robbery against ships, 16 June 1999, online at <http://www.imo.org>.

¹² MSC circular 623/Rev.3, Guidance to ship-owners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships, 29 May 2002, online at <http://www.imo.org>.

¹³ IMO Assembly resolution A.922(22), Code of Practice for the investigation of the Crimes of Piracy and Armed robbery against Ships, 29 Nov. 2001, online at <http://www.imo.org>.

¹⁴ See IMO Council document C 100/7, 25 April 2008.

¹⁵ See http://www.icc-ccs.org/index.php?option=com_content&view=article&id=30:welcome-to-imb-piracy-reporting-centre&catid=28:home&Itemid=12.

¹⁶ See http://www.icc-ccs.org/index.php?option=com_content&view=article&id=27:welcome-to-the-international-maritime-bureau&catid=25:home&Itemid=16.

communications channel for ships under attack to seek assistance from nearby forces. The main objective of the PRC is to be the first point of contact for the shipmaster to report an actual or attempted attack or even suspicious movements thus initiating the process of response. The main aim of the PRC is to raise awareness within the shipping industry, which includes the shipmaster, ship-owner, insurance companies, traders, etc, of the areas of high risk associated with piratical attacks or specific ports and anchorages associated with armed robberies on board ships. The PRC works closely with various governments and law enforcement agencies and is involved in information sharing in an attempt to reduce and ultimately eradicate this crime.

7.1.3 RECAAP INFORMATION SHARING CENTRE

The Information Sharing Center of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) established, since 29 November 2006, for the first time a formal and permanent platform for government-to-government information exchange on piracy and armed robbery against ships in Asia.¹⁷

7.1.4 NAVAL FORCES

7.1.4.1 States cooperating with the TFG

Operative paragraph 7 of UNSCR 1816 provides for the TFG to give advance notification to the UN Secretary-General of those States that are cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia. So far, the TFG has informed the UN of six such States, NATO SNMG, and the EU.¹⁸

7.1.4.2 CTF 150

CTF 150 is a maritime force drawn from some 16 nations. The number of vessels in the force varies but is typically between 6 and 10. They cover a vast sea area from the straits of Hormuz to the South of the Indian Ocean and their mission is primarily to repress terrorist activity. They may be employed on counter-piracy duties for a limited time in limited areas and will in any case go to the assistance of vessels under attack (Article 98 Law of the Sea Convention). CTF 150 has established a Maritime Security Patrol Area in the Gulf of Aden while the threat persists.

7.1.4.3 NATO Standing Naval Maritime Group (SNMG)

NATO has conducted successful anti-piracy operations off Somalia. NATO has secured permission under UNSCR 1838 for its warships to enter Somali territorial waters with the concurrence of the TFG, both for anti-piracy operations and escort of WFP program chartered vessels.¹⁹ Not all NATO states will accept that this permission is sufficient safeguard in the absence of bilateral arrangements.

¹⁷ See <http://www.recaap.org> and IMO document MSC 85/18/2, 24 Sept. 2008.

¹⁸ TFG letter to UNSG of 1 Sept. 2008 (Canada, Denmark, France, Spain, United States of America); TFG letter to UNSG SOM/MSS/797 of 22 October 2008 (Russian Federation); TFG letter to UNSG SOM/MSS/795 of 21 October 2008 (NATO Standing Naval Maritime Group); TFG letter to UNSG SOM/MSS/854 of 14 November 2008 (EU Member State naval vessels).

¹⁹ TFG letter to UNSG of 21 October 2008, SOM/MSS/795, with NATO note verbale CJ(2008)0688 of 21 October 2008.

7.1.4.4 EU

The EU is assembling forces to conduct counter piracy operations off Somalia. These forces will also undertake WFP escort duties in mid-December 2008. The operation will initially be commanded by a Greek Commodore. The operational headquarters will be in Northwood, London with subordinate commanders and force assets provided by member states.²⁰

7.1.4.5 Other States

Other States that have or have had naval forces in the region on anti-piracy missions include India and Malaysia.

7.1.4.6 WFP escorts

The WFP escort task takes place away from the principal piracy areas and to the South of Mogadishu. The task has been completed by warships of a number of nations including France, the Netherlands, Denmark and Canada. The task is currently being carried out by ships of the NATO Standing Maritime Group One and a Dutch warship. The EU deployment is expected to take over this task in mid-December 2008.

7.1.5 OTHER ADVISORIES

7.1.5.1 Singapore

The Maritime Port Authority of Singapore has issued a shipping circular on the heightened security situation at the Gulf of Aden.²¹

7.1.5.2 MARAD

The U.S. Maritime Administration has recently issued four advisories regarding Gulf of Aden anti-piracy countermeasures.²²

7.1.5.3 UKMTO

The UK Maritime Trade Organisation in Dubai has been designated to receive anti-piracy distress calls for commercial vessels transiting the Gulf of Aden.²³

²⁰ http://www.europa-eu-un.org/articles/en/article_8292_en.htm. On 5 November 2008, the EU Council adopted a Joint Action on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast, document 13989/08, online at <http://register.consilium.europa.eu/pdf/fr/08/st13/st13989.fr08.pdf>, published on 12 November 2008 in the Official Journal of the EU at L.301/33-L.301/37 as Council Joint Action 2008/851/CFSP of 10 November 2008.

²¹ MPA Shipping Circular No. 25 of 2008, 9 Sept, 2008, on line at http://www.mpa.gov.sg/circulars_and_notices/shipping_circulars/sc08-25.htm.

²² MARAD Advisories 2008-06, 5 Nov. 2008, Reporting Procedures For Gulf Of Aden Transit; 2008-07, 5 Nov. 2008, Gulf Of Aden Transit Advisory; 2008-08, 5 Nov. 2008, Gulf Of Aden Piracy Countermeasures; and 2008-09, 7 Nov. 2008, Gulf Of Aden Anti-Piracy Distress Calling Procedures, online at http://www.marad.dot.gov/news_room_landing_page/maritime_advisories/advisory_summary.htm.

²³ For UK guidance on the safety of British merchant ships in periods of peace, tension, crisis or conflict, see http://www.ukho.gov.uk/content/amdAttachments/2008/annual_nms/3.pdf.

7.1.5.4 MARLO Bahrain

The U.S. Navy's Maritime Liaison Office in Bahrain has issued a recent advisory regarding ships transiting Somalia and Gulf of Aden. Anti-piracy distress calls for commercial vessels transiting the Gulf of Aden may also be made to MARLO Bahrain.²⁴

7.1.5.5 U.S. Navy Office of Naval Intelligence (ONI)

The Office of Naval Intelligence's Civil Maritime Analysis Department provides weekly a comprehensive "Worldwide Threat to Shipping Report".²⁵

7.1.5.6 BIMCO

BIMCO is the largest of the international shipping associations, with a membership drawn from a broad representation of stakeholders within the shipping industry, notably from the ship owning community, representing 640 million DWT or about 65% of merchant shipping. With a total membership of approximately 2,600 individual members from 123 countries, composed of ship-owners, shipbrokers and agents and other entities with an interest in or associated with the maritime industries.²⁶ BIMCO has provided to its members only a security advisory on piracy aimed at shipping passing the Gulf of Aden.²⁷

7.2 WHAT HAS ALREADY BEEN DONE ON LAND

7.2.1 INSIDE THE POLITICAL PROCESS

In early October 2008, the Puntland government sent a high level mission to present to the international community in Nairobi the state of emergency regarding piracy in the Puntland coastal waters and coastal areas. The delegation discussed the threat of piracy. The risks for the Puntland government and the attraction of piracy for the Puntland youth and unemployed with embassies and UN agencies.

The SRSG issued a public statement in September 2008 addressing the fact that piracy constitutes a risk for peace and stability in Somalia. On the 3rd of October 2008 summoned a meeting of the diplomatic community in Nairobi and launched his initiative for coordinated international response.

7.2.2 RECONSTRUCTION AND DEVELOPMENT PROGRAMME AND UN TRANSITIONAL PLAN

The action on land is mainly coordinated between the TFG, the authority of Somaliland and Puntland and the United Nations in addition to number of large international NGOs such as CARE, DRC and NRC. The framework document used by the UN has been provided by the so-called UN Transitional Plan (UNTP), which is a common plan for all UN agencies, funds and programmes in Somalia for 2008-9. This is firmly based on objectives set out in the Reconstruction and Development Programme (RDP), the five-year national plan for Somalia (2006-11), which was produced by a Joint Needs Assessment for Somalia carried out by the UN, the World Bank and Somali partners.

²⁴ The MARLO Maritime Advisories for the summer of 2008 regarding the Somali coast and the Gulf of Aden may be found at <http://www.cusnc.navy.mil/marlo/Advisories/summer2008-piracy-advisory.htm>. See also <http://www.cusnc.navy.mil/marlo/>.

²⁵ The weekly ONI report is posted at the National Geospatial-Intelligence Agency's Maritime Safety site: <http://www.nga.mil/portal/site/maritime>.

²⁶ http://www.bimco.org/Corporate%20Area/About/BIMCO_a_century_of_service.aspx.

²⁷ http://www.bimco.org/Members%20Area/News/Security/2008/10/29_BIMCO_Security_Advisory.aspx.

The RDP is built around three pillars:

1. Deepening peace, improving security and establishing good governance;
2. Investing in people through improved social services;
3. Creating an enabling environment for private sector-led growth to expand employment and reduce poverty.

The UNTP has used these pillars as the basis for their planning and has identified 5 overall outcomes which are:

1. Strengthening of key federal, Somaliland and Puntland institutions;
2. Improved service delivery by local governance in selected locations;
3. Improved security and protection under the rule of law;
4. Better access to education and health;
5. Improved food security and economic opportunities (livelihoods)

Many of the agencies, funds, and programmes are currently implementing individual programmes and projects, mainly depending on their physical access to specific geographical areas. They all affect the fight of piracy, in particular outcome 1, 2, 3 and 5.

7.2.3 THE HUMANITARIAN RELIEF

The only action that was carried out linking the struggle against piracy to the humanitarian relief was the WFP vessels escort described above.

7.2.4 HUMAN SMUGGLING AND TRAFFICKING

Some initiatives have already been taken or are planned but cannot be implemented because of the current insecurity and country-wide conflict. The International Organization for Migration (IOM) intends to conduct a baseline assessment of trafficking in Somalia. IOM is also working with the Intergovernmental Authority on Development (IGAD) in East Africa with a view to boosting capacity building, policy, border assessments, etc. A separate project is being developed to determine the extent and the type of cases of trafficking in persons in Somaliland and to support the authorities with establishing an efficient, victim-oriented response.

In addition, the Mixed Migration Task Force (MMTF) co-chaired by IOM and UNHCR whose membership includes OCHA, OHCHR, UNDP, UNICEF, the Danish Refugee Council and the Norwegian Refugee Council, is attempting to develop a rights-based strategy to ensure a comprehensive coordinated response to protection and humanitarian needs of migrants and asylum seekers transiting through Somalia. The MMTF strategy includes short-, medium- and long-term activities, covering the following issues:

- Cooperation among key partners
- Data Collection, analysis and dissemination
- Protection of sensitive entry systems
- Reception arrangements
- Mechanisms for profiling and referral
- Differentiated processes and procedures
- Durable Solutions for refugees
- Durable solutions – Return and alternative migration options
- Addressing Secondary displacement
- Information and Advocacy strategy

These initiatives have the potential to contribute significantly to the reestablishment of some measure of control while providing for protection of vulnerable people. Unfortunately, the current state of emergency is preventing the implementation of many of these initiatives.

7.2.5 BUILDING STATE OF LAW

The International community has launched programmes, projects and activities in Somalia since 1991 on the sustainable development of good governance, rule of law and security, focusing on the erection and development of state institutions, local governance structures, responsible government based on international best practice, the establishment of the judicial chain, including legal frameworks, functioning courts, access to justice, law enforcement reactivation and rehabilitation, training and equipping of police officers, custodial corps and mine action activities.

As such, the international community has not yet addressed piracy as a separate element in its programming. The main reason that the International Community has not been able to tackle piracy at sea, is that the International Community has not addressed piracy on land.

The following recommendations will propose actions in this direction.

8 RECOMMENDATIONS

As it was assessed in the six first chapters of the report, piracy off Somalia is rooted on land. The reason piracy has not been suppressed yet is because it is only addressed at sea in a too restricted manner. To curb piracy off the coast of Somalia needs to combined intervention on both land and sea.

It may be said that without considerable renewed effort from the international community to address the misery and despair on the ground, the fight against piracy and other crime will be difficult if not impossible to win. The following proposals have taken this into consideration and recognize that both “push” and “pull” factors are needed to address the issue.

Their choice was led by three main principles:

- **Support what is already done** by the International Community, the regional states and the Somali themselves. For this reason, some already ongoing actions will be presented here as recommendations by the experts.
- **Explore new ways and means** to address piracy even if some of these recommendations could appear today as not immediately implementable.
- **Identify and take into account the risks** of implementing the proposals.

In some matters, the experts were not able to propose more robust measures because they recognized the limits of their ability to assess their political impact.

The structure of the recommendations was organized along two strands: the four concentric impact geographical circles of the recommendations and the three incremental implementation framework.

- The proposed recommendations can be described as covering four different circles: recommendations that apply only in **Puntland and the remaining coastal area of Somalia**; those that involve the **whole territory of Somalia**, because they depend on the general situation; others will need the cooperation and the commitment of the **regional states**, the main victims of piracy; and lastly, some of them will necessitate an exceptional and common effort by the **international community**.
- Despite the fact that all the proposed recommendations are to be implemented as soon as possible, it is obvious that not all of them will return outcomes in the short term. They are consequently organized in three categories: **short, med and long term impact**.

8.1 CURB PIRACY THROUGH SHORT TERM IMPACT MEASURES

Piracy must be curbed as soon as possible in the interest of Somalia and of the international community as well as for the benefit of the regional states. This requires an immediate firm action on land to reinforce measures taken at sea and to deprive the pirates from the proceeds of hijacking.

8.1.1 IMPOSE LAW AND ORDER ON LAND (PUNTLAND AND REMAINING COASTAL AREA OF SOMALIA)

On the short term, in order to effectively curb piracy ioff Somalia **it is necessary to establish a minimum capability of effective law and order** in Puntland and in the coastal areas of Somalia. This might need an **external security input**. Such quick impact security actions must be part of a broader strategy in Security Sector Reconstruction, as described below.

ENLIST ALL INFLUENTIAL SOMALI ACTORS IN CLOSING DOWN PIRATES’ SHORE BASES.

SANCTIONS AGAINST LEADERS AND INFLUENTIAL BENEFICIARIES OF PIRACY
ESTABLISH INTELLIGENCE NETWORK
REGISTRATION OF SKIFFS
DESTROY SKIFFS WITH MOTORS OVER 50HP
CAPTURE OF "MOTHER SHIPS"
ESTABLISH WITHIN THE SOMALI LAW ENFORCEMENT AUTHORITIES AN EFFECTIVE
RESPONSE CAPABILITY AGAINST PIRACY
TRANSFER CAPTURED PIRATES ASHORE TO REGIONAL STATES
ENABLE OR FACILITATE PROSECUTION IN NEIGHBORING STATES
KEEP IN MIND SOMALI PERCEPTIONS WHEN FRAMING ANTI-PIRACY INITIATIVES
FOREIGN GOVERNMENTS SHOULD NOT SEND MIXED SIGNALS TO THE TFG OR PUNTLAND
GOVERNMENT OR CLAN ELDERS

8.1.2 REINFORCE LAW AND ORDER AT SEA

Action at sea has shown its limitations, but at present they are the only intervention that the international community can implement, cooperating, when necessary, with TFG.

CONTINUE INTERVENTION BY FOREIGN WARSHIPS IN THE SHORT TERM
ESTABLISH SHIPRIDER ARRANGEMENTS
BETTER ON-BOARD PROTECTION AGAINST PIRACY TO SHIP TRANSITING THROUGH THE
GULF OF ADEN
MONITOR SOMALI COAST THROUGH MANNED OR UNMANNED AIRBORNE SURVEILLANCE
ESTABLISH A SHORE MONITORING SYSTEM USING LOCAL COMMUNITIES TO LOOK OUT
FOR BOATS SUSPECTED TO BE INVOLVED IN PIRACY, ILLEGAL FISHING OR ILLEGAL
DUMPING

8.1.3 DISRUPT PIRATES REVENUE

One solution to discourage piracy would either be to disrupt pirates' revenue or to track the ransom they receive. Due to the fact that ransoms are generally not wired but currently paid in used dollar notes, the expert group was not able to propose any solution to identify the pirates. Because the pirates in Somalia only act through hijacking and ransom demands, our strategy must focus on depriving them of the revenue.

INTERNATIONAL COMMUNITY TO DEVELOP CONSISTENT RESPONSE TO RANSOM
DEMANDS

8.2 SUPPRESS PIRACY THROUGH MEDIUM TERM MEASURES

Even if short term recommendations are successfully implemented, piracy will not have been suppressed unless coastal populations are provided with alternative occupation and revenue. Such goals could only be reached through establishing a minimum state of law throughout Somalia which would allow business, trade and other economic activities to flourish. Primary actors in these measures should be the regional community.

8.2.1 INTRODUCE IMPROVED EMPLOYMENT OPPORTUNITIES FOR PUNTLAND AND COASTAL POPULATION

For almost than 20 years the international community has been trying to rebuild the Somali economy. In the aim of suppressing piracy, this reconstruction effort must focus on the coastal areas and in the whole Puntland, to prevent Puntland becoming a pirate state.

DEVELOPMENT OF THE FISHING INDUSTRY IN SOMALIA

BUILDING UP OF LOCAL INFRASTRUCTURE IN SOMALIA COASTAL COMMUNITIES THROUGH LABOUR-INTENSIVE JOBS CREATION

VOCATIONAL TRAINING FOR UNEMPLOYED YOUTH

SUPPORT TO YOUTH GROUPS

ENGAGEMENT WITH SOMALI DIASPORA FOR GREATER SOCIO-ECONOMIC BENEFITS OF SOMALIA

SUPPORT TO PASTORALISTS IN PUNTLAND

8.2.2 ESTABLISH STATE OF LAW IN SOMALIA

The establishment of the state of law in the whole Somalia is a necessary condition for the success of a development initiative in Puntland and coastal areas.

This state of law must progress in parallel with the Security Sector Reconstruction, as an important condition to allow the state to control its security system.

SUPPORT IMO EFFORTS TO ESTABLISH REGIONAL ANTI-PIRACY ARRANGEMENTS

ILLEGAL ARMS TRADE

MEDIA CAMPAIGN

TO STRENGTHEN THE OPERATIONAL CAPACITY OF THE REGIONAL SOMALI LAW ENFORCEMENT AUTHORITIES

STRENGTHENING THE PUNTLAND COASTGUARD

DEVELOPING AND UPGRADING THE CAPACITY OF THE SOMALI PRISON SERVICE.

INCORPORATE PIRACY OFFENSES IN SOMALI LAW

STRENGTHEN THE LEGAL STRUCTURE IN SOMALIA

TAKE INTO ACCOUNT DDR LESSON LEARNED WHEN DISARMING PIRATES

8.2.3 INCLUDE SOMALIA INTO THE POLITICAL, ECONOMIC AND SECURITY FRAMEWORK OF THE REGION

The states in the greatest danger from unchecked piracy off the Somali coast are those of the surrounding region. For this reason they must be involved in the struggle against piracy and do their best to accept, support and respect Somalia as a partner in the struggle for regional political and economic stability, and security.

ESTABLISH/ENHANCE BORDER MANAGEMENT AND PROTECTION SYSTEM

8.3 UPROOT PIRACY THROUGH LONG TERM IMPACT MEASURES

The international community goal is to uproot piracy altogether. For this to happen, the international community will have to be sure that a sustainable state is established in Somalia and it is fully integrated into the community of Nations.

DEFINE A COMPREHENSIVE LONG TERM SECURITY SECTOR RECONSTRUCTION (SSR)
STRATEGY

ACTUALLY INSERT SOMALIA WITHIN THE INTERNATIONAL PRIORITIES

**International Expert Group
on Piracy off the Somali Coast**

Piracy off the Somali Coast

Workshop commissioned by the Special Representative of the
Secretary General of the UN to Somalia
Ambassador Ahmedou Ould-Abdallah

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Final report **Detailed Recommendations**

1. Curb piracy through short-term impact measures
2. Suppress piracy through mid-term impact measures
3. Up-root piracy through long-term impact measures

The contents of this report represent the opinions and views of the experts, and do not necessarily represent the views of the SRSG or any UN agency, government organization and/or civil society group involved in Somalia.

Nairobi, 21 November 2008

Detailed Recommendations

As it was assessed in the six first chapters of the report, piracy off Somalia is rooted on land. The reason piracy has not been suppressed yet is because it is only addressed at sea in a too restricted manner. To curb piracy off the coast of Somalia needs to combine intervention on both land and sea.

It may be said that without considerable renewed effort from the international community to address the misery and despair on the ground, the fight against piracy and other crime will be difficult if not impossible to win. The following proposals have taken this into consideration and recognize that both “push” and “pull” factors are needed to address the issue.

Their choice was led by three main principles:

- **Support what is already done** by the International Community, the regional states and the Somali themselves. For this reason, some continued support for ongoing actions will be presented here as recommendations by the experts.
- **Explore new ways and means** to address piracy even if some of these recommendations may appear today as not immediately implementable.
- **Identify and take into account the risks** of implementing the proposals.

In some matters, the experts were not able to propose more robust measures because they recognized the limits of their ability to assess their political impact.

The structure of the recommendations was organized along two strands: the four concentric impact geographical circles of the recommendations and the three step incremental implementation framework.

- The proposed recommendations can be described as covering four different circles: recommendations that apply only in **Puntland and the remaining coastal area of Somalia**; those that involve the **whole territory of Somalia**, because they depend on the general situation; others will need the cooperation and the commitment of the **regional states**, one of the main victims of piracy; and lastly, some of them will necessitate an exceptional and common effort by the **international community**.
- Despite the fact that all the proposed recommendations are to be implemented as soon as possible, it is obvious that not all of them will return outcomes in the short term. They are consequently organized in three categories: **short, med and long term impact**.

1 CURB PIRACY THROUGH SHORT TERM IMPACT MEASURES

Piracy must be curbed as soon as possible in the interest of Somalia and of the international community as well as for the benefit of the regional states. This requires immediate firm action on land to reinforce measures taken at sea and to deprive the pirates from the proceeds of hijacking.

1.1 IMPOSE LAW AND ORDER ON LAND (PUNTLAND AND REMAINING COASTAL AREA OF SOMALIA)

In the short term, in order to effectively curb piracy off Somalia **it is necessary to establish a minimum capability of effective law and order** in Puntland and in the other coastal areas of Somalia. This might need some **external security input**. Such quick impact security actions must be part of a broader strategy in Security Sector Reconstruction, as described below.

Recommendation 1. ENLIST ALL INFLUENTIAL SOMALI ACTORS IN CLOSING DOWN PIRATES' SHORE BASES.

DESCRIPTION

1. Wherever possible, enlist the vocal advocacy by non-political but influential actors in Somali civil society, the Somali Diaspora and the influential Somali Chambers of Commerce in the UAE and Kenya to support the idea that piracy is unpatriotic and destructive to Somalia's long term future.
2. As political expediency allows, introduce the demand for 'Zero tolerance' for piracy as a necessary qualification for continued participation in the political process in Somalia.
'Zero tolerance' should be assessed by whether or not pirate shore bases continue to exist in areas where the parties have control or influence.
'Political process' is one which strives to be as inclusive as possible and leading towards a stable political settlement in Somalia and the wider region

JUSTIFICATION AND EXPECTED BENEFITS

History shows that piracy can only be eradicated if the pirates' shore bases are closed down. In Somalia, closure can only be enforced in the medium or long term by the Somalis themselves.

There is strong evidence that Somali pirates operating from different clan bases in Haradheere and Hobyo in central Somalia and various locations between Eyl and Bosasso along the Puntland coast share either a common leadership and/or common beneficiaries. The most compelling evidence for this lies in the fact that their modus operandi in terms of attack methodology, treatment of captured crew, levels of ransom demands, negotiating methodology, collection of ransoms and release of ships are all, essentially, identical.

There is considerable evidence, at least circumstantial and anecdotal, that points to the involvement of influential persons in Puntland and, ultimately the TFG.

In recent weeks there have also been media reports that one of the elements of the anti-TFG insurgency in south central Somalia (the Al Shabaab) has reportedly taken an interest in piracy either directly or, and more likely, indirectly by providing protection for pirate shore bases in return for a share of the ransoms extorted from ship owners.

Whatever the reality, it is hard to believe that the major political actors inside Somalia cannot exert real and meaningful influence over the continued existence of pirate shore bases in the areas where they have political influence and/or control.

COSTS AND RISKS

So long as the approach is gradualist, there seems to be little political risk and no financial cost. Ultimately, support or toleration for piracy is an unsustainable position for any credible, political actor – whether an individual, a group or a government.

Recommendation 2. SANCTIONS AGAINST LEADERS AND INFLUENTIAL BENEFICIARIES OF PIRACY

DESCRIPTION

Recommend that the Security Council consider extending targeted sanctions to pirate groups, pirate leaders, financiers and other influential elements who benefit from the proceeds of piracy.

JUSTIFICATION AND EXPECTED BENEFITS

There is evidence that the apparently random nature of pirate attacks could in fact be organised.

The principal benefits would be to provide a disincentive to influential individuals to obstruct or undermine attempts to eradicate piracy and to build legitimate institutions and support systems necessary for good governance in Somalia.

COSTS

Possible short term political costs.

The cost of not addressing this will allow piracy to continue and for ransom to be used for other criminal activities.

Costs of enforcement.

RISKS

Violent reaction by targeted individuals

Recommendation 3. ESTABLISH INTELLIGENCE NETWORK

DESCRIPTION

Establish a dedicated intelligence system directed at penetrating the pirate organisations. This network must be established under the umbrella of an organisation enjoying actual law enforcement or military capability.

JUSTIFICATION AND EXPECTED BENEFITS

Piracy in Somalia is a criminal activity, with relatively loose hierarchical and operational systems. This means that it would be easy to penetrate the organisations to get accurate and substantive information. This is not being done at present due to the meteoric rise of piracy, the lack of a dedicated intelligence system, and the consequent loss of traditional information gathering capabilities due to the political instability and general insecurity in Somalia, which have given rise to a generalised fear of reprisals. Consequently, there is a shortage of accurate and verifiable information even though there is a lot of disjointed and unverifiable information.

Benefits would include:

- More accurate and timely information about current and planned operations involving piracy;
- More accurate information about organisational structures, funding, payment methods and external links;
- More effective targeting of interdictions and preventive operations.

COSTS

- Dedicated international coordinator;
- 8-10 local operatives.
- The projected cost for this operation for 5 years is estimated at \$1.6 Million.

RISKS

- Possibility of deliberate misinformation

Recommendation 4. REGISTRATION OF SKIFFS

DESCRIPTION

All skiffs should be registered, numbered and their coastal base locations written on their side.

JUSTIFICATION AND EXPECTED BENEFITS

The pirates use skiffs to attack targeted vessels. These skiffs are made of moulded fibreglass approximately 25 ft long with a high freeboard. They are powered by outboard motors and have been tracked at doing 30 knots. Due to their light weight, they are easily dragged up on the beach heads or moored in shallow water.

Registering the skiffs and recording other relevant information will make it extremely difficult for registered skiffs to engage in piracy. Any skiff found on the high seas and not registered will be assumed to be engaged in piracy or other criminal activity.

To effectively reduce the mobility and actions of piracy, the most expedient means would be to target the skiffs in a specific number of ways.

- This will very quickly reduce the number of pirate attacks;
- Severely reduce pirate mobility and capability;
- Impose law and order capability at land and sea.

Benefits:

- Potential source of registration income to government.
- Secures and protects skiffs from being illegally used for piracy.
- Allows all skiffs to be tracked and monitored.
- Supports communities against pirate activity.
- If pirates use registered skiffs to attack vessel the base location can be collectively fined or penalised.
- This puts pressure on pirates to move away from using communities as hiding locations thus reducing harm to residents.
- Place pressure on community to report pirate activities in their areas.
- Helps support law and order on land.
- Helps support law and order at sea.
- Promotes central government authority and capability.

COSTS and RISKS

- Needs the establishment of the necessary security agency to carry out the tasks.
- Needs relevant resources and funds for the security agency to operate.
- The initial and running costs are estimated at \$450 000 for 5 years.
- Some of these costs would offset by the income by registration.

Recommendation 5. DESTROY SKIFFS WITH MOTORS OVER 50HP

DESCRIPTION

Destroy or seize all skiffs equipped for piracy, including any outboard engine over 50HP found at sea, drawn up on the beachheads or anchored off beaches. This could be carried out very effectively by local Somali forces and international naval vessels.

JUSTIFICATION AND EXPECTED BENEFITS

The pirates use skiffs to attack targeted vessels. These skiffs are made of moulded fiberglass, approximately 25 ft long with a high freeboard. They are powered by outboard motors and have been tracked at speeds of 30 knots. Due to their light weight, they are easily dragged up on the beach heads or moored in shallow water.

To effectively reduce the mobility and actions of piracy, the most expedient means would be to target the skiffs in a specific number of ways. This will:

- Very quickly reduce the number of pirate attacks;
- Severely reduce pirate mobility and capability;
- Will show government capable of taking action against pirates; and

- Impose law and order capability at land and sea.

The action does not expose any direct danger to life or collateral damage and specifically targets the main resource of pirates.

COSTS and RISKS

- The cost of this action is included in the cost of both the land and maritime operations addressing this issue.
- As the skiffs are also used for fishing, there is the possibility that their destruction may adversely affect livelihoods and incomes (this is an ongoing operation to address the illegal arms trade and piracy).

Recommendation 6. CAPTURE OF “MOTHER SHIPS”

DESCRIPTION

“Mother ships” should be captured, if feasible, and returned to their owners where appropriate. If owners cannot be located, the mother ships should be considered for inclusion into local anti-piracy or fishing patrol initiatives.

JUSTIFICATION AND EXPECTED BENEFITS

“Mother ships” are used as a base from which skiffs are launched far out to sea. These mother ships are pirated ships and are usually dhows, fishing vessels or some other type of craft that looks inconspicuous on the open sea. Because these vessels can blend in at sea, they are able to get close to a targeted vessel without raising suspicions before launching the skiff attack, thus reducing the time available for the targeted ship and crew to take evasive or defensive action.

Benefits include:

- Curtailment of piracy;
- Captured “mother ships” are returned to owners;
- If owners cannot be located, the mother ships can be included in local anti-piracy or fishing patrol initiatives; and
- Promotion of effective government.

COSTS

Enforcement of law and order at sea.

The cost of this action is included in the cost of the maritime operations addressing this issue.

RISKS

Potential loss of or damage to vessels during the recovery process.

Recommendation 7. ESTABLISH WITHIN THE SOMALI LAW ENFORCEMENT AUTHORITIES AN EFFECTIVE RESPONSE CAPABILITY AGAINST PIRACY

DESCRIPTION

Regional Somali police forces

- Support the establishment of a specialist police unit within the regional Somali police forces tasked with developing a land based counter piracy strategy and operational response;
- Provide basic police training(law, procedure, operations) to the established units within the regional Somali police forces;
- Provide basic training in police special operations and attendant procedures;

- Assess needs and provide operational equipment to support front line operations of the units;
- Support the understanding and development of an intelligence based enforcement response to countering piracy;
- Support the development of an inter-agency approach to cooperation in developing and undertaking operations against pirates – MOU or the like. (police, coastguard, Customs);
- Support inter-agency operational training; and
- Support the development of community support networks for police operations against pirates.

Somali coast guard

- Provide basic training (law, procedure, operations) to the Puntland coast guard;
- Provide training in interviewing, report writing, information gathering and record keeping;
- Assess needs and provide the appropriate operational equipment to support Puntland coastguard operations;
- Support the understanding and development of an intelligence based enforcement response to countering piracy;
- Support the development of inter-agency approach to cooperation in developing and undertaking operations against pirates – MOU or the like (police, coastguard, Customs);
- Support inter-agency operational training; and
- Support the development of community support networks for coastguard operations against pirates.

JUSTIFICATION AND BENEFITS

The establishment of a specialised capacity within the Somali police services to respond to piracy will have an immediate and beneficial counter effect upon the illegal activities of those persons and groups engaged in these acts. Through the provision of a uniform training approach, professional and operational standards will be raised in a key law enforcement authority tasked with maintaining law and order.

As a coast guard service exists in Puntland, resources should be directed to develop its operations – both professional and operational to a higher standard of effectiveness, and link their operations with the land based strategy of the police. As a result of this intervention, the Government of Somalia will be able to move effectively in a short time against pirate operations utilising existing structures and resources.

As a result, there will be a well trained, disciplined and operationally equipped police and coastguard service able to respond individually and in coordination on a land and sea enforcement strategy that will impact directly upon illegal pirate operations.

RISKS

The risk to success would include:

- a lack of political will by Somali authorities to support a proactive counter piracy strategy ;
- corruption within government authorities could undermine the programme or delay the implementation process;
- lack of political will by police to set up specialist units targeting piracy;
- lack of political will by coast guard authorities to support a proactive counter piracy strategy;

- inability to identify suitable recruits for the police unit or the coast guard service;
- low levels of literacy amongst officer recruits;
- lack of financial resources to sustain on-going agency operations;
- security situation in the country / regions might not permit access to training and capacity building programmes.

Recommendation 8. TRANSFER CAPTURED PIRATES ASHORE TO REGIONAL STATES

DESCRIPTION

Establish arrangements for the transfer ashore of persons taken under control by naval forces at sea.

JUSTIFICATION AND EXPECTED BENEFITS

The retention on board warships for indefinite periods of persons taken under control (pirates) at sea significantly impairs the ship's ability to carry out its other missions. Accordingly, it is necessary that arrangements be in place for the rapid transfer ashore of pirates captured at sea.

The 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) provides a legal basis to effect the rapid transit ashore of pirates captured at sea where both the flag State and the receiving State are States Parties to SUA.

Kenya's recent agreement to accept Somali pirates for prosecution is encouraging but Kenya's judicial system needs to be supported if additional pirates are to be tried there.

COSTS

The receiving State Party to SUA is required to make an immediate inquiry into the facts, and to notify other State Parties that might have jurisdiction as to whether it intends to exercise its jurisdiction. The receiving State Party is required to extradite such offenders to another State Party with jurisdiction or to submit the case to its competent authorities for the purpose of prosecution.

Where one or both of the States concerned are not Parties to SUA, ad hoc arrangements would have to be made to effect the transfer ashore.

External support for judicial systems will be required.

RISKS

The receiving State may be unwilling to accept the offender from the ship. The compulsory dispute settlement provisions of SUA are unlikely to provide a timely resolution.

Recommendation 9. ENABLE OR FACILITATE PROSECUTION IN NEIGHBORING STATES

DESCRIPTION

Enhance existing legal structures within neighboring States, particularly Kenya, to prosecute, convict and imprison pirates once transferred to shore.

JUSTIFICATION AND EXPECTED BENEFITS

All other States in the region have functioning courts of law, prosecutors, judges, and legislation. Most are also parties to some or all of the relevant international legal instruments. Taken together, there is generally legal jurisdiction and some legal capacity to impose law and order in response to piracy. However, they need

assistance in enhancing their capacity. Kenya, in particular, has demonstrated its willingness to accept Somali pirates and prosecute them but needs additional resources to be more effective if the number of prosecutions and convictions increase.

Another expected benefit is the opportunity to second Somali legal officials to be trained in the prosecution and conviction of pirates.

COSTS

Depending on the state of the law in each State, advice and assistance in drafting, adopting and applying legislation may be necessary, both with respect to domestic legal codes and the ratification and implementation of international legal instruments. It may be necessary to provide on-site operational support to strengthen technical and operational skills of prosecutorial, judicial and other professional staff necessary to carry out the rule of law. There may be a need for improvement in judicial cooperation amongst relevant countries, justice system training, and improvements to criminal justice infrastructure.

RISKS

The recommendation would impose economic and political costs on neighboring States, including potential strains on already overburdened rule of law resources.

Recommendation 10. KEEP IN MIND SOMALI PERCEPTIONS WHEN FRAMING ANTI-PIRACY INITIATIVES

DESCRIPTION

Robust actions (naval or otherwise), should NOT be seen by Somalis as evidence that the international community is anti Somalia, anti Islam and/ or generally indifferent to the safety and well being of ordinary Somali people.

1. On the contrary, every effort should be made to align anti-piracy initiatives with the real interests of ordinary Somalis so that these initiatives can and will be supported by them.
2. The role of the navy task forces off the Somali coast should be extended to include the express protection of Somali interests - in particular the protection of Somali marine resources (and the livelihoods of an estimated 60,000 Somali fishermen) from illegal fishing by foreign fishing boats¹ and the dumping of toxic wastes from overseas.
3. Subject to the points above, the naval task forces should be given more robust terms of engagement against pirates on the sea.

¹ The number of foreign boats fishing illegally off the coast of southern Somalia is reported to be still increasing and includes fishing boats with the following flags: Belize (either French or Spanish-owned purse seiners operating under flag of convenience to avoid EU regulations); France (purse seiners targeting tuna); Honduras (EU purse seiners targeting tuna under flag of convenience); Kenya (Mombasa-based trawlers); Korea (longliners targeting swordfish seasonally); Pakistan (trawlers, but also targeting shark); Saudi Arabia (trawlers); Spain (purse seiners targeting tuna); Taiwan (longliners targeting swordfish seasonally); and Yemen (trawlers).

JUSTIFICATION AND EXPECTED BENEFITS

It is widely accepted that Somali piracy can only be defeated if its shore bases are closed. This will require the active support not just of Somalia's leaders but also its ordinary people.

However, the common strand linking all Somali insurgents is a perception that the international community has been indifferent to Somali sovereignty and the interests of ordinary Somalis. For example:

- The insurgency against the TFG is driven by perceptions amongst Islamists and Somali nationalists alike that it is an illegitimate government imposed by the international community.
- The missile strike that killed the Al Shabaab leader Aden Hashi Ayro (as well as others) in June 2008 provoked intense anger across Somalia even amongst the Somali majority who have no sympathy for Al Shabaab.

If criminals and/or insurgents are given excuses to justify the hijacking of ships for ransom as a legitimate 'political' and/or Jihadist activity then the problem will become exponentially harder to resolve.

Even in recent weeks, the Al Shabaab justified their support to the hijackers of the Ukrainian RORO ship FAINA by alleging that the tanks and other weapons on board were destined for Mogadishu to bolster the TFG and the Ethiopians.

On the other hand, attention to Somali perceptions also suggests that deploying a naval task force that apparently – from a Somali point of view – lacks the willingness to take risks actually weakens the credibility and influence of the international community. This is a constant worry and complaint of Somalis who oppose piracy and want to see it ended.

COSTS AND RISKS

This recommendation produces strategic constraints: namely framing policies in terms which do not unnecessarily upset Somalis may reduce strategic options.

Recommendation 11. FOREIGN GOVERNMENTS SHOULD NOT SEND MIXED SIGNALS TO THE TFG OR PUNTLAND GOVERNMENT OR CLAN ELDERS

DESCRIPTION

Diplomatic representations to the TFG or Puntland Government or clan elders should be consistent with a 'zero tolerance' policy on piracy.

JUSTIFICATION AND EXPECTED BENEFITS

Mixed signals from foreign governments risk undermining the efforts of individuals or groups inside Somalia who may be trying to bring the problem of piracy to an end.

COSTS AND RISKS

Pursuing a 'zero tolerance' policy may incur political costs – for example in a situation where ships' crews' lives are or appear to be at risk

1.2 REINFORCE LAW AND ORDER AT SEA

Action at sea has shown its limitations, but at present they are the only intervention that the international community can implement, cooperating, when necessary, with TFG.

Recommendation 12.

**CONTINUE INTERVENTION BY FOREIGN WARSHIPS IN THE
SHORT TERM**

DESCRIPTION

Counter-piracy operations by foreign warships should be encouraged to continue until such time as national forces can provide maritime security.

JUSTIFICATION AND EXPECTED BENEFITS

These operations are conducted both by individual warships and those of a number of combined naval forces,² and take a number of forms:

- Immediate Assistance: where a warship intervenes in a piracy incident in its immediate vicinity under the duty to render assistance.
- Deterrence: where warships patrol known piracy areas to deter attacks. Experience has shown that pirates will not generally attack shipping if they see a warship.
- Disruption: the boarding of suspected vessels, the confiscation of piracy equipment and (where there is a mechanism for transfer ashore) destruction of the vessel.
- Deliberate counter-piracy operations: the release of hostage vessels and crews, generally through special forces intervention.

Apart from the two operational vessels of the Puntland Coast Guard, there is no domestic law enforcement capacity in the seas off Somalia. In the absence of a domestic capability, the President of the TFG has approached naval powers operating in the region and the UN to request that they conduct counter piracy operations in Somali waters. These operations have been underway for many years and have involved all 4 of the above elements. Although it is difficult to gauge the number of piracy attacks that have been deterred, known results include: the disruption of piracy operations in their early stages, the release of a number of pirated vessels, the capture and destruction of mother ships, the confiscation of skiffs, weapons and equipment and the deaths of pirates who have fired on naval forces.

Counter-piracy operations are limited by the terms of the mission that the ship is given (for instance they may be limited to going to the defence only of ships of their own flag). The absence of regional transfer arrangements and reluctance to repatriate to the warship's flag state mean that pirates must often be allowed to return to Somalia.

COSTS

The financial cost of these operations is substantial and borne entirely by the states that provide the warships.

RISKS

Apart from the personal risk to the naval personnel involved in these operations, the principal risks are presentational. The perception in Somalia (and more widely in the region) is that there are numerous warships in the seas off Somalia and that

² Combined Maritime Forces is the most mature operation, but NATO also conducts operations and (planned) EU.

they are having little effect. Others suspect that the warships are gathering to violate Somali territorial integrity and sovereignty. The reality is that there are a small number of warships covering a vast sea area and doing a great deal to address the symptoms of a problem that they cannot solve, but there is a risk that pirates gain self-confidence from the limited impact of warships on their operations.

Recommendation 13. ESTABLISH SHIPRIDER ARRANGEMENTS

DESCRIPTION

Enter into arrangements (non-binding or binding as required) with regional coastal States to permit embarkation of their law enforcement officials on foreign warships, to exercise their law enforcement powers to board, search, detain, arrest and transfer ashore offenders against coastal State law.

JUSTIFICATION AND EXPECTED BENEFITS

The authority of naval forces at sea to enforce domestic law should be separate from those issues related to prosecution. The concept of shipriders is already in place for counter-narcotics operations in the Caribbean and Eastern Pacific, and for fisheries enforcement in the Western Pacific. It involves the embarkation of a detachment of persons, with the requisite law enforcement powers required by the state that is to prosecute, in a warship of another state. The pirates are detained, arrested, and prosecuted under the laws of a single state, notwithstanding that the operation is mounted from a warship of another state.

Use of shipriders avoids the difficulties posed by national law and policy restricting the authority of the warship's officers and crew to enforce laws at sea.

COSTS

The warship normally provides for berthing, food, medical care and transportation of the shipriders and use of the ship's communications facilities to permit contact with the shipriders' authorities.

The arrangements will need to be negotiated between competent governmental authorities.

RISKS

The coastal State may not have officials with law enforcement powers able to be used at sea or on foreign warships and some states do not accept that the shiprider agreement absolves them of all responsibilities for the treatment of those arrested.

Recommendation 14. BETTER ON-BOARD PROTECTION AGAINST PIRACY TO SHIPS TRANSITING THROUGH THE GULF OF ADEN

DESCRIPTION

To enhance the capacity of the merchant ships transiting the Gulf of Aden, organize protection combining permanent surveillance devices and removable active equipment and staff.

Ships would be equipped with permanent infrared systems, capable of automatically detecting and spotting small fast targets. When entering and leaving the Gulf of Aden, this equipment would be an additional active defence systems. These systems could be made of armed teams and/or of temporarily installed non lethal equipment such as sound or light cannon, or defence hoses.

In the western part of the Gulf of Aden, Djibouti could be a convenient place to embark and disembark such systems. On the eastern part, it would be necessary either to organise this loading and unloading from and to a devoted stationary ship, or to carry out these tasks when in the Straits of Malacca.

JUSTIFICATION AND EXPECTED BENEFITS

Escort by warships is very expensive and can only provide for a small number of merchant ships. Other ships rely on the deterrence effect provided by the presence of navies. However, the capacity of warships to intervene is limited because of the large area of operation.

The installation of permanent surveillance devices on ships can be very useful even when there is no risk of piracy, as anti-collision devices, especially in waters frequented by small fishing, sailing or cruise boats.

Most active defence equipment tends to be too expensive to permanently equip merchant ships. For legal or human rights reasons, ship-owners and unions may be oppose to having weapons permanently on board. For these reasons, removable solutions have to be sought.

COSTS

The cost of a complete surveillance system on expensive ships would be equivalent to the insurance premium of a non protected large merchant ship for a single transit through the Gulf of Aden. A removable active system, including staffing, would cost only about 20-25% of the premium. Ships protected in this way could be subject to significantly lower insurance premium, but it is not known by how much.

RISKS

Such protection will never be 100% safe.

Infrared surveillance devices need good weather conditions, which is often the case in the Gulf of Aden. They also need close attention by the people staffing them.

Using armed teams on board merchant ships raises complicated legal and discipline problems in several countries and could end in severe human rights violations. Using non lethal weapons diminishes the effectiveness of the defence.

Recommendation 15.

MONITOR SOMALI COAST THROUGH MANNED OR UNMANNED AIRBORNE SURVEILLANCE

DESCRIPTION

Maintain an up-to-date picture of activity along the Somali coast by using airborne surveillance. Manned or unmanned airplanes could be based outside Somalia (Aden, Djibouti, Mombasa or Nairobi) and would have to provide a twice a day, night and day information, on the movements of skiffs, boats and ships, ashore and in the near territorial waters.

JUSTIFICATION AND EXPECTED BENEFITS

Airborne surveillance is more effective when used to monitor lines such as a river or a coast line. The range and endurance of modern aircraft, particularly unmanned aerial vehicles (UAVs), would allow the same aircraft to monitor the coast from Djibouti to Mombasa without refueling for up to about 10 hours. Their cruising altitude allows them to remain unobtrusive.

Using infra-red as well as daylight sensors, they are particularly suitable for detecting human activities and identifying small targets. Using sophisticated photo analysis techniques, they

would be able to build and refresh the picture of movements around pirate bases, pirate activities, hijacked ships, pirate logistics and inland links.

Data about movements could be transmitted to naval vessels in the area.

COSTS

The operation of such aircraft is expensive and only available from the richer donor countries. The USA is currently the only country in the region able to operate such aircraft from Djibouti. France could shortly become another player, as could the United Arab Emirates.

This option has no real political cost, once TFG agreement is reached

RISKS

No risks, especially when using UAVs.

Recommendation 16. ESTABLISH A SHORE MONITORING SYSTEM USING LOCAL COMMUNITIES TO LOOK OUT FOR BOATS SUSPECTED TO BE INVOLVED IN PIRACY, ILLEGAL FISHING OR ILLEGAL DUMPING

DESCRIPTION

Monitors should be appointed at strategic points along the coast to watch out for illegal boat movements, whether they relate to piracy, illegal fishing or illegal dumping.

JUSTIFICATION AND EXPECTED BENEFITS

The length of Somalia's coastline makes it very difficult to keep track of the movement of boats and other activities of interest to the authorities. The remoteness of some coastal areas and a shortage of resources, both human and technological, mean that many illegal activities go undetected. Such monitors have been used quite effectively on the offshore islands in the Torres Strait immediately to the north of the Australian mainland.

The purpose of this recommendation is to complement aerial surveillance, the efforts of the Somali coastguard and other intelligence initiatives, by appointing people at strategic locations along the coast to act as lookouts for illegal activities. These people could be integrated into a border guarding service or form part of some other intelligence network.

The benefits of this recommendation will include:

- Enhancement of the intelligence gathering capability and the capability of aerial and other forms of surveillance;
- Help protect Somali fishing rights;
- Strengthen the fight against piracy; and
- Lead to the development of marine ecosystem management capabilities.

COSTS

The main costs consist of the salaries paid to the shore monitors and the provision of communication and portable surveillance equipment such as mobile telephones and binoculars.

RISKS

shore monitors could become targets of criminal elements and subjected to harassment or violent attacks.

1.3 DISRUPT PIRATES REVENUE

One solution to discourage piracy would either be to disrupt pirates' revenue or to track the ransom they receive. Due to the fact that ransoms are generally not wired but currently paid in used dollar notes, the expert group was not able to propose any solution to identify the pirates. Because the pirates in Somalia only act through hijacking and ransom demands, our strategy must focus on depriving them of the revenue.

Recommendation 17. INTERNATIONAL COMMUNITY TO DEVELOP CONSISTENT RESPONSE TO RANSOM DEMANDS

DESCRIPTION

The international community should focus urgently, at government level, on developing a consistent response to the payment of ransom demands

JUSTIFICATION AND EXPECTED BENEFITS

The decision not to pay a ransom demand (or indeed to authorise an attempt to release a ship by military force) is almost always a decision that is too big for ship owners and even governments to take on their own.

Ship owners and governments generally understand that paying ransoms puts others at risk in the future. Nevertheless this logic is far from universally accepted amongst the general public and media.

Somali pirates will regularly force crew members to telephone family members at home to inform loved ones that they are about to be killed or tortured, etc. The families are then encouraged to report this to the media. The objective is to whip up public interest and pressure on ship owners and, ultimately, the ships' crews' governments to do whatever is necessary to secure the safe release of crew members. This can prove devastatingly effective.

Equally, the human pressures imposed upon ship owners - who know that the lives of their crew (and their crews' families) may turn on the decision whether to pay or not to pay – are extreme. Of course, if the ship owners are unable to raise the money then they are relieved of a moral dilemma. However, Somali hijackers invariably tailor their ransom demands to levels which ship owners can afford to pay. The owner of a small Kenyan coaster will be asked to pay a much smaller figure, for example, than a Japanese owner of a large and sophisticated tanker. Ship owners who could pay but who try not to do so are often personally and very intensely put under pressure to pay ransom.

Part of the answer to this might be an education programme pursued at international and national levels to educate the media and the wider public about the greater, longer term risks inherent in surrendering to the demands of hijackers and kidnappers.

Another part of the answer might be formal and/or informal agreements at an international level discouraging or banning the paying of ransoms – something which would make it easier for individual ship owners and/or governments to withstand media or public pressure to do this

COSTS AND RISKS

Pursuing a non-payment policy might incur an emotional "life is more precious than money" backlash which could have political costs.

If a non-payment policy is adopted too visibly, and before there is public and political acceptance to support it, then it may result in embarrassing surrenders which can only give encouragement to the hijackers.

2 SUPPRESS PIRACY THROUGH MEDIUM TERM MEASURES

Even if short term recommendations are successfully implemented, piracy will not have been suppressed totally unless coastal populations are provided with alternative occupation and revenue. Such goals could only be reached through establishing a minimum state of law throughout Somalia which would allow business, trade and other economic activities to flourish. Primary actors in these measures should be the regional community.

2.1 INTRODUCE IMPROVED EMPLOYMENT OPPORTUNITIES FOR PUNTLAND AND COASTAL POPULATION

For almost 20 years the international community has been trying to rebuild the Somali economy. In suppressing piracy, this reconstruction effort must focus on the coastal areas and in Puntland, to prevent Puntland becoming a pirate state.

Recommendation 18: DEVELOPMENT OF THE FISHING INDUSTRY IN SOMALIA

DESCRIPTION

The fishing industry has been prioritized as a real opportunity that brings benefits to the coastal communities as well as the business community in Somalia. This proposal calls for the rehabilitation and professionalization of the fishing industry by enhancing the exploitation of inshore and offshore marine resources and rehabilitation of relevant landing, processing and marketing infrastructure for both the artisanal and industrial sectors. Activities include the introduction of new fishing techniques and equipment, rebuilding of jetties, the establishment of ice and cold-storage factories in harbours, improvement to market information systems, and training of artisanal fishers in post-harvest techniques. Both inshore and offshore fishing are considered to be underexploited by Somalis. The current illegal fishing practices by foreign states in Somali EEZ waters need to be tackled through increased Monitoring, Control and Surveillance (MCS) of marine resources and marketing infrastructure. The proposed strengthening of the Somali coast guard (see other recommendation) is part of this process.

JUSTIFICATION AND EXPECTED BENEFITS

As the origins of piracy in Somalia started with a concern about foreign states fishing illegally in Somali waters, it is appropriate for the international community to prioritize the rehabilitation, management and protection of a Somali-run fisheries sector. This is in fact one of the key areas identified in the Rehabilitation and Development Plan (RDP) for Somalia. Moreover, as pirates use land bases on the coast for their operations, coastal communities in the North, whose mainstay is fishing need to be targeted for livelihood support in order to curb piracy in the short and medium term.

Benefits are expected to be mostly economic by bringing more revenues to the local economy. The beneficiaries include:

- coastal communities by obtaining better prices for their produce as well as receiving additional job opportunities;
- Somali business community earning more (export) incomes.

A range of activities come to mind, but all should be informed by an initial comprehensive fisheries resources, post-harvest and marketing assessment for the artisanal and industrial sectors. This should be undertaken by a team of fisheries experts (FAO Fisheries Department), government agencies and local industry to identify and formulate a plan of action.

COST

The initial resource assessment of inshore and off-shore fishing opportunities (large and small pelagic and demersal fish species) may carry considerable cost, as the last comprehensive marine resources survey was conducted more than 30 years ago. Investment plans for establishing fishing infrastructure (hardware) and capacity building (software) depend on the main findings of the assessment, investment interest from the Somali business community, and access to Somali waters.

Improved post-harvest techniques and marketing opportunities are among the activities focusing on the artisanal sector. These are relatively inexpensive in comparison.

RISKS

A risk is that any investment e.g. infrastructure will stand underutilized as civil insecurity does not allow access to facilities and the means to export.

Another risk is the continued illegal exploitation of Somali waters by foreign fishing vessels, and a failure to establish sufficient MCS.

Recommendation 19, BUILDING UP OF LOCAL INFRASTRUCTURE IN SOMALIA COASTAL COMMUNITIES THROUGH LABOUR-INTENSIVE JOBS CREATION

DESCRIPTION

The aim of the recommendation is to build up local infrastructure in coastal areas of Somalia through labour-intensive job creation that will strengthen community services and facilitate economic development. This includes the construction of roads connecting villages to market centres and building of houses, warehouses and markets, etc. This process includes activities such as the production of local construction materials for building local infrastructure and also capacity building to build, operate and manage new community facilities.

A food-for-work (FFW) or cash-for-work (CFW) component, to be implemented in close collaboration with humanitarian actors is an opportunity to increase interest among target groups to participate.

A local needs assessment at the start of the project should identify the priority activities to be undertaken balancing the top priorities from the local population as well as the ones identified as key to facilitating local economic development.

JUSTIFICATION AND EXPECTED BENEFITS

This proposal goes hand in hand with the proposed development of the fishing industry and finding new economic opportunities in the coastal areas as a key aspect of the drive towards curbing piracy activities on the ground.

Benefits: The proposal is expected to create jobs for hundreds of people, with many of the beneficiaries having gained valuable new skills that can earn them additional income. The new infrastructure will be of great benefit to the community, in the full range of socio-economic terms as business and community services should be more easily accessible.

A FFW or CFW component would add significantly to socio-economic benefits to participating workers and their families.

COSTS

This community development project focuses on Puntland initially, with additional sites identified from the remainder of the coast line under follow-up phases. Over a five year period, a reasonable amount of money will be made available to selected coastal communities annually that will be a welcome injection of cash in the local economy but at the same time does not put too much stress on the local community's economy (additional inflationary drive) and people's wellbeing and social structures. It is expected that about 10 sites will be selected

for a first phase, with a total cost of US\$5-10 million over a 5 year period. Costs for FFW and CFW project needs separate funding from potential donors.

RISKS

- Low income job opportunities are not going to reduce interest in joining high-return piracy jobs.
- Access to coastal communities is difficult due to the security problems and identifying staff providing technical assistance in such an environment will be limited.
- New infrastructure will be used for illegal activities.

Recommendation 20, VOCATIONAL TRAINING FOR UNEMPLOYED YOUTH

DESCRIPTION

This recommendation proposes to set up vocational training programmes in Somalia, starting in Puntland to enhance practical skills of unemployed youth in sectors such as fishing, animal husbandry and agriculture. These programmes will target both sexes. Young women may also receive training in health, pre- and post-natal child care and nutrition.

A Food-For-Training component may be added to feed the students.

JUSTIFICATION AND EXPECTED BENEFITS

A large number of militia involved in piracy activities are unemployed youth without much formal or informal education. Their job prospects are therefore minimal, or in other words are limited to serve as militia men or security guards for which they are perhaps overqualified. Education levels are low, especially for the generation that should have gone to school after the civil war broke out in 1990. Subsequently, this proposal calls for a vocational training programme that will train large numbers of local youth. By improving the skills basis, it is expected to increase their chances to find employment in one Somalia's traditional livelihoods and turn their backs on illegal activities such as piracy.

The benefits are expected to be socio-economic due to access to income by trainees and trainers, growth of the local economy, a curb on illegal activities such as piracy and potentially an improvement of pre and post-natal care and survival rates of mother-and-child.

COSTS

This programme needs support from local colleges and technical experts in setting up a training programme in different areas of the country. The programme should cost about US\$10-15 million over a 5 year period. These costs include the following:

- Trainers to be recruited locally and be trained to lead individual training programmes;
- Training courses to be developed, adapted to the local situation;
- Youth to be targeted through an information campaign;
- Training programme to be run on a daily basis;
- Regular technical and management support from the experts

RISKS

- The security situation may not allow for a large training programme to be run in Somalia.
- The scale of the programme is too small or economic gains are too small to have a real impact on proposed objective to reduce illegal activities in Somalia.

Recommendation 21. SUPPORT TO YOUTH GROUPS

DESCRIPTION

Support must be considered for Youth Groups in order to ensure that they desist from piracy and other criminal activity through the introduction of more active and rewarding Youth Group activities. This will mean improving Youth Group organisations and the activities they provide and the introduction of support for long distance learning and qualification.

Current Youth Groups are largely ignored by the International humanitarian organisations and poorly supported and consist of personnel far older than would be normally attached to the age of a youth. They are mainly formed to try and win some tender and contain little organisational skills.

JUSTIFICATION AND EXPECTED BENEFITS

There needs to be a concerted effort to form and support youth groups involving youth from 12-17 years old. If the real youth are targeted these youth groups can attain their stated aims and will assist in forming expanding attitudes among the youth. These groups need to be supported in a number of activities; the formation of sports leagues with suitable rewards that are supported annually, the introduction of leadership courses, assistance in distance learning programmes and the introduction of a type of Boy Scout organisation. The system should emulate or follow similar group systems practiced in other Islamic countries.

Older youth groups (18-22 years) should be guidance in areas such as conflict resolution, community awareness, community assistance programmes and community policing, and assistance with accessing distance learning courses.

Benefits

A correctly managed and operated youth group system can attain the following:

- Expose youths to activities promoting challenge and competition.
- Develop activities among the youth.
- Expose them to new opportunities, ideas and thought.
- Provide assistance to youth development and advancement.
- Develop leadership and competitive capabilities.
- Assist in protecting the youth from idleness.

COSTS

- Financial assistance for the formation of a dedicated group to design, formulate and manage the youth system.
- Development of youth centers.
- Provision of equipment to attain goals.

Projected costs for at approximately 5 years are \$4 million.

RISKS

- Will be condemned by both local and religious leaders;
- Will be usurped by older persons.

Recommendation 22. ENGAGEMENT WITH SOMALI DIASPORA FOR GREATER SOCIO-ECONOMIC BENEFITS OF SOMALIA

DESCRIPTION

The proposal aims at promoting international cooperation and participation of the Somali Diaspora in the social and economic development of countries of origin, by supporting the channeling of their human, financial and social resources, and by identifying synergies

between the communities of origin and of destination. Co-funding of selected activities is possible through a micro-credit/ grant scheme.

JUSTIFICATION AND EXPECTED BENEFITS

It is widely acknowledged that migrants play an important role as potential development agents in strengthening cooperation between home and host societies through the following means: *human capital*, i.e. the know-how and professional skills migrants acquire through training and working experiences, and transfer from origin to destination country and vice-versa; *financial capital*, i.e. the income, remittances and savings migrants transfer to the communities of origin; and *social capital*, i.e. the social and working relations and the network of migrants' associations, which fosters the bridge-function of migrants.

A scoping exercise will aim at mapping and assessing interest and resources of Somali expatriates, either individual or associated. They will be invited to point out their possible interest in supporting diaspora initiative and projects. The registration of Somali diaspora and associations into a database will include the identification of entrepreneurial and/or social projects and tentative target areas in Somalia. For the sake of focusing on the area affected by piracy, priority will be given to Puntland. Needs assessments will be conducted among local (business) communities as well, in order to assess their priority sectors and investment opportunities. A preliminary matching and call for/ evaluation of proposals will be followed by selection of partners/ sponsors.

Co-funding to the entrepreneurial or social project will be made possible but cannot exceed 1/3 of the project overall budget and can be granted upon evidence of other 2/3 co-funding. Proposed co-funding will range between US\$5,000 up to maximum US\$30,000 and will be regulated by a grant agreement. Evaluation will be carried out by independent local and international service providers. Countries targeted for their large Somali migrant populations are: Italy, Canada, UK, Kenya, Australia and USA.

Training and business development services is also available to selected projects, in order to address lack of specific skills of both migrant-entrepreneurs and their partner-managers, responsible for running the SME in Somalia. Priority will be given to use available capacity in the Somali local and diaspora community.

This proposal should include a component that supports the empowerment of women and their active role in initiatives and entrepreneurial projects that foster socio-economic development and reduce poverty in their countries of origin.

COSTS

Depending on the scope and size of the exercise, outreach to Diaspora in different countries, total amount of funds available for grants/ micro-loans, and ability to train people in different skills, staff to be recruited in Somalia and in destination countries the project may cost between 2-5 US\$ million.

RISKS

The Somali Diaspora is already heavily involved with keeping people in Somalia alive through remittances and support to local businesses. Due to good linkages with family, sub-clan and other clan members, there is little need for outside assistance to facilitate this process. Availability of the micro-loan and/or grant component will attract a lot of attention but lead to a marginal increase in sustainable businesses on the ground, and its effect on socio-economic status of Somalis will therefore be minimal.

Recommendation 23, SUPPORT TO PASTORALISTS IN PUNTLAND

DESCRIPTION

This proposal includes support to pastoralists in Puntland as the geographical focus for livelihood support to curb piracy. This focuses on the livestock sector as the mainstay of the economy – through improved livestock health services, improved livestock water supply through rehabilitation of water points, maintenance and rehabilitation of boreholes, increase value-added processes in the processing and marketing channels, access to credit, improved marketing information, and the conservation and preservation of feed.

Given the current situation of four years of recurrent drought, it may be opportune to add a small stock component (goats and chickens) in the relatively short-term, as a means to improve household food security among those members of the household that when the head of household has migrated with the livestock to areas with permanent sources of water.

JUSTIFICATION AND EXPECTED BENEFITS:

As Puntland is the geographical focus of pirate activities in Somalia, the proposed intervention provides support to the pre-dominant livelihood in the North East, which is pastoralism. It is believed that this type of technical assistance will reduce pressures on pastoralists to engage in unlawful survivalist strategies, of which piracy and support to pirates is one.

The socio-economic benefits from these interventions are real, with a clear improvement in pastoralists' resilience in the face of drought and finally, improving nutritional status among their families. It is expected that if these interventions are successful, the dependence on food aid would decrease significantly.

COSTS

This programme for supporting the mainstay of the Somali society should be implemented over at least a 5 year period, and probably longer as the support to strengthen local structures responsible for oversight and capacity building takes time. An initial assessment should identify appropriate economic opportunities. The study would be undertaken by international and national technical experts, and representatives from pastoralists, business community and relevant government counterparts. Over the 5 year period, annually about 2US\$ million (10 million total) should be made available, of which about US\$500,000 the first few years could be singled out for enhanced marketing potential for Somali livestock in the region.

RISKS

Improving lives of pastoralists may have little effect on the occurrences of piracy along the coast.

The US\$10 million allocated to this exercise over 5 years will not have a great effect on the pastoralist sector as the contribution is marginal in comparison to the size and problems. On the other hand, the absorption capacity of development aid by Somalia is currently low and therefore one should start relatively small, and only expand once the initial interventions are a success.

The security situation in Somalia will prevent the implementation of critical parts of the proposed interventions and therefore be a failure.

2.2 ESTABLISH STATE OF LAW IN SOMALIA

The establishment of the state of law in the whole of Somalia is a necessary condition for the success of a development initiative in Puntland and coastal areas.

This state of law must progress in parallel with the Security Sector Reconstruction, as an important condition to allow the state to control its security system.

Recommendation 24. SUPPORT IMO EFFORTS TO ESTABLISH REGIONAL ANTI-PIRACY ARRANGEMENTS

DESCRIPTION

Support the effort of the IMO to conclude and implement a sub-regional arrangement concerning the repression of piracy and armed robbery against ships in the Western Indian Ocean, the Gulf of Aden, and the Red Sea, including the establishment of Operational Coordination and Information Sharing Centers.

JUSTIFICATION AND EXPECTED BENEFITS

The IMO organized a sub-regional meeting on piracy and armed robbery against ships in the Western Indian Ocean, Gulf of Aden and the Red Sea area in Dar es Salaam, United Republic of Tanzania from 14 to 18 April 2008. The purpose of the meeting was to enhance the level of awareness of governments in the region on issues relating to piracy and armed robbery against ships; to start a process of capacity-building to deal with related matters; and to prepare a draft regional arrangement to address the issue. The meeting prepared a draft memorandum of understanding concerning the repression of piracy and armed robbery against ships in the region, subject to further editorial and legal review and translation by the IMO, for onward transmission to national authorities and consideration by the IMO Council.

On 14 November 2008, the IMO Council endorsed the action of the Secretariat to convene, in the context of IMO resolution A.1002(25), a high-level meeting in Djibouti in January 2009, to conclude the regional arrangement. Once effective, the MOU is expected to enhance the ability of participants to:

- Take measures to repress piracy and armed robbery against ships
- Embark law enforcement officials (shipriders) on patrol ships or aircraft of other participants
- Facilitate coordinated, timely and effective information flow among the participants to enhance operational coordination
- Collect, collate and analyze incident information reported by participants
- Facilitate the provision of assistance between participants
- Facilitate review of national legislation for the prosecution, conviction, and punishment of those involved in acts of piracy and armed robbery against ships.

COSTS

Funding for participation in the meeting, and implementing its outcomes will need to be identified.

RISKS

None.

Recommendation 25. ILLEGAL ARMS TRADE

DESCRIPTION

There is a need for the international community to begin taking actionable steps immediately to reduce, if not eliminate, the illegal arms trade which has been moving unhindered through Somalia for the past eighteen years and which has contributed to the rise of piracy.

JUSTIFICATION AND EXPECTED BENEFITS

A UN Security Council resolution in 1992 placed an arms embargo on Somali which has largely been un-enforced, even with special groups charged with monitoring this activity making regular reports on the subject. This knowledge is not actively acted upon. As a result there has been a constant and largely unimpeded, stream of illegal weapons ranging from small arms to

anti-aircraft missiles transiting through Somalia. The availability of weapons contributes to the arming of pirates and the escalation of criminal activity.

This trade has allowed the Somalia conflict to continue almost unabated, in various forms, for the past eighteen years. Militia and terrorist groups have no problem in purchasing arms or re-arming when required.

More alarming, the Somali illegal arms not only stops at Somalia but has crossed the borders into Kenya, Uganda, Ethiopia and Sudan. This has fuelled many acts of violence including tribal clashes, rising armed crime and rebel groups.

If this trade is not effectively or professionally countered it will continue to stretch and stretch the law and order capabilities of many neighbouring countries and contribute to the potential of rising insecurity.

BENEFITS

There are many national and regional benefits associated with the reduction or elimination of the illegal arms trade in Somalia.

- Reduction or end of conflict and piracy in Somalia.
- Reduction or elimination of a regional arms trade.
- Reduction of armed crime in neighbouring countries.
- Reduction of many levels of violence perpetrated throughout the region.

COSTS

- Implementation of an effective enforcement anti-illegal arms trade system to take immediate legal and jurisdictional action against the purveyors of this trade.

RISKS

- Persons identified in this trade may take shelter in countries not willing to extradite them for prosecution.

Recommendation 26, MEDIA CAMPAIGN

DESCRIPTION

The establishment of a coordinated media campaign alerting coastal communities and pirates of progress under this plan (including actions at sea and legislative development).

The campaign includes such activities such as: engagement in existing information dissemination systems, including local and international radio services, local print media, TV, mobile phones.

JUSTIFICATION AND EXPECTED BENEFITS

The full advantage of this initiative will not be realised unless the pirates themselves and the wider community are aware of its existence.

The benefits will include:

- Greater community awareness may lead family groups to discourage their members from joining pirate groups;
- Fewer young Somali males being attracted to a pirate career;
- Those already involved may be discouraged from engaging in further such activities;
- Agencies that are contributing to this initiative can see tangible results.

COSTS

- Information operations manager;
- \$250,000 for a year.

RISKS

- Failure to reach targeted communities;
- Communities' response to the campaign is disinterested;
- Backlash of communicating wrong messages;
- Potential loss of credibility due to overstating success.

Recommendation 27 TO STRENGTHEN THE OPERATIONAL CAPACITY OF THE REGIONAL SOMALI LAW ENFORCEMENT AUTHORITIES

DESCRIPTION

There exists within the Somali regions, police forces mandated with the maintenance of law and order. At present these institutions are very weak, subject to poor training, inconsistent leadership and under resourced to carry out their role. This is a larger, longer term but fundamentally essential component of capacity building in Somalia if piracy and other forms of lawlessness are to be addressed effectively.

Building upon the existing UN and bi-lateral assistance programmes, this proposal will address police standards, professionalism and operations through the provision of capacity building training in the law, police procedures, integrity and professional standards and daily operations. It will commence with an assessment of current police training facilities, syllabus training needs and operations. From that will flow the development of syllabus, training and staff deployment. Concurrent with this process will be an assessment of police operational needs with respect to equipment, uniforms, communications and transport to be delivered as part of the overall approach to developing the police agencies of Somalia into an effective force for community service.

There exists in Puntland a Coast guard service with a mandate for search and rescue, fisheries protection and law enforcement. Other regions of coastal Somalia are without a coast guard service, and this proposal addresses the needs of these areas. In the first instance support would be provided to the Governments to realise its coastal strategy for Somalia. There would be a requirement to identify where a coast guard presence was most needed and commence the process of establishing its operation viz recruitment of staff for a coast guard service, basic training, the law, procedure, operations, information gathering and the like. There is also the need to provide these newly established operational units with the appropriate equipment to enable them to perform their mandate.

JUSTIFICATION AND EXPECTED OUTPUTS

As a result of this intervention, Somalia will have the capacity to continue to develop a well trained, disciplined and operationally equipped police and coastguard service, able to respond individually and in a coordinated land and sea enforcement manner that will strengthen the rule of law within Somalia, impact directly upon criminality in general and move to sustainably curb illegal pirate operations.

COSTS

The expert group was not able to evaluate the cost of this recommendation.

RISKS

The risk to success would include:

- a lack of political will by Somali authorities to support the development of the regional police services
- corruption within government authorities undermines the programme or delays implementation progress

- a lack of political will by police and coast guard authorities to support a programme of capacity building and development
- an inability to identify suitable recruits for the police and coastguard services
- lack of financial resources to sustain agency operations
- low levels of literacy amongst police and coast guard officer recruits
- security situation in the country / regions might not permit access to training and capacity building programmes

Recommendation 28. STRENGTHENING THE PUNTLAND COASTGUARD

DESCRIPTION

To provide support for the expansion of the Puntland Coast Guard Services. This will include providing training to the coastguards, purchasing appropriate marine and land support equipment and the installation of acceptable management and project coordination.

JUSTIFICATION AND EXPECTED BENEFITS

The private company Puntland Coast Guard Service was formed in 2002 and awarded a tender by the Puntland authorities to patrol and secure the seas off the coast of Puntland to protect licensed fishing vessels. These boats paid a fee for this protection which was divided 51/49% respectively between the Puntland authorities and the Puntland Coast Guard Service. The tender was awarded to an international company for 2005 to 2008 but this company was not successful and the tender was awarded again to the Puntland Coast Guard Services in 2008.

This time the conditions are more serious. There is no income from fishing licenses due to the high rate of piracy in the region, so the Puntland Coast Guard Services needs additional resources to improve its training and increase and improve its operational capabilities. At present it has one 30 meter ex-Japanese patrol boat which can do 30 knots full speed. This is supported at sea by a slower supply ship which carries fuel, food, water etc. A third boat is used to patrol known coastal areas from where criminals attempt human trafficking runs to Yemen.

To date the Puntland Coast Guard is the only operation which has successfully attacked a pirated ship and freed the crew and hostages without incident to the crew or ship. The only way to successfully and consistently tackle piracy off the coast of Somalia is to allow Somalis to do the work.

EXPECTED BENEFITS

- Provides an effective and consistent means of combating piracy off the coast of Somalia;
- Reduces acts of piracy;
- Reduces human trafficking in the region;
- Allows commercial fishing to return to Somalia;
- Provides an income from that fishing to be reinvested in coastal security;
- Promotes and creates a capable Somali deterrent to the problem of piracy;
- Provides employment and *esprit de corps*.

COSTS

The investment cost in supporting this current operation and providing for its effective expansion is minimal compared to the costs currently being expended on international and regional efforts to combat piracy.

- Three more patrol craft capable of doing 30+ knots at sea and carrying a crew and marine force of approximately 20 persons;
- Two extra supply boats and relevant operational equipment;

- Training location and provision of small three man expert marine operations team;
- Necessary land based equipment;
- Necessary Communications;
- Supporting management capability;
- The system can become self sufficient and supporting once legal commercial fishing returns to the coastline.

RISKS

- Armed factions will steal equipment;
- Guards may decide to use marine knowledge and become pirates themselves;
- Coast guards may use equipment to attack ships and hold for ransom;
- Revenues for the state from fishing licenses end up in individual hands rather than in state coffers.

Recommendation 29, DEVELOPING AND UPGRADING THE CAPACITY OF THE SOMALI PRISON SERVICE.

DESCRIPTION

There exists a prison system in the regions of Somalia, in varying standards of condition and operating standards. The first step in this proposal will be to undertake an assessment of existing facilities and identify those to receive assistance. Concurrent with this activity will be to discuss with regional authorities existing and expected prison facility requirements. A costed proposal for a building programme to address the needs of key, identified facilities to bring them to accepted international standards. In step with the physical upgrade of buildings and detention centres, a training programme to upgrade the professional skills of prison officers will be delivered that will provide leadership training to prison managers and senior managers on prison management and instill in prison officers the international standards and norms of human rights and prisoner management. The assistance programme will also support the introduction of an efficient prison records system, act to improve conditions for vulnerable groups in prison, with a particular focus on children, young people, women, the aged and the mentally ill.

JUSTIFICATION AND EXPECTED OUTPUTS

Current prison facilities in Somalia vary from region to region, both in number and in the standards of their facilities. To support other capacity building initiatives in the rule of law sector there is a need to evaluate the existing prison facilities in each region and support the development of identified facilities to accepted international standards. As a result each region will have a secure, functioning and well managed prison facility capable of supporting the rule of law and the needs of the community they serve.

COST OF THE RECOMMENDATIONS

The expert group was not able to evaluate the cost of this recommendation.

RISK

The risk to success would include

- a lack of political will by Somali authorities to support a prison development programme
- a lack of political will by within existing prison services to set adopt change and reform
- corruption within government authorities undermines the programme or delays implementation progress
- lack of financial resources to sustain on-going prison facility operations to the new established procedures

- low levels of literacy amongst prison officer recruits
- security situation in the country / regions might not permit access to training and capacity building programmes

Recommendation 30. INCORPORATE PIRACY OFFENSES IN SOMALI LAW

DESCRIPTION

Draft and secure adoption under Somali national and/or regional domestic laws of effective anti-piracy legislation, including necessary international legal cooperation provisions (mutual legal assistance, extradition) to allow effective and timely transfer of pirates to neighboring or willing other States to be prosecuted, convicted and imprisoned once pirates are transferred to shore, providing basis for imposition of rule of law against pirates.

JUSTIFICATION AND EXPECTED BENEFITS

Somalia has only rudimentary courts of law, prosecutors, and judges, and its legal code with respect to piracy is both incomplete and badly outdated. It is party to few international legal instruments relevant to the problem. Creating a legal basis for Somali national and/or regional governments to cooperate with neighboring and relevant other States in the effective prosecution of piracy is essential to reasserting law and order in response to piracy.

COSTS

Advice and assistance in drafting, adopting and applying legislation will be necessary with respect to domestic legal codes. It will be necessary to provide on-site operational support to strengthen technical and operational skills of prosecutorial, judicial and other professionals necessary to carry out the rule of law. Temporary, outside legal professionals may need to be brought in the short run both to carry out rule of law functions, and to mentor Somali counterparts.

RISKS

None.

Recommendation 31. STRENGTHEN THE LEGAL STRUCTURE IN SOMALIA

DESCRIPTION

Build necessary legal structures within Somalia to enable relevant national or regional governments within Somalia to prosecute, convict and imprison pirates once transferred to shore, providing basis for imposition of rule of law against pirates.

JUSTIFICATION AND EXPECTED BENEFITS

Somalia has only rudimentary courts of law, prosecutors, and judges, and its legal code is badly outdated. It is party to few international legal instruments relevant to the problem. Creating a functioning legal system, that is able effectively to dispense justice in a timely way, is essential to the reinstatement of the rule of law, thereby reasserting law and order in response to piracy.

COSTS

Advice and assistance in drafting, adopting and applying legislation will be necessary, both with respect to domestic legal codes and the ratification and implementation of relevant international legal instruments. It will be necessary to provide on-site

operational support to strengthen technical and operational skills of prosecutorial, judicial and other professionals necessary to carry out the rule of law. Temporary, outside legal professionals may need to be brought in the short run both to carry out rule of law functions, and to mentor Somali counterparts. There will be need to make possible judicial cooperation amongst relevant countries, justice system training, and improvements to criminal justice infrastructure.

RISKS

Substantial economic and political costs place serious strains on nascent or overburdened rule of law resources. Such an effort should only be undertaken as part of a larger effort to rebuild State civic institutions that are mutually supporting.

Recommendation 32. WHEN DISARMING PIRATES, TAKE INTO ACCOUNT LESSON LEARNED BY THE INTERNATIONAL COMMUNITY IN DDR STRATEGY

DESCRIPTION

Disarmament, demobilization and demobilization is a well established discipline in crisis management. Some of the lessons learned on other theatres deserve to be taken into account when disarming pirates:

- Guarantee the security of people you disarm;
- Break the links between pirates;
- Reward giving up weapons by providing them with adapted jobs, only few of previous pirates being included in the security sector, and in different services/units.

JUSTIFICATION AND EXPECTED BENEFITS

DDR can be a dangerous stage of a crisis exit when not properly planned, staffed and managed. The international community, notably DPKO, enjoys a considerable amount of experience in this matter. Even if not all the rules apply to the pirates, many of them do.

COSTS AND RISKS

Well planned, staffed and managed DDR operations are expensive and remain risky.

2.3 INCLUDE SOMALIA INTO THE POLITICAL, ECONOMIC AND SECURITY FRAMEWORK OF THE REGION

The states in the greatest danger from unchecked piracy off the Somali coast are those of the surrounding region. For this reason they must be involved in the struggle against piracy and do their best to accept, support and respect Somalia as a partner in the struggle for regional political and economic stability, and security.

Recommendation 33. ESTABLISH/ENHANCE BORDER MANAGEMENT AND PROTECTION SYSTEM

DESCRIPTION

Strengthen the Somali government's capacity to monitor and protect its external borders (both sea and land). This will include:

- The necessary legislative provisions, including immigration act and regulations;
- Providing operational guidelines to border control officers, including their powers of arrest and detention;
- Capacity building for officers (policies, the law, procedures, relevant regional and international instruments, etc);
- Promoting internal inter-agency and cross border cooperation;
- Development of intelligence gathering and analysis; and

- Provision of essential equipment such as communications and computerization.

JUSTIFICATION AND EXPECTED BENEFITS

An effective border management system is an essential element of good governance and will contribute to development and security. The fact that people can engage in sea piracy and use land bases from which to operate indicates that border monitoring is either absent or ineffective. The purpose of this recommendation is to:

- strengthen the capacity to monitor and protect the borders,
- promote cooperation between the domestic agencies with a role in border protection – immigration, customs, coast guard, law enforcement, national security, etc; and
- ensure that other important players, particularly those within the region, are engaged in this process through the exchange and sharing of intelligence and joint interdiction operations.

The expected benefits include:

- enhanced capacity to monitor the movement of pirates and would be pirates;
- greater emphasis on prevention of piracy; and
- development/promotion of regional cooperation arrangements, leading to greater effectiveness in rooting out piracy and engaging the regional powers generally in developing the country.

At the same time

- Secondary benefits include an enhanced capacity to deal with other forms of organised crime including people smuggling, trafficking in human beings, weapons smuggling, etc.

COSTS

The costs associated with this recommendation will include:

- Passing the necessary legislation;
- the development, printing and distribution of operational guidelines;
- a large capacity building component.

RISKS

The risks would include:

- corruption within government authorities undermines the programme or delays implementation progress
- security situation in the country / regions might not permit access to training and capacity building programmes
- a lack of political will by Somali authorities to prioritize a border management programme

3 UPROOT PIRACY THROUGH LONG TERM IMPACT MEASURES

The international community goal is to uproot piracy altogether. For this to happen, the international community will have to be sure that a sustainable state is established in Somalia and it is fully integrated into the community of Nations.

Recommendation 34. DEFINE A COMPREHENSIVE LONG TERM SECURITY SECTOR RECONSTRUCTION (SSR) STRATEGY

DESCRIPTION OF THE RECOMMENDATION

Determine the objectives, the means and procedures to create a new Security Sector for Somalia, adapted to the needs, the financial means and the political strength of the state. This strategy will include the short and medium term actions previously proposed in this document, and will fit them into the general state of law reconstruction.

Such strategy should particularly determine the needs for international security input necessary to safely initiate the process: police or military troops; police or military seconded officers; police or military trainers. It will then determine the way of staffing, equipping and funding this Security Sector, as well as the legal framework that will keep it under the control of a still weak state.

Having this done, the SSR strategy will organize the transition between the international security support and the full autonomy of the country in this matter. This strategy will respect the rule according which a constant balance must be kept between the strength of the Security Sector and the ability of the political level to control it.

JUSTIFICATION AND EXPECTED BENEFITS

The experts widely agree on the idea that nothing could be done in any matter in Somalia without increasing notably the security. For this reason they issued short and medium term recommendations that could deal, as quickly as possible, with urgent questions regarding piracy. But Security Sector issues can become dangerous for weak countries when not comprehensively addressed. It's the reason for the recommendation of such strategy.

On the other hand, the experts also recognized that the failure of Somalia is such that it is unlikely it could reestablish any Security Sector without the support, not only in funds and in means, but also in staffing, from other countries.

Such strategy must also be a tool to refrain the country from acquiring useless and/or dangerous capacities. It appears for instance vain and hazardous to provide this country with armed forces, as the main problem of Somalia is not to defend itself. On the contrary, Somalia needs a strong and mobile internal police, adapted border and Coast Guard forces as well as, when the economy allows, a transport and surveillance air component – which does not need to be a military one - adapted to the wideness of the county.

COSTS

Despite the fact that it is not proposed to build armed forces, Somalia will not be able to enjoy any security autonomy before being capable to equip and maintain a 10 000 service/policemen Security Sector, for at least \$50 million a year.

But much higher will be the price of the international security presence, whatever its form would be. Political cost first, as usual in this case, although recourse to a regional security input could make the problem easier. Financial costs too, even if regional forces could appear to be less expensive. In any case, such foreign support will be funded – if not equipped – by the international community, that is to say the richest countries.

RISKS

The first risk of the rebuilding of a security sector was already experienced in Somalia: the risk that well trained and well equipped policemen or coast-guard could disappear and form new militias. For this, reason, as soon as the state is not able to “guard the guards” by its own, an international security support is essential.

Indeed there will be obvious risks for this international component of the Security Sector Reconstruction, as long as the local forces have not reached a minimum cruise speed. These risks could be minimized by a perspicacious choice of the contributing countries and through an adapted communication strategy with the population, the armed groups and the neighboring countries supporting them.

But as in all SSR action, the main risk will arise during the transition from the international support to the full security autonomy. At this time the state could be threatened both by a too weak Security Sector enable to protect it and by a too strong one, which could be non obedient to the political power.

These risks are the main reasons not to engage in building security units without including their reconstruction in a careful strategy, combining security and political expertise.

Recommendation 35, ACTUALLY INSERT SOMALIA WITHIN THE INTERNATIONAL PRIORITIES

DESCRIPTION OF THE RECOMMENDATION

Put Somalia among the priorities of the international community, in terms of political support, economic and development assistance, security

JUSTIFICATION AND EXPECTED BENEFITS

As this question is mainly political and beyond their competence, the experts will not elaborate on it. But it appeared to them that, for reasons they do not have to contest, the lack of interest of the international community for this country fired back against one of the most sensitive part of their economy: sea trade. Lessons must be learned.

**International Expert Group
on Piracy off the Somali Coast**

Piracy off the Somali Coast

Workshop commissioned by the Special Representative of the
Secretary General of the UN to Somalia
Ambassador Ahmedou Ould-Abdallah

Nairobi 10-21 November 2008

Final report
Legal Framework

1. The Legal Framework at sea
2. The Legal Framework for Transfer Ashore
3. The Legal Framework on Land
4. Environmental Protection

The contents of this report represent the opinions and views of the experts, and do not necessarily represent the views of the SRSG or any UN agency, government organization and/or civil society group involved in Somalia.

Nairobi, 21 November 2008

The LEGAL FRAMEWORK of the STRUGGLE AGAINST PIRACY off SOMALIA

1 THE LEGAL FRAMEWORK AT SEA

1.1 INTERNATIONAL LAW

1.1.1 PIRACY

1.1.1.1 1982 Law of the Sea Convention (LOSC)¹

The LOSC includes eight articles on piracy: articles 100-107. Article 100 places a broad duty on states to cooperate to the fullest possible extent to repress piracy on the high seas and beyond the jurisdiction on any state: that latter is taken to mean areas such as the Antarctic where there is no coastal state rather than areas where the coastal state is unable as a matter of practice to exercise jurisdiction. Article 101 defines piracy² and although not all states are party to the LOSC, the definition is universally accepted.³ Article 105 gives states the power to seize a pirate ship, to arrest those on board and to seize the property on board.

1.1.1.1.1 Pirate Ships.

Article 103 provides: "A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act." This definition provides a basis for operations targeting inchoate piratical acts and piracy prevention because it permits the interdiction of vessels intended to be used to commit piratical acts. Thus, vessels apparently outfitted for piracy (e.g., possessing grappling hooks, rocket propelled grenades, unregistered small arms and automatic weapons) may be subject to boarding, search, and seizure under international law in the same manner as those that have completed piratical acts or that

¹ The text of the LOS Convention may be found at http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf. There are 156 parties to the LOS Convention as of 25 September 2008.

² (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 the 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).

³ See articles 14-21 of the 1958 Geneva Convention on the High Seas, which is expressly declaratory of customary international law.

have themselves been seized by pirates. See also the discussion of the Right of Visit in subparagraph 1.1.1.3.

1.1.1.2 1958 High Seas Convention⁴

The definition of piracy is fundamentally the same in the High Seas Convention as in the LOSC.

1.1.1.3 Right of visit

Article 110 of the LOS Convention permits a warship to board a foreign ship when there are reasonable grounds to suspect that the ship is engaged in piracy or is without nationality. (Article 22 of the High Seas Convention provides similar authority for ships suspected of engaging in piracy.) Article 92 of the LOSC (and article 6 of the High Seas Convention) provides that “ships shall sail under the flag of one State only”. Customary international law provides that ships that are not registered in a State, and thus are not entitled to fly any flag, are ships without nationality (or stateless). Ships without nationality found seaward of any State’s territorial sea are subject to the jurisdiction of any State. The skiffs used by Somali pirates are not registered in any State and are not entitled to fly the flag of any State, and thus may be boarded seaward of any State’s territorial sea under the authorities related to pirate vessels, stateless vessels, or both.

1.1.2 1988 CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION (SUA)⁵

In 1988, under the auspices of the IMO, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation was concluded. It was negotiated following the hijacking of the cruise ship *Achille Lauro* in light of the uncertainty whether the acts of the PLO hijackers amounted to piracy, as the private ends motive was missing.

The SUA Convention, *inter alia*, requires States Parties to criminalize a number of acts that appear to exist in the various hijackings off Somalia. In particular, article 3 defines SUA offenses to include any person who unlawfully and intentionally (a) seizes or exercises control over a ship by force or threat of force or any other form of intimidation; (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; (g) injures or kills any person, in connection with the commission or the attempted commission of any of these offenses.

Any person also commits an offense if that person (a) attempts to commit any of the offenses; or (b) abets the commission of any of the offenses perpetrated by any person or is otherwise an accomplice of a person who commits which is an offense; or (c) threatens, with or without condition, as is provided for under national law, aimed at compelling a person to do or refrain from doing any act, to commit the offense in (b) above, if that threat is likely to endanger the safe navigation of the ship in question.

As noted below, the SUA Convention provides a detailed legal framework to support post-seizure investigation, prosecution, and, when appropriate, extradition.

⁴ The text of the High Seas Convention may be found at http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_high_seas.pdf. There are 65 parties to this convention. Piracy is defined in article 15.

⁵ The text of the SUA Convention may be found at <http://www.admiraltylawguide.com/conven/suppression1988.html>. There are 149 parties to the SUA Convention as of 31 May 2008. Some believe the 1988 SUA Convention is an inappropriate instrument to combat piracy because it was prepared in a counter-terrorism context. Others point out that the articles of the SUA Convention make no reference to terrorism and that the acts proscribed by SUA include all of those acts committed by pirates off Somalia, and other acts not covered by the traditional law of piracy. The 2005 SUA Protocols are not relevant as they proscribe acts not involved in the hijackings off Somalia, and are not in force.

1.1.3 UNTOC

The UN Convention on Transnational Organized Crime⁶ requires all States Parties to criminalize a broad range of criminal activity, including participation in an organized criminal group, laundering of the proceeds of crime, corruption, and obstruction of justice, as well as “other serious crimes” defined as those crimes that are transnational, committed by an organized criminal group (i.e., three or more individuals), and subject to at least four years imprisonment upon conviction. Piracy, and other accompanying forms of crime, would in most cases fit within the scope of the convention and, as such, is subject to the Convention’s comprehensive and powerful provisions on international cooperation (law enforcement cooperation, joint investigations, mutual legal assistance, extradition, transfer of criminal proceedings and sentenced persons). These international cooperation provisions are in many cases available even in the absence of bilateral legal arrangements.

1.1.4 OTHER CRIMES

To the extent that evidence indicates that interdicted pirates may also be involved in illicit drug trafficking,⁷ human trafficking,⁸ migrant smuggling,⁹ or firearms smuggling,¹⁰ other criminal law conventions or protocols may provide additional authorities. Each of these instruments requires States Parties to criminalize specific conduct, and incorporates the legal remedies and forms of cooperation provided by the instrument. With respect to illicit drug trafficking, the great majority of States Parties have enacted domestic legislation of extraterritorial application to deal with the problem of drug smuggling by sea.

1.1.4.1 _____ UNSC Resolutions 1816, 1838 and renewal of 1816

1.1.4.1.1 Piracy - Resolutions 1816, 1838 and renewal of 1816

UNSCR 1816, 2 June 2008, encourages states to work to repress piracy and armed robbery in the seas (both high seas and territorial seas) off Somalia. It also decides that:

“States cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary General may:

“(a) Enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law; and

⁶ The text of the UNTOC and its protocols may be found at <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> and at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>. There are 147 parties to UNTOC as of 26 Sept. 2008.

⁷ The text of the 1988 Vienna Convention may be found at <http://www.unodc.org/unodc/en/treaties/illicit-trafficking.html>. There are 183 States Parties as of 14 March 2008.

⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁹ Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime.

¹⁰ Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.

“(b) Use, within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery.”¹¹

UNSCR Resolution 1838, 7 October 2008, *inter alia*, reinforces resolution 1816.¹²

Unless renewed, UNSCR 1816 expires on 1 December 2008. The Council, in operative paragraph 9 of resolution 1838, expressed its intention to review the situation with a view to renewing the authority in paragraph 7 of resolution 1816 for an additional period upon request of the TFG. In addition, the Secretaries-General of the UN and the IMO have also expressed their support for renewal of resolution 1816.¹³

1.1.4.1.2 Arms Embargo on Somalia

Security Council resolution 733 (1992) imposed a general and complete arms embargo on Somalia. For the purposes of establishing peace and stability in Somalia, all States are required to implement immediately a general and complete arms embargo on all deliveries of weapons and military equipment to Somalia until the Council decides otherwise.¹⁴

There is increasing evidence that the weapons, ammunition and military equipment being employed by the Somali pirates are imported into Somalia in violation of the arms embargo.¹⁵

Exceptions to the arms embargo are set out in paragraphs 2 and 3 of resolution 1356 (2001), paragraph 5 of resolution 1725 (2006) and in paragraph 6 of resolution 1744 (2007), and reiterated in paragraphs 11 and 12 of resolution 1772 (2007). Paragraphs 11(b) and 12 of resolution 1772 (2007) provide that States providing supplies of weapons and military equipment, and technical training and assistance, solely for the purpose of helping qualified sector security institutions are exempt from the arms embargo, provided they provide five working days advance notification in each case to the Sanctions Committee and it does not during that period take a negative decision.

Accordingly, efforts to combat the piracy problem on land covered by the exemptions to the embargo will need to advise the Sanctions Committee pursuant to resolution 1772 (2007).

The Security Council is expected to adopt a new resolution on the Somali arms embargo before the end of November 2008.

1.2 DOMESTIC LAW

1.2.1 IMPLEMENTATION OF INTERNATIONAL CONVENTIONAL OBLIGATIONS

It is important that State obligations and rights under international conventions relevant to piracy be effectively translated into domestic law. This section details how this would occur with respect to different international conventions. In general, the LOSC and High Seas Convention

¹¹ The text of UNSCR 1816 may be found online through link at http://www.un.org/Docs/sc/unsc_resolutions08.htm.

¹² The text of UNSCR 1838 may be found online through link at http://www.un.org/Docs/sc/unsc_resolutions08.htm.

¹³ IMO press briefing 49, 20 October 2008, online at <http://www.imo.org>.

¹⁴ The text of UNSCR 733, 23 January 1992, is available online at <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/010/92/IMG/NR001092.pdf?OpenElement>.

¹⁵ Report of Panel of Experts, 27 October 2003, annexed to UN doc. S/2003/1035, 4 Nov. 2003, paras. 69, 141-148.

provisions on piracy do not explicitly require States Parties to enact domestic legislation criminalizing acts of piracy. However, enacting such legislation would seem to be required to enable States Parties to carry out their obligations to “cooperate to the fullest extent possible in the repression of piracy on the high seas.”¹⁶

Each of the other relevant international conventions requires States Parties to enact domestic legislation implementing their provisions.¹⁷ Many States Parties, particularly in the African region, have not done so.

1.2.1.1 Piracy

Although the LOSC imposes a duty on states to repress piracy and provides some powers of enforcement, many states will require national domestic legislation to implement the LOSC piracy provisions and most will require a specific piracy offence in their national criminal law if they are to prosecute pirates in their own courts. Likewise, States should consider whether their domestic law is sufficient to take action against inchoate piratical acts and vessels outfitted for piracy and intended to be used to commit piratical acts.

1.2.1.2 SUA

Article 5 of the SUA Convention requires States Parties to enact domestic legislation to make the offenses established under the Convention punishable by appropriate penalties which take into account the grave nature of those offenses. Article 6.1 requires each State Party to take such measures as may be necessary to establish its jurisdiction over these offenses when they are committed (a) against or on board a ship flying the flag of the State at the time the offense is committed; (b) in the territory of the State including its territorial sea; or (c) by a national of that State. Article 6.2 permits a State Party also to establish its jurisdiction over these offenses when (a) it is committed by a stateless person whose habitual residence is in that State; or (b) during its commission a national of that State is seized, threatened, injured or killed; or (c) it is committed in an attempt to compel that State to do or abstain from doing any act. Article 6.4 of the SUA Convention requires each State Party to take such measures as may be necessary to establish its jurisdiction over the offenses in cases where the alleged offender is present in its territory and it does not extradite him to any of the State parties that have established jurisdiction over the offenses. It is not clear how many of the 149 State Parties have enacted domestic legislation to implement these obligations.

1.2.1.3 UNTOC

As noted above, the UNTOC requires State Parties to criminalize a broad range of criminal activity, including participation in an organized criminal group, laundering of the proceeds of crime, corruption, and obstruction of justice, as well as “other serious crimes” defined as those crimes that are transnational, committed by an organized criminal group, and subject to at least four years imprisonment upon conviction.

National legal policy caveats:

Notwithstanding the international and domestic law powers that exist, regard must be had to national caveats. These may arise as a result of constitutional issues (e.g., a constitutional or statutory restriction on military personnel engaging in law enforcement activity), legal issues (e.g., restrictive national laws on the use of force or limits on the delay in bringing suspects before a judicial authority) or policy issues (e.g., restrictions on the deployment of Special Forces). These caveats need to be mapped and taken into account when planning multi-national operations.

¹⁶ Law of the Sea Convention, article 100; 1958 High Seas Convention, article 14.

¹⁷ 1988 SUA articles 5-6; TOC article 5-6.

1.2.1.4 Extraterritorial applicability

For many states, criminal law does not apply beyond the edge of the territorial sea. Clearly a state that wishes to prosecute pirates and other such criminals needs to ensure that the relevant laws apply on the high seas too. If they wish to pursue pirates into another state's territorial sea with a view to prosecuting them in their domestic courts, then the law will need to apply there too.

1.2.1.5 Law enforcement powers

Consideration of issues related to the authority of naval forces at sea to enforce domestic law should be separate from those issues related to prosecution. One framework that may offer a solution to the complexity of enforcement powers and subsequent prosecutions in piracy operations is that of shipriders. This framework, already in place for counter-narcotics operations in the Caribbean and Eastern Pacific, and for fisheries enforcement in the Western Pacific, involves the embarkation of a detachment of persons, with the requisite law enforcement powers required by the state that is to prosecute, in a warship of another state. The pirates are detained, arrested, and prosecuted under the laws of a single state, notwithstanding that the operation is mounted from a warship of another state.

1.2.1.5.1 *Enforcement jurisdiction*

Law enforcement powers (which may be placed in domestic law or judged to be implicit in the international law provisions) will include a power to stop, board, make inquiries, search, seize, detain, and in some cases arrest. The power to detain must include consideration of any national legal requirement to review that detention.

1.2.1.5.2 *Prosecution jurisdiction*

In addition to the requirement to have an offence enacted in national criminal law, states must also be satisfied that those who conduct the counter-piracy operations are producing not just the pirates but also an evidence bundle (case package in USCG parlance) that is sufficient to support the prosecution. In some cases, warships will find themselves detaining or arresting pirates without a decision having been made about if or where they are to be prosecuted.

2 THE LEGAL FRAMEWORK FOR TRANSFER ASHORE

2.1 INTERNATIONAL LAW

2.1.1 PIRACY

Neither the LOSC nor the High Seas Convention directly address the transfer of suspects ashore.

2.1.2 UNSC RESOLUTIONS 1816, 1838 AND RENEWAL OF 1816

Operative Paragraph 11 of Resolution 1816 calls upon States with relevant jurisdiction under international law and national legislation to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction or control, such as persons detained as a result of operations conducted under this resolution.

Resolution 1838 does not contain similar language.

The renewal of resolution 1816 should contain similar language as in OP11 of resolution 1816, and make reference to the 1988 SUA Convention as next discussed.

2.1.3 1988 SUA

Article 8.1 provides that the master of a ship of a State Party (the "flag State") may deliver to the authorities of any other State Party (the "receiving State") any person who the master has

reasonable grounds to believe has committed a SUA offense. There is no requirement that master or ship making the delivery is the victim or victim ship of a SUA offense – only that the subject being delivered is a SUA offender and that delivery ship is flagged in a State Party.

Article 8.3 requires the receiving State to accept the delivery, except where it has grounds to consider that the SUA Convention is not applicable to the acts giving rise to the delivery.

2.1.4 HUMAN RIGHTS LAW

There are numerous international instruments addressing human rights. These instruments bind only those States which have consented to be bound by them.

In addition to widely ratified international human rights treaties, for example the Convention against Torture,¹⁸ there are a number of regional human rights treaties, notably the European Convention on Human Rights.¹⁹

Human rights law is most likely to engage when considering issues of transfer and in particular the standard of treatment that a suspected pirate with experience both at trial and in custody. Some treaties will place obligations on states to satisfy themselves of adequate treatment before making a transfer.

2.2 DOMESTIC LAW AND POLICY

2.2.1 IMPLEMENTATION OF INTERNATIONAL CONVENTIONAL OBLIGATIONS

2.2.1.1 _____Piracy

There is no current compilation of national piracy legislation, so their applicability to the transfer of suspect ashore cannot be described.²⁰ On 18 November 2008, the Royal Navy transferred to Kenyan police in Mombasa eight suspected Somali pirates interdicted at sea on 11 November in the Gulf of Aden.²¹

2.2.1.2 _____SUA

It is not clear how many of the 149 State Parties need to enact legislation implementing article 8.3.

¹⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, online at <http://www2.ohchr.org/english/law/cat.htm>.

¹⁹ European Convention on Human Rights is formally known as the Convention for the Protection of Human Rights and Fundamental Freedoms. The text, as amended by Protocol No. 11, with Protocol Nos. 1, 4, 6, 7, 12 and 13, may be found online at <http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/Basic+Texts/The+European+Convention+on+Human+Rights+and+its+Protocols/>.

²⁰ Volume 5 of the Harvard Research in International Law (1932) contains “A Collection of Piracy Laws of Various Countries,” prepared by Prof. Stanley Morrison.

²¹ STATEMENT BY UK MINISTER FOR ARMED FORCES RT HON BOB AINSWORTH, NAIROBI, KENYA, 18 NOV. 2008, [HTTP://WWW.MOD.UK/DEFENCEINTERNET/DEFENCENEWS/MILITARYOPERATIONS/SUSPECTEDPIRATESCAUGHTBYTHEROYALNAVYHANDEDVERTOKENYA.HTM](http://www.mod.uk/DEFENCEINTERNET/DEFENCENEWS/MILITARYOPERATIONS/SUSPECTEDPIRATESCAUGHTBYTHEROYALNAVYHANDEDVERTOKENYA.HTM). SEE ALSO THE BBC REPORT AT [HTTP://NEWS.BBC.CO.UK/2/HI/UK_NEWS/7735088.STM](http://news.bbc.co.uk/2/hi/uk_news/7735088.stm). DETAILS OF THE TRANSFER WERE NOT AVAILABLE TO THE EXPERTS. IT IS UNDERSTOOD THIS WAS A ONE-TIME TRANSFER TO KENYA.

2.2.1.3 TOC

The TOC and its subsidiary protocols do not contain specific provisions regarding the transfer of criminal subjects from sea to shore. However, the TOC and its protocols do contain provisions for the transfer of defendants and of criminal proceedings from one State Party to another through extradition and transfer procedures.

2.2.2 NARCOTICS SMUGGLING

An examination of the various national laws dealing with narcotics smuggling with regard to the transfer of suspects ashore is beyond the scope of this study.

2.3 SHIPRIDERS/EMBARKED OFFICERS

Where a shiprider arrangement is in place, transfers of suspects from sea to shore is straightforward: they remain subject to the jurisdiction of the shiprider's government throughout.

3 THE LEGAL FRAMEWORK ON LAND

3.1 INTERNATIONAL LAW

3.1.1 PIRACY

3.1.1.1 1982 Law of the Sea Convention

Article 105 permits the courts of the State which carried out the seizure to decide on the criminal penalties and the disposal of the pirate ship.

3.1.1.2 1958 High Seas Convention

Article 19 permits the courts of the State which carried out the seizure to decide on the criminal penalties and the disposal of the pirate ship.

3.1.1.3 UNSC Resolutions 1816, 1838 and renewal of 1816

Operative Paragraph 11 of Resolution 1816 calls upon States with relevant jurisdiction under international law and national legislation to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery of the coast of Somalia, consistent with applicable international law including international human rights law. OP11 also calls on the same States to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction or control, such as victims and witnesses as a result of operations conducted under this resolution.

Resolution 1838 does not contain similar language.

The renewal of resolution 1816 should contain similar language as in OP11 of resolution 1816.

3.1.2 SUA

Article 6.4 of the SUA Convention requires each State Party to take such measures as may be necessary to establish its jurisdiction over the offenses in cases where the alleged offender is present in its territory and it does not extradite him to any of the State Parties that have established jurisdiction over the offenses.

Article 7 of the SUA Convention requires each State Party to which a suspected offender is delivered or in whose territory a suspected offender is otherwise present to make an immediate inquiry into the facts, and to notify other State Parties that might have jurisdiction as to whether it intends to exercise its jurisdiction.

Article 10 requires a State Party to extradite such offenders to another State Party with jurisdiction or to submit the case to its competent authorities for the purpose of prosecution.

3.1.3 UNTOC AND PROTOCOLS

Article 3 of the UNTOC requires each State Party to take such measures as may be necessary to establish as criminal offenses a broad range of “serious crimes” (defined as those offenses punishable by a term of imprisonment of at least four years or more) when transnational and, under Article 5, to criminalize participation in an organized criminal group of three or more persons. Article 6 requires the criminalization of laundering the proceeds of crime, Article 8 requires States Parties to criminalize corruption, and Article 23 requires criminalization of obstruction of justice.

3.2 DOMESTIC LAW AND POLICY

3.2.1 IMPLEMENTATION OF INTERNATIONAL CONVENTIONAL OBLIGATIONS

3.2.1.1 Piracy

There does not appear to be a web-based compilation of national piracy legislation.

3.2.1.2 SUA

It is not clear how many of the 149 State Parties have enacted the necessary legislation. Unlike the 1988 Vienna Drug Convention, there is no compilation of legislation implementing the 1988 SUA Convention.

3.2.1.3 TOC

Of the 148 States Parties to the TOC, UNODC has received reports from approx 90 States Parties of which 80 report they have adopted the necessary implementing legislation.

3.2.1.4 Trafficking in Persons Protocol

Of the 124 States Parties, UNODC has received reports on implementation activities from 86 States Parties. Of these, 75 report they have criminalized trafficking in persons.

3.2.1.4.1 Migrant Smuggling Protocol

Of the 116 States Parties, UNODC has received reports on implementation from 80 States Parties. Of these, 67 report they have criminalized smuggling of migrants.

3.2.1.4.2 Firearms Protocol

Of the 77 States Parties, UNODC has received reports on implementation from 55 States Parties. Of these, 45 report they have criminalized the relevant firearms offenses.

3.2.1.5 Narcotics smuggling

Approximately 140 of the 185 States Parties to the 1988 Vienna Drug Convention report to UNODC that they have enacted adequate implementing legislation for article 17, Trafficking by sea. The UNODC online legal library contains the national legislation of States Parties to put into effect the 1988 Vienna Drug Convention.²²

3.2.2 HUMAN RIGHTS CONSIDERATIONS

Article 10.2 of the SUA Convention requires that any person regarding whom proceedings are being carried out in connection with any SUA offense is guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which the offender is present.

²² See http://www.unodc.org/enl/browse_countries.jsp.

3.2.3 SPECIFIC COUNTRIES

3.2.3.1 -----Somalia

Somalia is *not* a party to the LOS Convention, the 1988 SUA Convention, the 1988 Vienna Drug Convention, or the UNTOC and its protocols. There are no piracy offences in Somali law and the bulk of cases (perhaps 70%) are dealt with outside the formal court system, i.e., in the sharia and tribal court system. As at 2002, Somali was believed to have only 35 judges of which only 19 hold a legal qualification.²³

3.2.3.1.1 Puntland

Puntland has no piracy offences in its domestic law, although it claims (at Oct 08) to have 60-70 pirates in custody, none of whom have been charged or tried. In 2003 it was estimated²⁴ that Puntland had 45 judges of which 18 hold a legal qualification. Puntland has never passed a law and is not believed to have a legal drafting capability.

3.2.3.1.2 Somaliland

Somaliland is a de facto authority which does not recognize the authority of the TFG. So far as can be ascertained Somaliland has no piracy laws and lacks judicial capacity.

3.2.3.2 -----Kenya

Kenya is party to the LOS Convention, the 1988 Vienna Drug Convention, the UNTOC and its three protocols on Trafficking in Persons, Smuggling of Migrants and Trafficking in Firearms, the 1988 SUA Convention, and the UNTOC and its three protocols. Kenya's legislation implementing the 1988 Vienna Drug Convention is online at http://www.unodc.org/en/browse_country.jsp?country=KEN&cmd=add&node=docs. Kenya has not reported its implementing legislation for the UNTOC or its protocols.

3.2.3.3 -----Other East African States.

Djibouti is a party to the LOS Convention, the 1988 SUA Convention, the 1988 Vienna Drug Convention, the UNTOC and its Protocols on Trafficking in Persons and Smuggling of Migrants. Djibouti's implementing legislation for the 1988 Vienna Drug Convention is online at http://www.unodc.org/en/browse_country.jsp?country=DJI. Djibouti has reported to UNODC that it has criminalized the offenses under the UNTOC, but has not reported regarding the protocols.

Tanzania is party to the LOS Convention, the 1988 Vienna Drug Convention, the 1988 SUA Convention, and the UNTOC and all three Protocols. Tanzania has reported to UNODC that it has adopted implementing legislation to criminalize acts under the TOC and all three Protocols. Implementing legislation for the 1988 Vienna Drug Convention is not listed on the UNODC website.

Yemen is a party to the LOS Convention, the 1988 SUA Convention, and the 1988 Vienna Drug Convention. The UNODC website does not list any implementing legislation for the 1988 Vienna Drug Convention. Yemen has signed but not yet ratified the UNTOC.

²³ Andre Le Sage, *Stateless Justice in Somalia: Formal and Informal Rule of Law Initiatives*, Jan 2005.

²⁴ *Ibid.*

4 ENVIRONMENTAL PROTECTION

Many pirates believe their actions are justified in response to illegal fishing²⁵ in Somali waters and in the dumping of toxic wastes in Somali waters. Their actions are not consistent with the applicable international law.

4.1 FISHING

The law of the sea accords coastal States sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of its jurisdictional waters.²⁶ Coastal States have the right to enforce, consistent with the law of the sea, their fishing laws by taking such measures such as boarding, inspection, arrest and judicial proceedings as may be necessary to ensure compliance with their laws and regulations.²⁷

4.2 DUMPING

The law of the sea defines “dumping” as pollution of the marine environment by the deliberate disposal of wastes or other matter from vessels.²⁸ The law of the sea requires the coastal State to adopt laws and regulations to prevent, reduce and control pollution of the marine environment by dumping and to ensure that dumping within its waters is not carried out without the express prior approval of the competent authorities of the coastal State.²⁹ The law of the sea also requires the coastal State to enforce its laws and regulations with regard to dumping within its waters.³⁰ Dumping is also regulated by the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, and its 1996 Protocol thereto (London Convention).³¹

²⁵ See <http://www.illegal-fishing.info>.

²⁶ Law of the Sea Convention, article 56(1)(a).

²⁷ Law of the Sea Convention, article 73.

²⁸ Law of the Sea Convention, article 1(1)(5)(a)(i).

²⁹ Law of the Sea Convention, article 210.

³⁰ Law of the Sea Convention, article 216(1).

³¹ The texts of the London Convention and its 1996 Protocol may be found online through links at <http://www.admiraltylawguide.com/conven/dumping1972.html>. Somalia is not party to the London Convention.

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Final report
Reference Appendix

The contents of this report represent the opinions and views of the experts, and do not necessarily represent the views of the SRSG or any UN agency, government organization and/or civil society group involved in Somalia.

Nairobi, 21 November 2008

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