



SECURITY COUNCIL REPORT

UPDATE REPORT



20 April 2010 No. 3

SOMALIA: PIRACY

Expected Council Action

On 6 April in informal consultations Russia introduced a draft resolution on Somali piracy to Council members. A revised draft was circulated on 15 April. It would ask the Secretary-General to prepare a report within three months on possible options (such as special domestic chambers, a regional tribunal or an international tribunal) for ensuring prosecution and incarceration of pirates captured off the coast of Somalia.

It seems that the Russian initiative comes in response to a recent surge in piracy attacks, despite the strong international naval presence off the coast of Somalia, and continuing challenges in ensuring justice for suspected pirates. Captured pirates have continued to avoid prosecution notwithstanding increased international focus on the need for accountability. While it is clear under international law that any state may prosecute pirates (universal jurisdiction applies to piracy), many countries lack domestic law to support prosecutions or do not have the capacity or political will to do so. Kenya and Seychelles have been the only countries in the region accepting pirates captured by other countries to be tried in their courts. However, Kenya recently revoked these arrangements.

It is possible that the resolution will be put to a vote this week.

Background and Key Recent Developments

The Council last discussed Somali piracy in November 2009. On 18 November the Council held a debate to discuss the Secretary-General's 13 November report on implementation of resolution 1846 (which in December 2008 authorised antipiracy action in Somali territorial waters) and heard a briefing by the Special Representative of the Secretary-General Ahmedou Ould-Abdallah. On 30 November, the Council adopted resolution 1897 renewing the antipiracy measures of resolutions 1846 and 1851 (which authorised antipiracy action on land) for another 12 months. This resolution requests states and regional organisations to report within nine months on any action taken under its provisions and the Secretary-General to report within 11 months on its implementation.

Resolution 1897 also addresses the question of prosecution in several ways. It

- invites states and regional organisations to conclude agreements with countries willing to take custody of pirates for law enforcement officials ("shipriders") from these countries to embark on vessels with the aim of facilitating investigation and prosecution of detained pirates;
- calls on states to help Somalia strengthen its prosecution capacity;
- calls for enhanced cooperation in determining jurisdiction and in investigating and prosecuting suspected pirates;

- urges states parties to the UN Convention on the Law of the Sea and to the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation to “fully implement their obligations under these conventions...and...help build judicial capacity for prosecution of suspected pirates”; and
- requests states to report within nine months on efforts to establish jurisdiction and cooperation in the investigation and prosecution of piracy.

International naval military efforts to combat Somali piracy now include EU's operation ATALANTA, NATO's Operation Ocean Shield, the US Combined Task Force 151 as well as national counter-piracy missions from China, India, Japan, Russia and others. Coordination of these forces has led to the creation of an Internationally Recognised Transit Corridor, providing safe passage to vessels in the Gulf of Aden.

The Contact Group on Piracy off the Coast of Somalia, which was established at the initiative of the US in response to resolution 1851 to ensure international coordination of antipiracy activities, has continued to meet regularly. Its membership has grown from some thirty countries and organisations at the inaugural meeting in January 2009 to more than fifty today.

The contact group, which has a rotating chairmanship, has established four working groups focusing on the following issues:

- military and operational coordination, information sharing, and capacity building (chaired by the UK);
- judicial issues (chaired by Denmark);
- strengthening shipping self-awareness and other capabilities (chaired by the US); and
- public information (chaired by Egypt).

It has also established a trust fund to support regional capacities to combat piracy. The Contact Group held its fifth plenary meeting in New York on 28 January under the chairmanship of Norway. The next plenary meeting is scheduled to be held on 25 May in New York under the chairmanship of Greece.

Despite these efforts the International Maritime Bureau (IMB) reported on 14 January a significant increase in worldwide piracy attacks in 2009 compared to 2008 (from 293 to 406) with Somalia accounting for half of the attacks in 2009 and most of the increase from the previous year. Somali pirate attacks increased from a total of 111 in 2008 to 217 in 2009. The IMB also reported that there had been a significant shift in 2009 in the location of the attacks from the Gulf of Aden to areas further away from the Somalia coast in the Indian Ocean. There had been, however, a decrease in successful attacks. In 2009 there were 47 hijackings off the coast of Somalia compared with 42 in 2008.

Somali pirates are currently holding more than ten vessels. To date, ransoms paid to pirates operating off the coast of Somalia have been minimally estimated at \$30 to \$50 million whereas other estimates are considerably higher.

In early April, Rear Admiral Peter Hudson, the UK admiral in charge of the EU's antipiracy operation, said there had been a significant surge in piracy activity in the previous weeks to the point that pirates seemed to be “swarming” the operating area.

The Monitoring Group for Somalia, which has been investigating piracy in the context of the Somalia sanctions regime, argued in its latest report, submitted to the Council in March, that the main effect of international antipiracy efforts had been a shift in pirate activities away from the Gulf of Aden into the Indian Ocean. The Group also said, however, that it had found no evidence of any increase in the level of sophistication or links with armed opposition groups and that most

pirate attacks still seemed to be “random and opportunistic”. The report contains several recommendations relating to piracy, including that the Council:

- authorise international antipiracy naval forces to seize any weapons encountered during operations and actively interdict arms trafficking and call on these forces to share any pertinent information with the Monitoring Group;
- call upon the authorities of Puntland (where one of Somalia’s main pirate networks is based) to increase efforts to combat piracy, consider possible targeted measures against those involved in pirate activities and prohibit the provision of support to the Puntland security sector in the absence of significant improvement;
- encourage member states to provide capacity-building, training and other support to the Somali government and the Somaliland coastguard forces and other institutions engaged in the fight against piracy.

In April Kenya announced that it would not accept any more Somali pirates to be tried by its courts. It said it had not received the promised support from the international community to help cover costs following agreements it had entered into with the EU, the US and others to prosecute pirates. The announcement followed a request by a parliamentary committee to the attorney general of Kenya to revoke these agreements. According to media reports Kenya currently holds more than 100 Somali pirates.

The president of the General Assembly, Ali Abdussalam Treki of Libya, has scheduled an informal meeting of the General Assembly for 14 May “to provide an opportunity for all Member States to discuss the problem of international maritime piracy in a comprehensive manner and to address its causes and effects both on land and at sea”.

Key Issues

A key issue for the Council is whether it should adopt the resolution proposed by Russia. A related issue is whether a report by the Secretary-General will add any value at this stage, given that the Contact Group on piracy is already discussing judicial issues relating to piracy, including mechanisms for prosecution, and that this Group will be meeting in May.

If the Council decides to support the request for a report, a key issue is what kind of guidance to give to the Secretary-General on possible options for prosecution mechanisms.

A further issue is whether to take on board the recommendations of the Monitoring Group.

A final issue is whether enough is being done to address the situation on land in Somalia and piracy’s root causes and whether some of the resources spent on antipiracy efforts could be put to better use in other areas supported by the international community.

Options

Options for the Council include:

- adopting the resolution proposed by Russia, calling on states to adopt necessary domestic legislation for prosecution of pirates and requesting the Secretary-General to present a report on options for ensuring prosecution and imprisonment of pirates, including establishment of special domestic chambers with possible international components, a regional tribunal or an international tribunal;
- considering the recommendations of the Monitoring Group pertaining to piracy, including for the Somalia/Eritrea Sanctions Committee to consider targeted sanctions against pirate leaders (the Committee’s first designations, announced on 12 April, did not target any pirates); and

- as an unlikely option, deferring any action at this stage in order to allow for further discussions in the Contact Group on Piracy off the Coast of Somalia and its working group on judicial issues.

Council Dynamics

Russia's draft resolution seems to have taken Council members by surprise (Russia has not been particularly active on these issues before and in general rarely takes the lead on drafting texts.) but appears to be fairly uncontroversial. There is no disagreement that more needs to be done to ensure prosecution of pirates.

Some members, including the UK and France, initially seemed to question the added value of the resolution, and in particular whether there was a need to involve the Secretary-General at this stage in light of the ongoing work on the same questions in the Contact Group on piracy. Its working group on judicial issues is already discussing the need to develop an international, regional or other mechanism for the prosecution of suspected pirates as a possible addition to national jurisdictions.

Slow progress and divisions in the Contact Group may, however, have prompted Russia to push for more direct Council involvement. At the last meeting of the Contact Group in January, the chair of the judicial working group reported that discussions showed that "the most feasible model" would be a dedicated piracy chamber established within the domestic justice system of one or more states, but underlined that the conclusion did not prejudge participants' positions, indicating that there is no consensus on the way forward. Russia has in the past seemed to favour the establishment of an ad hoc international tribunal dedicated to the prosecution of pirates, but there is considerable scepticism among other countries to such a solution because of cost and other concerns.

Russia also appears to be concerned that the UN should stay clearly involved in the issues and argues that a report from the Secretary-General will bring forward additional useful information that will support the discussions in the piracy Contact Group.

While Council members seem prepared to support the Russian initiative, the US, the UK, Japan and France in particular have insisted that the request to the Secretary-General must not prejudge the options to be considered. The US and others have also argued that the Secretary-General's report must take into consideration the work of the piracy Contact Group. In addition African members have emphasised the importance of addressing the situation on land in Somalia in the fight against piracy.

UN Documents

Selected Council Resolutions

- S/RES/1897 (30 November 2009) renewed for a period of 12 months the antipiracy measures of resolutions 1846 and 1851.
- S/RES/1851 (16 December 2008) expanded the antipiracy authorisation to include action on land in Somalia and called for enhanced coordination.
- S/RES/1846 (2 December 2008) authorised states and regional organisations to enter Somalia's territorial waters to combat piracy for a further period of 12 months.
- S/RES/1844 (20 November 2008) imposed targeted sanctions relating to the situation in Somalia.
- S/RES/1838 (7 October 2008) called for intensified action against piracy in Somalia.
- S/RES/1816 (2 June 2008) was the first resolution on piracy off the coast of Somalia and the first to authorise states and regional organisations to enter Somalia's territorial waters to combat piracy.

Latest Secretary-General's Reports

- S/2009/684 (31 December 2009) was the latest regular report on Somalia.
- S/2009/590 (13 November 2009) was a report on piracy as requested in resolution 1846.

Selected Meeting Records

- S/PV.6259 (14 January 2010) was the last briefing by the Secretary-General's Special Representative.
- S/PV.6221 (18 November 2009) was a debate on piracy off the coast of Somalia in which the Special Representative of the Secretary-General gave a briefing on the Secretary-General's November 2009 report.

Other

- SC/9904 (12 April 2010) was a press release from the Sanctions Committee announcing its first designations of individuals and entities for targeted sanctions under resolution 1844.
- S/2010/91 (10 March 2010) was the letter from the chair of the Sanctions Committee transmitting the Somalia Monitoring Group's latest report.
- S/2009/569 (3 November 2009) was a letter from the Secretary-General submitting a report on the activities of EU's antipiracy operation ATALANTA.

Other Relevant Facts

Special Representative of the Secretary-General

Ahmedou Ould-Abdallah (Mauritania)

Chairman of the Somalia Sanctions Committee

Claude Heller (Mexico)

Additional Useful Source

Communiqué of the 5th plenary meeting of the Contact Group on Piracy off the Coast of Somalia, 29 January 2010

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Security Council Report is published with the support of the Governments of Canada, Denmark, Liechtenstein, Norway and Switzerland, The Rockefeller Foundation, the John D. and Catherine T. MacArthur Foundation, the William and Flora Hewlett Foundation and the David and Lucile Packard Foundation. It is incorporated as a not for profit Organisation and operates in affiliation with the School of International and Public Affairs at Columbia University in New York.

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