

CONTACT GROUP ON PIRACY OFF THE COAST OF SOMALIA

3rd MEETING OF WORKING GROUP 2 ON LEGAL ISSUES

Chairman's Conclusions

(These conclusions are the sole responsibility of the chairman of the Working Group. They constitute a summary of the outcome of the discussion at the meeting of the Working Group in Copenhagen on 26 – 27 August 2009 and will form the basis for the report of the Chair to the Contact Group Meeting in New York on 10 September 2009).

Based on the initial tasking by the Contact Group at its meeting in New York on 14 January 2009 and the request from the Contact Group at its meeting in New York on 29 May 2009 that the Working Group continue its work along the lines listed in the Chair's conclusions from the 2nd Meeting.

As to the projected final outcome of the activities of the Working Group, the Group agreed that its task is to provide specific, practical and legally sound guidance to the Contact Group members on legal issues related to the fight against piracy, including to ensure the prosecution of suspected pirates. With a view to fulfilling this task the Working Group agreed that the way forward was to develop a full set of practical tools (checklists, guidelines, templates, compilations) with the aim of providing support to States and organizations participating in this effort. This toolbox should i.a. be available on the Contact Group web-site.

Legal basis for prosecution

Dr. Douglas Guilfoyle, University College London presented a compilation of the international legal basis for prosecution of suspected pirates. The purpose of the compilation, which had been commissioned by the chair, was to promote common understanding of relevant provisions in international law. Delegations agreed that the compilation provided very useful guidance on these issues.

The compilation ("Treaty Jurisdiction over Pirates: A Compilation of Legal Texts with Introductory Notes") is annexed to these conclusions. The Contact Group is invited to take note of the compilation and encourage States to make use of the documents in their future work in this field. As part of the discussion in the Working Group the UN Office of Legal Affairs (OLA) provided the enclosed statement on international law on piracy.

National prosecution

States reported on progress in national efforts to facilitate prosecution of pirates, including recent incidents/cases of piracy off the Coast of Somalia and shared lessons learned. Interventions showed general progress in ensuring prosecution, including through introduction of new or updated legislation, and indicated an increasing number of cases brought before courts. In Kenya alone 12 cases

were currently proceeding and over 100 persons suspected of piracy were held in custody. Delegations encouraged continuous exchange of relevant information, including legal arguments presented by prosecuting states in ongoing cases. The Chair would explore this issue further, including in the context of a possible CGPCS-website.

The exchange of lessons learned also demonstrated that challenges remain, in particular with regard to the collection and handling of evidence, the securing of testimony from witnesses and issues related to detention.

The UNODC made presentations on the relevant national legal framework in participating states. The UNODC will in collaboration with the Chair and other interested partners explore whether it may be feasible to collect examples of standard legislation. Furthermore, the UNODC would continue to expand and update its report on the legal framework in participating States. In this regard the UNODC invited those delegations that have not previously participated in the group to report to UNODC based on the questionnaire.

Supporting prosecution and capacity-building

Counter Piracy Programme Coordinator, Alan Cole, UNODC, Nairobi, made a detailed presentation on his work to identify ways to assist Kenya in further building its capacity to counter the challenges arising from piracy. He also presented a “Kenya Handover Guidance”, which is to assist countries and ships in complying with the Kenyan legal process. The Working Group took note of said document, which is annexed to these conclusions and forwarded to the Contact Group for guidance and inspiration to other States and organisations.

Based on the tasking from the Contact Group the Working Group considered a proposal for detailed Terms of Reference for an International Trust Fund to help defray the expenses associated with prosecution of suspected pirates as well as other activities related to implementing GGPCS objectives regarding combating piracy in all its aspects. The draft was prepared by Germany and the United Nations Department of Political Affairs, who undertook extensive consultations with delegations. Based on the comments and proposals received Germany will circulate a revised draft to delegations in a short written procedure with a view to achieve final approval of the Terms of Reference at the next CGCPS meeting in New York on 10 September 2009.

Practical tools in ensuring prosecution

The Working Group considered a variety of practical tools that may assist states in ensuring prosecution.

The United States presented an updated generic template on evidentiary standards which is annexed to these conclusions and forwarded to the Contact Group for guidance and inspiration to States and organizations. The Chair will in conjunction with the US and UNODC prepare an explanatory note

to accompany the template, also taking the IMO-guidelines into account. The Working Group will continue to focus on the issue of evidence collection in order to produce further specific guidelines. In this context the Chair would collect information concerning the sharing of obtained evidence and other information.

The United States presented a generic template for ship rider agreements, and the OLA put forward a discussion paper on Shiprider Agreements. Both papers are annexed to these conclusions and forwarded to the Contact Group for guidance and inspiration to States and organizations.

The European Union (EU NAVFOR) presented a general template for obtaining flag state consent in cases where a Vessel Protection Detachment is to be embarked on board a merchant ship. The Working Group took note of the presentation and the template, which is annexed to these conclusions and forwarded to the Contact Group where it may serve as inspiration to other States and organizations.

The Working Group shared information on relevant bilateral arrangements and agreements and their functionality. The United Kingdom presented a generic template for drafting a Memorandum of Understanding on the conditions of transfer of suspected pirates, armed robbers and seized property. The Working Group welcomed this generic template and agreed to revert to this issue.

International or regional or other mechanism for prosecution of suspected pirates

The Dutch Government reported on its informal workshop on the establishment of a piracy tribunal in The Hague, 7 July 2009, where a joint German/Russian paper “Towards an International Tribunal for the Prosecution of Pirates” had been presented. Portugal presented its paper on the establishment of a Somali special chamber (“hybrid court”) for the prosecution of piracy related Crimes off the Coast of Somalia. OLA presented factual information on the establishment and operation of international tribunals drawing from the experience of the UN. The UNODC made a presentation on related issues, including the possible establishment of a separate courtroom in Kenya and possible use of prisoner transfer agreements.

On this basis the Working Group continued its discussion of possible international, regional or other mechanisms for the prosecution of suspected pirates as an addition to options for national prosecution. Noting that the Working Group had previously exchanged views for and against the establishment of a piracy tribunal the Working Group discussions focused on other models and options as well as on the basic elements of a solution – the latter discussion based on an intervention by Canada. The Working Group agreed to a proposal from the Chair to produce a discussion paper on this issue, which should form the basis for a first in-depth discussion in the Contact Group. The paper will take into account all previous interventions and papers presented in the Working Group on this issue and will be produced in close cooperation with interested members of the Working Group. The paper will be forwarded to all members of the Working Group before presentation to the Contact Group – with the previously produced paper on this subject annexed.

Apprehension and detention

Based on a presentation by France the Working Group discussed issues of compliance with human rights instruments when apprehending and keeping persons suspected of piracy in detention. The Working Group agreed that this matter requires further in-depth discussions and the Chair offered to produce a basis for such a discussion in close cooperation with interested members of the Working Group.

UK made a presentation on the use of force in a maritime law enforcement context. The UK will produce a written version of the presentation, which would form the basis for further discussions on this issue.

Future action

The Contact Group is invited to distribute the attached documents to all members of the Contact Group and urge members to take the documents into consideration when establishing national guidelines, practices and procedures etc.

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

- Report back to the Contact Group at its next meeting on the further progress made by States in efforts to facilitate prosecution of pirates,
- Explore the possibilities to exchange relevant information, including legal arguments presented by prosecuting states in ongoing cases.
- Further explore issues related to collection of evidence in a piracy incidents in order to assist states in fulfilling the relevant evidentiary standards (both in the collection end and prosecution end),
- Share information about relevant bilateral arrangements and agreements between states and continue to assess their functioning,
- Continue consideration of possible international, regional or other mechanisms for the prosecution of suspected pirates in addition to options for national prosecution, based on the guidance of the Contact Group,
- Invite the UNODC to continue gathering information on relevant national legal systems and practical challenges in regard to prosecution and to explore whether it may be feasible to collect examples of standard legislation
- Continue consideration of issues relating to detention of suspected pirates, including application of relevant human rights instruments etc.

- Further explore the use of force in a maritime law enforcement context.