

**Security Council**

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**Letter dated 24 January 2011 from the Secretary-General to the President of the Security Council**

I have the honour to refer to my letter dated 25 August 2010 (S/2010/451) by which I informed members of the Security Council that I intended to appoint Mr. Jack Lang as my Special Adviser on legal issues related to piracy off the coast of Somalia and that I would be asking him to identify any additional steps that could be taken to achieve and sustain substantive results in prosecuting piracy.

In that regard, I wish to inform the members of the Security Council that Mr. Lang has submitted to me a report (see annex).

I should be grateful if you would bring the present letter and its annex to the attention of the members of the Security Council.

*(Signed)* **BAN** Ki-moon



**Annex to the letter dated 24 January 2011 from the Secretary-General to the President of the Security Council**

[Original: French]

**Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia**

**Summary: A plan in 25 proposals**

**This report was requested by the Secretary-General as a result of the debate held in the Security Council on 25 August 2010.** Its purpose is to identify any additional steps that can be taken to assist States in the region, as well as other States, to prosecute and imprison persons who engage in piracy, and explore the willingness of States in the region to serve as potential hosts for any of the options for potential new judicial mechanisms.

**Assessment of the threat reveals a serious situation.** There has been no decline in piracy since its resurgence off the coast of Somalia in 2007. In 2010 the violence escalated, the periods of detention became lengthier, the modus operandi became more sophisticated and the area of attacks extended farther to the south (as far as Mozambique) and east in the Indian Ocean. The pirate economy, which has its epicentre in Puntland, is having a destabilizing effect on Somalia and the entire region owing to rising prices, insecurity of energy supplies and loss of revenue. While world seaborne trade appears to be handling the threat better thanks to naval operations, which play a crucial role in providing security, the number of victims is nevertheless rising, with 1,900 persons taken hostage since the end of 2008. In the long term, the entire world economy could be affected.

**There are numerous gaps in the counter-piracy effort.** It will be successful only when a series of converging measures are put in place to address all of its component parts. That effort should be sustained and steps should be taken on two fronts that make up the two primary areas of focus of this report: the enhancement of measures currently being implemented and the urgent application of new measures.

**The enhancement of existing measures relates, in the first instance to the operational component.** In order to implement self-protection measures more broadly within the shipping community, international certification for compliance with certain best practices is proposed, with a provision for notification of the flag State in the event of non-compliance. To enhance the effectiveness of naval operations, more frequent monitoring of the coastline and information-sharing with regional authorities in Somaliland and Puntland are recommended.

**The enhancement of existing measures also covers the jurisdictional and correctional component.**

First, judicial obstacles should be removed. Prosecutions can fail because certain prerequisites have not been met. To ensure that apprehended individuals can be tried, all States must see to it that they have a robust body of law and must make adjustments, as necessary, in both substantive and procedural terms.

With respect to substance, the proposal is to encourage all States:

- to criminalize piracy as defined by the United Nations Convention on the Law of the Sea; and
- to establish universal jurisdiction for acts of piracy.

In terms of procedure, a legal framework for apprehension at sea that complies with international human rights law and is compatible with operational constraints is often lacking and could easily be adopted by States participating in the counter-piracy effort. Three further proposals would help facilitate the gathering of evidence and its admissibility in court: to develop an international model case report, make it possible to conduct prosecutions for intent to commit an act of piracy and encourage victims to testify.

States in the region should also be given appropriate support to increase the number of transfer agreements so that alleged perpetrators can be transferred, initially for trial and then for imprisonment.

Second, the obstacles posed by the lack of correctional capacity will be overcome only by bolstering international assistance to the States in the region.

Third, to overcome the political obstacles to the prosecution of suspected pirates, a general mobilization of States to bring pirates to trial will be necessary.

**New measures to enhance the effectiveness** of counter-piracy efforts and successfully prosecute alleged pirates will be crucial. The recommended solution is to implement, on an extremely urgent basis, **a comprehensive multidimensional plan targeting Puntland and Somaliland and comprising three components — economic, security and jurisdictional/correctional — that would be brought to bear simultaneously.**

The **economic component** is aimed at developing activities that cannot thrive in an environment of piracy, safeguarding the sovereignty of Somali authorities over their territory and regulating service activities to ensure that their development does not spark an increase in piracy. There are several priority sectors: port and fishery operations, livestock exports and the regulated development of telecommunications services.

The **security component** must help to build the capacity of Somali authorities to secure their territory using their sovereign forces. Police units should be re-established in areas of lawlessness and a land-based coastguard support function should be developed.

It is also necessary to strike at the source of piracy networks by going after the persons behind them, who have been clearly identified but take refuge in areas where they are protected. To that end, the forensic capacities of States in the region must be enhanced, evidence must be made more readily admissible in court and individual sanctions must be imposed on the masterminds.

With respect to the **jurisdictional and correctional component**, the report favours the establishment, within eight months, of a court system comprising a specialized court in Puntland, a specialized court in Somaliland and a specialized extraterritorial Somali court that could be located in Arusha, United Republic of Tanzania. The specialized court in Puntland and the extraterritorial Somali court are priorities, given the possibility of granting them universal jurisdiction.

The correctional capacities of Puntland and Somaliland would be strengthened by the immediate construction of two prisons, one in Somaliland and one in Puntland, each with the capacity to hold 500 prisoners and with protected status to allow for international monitoring. The first spaces in these prisons would become available in eight months. A third prison should be built soon afterwards in Puntland.

**The total cost of this component for three years is estimated to be less than \$25 million.**

There are several sources of funding for the counter-piracy effort: the budget of the United Nations Development Programme (UNDP); a fund established by the International Maritime Organization (IMO); and the Trust Fund of the Contact Group on Piracy off the Coast of Somalia, which should remain focused on judicial and correctional capacity-building in States in the East African and Indian Ocean region that are prosecuting alleged pirates.

**The current funding needs remain far lower than the overall cost of piracy,** which amounts to several hundred million dollars when the costs of insurance, security measures, naval operations and loss of revenue in key sectors of the region's economies are taken into account, not to mention the incalculable damage caused to victims, including the loss of human life.

The funds required to finance the proposed plan could be raised through a high-level donor conference.

The United Nations has a key role to play in facilitating and coordinating the international community's scaled up efforts to combat piracy off the coast of Somalia, and in mobilizing States and international organizations to take action to that end. Of the 25 proposals presented in this report, those associated with the Security Council, pursuant to its resolution 1918 (2010), could be set out in a new resolution. The Secretary-General, in close consultation with his Special Representative for Somalia, should contemplate the establishment of an institutional structure to facilitate the implementation of that resolution, under the aegis of a high-level eminent personality with vast United Nations experience.

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## Abbreviations

AFP	Agence France-Presse
AIS	Automatic Identification System
AMISOM	African Union Mission in Somalia
BMP	Best Management Practices
CGPCS	Contact Group on Piracy off the Coast of Somalia
CMF	Combined Monitoring Forces
CTF151	Combined Taskforce 151
EEZ	exclusive economic zone
EU	European Union
EUNAVFOR	European Naval Forces (Operation “Atalanta”)
EUROPOL	European Police Office
GDP	Gross domestic product
GPS	Global Positioning System
GT2	Working Group 2 (which focuses on legal aspects of piracy)
ICU	Internal Control Unit
IGAD	Intergovernmental Authority on Development
IMO	International Maritime Organization
INTERPOL	International Criminal Police Organization
IRTC	Internationally recognized transit corridor
MSC-HOA	Maritime Security Centre — Horn of Africa
NATO	North Atlantic Treaty Organization
SPU	Special Police Unit
SUA	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
TFG	Transitional Federal Government
UK-MTO	UK Maritime Trade Operations
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea

UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNODC	United Nations Office on Drugs and Crime
UNOPS	United Nations Office for Project Services
UNPOS	United Nations Political Office for Somalia
USD	United States dollars
WFP	World Food Programme

## Introduction

### A. Mandate of the Special Adviser and methodology

#### Mandate

1. This report is submitted as part of the process initiated by the Security Council on 27 April 2010 under its resolution 1918 (2010) with a view to “furthering the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia”.

2. As the first step, the Security Council, noting in its resolution 1918 (2010) the failure to prosecute persons responsible for acts of piracy and armed robbery at sea, requested the Secretary-General to report on possible options to address the problem. Subsequently, in his report of 26 July 2010 (S/2010/394),<sup>1</sup> the Secretary-General presented seven options with an exhaustive analysis of their advantages and disadvantages “in the light of general considerations that apply”, prior to the political consultation phase. The report provides essential food for thought, given the quality of the legal analysis it contains.

3. On 25 August 2010, following its deliberations on the aforementioned report, the Security Council welcomed the Secretary-General’s intention to appoint a *Special Adviser on legal issues related to piracy off the coast of Somalia* (Presidential Statement S/PRST/2010/16). Upon making the appointment on 26 August 2010, the Secretary-General requested me, in particular, to identify any additional steps that can be taken to assist States in the region, as well as other States, to prosecute and imprison persons who engage in piracy, and explore the willingness of States in the region to serve as potential hosts for any of the options for potential new judicial mechanisms set out in [his] report (...) to the Council.

4. While there is consensus on the need to end the impunity of pirates, views are divided among the principal States engaging in counter-piracy on the methods that should be implemented to achieve that goal. Two radically diverse options have been proposed: the creation of an international criminal tribunal on one hand, and on the other, strengthening the capacities of States in the region without creating an additional mechanism. Various mechanisms between these two extremes have been suggested. No option is perfect: each has advantages and disadvantages. Given this background, my mandate prompted me to undertake numerous political and legal consultations in order to seek an effective solution which States would generally endorse.

#### Methodology

5. I made two visits to the region to consult with the highest authorities of Somalia as well as the authorities of Djibouti, Ethiopia, Kenya, Maldives, Mauritius,

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<sup>1</sup> Report of the Secretary-General on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia, including, in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements, taking into account the work of the Contact Group on Piracy off the Coast of Somalia, the existing practice in establishing international and mixed tribunals, and the time and resources necessary to achieve and sustain substantive results (S/2010/394).

Seychelles and the United Republic of Tanzania. I also conducted high-level meetings with authorities in China, Denmark, Egypt, France, Germany, India, Italy, Japan, Oman, Portugal, the Russian Federation, Ukraine, the United Kingdom and the United States of America. In addition, I consulted senior officials from international organizations concerned with the issue (INTERPOL and several United Nations agencies: the United Nations Office on Drugs and Crime (UNODC), the International Maritime Organization (IMO) and the United Nations Development Programme (UNDP)) and regional organizations (the Intergovernmental Authority on Development (IGAD), the African Union and the Indian Ocean Commission (IOC)), as well as the European Union and the naval commands of the coalitions conducting operations in the area. I met with Judge Yussuf, a Somali judge at the International Court of Justice, in his personal capacity, and with many legal experts and experts on Somalia. Lastly, I met with several private-sector stakeholders: shipowners, insurers and an association for the protection of the rights of employees of shipping lines.

6. The authorities of Somalia's Transitional Federal Government (TFG) were consulted on several occasions, as were regional authorities in Somaliland and Puntland. My visit to Somalia played a decisive role in my thinking on the issue. In addition to meeting with local authorities, including President Silanyo in Somaliland and President Farole in Puntland, I had an opportunity to visit several courts and prisons in Hargeysa and Garoowe. I also spoke with pirates (suspected and convicted) who had been transferred to the Kenyan authorities, at Shimo la Tewa prison in Mombasa.

7. The ongoing collaboration with Ambassador Augustine Mahiga, Special Representative of the Secretary-General for Somalia, was highly constructive. From Nairobi, we travelled together to Addis Ababa, Djibouti, Mauritius and New York. I also felt that it was essential to have Ambassador Thomas Winkler, Chairman of the Legal Working Group of the Contact Group on Piracy off the Coast of Somalia (CGPCS) accompany me on my visit to Somalia, which enabled us to cooperate more closely. I travelled to Copenhagen twice, the first time on 3 September, a few days after my appointment, and the second time for the meeting of the Legal Working Group held on 3 November, during which the participating States considered my preliminary findings. Lastly, I am especially indebted to Ms. Patricia O'Brien, Under-Secretary-General for Legal Affairs and Legal Counsel, and to Mr. B. Lynn Pascoe, Under-Secretary-General for Political Affairs, for our exchanges of views and the invaluable support they provided to ensure the successful discharge of my mandate.\*

**8. I came away from these various consultations with the feeling that it was extremely urgent to:**

- deploy effective counter-piracy mechanisms before the professionalization, spread and escalation of piracy reaches a point of no return;

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\* I wish to extend my warm thanks to my collaborator, Ms. Camille Petit, Adviser on Foreign Affairs, for her outstanding work, without which these consultations, analyses and proposals and the drafting of this report would not have been possible. I also wish to thank Ms. Rachel Gasser and Mr. Vincent Astoux, who accompanied me on some of my visits, particularly to East Africa, and from whose expertise on the region I benefited enormously.

- establish continuity between the operational component of counter-piracy and its jurisdictional/correctional component, before the marines become discouraged;
- tackle the destabilizing factors inherent in piracy before their repercussions on the entire region become irremediable;
- adopt a new vision in order to focus not only on countering the symptom but also on vigorously tackling the underlying causes of piracy and purposefully promoting the economic development of Somaliland and Puntland.

9. Accordingly, this report places the jurisdictional and correctional aspects of the solution within the framework of a comprehensive multidimensional approach aimed at **strengthening each link in the chain of measures to combat, prevent and suppress piracy**. To counter the impunity of pirates, **there must be no weak link in that chain**.

10. The criteria that have guided me in seeking solutions take into account the goals of respect for human rights, effectiveness, efficiency and consistency with United Nations policy on Somalia. The advantages and disadvantages of each option can thus be evaluated according to the following four criteria:

- The effectiveness of the arrangement, which translates into successful prosecutions of persons suspected of planning or committing an act of piracy and who have been apprehended either through naval operations or, on land, through police investigations;
- Respect for international human rights law, which requires, at the judicial level, a judgement rendered by an independent and impartial court within a reasonable time and with due protection of defendants' rights and, at the correctional level, conditions of detention that meet international standards, provisions for social reintegration and criminal punishment that excludes the death penalty;
- The need for a solution that helps to strengthen the rule of law in Somalia while respecting the country's territorial integrity and sovereignty;
- Efficiency in terms of costs and the time required to establish the mechanism and put it into operation.

11. Given **the seriousness of the situation**, further to the Secretary-General's report of 27 October 2010 (S/2010/556) and my introductory remarks, I set out below the analysis of piracy off the coast of Somalia that guided my thinking on the issue and the crafting of my recommendations.

## B. Piracy off the coast of Somalia, a symptom with growing regional implications

### 1. Emergence of a piracy industry

#### *Genesis of the phenomenon*

12. One of the reasons advanced for the large-scale development of piracy<sup>2</sup> off the coast of Somalia is the need for the Somali population to protect its territorial waters and marine resources against illegal fishing, uncontrolled degassing and dumping of toxic waste by foreign vessels. As early as 1997, a United Nations assessment mission led by Mr. Mahdi Gedi Qayad had warned the international community about the consequences of such practices and had recommended that a mechanism should be established for monitoring and protecting Somali's territorial waters. The absence of State structures capable of protecting the country's marine resources and combating the criminal practices of the pirates led to the resurgence of piracy, especially starting in 2005, in the aftermath of the tsunami which devastated the Puntland coastline between Hafun and Garacad, ruined 18,000 households, and revealed the scale of toxic waste which had been dumped off the Somali coast.<sup>3</sup>

13. Although the nexus between piracy, on the one hand, and illegal fishing and toxic waste, on the other, continues to be invoked without having been proven to date, piracy has in essence become an organized, lucrative and attractive criminal activity undertaken for heinous ends. The extension of acts of piracy further away from the Somali coast shows that those acts have nothing to do with a desire to protect national interests.

#### *Persistence of the phenomenon, spurred by impunity of pirates*

14. The threat has persisted since 2007. Given the intensity of the violence and the increasingly longer periods of detention, it cannot be said that the phenomenon is being brought under control; on the contrary, the fear is that the number of victims who die from natural causes, accident or execution<sup>4</sup> might increase. The success rate

<sup>2</sup> In the rest of the report, the term "piracy" will be used in a broad sense to include piracy in the strict sense of the word (on the high seas or in a place outside the jurisdiction of any State) and armed robbery at sea. Subject to the foregoing, piracy will be understood as set forth in article 101 of the United Nations Convention on the Law of the Sea, which states that: "Piracy consists of any of the following acts: (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 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)."

<sup>3</sup> *Rapid Environmental Desk Assessment Somalia*, UNEP, March 2005.

<sup>4</sup> Data provided by the European Union Naval Force (EU NAVFOR). These figures differ considerably from those produced by the International Maritime Bureau of Kuala Lumpur (which tabulates attacks reported by the maritime community with a risk of underestimation) and the International Maritime Organization (which has a broader definition of a hijacked vessel: a ship whose crew members take refuge in the citadel, which is then abandoned by the pirates or is rescued by a military force will be considered by the International Maritime Organization as hijacked, then freed, whereas EU NAVFOR will classify the incident as an "aborted attack", because the pirates could not "take control of the vessel" when the crew members were in the citadel).

of attacks seems to have levelled off at a figure that does not go below about 25 per cent (26.6 per cent in 2010)<sup>5</sup>. Some cases of repeat offending have been identified, where the pirates apprehended had already been released on previous occasions for lack of a host State to prosecute them. Thus, more than 90 per cent of the pirates apprehended by States patrolling the seas will be released without being prosecuted.<sup>6</sup> The impunity resulting from such “catch and release” practices tends to make the risk-reward ratio for the pirates negligible and to encourage piracy. This highly attractive criminal activity is perceived as a virtually foolproof way of getting rich.

### ***Industrialization of the phenomenon***

15. Three trends can be observed in the evolution of the phenomenon:

- Escalation, considering the ever-growing number of pirates who today even hail from the hinterland<sup>7</sup> (currently totalling at least 1,500, according to the Transitional Federal Government<sup>8</sup>);
- Intensification of the violence of attacks (first weapons of choice are AK-47 automatic assault rifles and RPG-7 rocket launchers);
- Sophistication of the modus operandi (increasing use of “mother ships” to backstop attack skiffs, global positioning satellites (GPS), Automatic Identification System (AIS) data, satellite telephones and counterfeit detectors; organization of refuelling at sea of captured ships for the trip to Somalia). More than their equipment, it is primarily the organizational capacity of the pirates that is bolstered during attacks at sea, on land or at the home port, owing to the logistical support provided in the negotiation of ransoms and the holding of hostages. The pirates now have the ability to manage a large number of captures over a long period of time, thus ensuring that they have regular income throughout the year, even during the monsoon seasons.

## **2. Destabilizing political, economic and social impacts**

### ***Impact on Somalia***

#### **A piracy-driven economy**

16. With the industrialization of the phenomenon and especially the emergence of new professions (intermediaries, negotiators, and interpreters), the Somali population is increasingly dependent on piracy. The economy, which basically depends on export of livestock (camels, sheep) to the Gulf countries, remittances from the diaspora and port operations, is gradually relying on support for the pirates by entire villages, now with the approval of some clan chiefs and even some members of the diaspora. The risk of reaching a point of no return is emerging, with the creation of a veritable mafia, piracy-driven economy and the deep disintegration of Somali society, which is built on fragile local arrangements.

<sup>5</sup> In 2010, of the 173 vessels attacked, 46 were hijacked (defined as vessels which have been taken over by pirates).

<sup>6</sup> Data communicated by EU NAVFOR.

<sup>7</sup> The United Nations Development Programme found that some of the pirates were from pastoral, inland populations, not only coastal populations.

<sup>8</sup> Estimate presented at the African Union seminar on maritime safety and security, Addis Ababa, 6-7 April 2010.

17. Meanwhile, growing insecurity caused by piracy is depriving the north of Somalia of possible job-creating investments (port operations, fishing and development of public infrastructure). The sponsors are exploiting a population which has no professional prospects. Some pirates operate far from the coast. As they do not always have enough fuel for their return, their survival sometimes depends on the success of their attacks. According to the United Nations Office on Drugs and Crime (UNODC), 200 to 300 pirates have not returned from their expeditions since the resurgence of the phenomenon and their families are being abused by the instigators who lie to them and say that the pirates have settled in Europe or elsewhere. Piracy is also one of the main obstacles to the delivery of food aid, the lifeline for more than 2 million Somalis or about 27 per cent of the population.<sup>9</sup> The World Food Programme (WFP) is relying more and more on very costly air deliveries.<sup>10</sup> The need to escort vessels, although indispensable, also places a heavy burden on WFP logistics. Lastly, members of the diaspora themselves are penalized because their income is under suspicion and scrutiny.

18. The piracy-driven economy is gradually overtaking the traditional economy, owing to the development of activities on land in support of the pirates, the lack of job-creating investments in a context of widespread insecurity, and the destructive effect of piracy on Somali society which creates a vicious circle.

#### **Puntland, epicentre of piracy**

19. Piracy attacks are launched from two major locations: Puntland, home of the vast majority of the pirates, and the centre-south of Somalia, from Xarardheere to Kismayo, which has since September 2010 seen a recent and worrying trend as launching stations for attacks have moved to the south of Somalia, an area marked by the absence of governance (and the presence of Al-Shabaab).

20. Nonetheless, Puntland remains the epicentre of piracy. Most of the ports where ships dock during ransom negotiations are located between Hobyo and Garacad (eastern coast of Puntland), as well as in Xabo (northern coast of Puntland). This stems from two centrifugal movements: the capture of Xarardheere by Hizbul Islam in April 2010, which led to a relative retreat to the north, between Hobyo and Garacad;<sup>11</sup> and the counter-piracy actions of the Puntland authorities against the Eyl base, which drove the pirates further south towards Garacad. Consequently, Puntland remains the main area of refuge for the pirates, despite its declared commitment to eradicate piracy from its soil.

21. Somaliland, which is determined to tackle piracy courageously, in order to ensure, inter alia, the unimpeded development of the port of Berbera, has (limited) police and coast guard capacities. While this region seems relatively unaffected by the phenomenon, it is still not safe from the threat, especially in less controlled areas on the border with Puntland.

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<sup>9</sup> Report of the United Nations Resident and Humanitarian Coordinator for Somalia, submitted pursuant to Security Council resolution 1916 (2010) (S/2010/580).

<sup>10</sup> *Source*: WFP.

<sup>11</sup> Hobyo (and Xarardheere) are located in the Galmudug region, which is clamouring for greater autonomy yet remains close to Puntland, and recognizes, as Puntland does, the authority of the Transitional Federal Government (GFT).

### **Piracy and clan structure**

22. Piracy has a destructive effect on the clan structure of Somali society. Young pirates who have acquired wealth are now challenging the authority of the Elders and their private militias are competing with loyalist security forces. In Garacad, the Elders oppose the pirates and make the population aware of the harmful effects of piracy (alcohol, prostitution), which are contrary to Islamic teaching. The authorities in Garowe say that they rely on clan chiefs in conducting awareness campaigns among the population in order to discourage any would-be pirates. It is the Elders who reportedly obtained the release of the Puntland Minister of Maritime Transport, Ports and Counter-Piracy, who was kidnapped by pirates during a communication operation.<sup>12</sup> Other clan chiefs prefer to side with (rather than alienate) the pirates and even support them (in order to share in their revenues).

### **Piracy and local authorities**

23. The pirates also destabilize the authority of local governments by putting them in a quandary: they either support the pirates and become compromised,<sup>13</sup> or oppose the pirates and lose readily available resources. According to the African Development Bank, annual revenues of the Puntland region for 2009 were estimated at \$16 million,<sup>14</sup> while revenues from piracy were estimated at \$82 million for the same year, according to the United Nations Monitoring Group for Somalia. The reshuffling of the local Government of Puntland in March 2010 and the implementation of counter-piracy measures by the Puntland authorities are to be commended. The Government of Puntland affirms that it is now committed to tackling piracy. Apart from pressure from the international community, internal pressures are also being exerted on some sub-clans and traditional chiefs (Elders) opposed to piracy. The struggle against piracy, it seems, is also a struggle for power.

### **Pirates and Islamist insurgents**

24. While a major alliance between the pirates and Al-Shabaab has not yet materialized, local complicities have been noted. Officially, the insurgents (of Al-Shabaab and Hizbul Islam) are opposed to piracy, a crime which is severely punished by the sharia. Following the resurgence of piracy in 2005, there was a lull in 2006, when the country was run by the Islamic Courts Union in Mogadishu for one year. Today, the relocation of the pirates to the south of Somalia in areas controlled by Al-Shabaab suggests that there are ad hoc agreements guaranteeing tranquillity for the pirates in return for a portion of their ransom money (which could reportedly reach 30 per cent).<sup>15</sup> Such passive collusion, for example in the region of Kismayo, further destabilizes Somalia by facilitating the recruitment of insurgent militias as well as the weapons trade in violation of the embargo.

<sup>12</sup> *Source*: Puntland regional authorities.

<sup>13</sup> Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853 (2008) (S/2010/91).

<sup>14</sup> African Development Bank, Somalia — summary report, 18 May 2010. According to the same source, revenues for Somaliland in 2009 were \$22 million.

<sup>15</sup> Information communicated in the course of several discussions; it needs to be confirmed.

***Impact on the region*****More States affected**

25. Besides Somalia, the entire region is affected by the scourge of piracy. The area of operation corresponds to an ever-expanding triangle, stretching from Yemen and Oman to Seychelles and the United Republic of Tanzania, and even to Mozambique. More and more, the pirates are using hijacked vessels as “mother ships” to carry out other attacks further off from the coast, at less than 200 miles from India and 120 miles from Maldives (May 2010). They do not hesitate to use captured crew members as shields to challenge naval forces. As pointed out by the President of the United Republic of Tanzania, 26 attacks took place off the Tanzanian coast between 25 September and 18 December 2010. The shift of attacks to the south and east of the Indian Ocean reflects the pirates’ ability to constantly adapt in order to bypass the security corridor established by naval forces. In the south, the pirates now set up base along the coast of Somalia before heading towards Mwatara (the United Republic of Tanzania) or dispersing into the vast expanse of the Indian Ocean, cruising critical shipping lanes.

**Loss of income, increase in prices and insecurity of energy supplies**

26. From an economic standpoint, piracy has a dangerous negative impact on the major economic sectors of the region, notably tourism and fishery (4 per cent drop in GDP in Seychelles in 1990,<sup>16</sup> 90 per cent of which was from these two sectors). Local business is also affected by the increase in commodity prices, coupled with the impact of insurance premiums on the final consumer, not only in Kenya and the United Republic of Tanzania, but also in landlocked countries serviced by the East African coastline (Burundi, eastern Democratic Republic of the Congo, Ethiopia, Malawi, Rwanda, Uganda and Zambia). Port operations, maritime traffic and imports have declined across the Horn of Africa, with an attendant risk for energy supplies to East African countries. In fact, only three vessels supply gas to Comoros, Madagascar, Mauritius, Seychelles and the United Republic of Tanzania. Hijacking any of those vessels would have a major impact on gas supplies to those countries. Any attack on a vessel carrying hazardous materials could also affect the environment.

**Replacement of illegal activities with legal activities**

27. The entire region has not only suffered from the negative economic effects of piracy, but also witnessed a gradual increase in illegal activities connected with piracy (money-laundering, destabilization of the real estate sector, trafficking of weapons and migrants), which are, to some extent, replacing legal activities. Some States of the region fear that logistical bases would be set up in their territory (Kenya, Seychelles and the United Republic of Tanzania), and even that their populations would find new outlets.

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<sup>16</sup> Speech by President Michel at the symposium on piracy held in Victoria in July 2010. The Seychelles President had also referred to a 50 per cent increase in insurance premiums, a 30 per cent drop in revenues from fishing operations, and additional expenses of 2.3 million euros for counter-piracy patrols and surveillance.

### ***Impact on international maritime trade***

28. Naval operations have helped secure the Gulf of Aden; 33 vessels have been hijacked by pirates in that region since the establishment of the Internationally Recommended Transit Corridor (IRTC) and the Maritime Security Centre — Horn of Africa (MSC-HOA) in early 2009.<sup>17</sup> Yet, between 22,000 and 25,000 vessels transit through the Suez Canal each year. Every day, 3.3 million barrels of oil are transported through the Bab-el-Mandeb Strait, representing 30 per cent of the world's oil supply.<sup>18</sup> As a result, free movement along these critical shipping lanes remains of major economic importance for the entire international community. Insurance premiums are said to have quadrupled for passage through the zone, which is classified as a war zone. However, these increased premiums have not yet had an impact on energy prices in Europe,<sup>19</sup> nor have they led to the re-routing of traffic through the Cape of Good Hope. Only a few shipping companies have used that route instead of the Suez Canal, because of the ensuing delays (rounding the African continent would add 10 days to shipping times and increase fuel costs by US\$800,000 to US\$2.7 million, depending on the size of the vessel).

### ***Impact on victims***

29. As of 31 December 2010, pirates held 612 people and 26 vessels hostage. Nearly 250 additional hostages have been taken since the resumption of piracy operations in the fall of 2010, following the monsoon season. In all, since 12 December 2008 (a period of two years), pirates have held close to 1,900<sup>20</sup> people and 105 vessels<sup>21</sup> off the coast of Somalia.

30. As a result of growing pressure by the instigators of piracy, the remoteness of areas of operation, and the increase in ransoms sought, the level of violence involved during attacks, detention and ransom negotiation tends to be higher. With the steady increase in ransoms demanded, the average period of detention is also growing, now standing at 120 days<sup>22</sup> (11 months in the case of the Chandler couple). Some traumatized victims prefer not to testify about the psychological torture and mock executions which they endured. Lastly, crew members used as human shields and slaves to the pirates seem sometimes to be forgotten by their employer, the ship owner and the insurer.

31. Efforts to bring the phenomenon under control are complicated by the extreme seriousness of the situation and developments in piracy operations since October 2010 (establishment of logistical bases in the south of Somalia controlled by Al-Shabaab; shift of areas of operation to the east and the south close to the Kenyan, Tanzanian and Seychelles shorelines threatening energy supplies to East Africa; stagnation and even increase in the success rate of attacks; violence against victims). The

<sup>17</sup> Source: EU NAVFOR.

<sup>18</sup> Source: IMO.

<sup>19</sup> Following the capture of the *Sirius Star*, a Saudi oil tanker, the price of a barrel of oil was reported to have increased by one dollar, without any clear cause-and-effect relationship being established.

<sup>20</sup> The exact number is reportedly 1,890, but may not be reliable, as it is based on, among other things, statements from the companies.

<sup>21</sup> Source: EU NAVFOR. This figure reflects the number of boats for which ransom payments were being negotiated, to the knowledge of the naval forces. Certain dhows hijacked for exclusively logistical purposes or for use as "mother ships" may not be included in this total.

<sup>22</sup> Source: EU NAVFOR.

international community is involved in a sprint with the pirates and it must respond more effectively.

**32. The counter-piracy effort has many weaknesses. It can only succeed if a series of convergent measures are taken to address the different links of the chain. Action is thus required on two fronts:**

- Keeping up the effort and reinforcing the solutions currently being implemented;
- Applying new solutions urgently.

## **I. Improving on current solutions**

### **A. Operational component of counter-piracy**

33. At the operational level, two types of measure are essential:

- Merchant ships must protect themselves by systematically implementing best management practices;
- Naval operations should be conducted in order to escort vulnerable ships, discourage and thwart attacks, and arrest the pirates with a view to possible prosecution.

#### **1. Extending the scope of self-protection measures**

34. The best management practices defined by the maritime community and disseminated in particular by IMO remain the best tool for protection against acts of piracy. They include passive protection measures to discourage attacks, and defensive measures to counter the pirates in the event of an attack. Ships that comply with the best management practices can more easily thwart attacks or hold out until naval forces respond, thereby avoiding capture. The European Union has played a central coordinating role: in February 2009, it established the Maritime Security Centre — Horn of Africa (MSCHOA), which is linked in particular with United Kingdom Maritime Trade Operations (UKMTO).<sup>23</sup>

- The first best management practice is advance registration with MSCHOA, which assesses the ship's vulnerability (e.g. speed lower than 15 knots, a minimum freeboard lesser than 5 metres, reduced manoeuvrability, weak or defective propulsion), and registration with UKMTO on arrival in the zone. MSCHOA then organizes group transit convoys adapted to the ship's vulnerability and travelling in a monitored zone, depending on the available naval capacity.
- The other best management practices include advance staff training and installation of a citadel, razor wire and additional non-lethal defensive measures, depending on the characteristics of the ship and the needs identified by the ship's master.

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<sup>23</sup> UK-MTO is based in Dubai.

35. Because of their evolving and adaptable nature, the best management practices are not binding. Some 20 per cent of ships are reportedly not in compliance.<sup>24</sup> Those ships are, in fact, the principal victims of piracy because they have not adequately protected themselves.

36. Nonetheless, several courses of action could be considered in order at least to encourage companies to register with MSCHOA.

**Proposal 1: Establishing international certification for compliance with certain best management practices**

Firstly, insurance companies could require registration as a precondition for the payment of compensation connected with acts of piracy. Some insurance companies have already taken steps in that direction. The command of the European Union Naval Force in Somalia — Operation Atlanta (EUNAVFOR Atlanta) has proposed the establishment of an international certification process, organized in partnership with IMO and the maritime community, leading to a declaration of compliance with best management practices. The certificate could be required by insurance companies.

**Proposal 2: Informing the flag State in the event of non-compliance with best management practices**

Secondly, the MSCHOA centre could inform the flag State if a ship is not registered on its portal. The State in question could then adopt such measures as it deems appropriate in compliance with national legislation.

**2. Maintaining, strengthening and adapting naval operations**

37. The fight against piracy has led to unprecedented operational solutions in an innovative legal context. The “reverse right of pursuit” posited in Security Council resolution 1816 (2008) allows naval forces cooperating with the Transitional Federal Government to enter the territorial waters of Somalia in order to pursue and detain persons suspected of piracy. For the first time in peacetime, a common objective has brought together the naval forces of the European Union (in what is now the most prominent European Union maritime defence initiative); the North Atlantic Treaty Organization (NATO); Combined Task Force (CTF) 151, a coalition under United States leadership; and several navies under national command, namely those of China, the Islamic Republic of Iran, India, Japan, Malaysia, the Republic of Korea, the Russian Federation, Saudi Arabia and Yemen.<sup>25</sup>

38. The missions exist primarily in order to protect the delivery of food aid to the Somali population, a task that is being discharged in full — 95 per cent by the European Union but also by NATO and the Russian Federation. The European Union also escorts supply ships for the African Union Mission in Somalia (AMISOM).

39. On their second mission, which consisted of discouraging and thwarting attacks, the naval forces also proved effective; they thwarted 126 attacks in 2008, 176 in 2009 and 127 in 2010.<sup>26</sup> Although the success rate of attacks has decreased

<sup>24</sup> *Source:* concerned ship-owners.

<sup>25</sup> Security Council resolution 1950 (2010).

<sup>26</sup> *Source:* EUNAVFOR.

markedly (from 60 per cent in 2007 to 22 per cent in 2009) and then evened out (26.6 per cent in 2010), the number of attacks in absolute terms has nonetheless continued to grow, particularly in the Somali Basin (nine successful attacks in 2007, and 31 in 2010), which is more difficult to monitor owing to its vast area.<sup>27</sup>

40. At the operational level, several courses of action are open with a view to dismantling and then, prosecuting and imprisoning, a greater number of pirate gangs.

### **Proposal 3: Intensifying close monitoring of the coastline**

Thus far, pirates have overwhelmingly used small vessels which do not need supplies and can therefore leave from any of the beaches along the 3,300 kilometres of coastline. Their activities are therefore difficult for naval forces to monitor. Pirates increasingly use mother ships, which need to restock at a small number of well-known ports. Naval forces should therefore closely monitor the coastline with a view to military intervention.

### **Proposal 4: Increasing cooperation with the Somali regional authorities in Puntland and Somaliland**

Information exchange between naval forces and the land-based coast-guard function could be systematized under international supervision, thereby optimizing the use of available maritime capacity. Such a cooperation mechanism could be based on the Kampala process, which comprises Puntland, Somaliland and the Transitional Federal Government, and which needs to be revitalized.<sup>28</sup>

41. In order for a military effort of the current scope to be sustained and successful, it must be complemented by judicial action. Thus far, virtually all of the suspects have been freed without being prosecuted, thereby consolidating the impunity of pirates. As a result, the risk/benefit ratio is too low to act as a deterrent.

## **B. Jurisdictional and correctional component of counter-piracy**

### **Situation of prosecutions of suspected pirates**

42. At present, 738 individuals suspected or found guilty of piracy have been transferred to the judicial authorities and are being detained in 13 countries. Some are in the region (338 in Somalia, including 78 in Somaliland and 260 in Puntland; 120 in Yemen; 136 in Kenya; 47 in the Seychelles; 12 in Oman; one in the United Republic of Tanzania; and 34 in the Maldives, pending deportation to Somalia, where they will not stand trial). Others are in Europe (15 in France, 10 in Germany, 10 in the Netherlands, 2 in Spain and 1 in Belgium), and 12 are in the United States of America.<sup>29</sup>

<sup>27</sup> *Source:* EUNAVFOR. In 2010, 21 successful attacks took place in the Somali Basin, as compared with 15 in the Gulf of Aden; 100 attacks were thwarted in the Somali Basin, and 27 in the Gulf of Aden.

<sup>28</sup> The Kampala process brings together technical experts from the Transitional Federal Government and the regions of Puntland and Somaliland for the purpose of cooperating on security matters. Thus far, counter-piracy has been its main focus. This cooperation process should be actively supported and, if possible, extended to other areas.

<sup>29</sup> *Source:* UNODC, as at 31 December 2010.

43. However, the 738 pirates account for only a limited and shrinking part of the over 2,000 pirates apprehended since December 2008. As of May 2010, more than 9 out of 10 captured pirates have not been prosecuted. Formerly, only certain navies opted to immediately release the pirates, destroying the skiffs and weapons. That practice has now become the rule, and judicial prosecution the exception. From mid-August to mid-December 2010, the command of the Atalanta force captured 51 pirates who were immediately freed.<sup>30</sup>

### **Obstacles to effective prosecution**

44. If piracy suspects are to be prosecuted effectively, a number of conditions must be in place in order to ensure procedural continuity from the time the offence is committed to sentencing and imprisonment. However, a number of obstacles arise in this chain. In view of operational constraints, and in order to avoid the practice known as “catch and release”, there is a need to streamline the transfer of prisoners to the competent judicial authorities. Obstacles of a legal, political and capacity-related nature will therefore need to be overcome.

### **1. Overcoming legal obstacles to the prosecution of piracy suspects**

45. The absence of certain preconditions could jeopardize the entire process. In order to be able to sentence the detainees, all of the States — which have an obligation to cooperate — must first ensure that they have a solid body of legislation, making such substantive and procedural changes as may be necessary.

#### *Reform of substantive domestic law*

#### **Criminalization of piracy**

#### **Proposal 5: Encouraging all States to criminalize piracy as defined by the United Nations Convention on the Law of the Sea**

46. Failure to criminalize piracy in domestic law is the first obstacle to effective prosecution. The Security Council has reiterated the need for all States to incorporate into domestic law the provisions on piracy contained in the United Nations Convention on the Law of the Sea. The Djibouti Code of Conduct,<sup>31</sup> which has now been signed by 17 States, encourages parties to reform their legislation.

47. Several States (in particular Belgium, France, Japan, Maldives, Seychelles, Spain and the United Republic of Tanzania) have begun such a process of legislative reform in order to adapt their criminal law to combating piracy. Some have incorporated the crime of piracy into their penal codes and harmonized the definition with that of the Convention.

<sup>30</sup> Agence France-Presse press release, 29 December 2010.

<sup>31</sup> The Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, adopted in Djibouti on 29 January 2009, has currently been signed by 17 of 21 States in the region.

## Jurisdiction

### **Proposal 6: Encouraging all States to adopt universal jurisdiction over acts of piracy**

48. There is no lack of legal bases allowing States to exercise universal jurisdiction. General international law provides for multiple forms of jurisdiction without establishing priority rules. Examples are the territorial jurisdiction of coastal States over acts perpetrated in their territorial waters; active personal jurisdiction of Somalia to prosecute Somali nationals who have committed acts of piracy; passive personal jurisdiction of the victim's State; jurisdiction of the ship's flag State; and jurisdiction of the State that carried out the seizure, in accordance with article 105 of the Convention. Those bases enable a large number of States to fulfil their duty to cooperate in the repression of piracy to the fullest possible extent in accordance with article 100 of the Convention, a duty that was reaffirmed in Security Council resolution 1918 (2010).

49. The exercise of such jurisdiction is, however, optional under the Convention, which remains the primary legal framework for counter-piracy in accordance with Security Council resolution 1918 (2010). It should however be noted that the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation enshrines an obligation to prosecute or extradite, which can provide a useful way for States to combat piracy. The obligation to cooperate in the repression of piracy is qualified by the phrase "to the fullest possible extent".<sup>32</sup> That degree of flexibility should not be used as a pretext for failure to prosecute.

50. Kenya is the first State in the region to have exercised its universal jurisdiction, having done so in 2006. By virtue of its decision of 26 October 2006, the Subordinate Court (court of first instance) of Mombasa declared that it had the competence to prosecute some Somali pirates who had been arrested by a United States warship after attacking an Indian-flagged ship on the high seas. The decision was based on a *jure gentium* definition of piracy in accordance with the 1967 Penal Code, section 69, referring to international customary law without specifying the constituent elements of the offence. On that basis, 50 pirates were sentenced in Kenya in 2009 and 2010. In order to provide a precise definition of the offence and incorporate the provisions of the United Nations Convention on the Law of the Sea and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Kenya adopted a new Merchant Shipping Act in late 2009. Once its deficiencies have been corrected, the Act should constitute a solid legal basis for Kenya to exercise its universal jurisdiction.<sup>33</sup>

51. Although they have yet to make full use of it, Belgium, France, the Netherlands, Seychelles, Spain and the United Republic of Tanzania have established universal or quasi-universal jurisdiction to prosecute piracy suspects. Such incorporation of international law into domestic law must be encouraged and

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<sup>32</sup> Article 100 of the United Nations Convention on the Law of the Sea, cited above.

<sup>33</sup> By virtue of its decision of 9 November 2010, which was confirmed on appeal, the Mombasa High Court released nine defendants on the grounds that owing to the absence of universal jurisdiction over acts of piracy on the high seas. It was feared that that reversal in case law would permanently paralyse Kenya's legal action against piracy. In fact, the decision had been taken in accordance with the new Merchant Shipping Act adopted in late 2009 and was a result of a legislative deficiency that had been identified and will soon be corrected. The new legislation had only incompletely revoked the existing provisions of the Penal Code.

supported. However, the establishment of universal jurisdiction is not enough; States must also agree to prosecute the pirates effectively.

### ***Reform of procedural domestic law***

52. Two procedural obstacles should be noted. The first arises during the operational phase of detention at sea; the second during prosecution, when evidence and witness statements are examined.

### **Detention at sea**

#### **Proposal 7: Adopting a legal framework for detention at sea in compliance with international human rights law and compatible with operational constraints**

53. The detention of suspected pirates at sea involves a number of operational difficulties. Warships do not always have a secure location in which to keep such persons, so naval forces must be able to transfer them swiftly. However, where the relevant agreements are not applied automatically, a series of procedures must be initiated in each potential host State, and there is often no positive outcome for several days. In addition, there are often constitutional constraints limiting the deprivation of liberty to one day or 48 hours from capture to appearance before a judge (examples are Germany,<sup>34</sup> Kenya, the Russian Federation and Spain).

54. Moreover, most States do not have a legal framework for detention at sea. This is true even of States members of the European Union, which are bound by article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The requirement for a legal framework for detention at sea was reiterated by the European Court of Human Rights in its judgments of 10 July 2008 and 29 March 2009 on the *Medvedyev* case.

55. Legislative reform aimed at introducing procedures for detention at sea are therefore desirable where constitutionally permitted. Such reform must guarantee respect for human rights on board through external control. The procedure must not be subject to deadlines incompatible with operational constraints. The swift determination of jurisdiction is an important factor in order to streamline the procedure.

### **Rules of evidence**

56. The difficulty of assembling evidence is the main reason why pirates escape punishment. The following three proposals would help to collect evidence and ensure its admissibility in court.

#### **Proposal 8: Formulating an international model case report on acts of piracy and armed robbery at sea<sup>35</sup>**

57. The need for continuity in the collection and production of evidence is a further operational constraint. In order not to invalidate the procedure, the operation must not break the chain of evidence, something that could occur through transfer to

<sup>34</sup> Article 104 of German Basic Law requires that every detainee be brought before a judge not later than the day after arrest.

<sup>35</sup> The case report (*procès-verbal*) is to be understood as a written document setting forth the facts of the case. It is included as evidence for the judicial authorities, but does not initiate the judicial stage of the procedure.

another ship or aircraft. In addition, the current framework for transfer agreements requires naval forces to have a command of complex criminal procedures that vary according to the prosecuting State.

58. As a first step, the authorities of Seychelles and Kenya have put in place guidelines akin to those of UNODC. Moving beyond that stage, the formulation of a model case report would increase effectiveness: naval forces could more rapidly acquaint themselves with the procedure, and the validity of the evidence would be easier to ascertain. It would be appropriate to ensure that the case report does not automatically trigger judicial proceedings in the detaining State. Moreover, the agreement of the maritime transport sector is indispensable in order to collect evidence and introduce a specific module in seafarers' training.

**Proposal 9: Facilitating the prosecution of individuals who intend to commit acts of piracy**

59. Article 103 of the United Nations Convention on the Law of the Sea, concerning the definition of a pirate ship, includes the intention to commit an act of piracy. However, the constituent elements of that offence are not clearly defined. Unless the perpetrators are caught in the act, many acts of piracy are not prosecuted. National judicial systems must therefore also criminalize intention.

Case study:<sup>36</sup>

On 17 November 2010, a helicopter crew of the European Union naval force Atalanta suspected that an attack was being prepared in the Gulf of Aden.

An Atalanta force battleship approached the suspect vessel and, in compliance with its rules of engagement, prepared to board it and take control. Aware that they had been spotted, the crew of the vessel threw some ladders overboard. The Atalanta team seized the weapons on the suspect vessel (two missile launchers, an automatic weapon and ammunition).

In view of the experience gained by the Command of Atalanta through previous requests for transfer to the judicial authorities of Kenya and the Seychelles, it was decided that the evidence (in particular, the photos) was not sufficient to initiate a prosecution. The seven crew members of the suspect vessel were freed.

60. In order to facilitate the prosecution, the assembly of a case should begin with a set of evidence, such as the presence of equipment on board, a global positioning system, weapons, a large quantity of fuel, the composition of the crew, aerial observation of behaviour and the type of ship for the zone in question. The instruments in place for combating other types of organized crime, such as drug trafficking, could also be used to counter piracy. In particular, a database of fingerprints could be compiled. In at least two recent cases, concerning transfer to

<sup>36</sup> EUNAVFOR press release, 17 November 2010.

Belgium and the Netherlands respectively, fingerprinting made it possible to identify the perpetrators of previous attacks, who were attempting a repeat offence.

**Proposal 10: Raising awareness of the need for victims and their employers to testify; encouraging testimony by videoconference**

61. In most of the States in which prosecutions have been initiated, the legal system is based on common law and requires testimony in person. That requirement is a major obstacle to a swift trial either because the victims do not wish to go to lengths to give evidence, are afraid, or their employers may not allow them to testify. One hundred or so pirates are currently in temporary detention. Some have been in that situation for almost two years while awaiting sentencing or the hearing of testimony.

62. Security Council resolution 1950 (2010) provides that seafarers must have an opportunity to give evidence in criminal proceedings. Their security must be guaranteed during the trial in order to remove any fear of reprisals. Seafarers' contracts could include clauses providing compensation for giving evidence and enshrining the right to do so, which could be enforceable against the employer.

63. An ideal solution would be to allow testimony by videoconferencing. Prosecuting States could be encouraged to amend their Code of Criminal Procedure in order to authorize that method. The appropriate technology could be fitted in court rooms where piracy trials take place.

64. National criminal procedures could also be amended in order to allow testimony in writing.

***Proliferation of transfer agreements***

**Proposal 11: Facilitating the transfer of suspects for trial**

65. To begin with, the international community has been engaged in signing transfer-for-trial agreements with States in the region, in the spirit of global sharing of the burden and for operational reasons having to do with the advantages of transfer nearer to the place where the offence was committed. Kenya and Seychelles have agreed to take the lead with regard to some of the jurisdictional component of the fight against piracy, with the support of the international community.<sup>37</sup> Those two States have played an exemplary leadership role in the region. They should continue to play that role with a view to setting an example for the other States in the region. That requires not only appropriate support from the international community, but also that those States should be forthcoming about their needs.<sup>38</sup>

<sup>37</sup> The European Union has provided financial support for enhancing judicial and correctional capacities in Kenya and Seychelles through direct contributions to the UNODC budget. Discussions are ongoing with Mauritius (including with regard to construction of a new prison wing with capacity for 60 inmates). In addition, the special trust fund created under the auspices of the Contact Group on Piracy off the Coast of Somalia has provided a further US\$ 332,770 to Kenya, and US\$ 415,160 to Seychelles.

<sup>38</sup> In a letter dated 23 September 2010, addressed to President Kibaki, the ambassadors of China, Denmark, the United States, France and the United Kingdom, along with the representative of the European Union in Nairobi, asked the Kenyan authorities to clarify their needs, particularly with regard to capacity-building required for further transfers to Kenya. Similarly, the Tanzanian authorities have been asked to indicate what their needs are for entering into a transfer agreement. As at the end of December 2010, no response to those requests had been received.

66. The special domestic chambers proposed by certain States, notably Seychelles, should be supported, because they could in principle become rapidly functional. In order to be effective, such national judicial mechanisms should not only be specialized, but should be regional in scope based on quasi-universal jurisdiction. Limiting jurisdiction to the exclusive economic zone of the host country would detract considerably from the impact of these proposals. Lack of automaticity of implementation of such a mechanism would also be a serious constraint. The slow pace of discussions on this mechanism should be noted.<sup>39</sup>

67. While it is essential for Kenya and Seychelles to continue to be engaged in the fight against impunity for pirates, they must be joined by an expanded circle of prosecuting States from within the region (soon to include Mauritius), as well as from among the patrolling States and the flag States. Transfers to the judicial authorities in the European States and the United States of America have sent a positive signal.

#### **Proposal 12: Facilitating the transfer of convicted persons for imprisonment**

68. More recently, the Legal Working Group of the Contact Group on Piracy off the Coast of Somalia explored the possible modalities of transfer agreements between prosecuting States (Seychelles, Mauritius) and incarcerating States (Somalia).<sup>40</sup> In order to initiate the chain of transfers (from the apprehending State to the prosecuting State to the imprisoning State), the initial agreements between the apprehending State and the prosecuting State must provide for the possibility of a second transfer to Somalia and the conditions under which it might take place. The agreement between the European Union and Kenya, which requires the consent of the European Union for any subsequent transfer, could serve as a model. With regard to the controversial question of the prisoner's consent, my view is that such consent is not a necessary condition when the imprisoning State is also the State of the perpetrator's nationality.

## **2. Overcoming capacity constraints on the prosecution of piracy suspects**

69. Lack of prison capacity is the major obstacle to trial of pirates by States in the region. Those States are afraid that they will have sole responsibility for prisoners once the support of the international community subsides. Prison terms can be long (a sentence of 22 years was recently handed down in Seychelles; indeed, a life sentence was imposed in Oman).

#### **Proposal 13: Consolidating international assistance for increasing prison capacity in States in the region**

70. In consolidating international assistance for increasing prison capacity in States in the region every effort should be made to keep them engaged. UNODC, with the support of the European Union, has done outstanding work in Kenya,

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<sup>39</sup> The major sticking point remains the establishment of a mechanism for the transfer of convicted persons to Somalia.

<sup>40</sup> A meeting between the Seychelles authorities and Somali authorities from the Transitional Federal Government will be held shortly (7-9 February 2011), with the participation of UNODC and the head of the Legal Working Group of the Contact Group on Piracy off the Coast of Somalia, with a view to negotiating an agreement for the transfer of convicted pirates to Somalia for the purpose of imprisonment. The main obstacle continues to be the lack of prison capacity in Somalia (see below).

Seychelles and Somalia, and has developed a proposal for Mauritius.<sup>41</sup> However, prison capacity remains limited; hence the need to provide support in an effort to encourage more States to initiate prosecutions of suspected pirates, and to develop capacities within Somalia itself. The Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia, created under the auspices of the Contact Group on Piracy off the Coast of Somalia, should be the driving force in that effort. That Fund should therefore be augmented well beyond its current level.<sup>42</sup>

### **3. Overcoming the political obstacles to the prosecution of suspected pirates**

71. Beyond legal hurdles (which can be dealt with in the short term) and capacity issues (which can be resolved in the medium term with appropriate support from the international community), the crucial question remains one of political will.

72. Kenya has registered some discouragement, reflected notably by its March 2010 declaration of its intention to withdraw from the transfer agreements to which it is party, citing the threat of retaliation and the need to see other States sharing the burden. The Netherlands recently exercised its universal jurisdiction even though its national interests did not seem to be directly affected. Continuing such mobilization is essential. It is problematic to ask some States to keep up their efforts when the burden is not shared.

#### **Proposal 14: Encouraging general mobilization by States to prosecute persons accused of piracy**

73. Security Council resolution 1918 (2010) calls on all States, including States in the region, to criminalize piracy under their domestic law and favourably consider the prosecution of suspected, and imprisonment of convicted, pirates apprehended off the coast of Somalia, consistent with applicable international human rights law.

74. Collective engagement will be the greatest spur to individual commitment. Recent prosecutions in Europe and the United States are encouraging, as is the expansion of the number of host States in the region (including Mauritius, and even Maldives).

75. To date, prosecution by flag States of ships that have fallen victim to piracy has been marginal; it must become much more frequent. Global sharing of the burden should be better distributed. In the short term, it is crucial for States, including the flag States of attacked ships, to bring pirates to justice.

76. In the meantime, the necessarily evolving nature of the process, its limited scope, and lack of automaticity in its implementation make it necessary to devise new short- and medium-term solutions to respond to operational needs.

<sup>41</sup> These projects are not exclusively targeted at piracy; they also aim to enhance prison capacity beyond just accommodating persons imprisoned for piracy.

<sup>42</sup> As at 31 December 2010, the total amount of contributions had reached US \$5,088,917.

## II. Apply new solutions urgently

### **Exceptional measures for an exceptional situation**

77. While the current solutions have had the benefit of enabling around a third of the pirates captured between 2008 and early 2010 to be swiftly prosecuted, they have now reached a standstill, as the rate has been less than 10 per cent since autumn 2010. Beyond seeking a short-term improvement in the current measures, which have limited margins for improvement, new solutions that would urgently establish genuine continuity between the operational and jurisdictional components should be applied. The international community must take exceptional measures commensurate with the seriousness of the situation and the rapid implementation it calls for.

### **Solutions on which there is no consensus**

78. The lack of consensus in the Security Council over which solution to choose means that the more radical options have been put to one side. An international criminal tribunal (options 6 and 7) may seem an attractive proposal with certain advantages stemming from its internationally protected status, but most States believe that it would not be well suited to the ordinary crime of piracy. Moreover, installation of a tribunal and its excessively long procedures would take time and entail very high costs. Similarly, a regional tribunal (option 5), which would have to be based on a multilateral agreement between several States in the region, would, of necessity, take time to put in place. On the other hand, extending international protection to a Somali court situated outside Somalia is worth considering and is studied in this report.

### **The “Somalization” of solutions**

79. The rapid and effective implementation of a jurisdictional solution to piracy is, in the first instance, a must for Somalia, as both the source and the victim of piracy. The solution should form part of the efforts being undertaken to resolve the Somali crisis and strengthen the rule of law in Somalia. In any case, it would be futile to envisage a jurisdictional solution that has no connection to Somalia, where the pirates come from. It would be equally futile to attempt to suppress piracy without also taking action to prevent it. In that regard, it is worth noting that my mission coincides with a collective awakening to both the urgency of the situation and the necessity of placing Somalia back at the heart of the solutions. The proposed plan is therefore an emergency plan for which the operative words are “Somalization” and “urgency”.

80. The proposed emergency plan has three components — economic, security and jurisdictional/correctional — which aim to build capacities in Somalia. By extending the “dual-track approach to Somalia” developed by the United States, the plan includes direct support for the region of Somaliland and Puntland,<sup>43</sup> in addition to actions to benefit the Transitional Federal Government. Following the recommendations made by the Russian Federation and Germany, an international component seems to be indispensable to the provision of such support. Lastly, in the

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<sup>43</sup> This could entail different actions for Puntland and Somaliland, whose needs are not exactly the same.

framework of a global approach, the emergency plan must be centred on two areas, the prevention and suppression of acts of piracy.

## A. Preventing acts of piracy

### 1. Economic and social component

81. Eradicating piracy will mean developing economic alternatives so that the “piracy economy” does not corrupt the entire Somali economic system, and giving hope to the young people who too often believe they have no future. The Transitional Federal Government, in coordination with the international community and the private sector, identified six priority areas for action at the Istanbul conference on piracy in Somalia, held in May 2010: fisheries, transport infrastructure, livestock exports, telecommunications, alternative energies and the banking sector. The United Nations country team has also identified a large number of development projects which, when implemented, particularly in the coastal regions, will enable the aforementioned objectives to be achieved.

82. The economic component is aimed at developing activities that cannot prosper in an environment of piracy, ensuring the sovereignty of the Somali authorities over their territory and regulating service activities so that their development does not contribute to the expansion of piracy. Several sectors of activity are a priority: port and fishing activities, livestock exports and the regulated development of telecommunications services.

83. It is crucial to broaden these areas, targeting the two northern regions of Puntland and Somaliland and prioritizing economic and human activities whose development is incompatible with piracy. The objective is for the Somali population to perceive piracy as an activity that is in competition with the economic and social development of the community and to oppose it. Moreover, Somalia’s sovereignty over its land and sea resources should be restored. At least three areas of activity meet these criteria: fishing, port activities and livestock exports. These sectors are also sources of unskilled employment and, therefore able to harness the idle population that could otherwise be exploited by the pirate leaders. With the exploration, and in time the mining, of land or sea natural resources will come the need to build the capacity of the Somali authorities to ensure the security of their territory using their sovereign forces. Lastly, service activities must be regulated so that their development does not contribute to the expansion of piracy.

### **Proposal 15: Give Somaliland and Puntland the means to exploit their resources**

#### **Developing fisheries**

84. The potential for growth is considerable. Fishing (the sale of fisheries licences and activities) could bring in a sum comparable to the total ransom paid in 2009.<sup>44</sup> In order to develop employment in coastal areas, fishing agreements regarding the sale of licences could include an obligation to process 30 per cent of fishing

<sup>44</sup> The sum of ransom payments was evaluated by the Monitoring Group on Somalia established pursuant to resolution 1853 (2008) to be \$82 million in 2009. At the Istanbul Conference (2010), the United Nations estimated that \$95 million in potential earnings from the export of fishing products was being lost each year as a result of illegal, unregistered and unregulated fishing activities.

products in Somali fisheries. Ultimately, the fishing zones could be protected by Somali coastguards with regional or international support.

#### **Developing port activities**

85. The two main ports in northern Somalia are at Bosaso and Berbera, which have been equipped for livestock exports by private investors. Securing these ports would enable these activities to be expanded. Quality road infrastructure, in particular for the Berbera corridor, is crucial in order to ensure that the port investment projects are profitable for the region.

86. Developing these activities will necessitate the implementation of a transparent recruitment policy for port personnel and training programmes in both management and handling. Given the lack of electricity (to which 90 per cent of the Somali population does not have access), port infrastructure could be partially powered by renewable energy sources (Bosaso project for developing solar energy). Lastly, in time it will be necessary to involve the regional authorities in escorting ships along the coast. The Special Police Unit (SPU) established in Somaliland and Puntland for escorting the staff of United Nations agencies on land could have their responsibilities extended to include the sea.

#### **Developing livestock exports**

87. The farming and export of camels and sheep are essential to the Somali economy (40 per cent of GDP, 65 per cent of employment and 80 per cent of currency). Developing sanitary infrastructure at the Bosaso and Berbera ports would also enable the creation of new prospects for livestock exports.

#### **Regulated development of the telecommunications sector**

88. The telecommunications sector is a key area of development. The private sector has invested more than \$390 million in this sector over the past 10 years, enabling 2 million Somalis to connect to the Internet and 1.5 million Somalis to obtain a mobile telephone line. These resources can, however, also be used for criminal activities, in particular for the transfer of funds by mobile telephone. The *Telecommunications Regulation Authority* has been established by private actors to regulate itself in the absence of a governmental body. It is crucial to strengthen the controls on these sensitive activities.

#### **Proposal 16: Facilitate the declaration of Somali ocean space**

89. However, action cannot be taken until the legal issue of the delimitation of ocean space has been resolved. Although Somalia has been a party to the United Nations Convention on the Law of the Sea since 24 July 1989, in 1972, it adopted an Act declaring that its territorial sea extends to 200 miles, which is greater than the 12 miles authorized in the Convention. In the absence of delimitation in accordance with international law, Somalia is legally deprived of a territorial sea and an exclusive economic zone. Norway has assisted Somalia in delimiting its exclusive economic zone and continental shelf. The Somali Parliament in Mogadishu has neither adopted that delimitation nor repealed the Act on the territorial sea. Delimitation of maritime boundaries with the three neighbouring countries (Kenya, Djibouti and Yemen) remains crucial. These sensitive matters must be resolved as soon as possible with United Nations assistance.

**Proposal 17: Establish a committee to investigate illegal fishing and maritime pollution**

90. Given the many allegations of illegal fishing and dumping of toxic waste in Somali waters, which the pirates use as a pretext to justify their criminal activities, the establishment of an independent investigation committee would determine how to protect the resources and curb the use of that pretext. Such a committee could comprise scientific experts whose appointment by the United Nations, in accordance with the principle of equitable geographical distribution, would be difficult to find fault with.

**2. Security component**

91. The economic and social component must be accompanied by an effective security component. A resolute commitment on the part of the Somali authorities, including the regional authorities of Puntland, to secure the main pirate bases and havens, must go hand in hand with international assistance for development of these areas. The international community's approach, therefore, must be phased so as to progress, step by step, in a partnership with the Somali authorities.

92. Any effort to build the security capacity of the public authorities must respect the embargo regime established by Security Council resolution 733 (1992) and enforced by the sanctions committee established pursuant to Security Council resolution 751 (1992).

***Coastal monitoring***

**Proposal 18: Redeploy police units to the lawless areas**

93. The first priority is the re-establishment of a system of governance in the lawless areas where land-based activities related to piracy have taken place. As part of its Rule of Law and Security Programme,<sup>45</sup> UNDP intends to work with local authorities and Elders to heighten the visibility of the public authorities in those areas. In follow-up to those efforts, police units should be established in some 10 vulnerable coastal villages. Each unit would have an inspection team, based on the Internal Control Units (ICU), a hybrid mechanism comprising representatives of the Elders, but also of the United Nations system. A police office could be opened for an estimated US\$ 174,000,<sup>46</sup> which includes US\$ 65,000 for the construction of new facilities.<sup>47</sup> Special training for the Puntland and Somaliland police officers, and a mentoring system for a period of three years would cost US\$ 1,090,000,<sup>48</sup> with an additional US\$ 200,000 to renovate facilities and update equipment.

**Proposal 19: Develop a land-based coastguard support function**

94. Puntland and Somaliland are asking the international community to support the creation and training of coastguards. As part of the Kampala process, which comprises TFG, Puntland and Somaliland under the auspices of the United Nations, a Somali contact group on piracy has been established. The process must not become bogged down and regional authorities must not choose the option of hiring

<sup>45</sup> *Rule of Law and Security*.

<sup>46</sup> *Source*: UNDP.

<sup>47</sup> For a 250m<sup>2</sup> police office.

<sup>48</sup> *Source*: UNODC.

private military companies. The agreement between TFG, Puntland and Galmudug to create a Coastal Monitoring Force (CMF), lays the foundation for cooperation that the international community must firmly support. Land-based coastal monitoring needs stronger maritime administration, human resources for monitoring activities and the basic technical resources for information exchange. By developing a training module for land-based coastguard support, focused initially on the training of trainers, Somalia itself could take advantage of the Djibouti regional training and documentation centre, established by the International Maritime Organization with the support of the European Union, to strengthen the maritime capacities of the States of the region. These trainers would develop the module on Somali territory, beginning with the northern regions. Eventually, this Somali coastguard could have a maritime capacity.

***Paralyse and terminate the activities of the instigators***

95. The instigators' role is to gather the necessary funds from investors,<sup>49</sup> then to delegate operations to gang leaders who, in turn, employ and even exploit, coastal populations. Two main networks were initially active, one to the north of Puntland and one to the south. Those networks have apparently broken up, after the reinvestment by certain pirates of a proportion of the ransoms. About 10 instigators may be active currently, mostly in Puntland. Several instigators were mentioned by the United States in the annex to the Executive Order of 12 April 2010.

96. In 2010, ransoms paid per ship (depending on the value of the goods on board) again doubled; the most recent amounted to more than \$9 million. Given the initial amount needed to carry out a piracy operation (US\$ 70,000), that kind of return on investment continues to attract people to the activity. The funds leave Somalia largely to be laundered and reinvested in States in the region. Paralyzing the instigators, by attacking the source of the scourge, is one of the most effective ways to break this terrible spiral.

**Proposal 20: Build the investigative capacity of forensic police in the States of the region, under the auspices of INTERPOL**

97. Evidence must be identified and gathered if the instigators of piracy are to be paralysed. That is why the Security Council underlined, in its resolution 1950 (2010) "the importance of continuing to enhance the collection, preservation and transmission to competent authorities of evidence of acts of piracy and armed robbery at sea off the coast of Somalia". As INTERPOL has indicated, that will mean giving the police forces of the region better training and greater support to that end. The quality of the criminal analysis reports they can produce depends entirely on how evidence and intelligence are gathered and on whether information is checked and entered into appropriate databases. That will be essential if prosecutions are to be successful, as it will provide a linkage between action taken by the naval forces and by the judicial authorities prosecuting piracy suspects.

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<sup>49</sup> The investment necessary to mount an operation is estimated at US\$ 70,000. That covers fuel, weapons and ammunition, the hiring of skiffs, engines and communications equipment, the wages of the pirates on land who guard the hijacked ships and hostages, and meals for hostages. Mother ships are often hijacked ships, which lowers investment costs.

98. The establishment of special regional teams to investigate piracy<sup>50</sup> must allow for a coordinated and integrated approach to improve evidence collection at all stages of the commission of an offence:

- **Immediately after an attack is thwarted** by naval forces, so they can take fingerprints and otherwise identify suspects (to identify repeat offenders), and gather information on the mother ship and engines (numbers, to find buyers and sellers) which can be incorporated in the INTERPOL and EUROPOL databases. To the extent possible, when it is decided that there is sufficient evidence to prosecute suspects, mother ships and skiffs should not be sunk. Apart from constituting evidence, they also offer future capacity for the development of regulated fishing and even coastguard work.
- **During hostage-taking, negotiation and payment of ransom**, thanks to cooperation with the shipping industry, insurance companies and the banking sector, intermediaries and their telephone communications can be monitored in real time, and banknote serial numbers can be tracked.
- **Immediately after release**, to analyse the crime scene and take fingerprints and DNA samples.
- **Monitoring of financial flows from piracy:**<sup>51</sup> banking supervision and monitoring of electronic funds transfers (by Internet and mobile telephones), in cooperation with central banks, the traditional banking system, foreign exchange bureaux, funds transfers businesses and mobile telephone companies, benefiting from the expertise of the Financial Action Task Force on Money Laundering (FATF). Such efforts require the application and potentially the harmonization of the regulations already in place in the States of the region with the exception of Somalia, which should eventually adopt such regulations.

**Proposal 21: Ensure the admissibility of evidence against instigators**

99. The major difficulty is the admissibility of evidence before the courts. That requires greater cooperation among insurers, shipowners and the banking sector. This process will of necessity be long. Certain evidence gathered in investigations must be admissible in court.

**Proposal 22: Apply individual sanctions against instigators**

100. The adoption of individual sanctions against instigators by the Security Council, based on resolution 1844 (2008) could be made effective more quickly, without criminalizing the payment of ransoms. Such sanctions, once adopted, must be applied immediately by the States in the region (such as travel bans and assets freezes). Individual sanctions cannot replace national criminal prosecutions.

<sup>50</sup> This proposal was made at the conference organized by INTERPOL and the authorities of the United Republic of Tanzania in Dar es Salaam on 10 December 2010.

<sup>51</sup> Several conferences will be held on the subject in the near future (January, February and March) under the auspices of INTERPOL and UNODC.

## **B. Suppressing acts of piracy**

101. Until now, the international community has favoured prosecution and imprisonment of pirates in the States of the region, with Somalia serving merely as a subsidiary channel or reserved for the prosecution of pirates apprehended by the Somali authorities themselves. The final component of the proposed plan — the economic and security components having been set out — is designed to make Somalia the centrepiece of the judicial solution. Three elements are therefore necessary to suppress and thereby deter acts of piracy: the establishment of a Somali body of law which authorizes the prosecution of suspected pirates, but complies with international human rights norms, the building of Somali judicial capacities fairly quickly and the creation of correctional facilities for the effective execution of sentences in Somalia.

### **1. Legal component**

#### **Applicable Somali law**

102. There are three levels to Somali law: firstly, customary law (*xeer*) applied by the Elders of the sub-clan and valued by the population because it is flexible and consensual; secondly, sharia law, applied primarily in civil matters, in particular, family matters; and thirdly, the law that is a vestige of colonization, by the British in Somaliland and the Italians in Puntland and in central and southern Somalia (“Somalia”). Criminal law is governed by the latter, not by sharia.

103. In order to unify Somalia after independence was achieved, the central authorities launched a process of unification of the law. In accordance with Act No. 5 of 30 January 1962, the National Assembly delegated to the Government the power to adopt within six months the Somali Criminal Code and the Code of Criminal Procedure, which were applicable throughout the territory. Given the extremely tight deadline, a decision was made to use the Criminal Code of the former Italian colony, taken directly from the Italian Criminal Code of 1930. It entered into force on 2 April 1964 and remains applicable today, including in Somaliland.<sup>52</sup> The Code of Criminal Procedure adopted in 1962, on the other hand, comes directly from the Code in effect in the former British colony, which is itself based on the Indian norms of procedure of 1872.<sup>53</sup> Somalia is still governed today by criminal norms of Italian origin and *Common Law* norms of criminal procedure.

#### **Adoption of Somali counter-piracy legislation**

104. However, the Somali Criminal Code makes no provision for the offence of piracy.<sup>54</sup> This is why a bill criminalizing piracy and intended for application throughout the Somali territory was developed under the aegis of the United Nations Office on Drugs and Crime (UNODC). The President of the Supreme Court, the Prosecutor-General and the Commander of Corrective Services for all three entities, namely, the Transitional Federal Government (TFG), Puntland and Somaliland, have been meeting in Djibouti since the spring of 2010.

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<sup>52</sup> After it declared independence in 1991, Somaliland decided to continue applying the 1964 Criminal Code.

<sup>53</sup> *Indian Criminal Procedure Ordinance and Indian Evidence Act of 1872.*

<sup>54</sup> Until now, those accused of piracy have been tried under article 486 of the Criminal Code.

105. This counter-piracy law was adopted by the Parliament of Puntland on 18 December 2010, but it has yet to be adopted by the Parliament of Mogadishu. The Government of Somaliland has agreed to submit the draft law to the Parliament of Hargeisa so that it can enter into force in Somaliland, while nonetheless restricting the jurisdictional competence of its courts.

106. The substance of the counter-piracy draft law is drawn to a large extent from the new legislation of Seychelles (section 65 of the Criminal Code). Somali experts have favoured the adoption of a special law over amendment of the Criminal Code in effect, which would have been more complicated to carry out. The law borrows language from the United Nations Convention on the Law of the Sea, using its definition of piracy (articles 4 and 5). The offence includes acts of organization, complicity and attempt [to commit] (article 3). As adopted by Puntland, it provides for universal jurisdictional competence (articles 1 and 2), granting the judicial authority the competence to recognize all acts of piracy, regardless of where the offence was committed or the nationality of the perpetrator. It includes a criminal sanction of 5 to 20 years' imprisonment and a fine of \$50,000 to \$500,000, thereby excluding capital punishment (articles 1 and 3). A public official who facilitates an act of piracy or who profits from such an act is subject to a more severe penalty of 10 to 25 years' imprisonment and a fine of \$200,000 to \$1 million (article 11). Anyone found guilty of an act of piracy shall be permanently prohibited from holding public office (article 12). These provisions represent indisputable progress and form a solid legal basis for the prosecution of piracy suspects in Puntland.

**Proposal 23: To adopt the missing legislative provisions needed to make the Somali counter-piracy body of law complete**

107. In order to be complete, the Somali counter-piracy body of law must contain four additional laws. Even so, the legislative reform process could be adopted very quickly, given the progress in the work being carried out under the aegis of UNODC.

- **a criminal procedure counter-piracy law**, which would make the main principles of Common Law compatible with the operational constraints on the navy. A key provision would consist of authorizing testimony by videoconference.
- **a law for minors**<sup>55</sup> modelled on Act No. 36/2007, adopted by the Parliament of Somaliland in 2007, which supercedes the Act of 13 March 1970 on juvenile courts and rehabilitation centres.
- **a law organizing transfer to Somalia** of persons found guilty of acts of piracy in a third State, in order to carry out the sentence in Somalia. Legislative provisions should stipulate that the transfer may take place only after domestic remedies have been exhausted in the State where the judgement was issued. In application of the rule of *non bis in idem*, the person who is transferred may under no circumstances be tried again. The security committee mechanism shall be excluded. A hybrid mechanism for monitoring implementation of the penalty shall be provided for with the participation of the United Nations or its agencies.

<sup>55</sup> In Somali law, minors under the age of 15 cannot be tried. Those older than 15 are tried with other adults who have collaborated in the commission of the offence. However, a specific detention regime in which penalties can be adjusted and particular emphasis is placed on social reintegration programmes should be provided for.

- **a special correctional law** repealing Act No. 7 of 30 December 1971 now in force throughout Somali territory, including in Somaliland. It should recall the prohibition on all inhuman and degrading treatment and provide for a two-pronged hybrid surveillance mechanism: on the one hand, a UNODC office within the prison for correctional capacity-building (training correctional staff) and, on the other hand, external monitoring by independent experts who make regular visits.

108. The legislative reform process must permit adoption of identical draft laws for the central authority (TFG) and the two regional entities (Puntland and Somaliland). The adoption of this body of law must be one concrete result of the transition process to be completed in August 2011. Given the exceptionally urgent nature of the fight against piracy, these laws should enter into force in each region as soon as they are adopted by the relevant regional authorities. This situation exists in other areas, i.e., the regional authorities of Somaliland and Puntland apply laws that have not been adopted by TFG. Finally, in a comprehensive agreement framework between Puntland and TFG, initiated by the Galkayo Agreement of 23 August 2009, the two parties have decided to establish a permanent working relationship (item 15) and to cooperate, particularly in combating piracy (item 9).

#### Provisional timetable and estimated costs

	<i>Provisional timetable</i>	<i>Total estimated cost</i>
Payment of consultant, transportation and <i>per diem</i> for Somali experts		
Public information campaign to introduce the new legislative provision	First half of 2011	\$250 000 <sup>56</sup>

## 2. Correctional component

109. The lack of correctional capacities is the main obstacle to prosecuting pirates, in Somalia as well as in the other States of the region. The burden on the prison system, with sentences that can be as high as 20 to 30 years or even life imprisonment, discourages the States of the region from initiating the prosecution of pirates who have not been apprehended in their territorial waters. If Somali pirates found guilty in neighbouring countries were transferred to Somalia, it would remove a major obstacle to their effective prosecution. Moreover, the pirates now imprisoned in the region are asking to serve their sentences in Somalia. They cite, in particular, the desire to be closer to their families.<sup>57</sup> Imprisonment in Somalia would also be more conducive to their social reintegration.

<sup>56</sup> This amount covers all the legislative reforms that must still be carried out under the aegis of UNODC.

<sup>57</sup> In general, it is crucial to communicate with prisoners' families, who sometimes believe that the prisoners have succeeded in emigrating to the United States or Europe. This is also the message conveyed by instigators so as not to discourage recruits. Beyond humanitarian concerns, which remain primary, giving families accurate information on the fate of detainees would effectively contribute to combating piracy by encouraging families to exert pressure on their members not to take off with pirate gangs.

110. The Hargeisa prison, which has the capacity to house 362 prisoners, was rehabilitated by UNDP and UNODC.<sup>58</sup> In late November 2010, it received the 78 pirates convicted after being apprehended in Somaliland territorial waters and imprisoned in Mandera, as well as other common law criminals being held at the time in overcrowded prisons in Somaliland. Forty places are still available. Other rehabilitation projects are being completed with the support of the international community (Qardo, in Puntland) or considered (Bosasso,<sup>59</sup> in Puntland and Berbera, in Somaliland).

**Proposal 24: In the short term, construction of two prisons in Puntland and Somaliland**

111. Prison capacities must become available urgently in order to put an end to the practice of “catch and release”. With the support of the United Nations Operations and Project Services (UNOPS), which would oversee building construction, UNODC has indicated that it is capable of establishing two prisons with a minimum capacity of 500 places each, in Somaliland and Puntland, respectively, in no more than two years.

112. Given the urgent nature of these construction projects, the proposed plan aims to reduce the time to one year, by concentrating initially on Puntland, which has agreed to try pirates apprehended outside its territory, and then proceeding with “one-block-at-a-time” construction.<sup>60</sup> The operation should be resumed immediately so that there will be a correctional capacity of 1,500 places, 1,000 in Puntland and 500 in Somaliland, to be completed in no more than two years.

**Monitoring detention conditions**

113. Monitoring prison conditions is essential to guarantee respect for human rights and reassure apprehending or prosecuting States. This monitoring will be based on a twofold approach: on the one hand, a UNODC office within the prison to strengthen correctional capacities, especially training of correctional personnel responsible for surveillance and management, and through the establishment of a prisoner database; on the other, the establishment of a surveillance committee outside the prison, responsible for its regular inspection. UNODC proposes that it consist of seven members, which is reasonable. The prison would be Somali, but under a protected status guaranteeing respect for international human rights norms.

**Social reintegration programmes**

114. Social reintegration programmes must allow the prison population to find legal employment upon completion of their sentence. Reintegration programmes must therefore be geared to the socio-economic situation in the country (light industry, literacy). Moreover, the prison should have some degree of self-sufficiency in terms

<sup>58</sup> It should be noted that UNODC has done outstanding work to rehabilitate several prisons in East Africa, in particular the Shimo la Tewa Prison in Mombasa and the prison in Hargeisa.

<sup>59</sup> The Bosaso prison should be a priority. Overcrowded, it houses 205 pirates out of a total population of 240 prisoners. UNODC plans to create an additional 200 places. Another prison could be established.

<sup>60</sup> Construction of vital units (such as security facilities and kitchens) would be followed by prisoner housing blocks, to be constructed one after the other so as to receive successive groups of prisoners without waiting for construction to be completed.

of feeding its staff and the prison population, hence the UNODC project of attaching a farm to each prison, to the extent possible. A special reintegration programme for juveniles 15 to 18 years of age should be set up, with a special detention follow-up provision.

#### **Estimated costs and provisional timetable<sup>61</sup>**

115. UNODC has estimated that the construction of two prisons in Puntland and Somaliland, each with 500 places, as well as their operations for three years, will come in at under \$6.75 million.<sup>62</sup>

### **3. Jurisdictional component**

#### **Proposal 25: To strengthen the rule of law in Somalia by establishing a court system comprising a specialized court in Puntland, a specialized court in Somaliland and an extraterritorial Somali specialized court**

##### **Counter-piracy efforts to drive comprehensive reform of the Somali judicial system**

116. While the strengthening of the rule of law in Somalia must remain the guiding principle of any jurisdictional proposal, the current lack of capacity makes it impossible to achieve both comprehensive reform and rapid results. According to a 2008 UNDP study conducted in Puntland, less than 5 per cent of the 76 judges and 6 prosecutors<sup>63</sup> in that region have had legal training. Often ignorant of applicable statutory law, these officials apply customary law, including sharia. Furthermore, Puntland has not yet abolished the mechanism of the security committee, which comes under the executive branch and has the power to void a court ruling at any time. Although Somaliland has dissolved that body, the number of judges having received legal training remains low (5 per cent of 120 judges and 40 prosecutors practising in 2010).<sup>64</sup>

117. In view of the foregoing, any short-term solution must satisfy three requirements:

- Somalia's limited judicial capacity must not be diverted to a third State. On the contrary, the Somali diaspora, other States of the region actively prosecuting pirates, and international and regional organizations with legal aid expertise must enable Somalia to benefit from their experience.
- Significant international support is crucial to raise legal practices to the level of international standards.
- Specialized courts must help to achieve rapid results while establishing specialized law that fully guarantees due process.

118. Given the urgent need to combat the impunity of pirates, the proposed plan recommends the creation of specialized piracy courts as a first step. These courts

<sup>61</sup> These data are based on UNODC estimates from its programme (October 2010-October 2015) for transfer of imprisoned pirates and improvement of the Somali criminal justice system.

<sup>62</sup> That breaks down to \$5.25 million for staff, prisoner transportation and monitoring of prison conditions, for three years, and less than \$500,000 for annual correctional (and judicial) infrastructure operations, see table below.

<sup>63</sup> In addition to whom there are police officers who perform the duties of prosecutors.

<sup>64</sup> The majority of these prosecutors are police officers.

could serve as a model and thus drive overall reform of the penal system and eventually strengthen the judicial system as a whole.<sup>65</sup>

**A court system comprising a specialized court in Puntland, a specialized court in Somaliland and an extraterritorial Somali specialized court**

119. The objective is to establish specialized courts in Puntland, Somaliland and outside Somalia. The extraterritorial court would eventually be transferred to Mogadishu. These courts would have concurrent jurisdiction:

- The Puntland specialized court and the extraterritorial court would have universal jurisdiction under the counter-piracy law.
- Somaliland, on the other hand, has stated that it will only accept jurisdiction limited to acts committed by persons from Somaliland (irrespective of where the offence was committed and of the apprehending State) or in its territorial waters (irrespective of the suspect's origin).

120. International support will be crucial to create a fully fledged legislative framework for the system, to train judges in the application of the new legislation, and to contribute to a hybrid mechanism to monitor trial proceedings and pretrial detention (and later, imprisonment under the correctional component). Thus, until such time as security conditions make it possible to establish a court in Mogadishu under the responsibility of the Somali authorities, an internationally supported extraterritorial Somali court would be the vehicle for legal capacity-building by the international community in Somalia, particularly in Puntland. Based on Somali law, the court system comprising two specialized courts and an extraterritorial court would reduce the proliferation of legal corpora to be dealt with by naval forces and prevent inconsistent handling of pirates.

121. **The Puntland specialized court and the extraterritorial court must be given priority**, given the possibility that universal jurisdiction may be conferred on them. They must be operational within eight months, by which time Puntland will have acquired initial correctional capacity (see provisional timetable).

- **An extraterritorial court, to act as a vehicle for international support for strengthening the rule of law in Somalia**

**Location of the court**

122. The extraterritorial court would be established temporarily outside Somalia. It would be one of the tangible results of the Somali transition process, which ends in August 2011. In the interest of cost-effectiveness, it is proposed that the court should use the facilities of the International Criminal Tribunal for Rwanda (courtrooms and pretrial detention facilities) in Arusha, United Republic of Tanzania, which has adopted its completion strategy for the period 2011-2013. The President of the United Republic of Tanzania, when consulted on the matter, stated

<sup>65</sup> Despite the different laws governing the judicial system, especially in Puntland and Somaliland, there is a certain unity in the structure of the Somali court system, which includes three levels of jurisdiction: courts of first instance (district or regional); appeals courts; and a supreme court. Crimes fall within the competence of the criminal division of regional courts (Somaliland) or courts of first instance (Puntland).

that he had no objection to the establishment of the extraterritorial court in Arusha, according to terms yet to be defined.

#### **Advantages of the court**

123. The extraterritorial court would have three advantages:

- By being Somali, and in view of its eventual establishment within Somalia, the court would help strengthen the rule of law in Somalia; it would be politically justifiable (Somali judges would be trying Somalis); it would have active personal jurisdiction to try the Somali perpetrators of acts of piracy, because of the link of nationality, which would render them subject to its jurisdiction; it would comply with the operational constraints of navies by introducing an obligation to hold a trial upon receiving notification from an apprehending State;
- By being extraterritorial, based in Arusha, Africa’s legal capital, it would act as a focal point for regional and international support for the rule of law in Somalia; international experts, who may not necessarily have permits to enter Somalia, could be assigned to another State of the region to assist with the training and instruction of judges, prosecutors and defence counsel, and thus provide the necessary support for the establishment of specialized courts in Puntland and possibly Somaliland;<sup>66</sup>
- By making use of the existing facilities, the court could be set up very swiftly; having no participation by the United Nations,<sup>67</sup> it would be much less costly than the other international and hybrid criminal tribunals; by basing its work on ad hoc arrangements, it would be able to exercise a certain amount of flexibility in its practical operation.

#### **Establishment of the court**

124. Three agreements would be needed to establish the court and to enable it to operate:

- an agreement between Somalia and the host State authorizing the establishment of a Somali extraterritorial court on the territory of the host State and determining the allocation of responsibilities between it and Somalia (during transport to the court and from the court to the place of imprisonment in Somalia; during pretrial detention and during the trial);
- an agreement between Somalia, the host State and the United Nations, stipulating, among other matters, United Nations support to ensure the security of the court and the pretrial detention facilities<sup>68</sup> and the training of judges and other staff; it should be noted that, strictly speaking, there is no “participation” by the United Nations: the judges are Somali, they should be appointed by the Transitional Federal Government, on a representative basis, and where

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<sup>66</sup> Judges from the diaspora could conceivably carry out assignments lasting several months.

<sup>67</sup> S/2010/394.

<sup>68</sup> The external security measures for those facilities shall be based on the current arrangement between the United Nations and the Tanzanian authorities regarding the remuneration of the police.

possible from a list prepared with the support of the United Nations Political Office for Somalia (UNPOS);

- transfer agreements between the apprehending States, Somalia and the host State, modelled on the transfer agreement which was in effect, before its termination, between the European Union and Kenya.

### **Operating modalities**

125. The court will have a two-tiered system, with a bench of three judges for proceedings at first instance at trial and three judges for appeals. The court will be empowered to adjudicate on juvenile cases, applying a special law adopted as part of the legislative reform cited above (see 1/Legal component).

126. In order not to sap the already weak capacities within Somalia, it would be desirable to draw on the resources of the Somali diaspora. Acting on behalf of the Somali authorities, UNPOS could launch a call for applications for the posts of the judges, the prosecutor and the registrar.

127. The Office of the Prosecutor would be strengthened to ensure the provision of technical support to the investigation of cases brought before the special court in Puntland. It would also be advisable to strengthen its defence services and to ensure that each defendant could be represented by a court-appointed lawyer or receive legal aid.

128. Lastly, pretrial detention should take place in the vicinity of the extraterritorial court, until the end of the appeal. While making efforts to ensure a fair and sound trial, the length of proceedings must of necessity be reasonable, given the capacity of the pretrial detention facilities which might be attached to the extraterritorial court.<sup>69</sup>

### **Procedure for the end of the court's mandate**

129. The extraterritorial status of the Somali court would only be a temporary measure, until the necessary security conditions were in place in central and southern Somalia. Plans should therefore be made for the court's ultimate transfer to Mogadishu.

#### **• Two specialized courts, in Puntland and in Somaliland**

### **Elements shared with the extraterritorial court**

130. The existence of two levels of jurisdiction within a specialized court, the possibility of adjudicating on juvenile matters and the applicable law would all remain identical for the Puntland court and for the extraterritorial court.

<sup>69</sup> The pretrial detention facilities at the International Criminal Tribunal for Rwanda in Arusha have a maximum capacity of 78 places, of which some 32 were occupied as at 1 November 2010.

**Specific elements**

131. The judges would be recruited from the law departments of local universities,<sup>70</sup> before undergoing specific training supported by the international community.

132. Attached to each of the two prisons erected in Puntland and Somaliland there would be a secure courtroom (modelled on the courtroom adjacent to Shimo la Tewa prison in Mombasa), which would help reduce the transport (and guarding) of detainees between the pretrial detention facility and the trial venue. The courtroom should be fitted with videoconferencing equipment to facilitate the collection of evidence.

**Assistance provided by the extraterritorial court to the specialized courts of Puntland and Somaliland**

133. The specialized courts of Puntland and Somaliland could be assisted by the extraterritorial court, including the office of the prosecutor. The experience of piracy trials in the States of the region has pointed to the need for enhanced investigative capacity. The extraterritorial court would also provide for the short-term training of Puntland and Somaliland judges. The three courts would remain independent and evolve at their own separate paces.

134. International support should help provide such new courts with all the available expertise to enhance the expertise of judges, prosecutors and defence counsel.<sup>71</sup> UNODC could be a lead agency. It should involve UNDP, which is conversant with the Somali judicial system and has already undertaken assessments of it, including in Somaliland and Puntland. It should also involve regional organizations. The African Union could provide specific expertise on African judicial systems.<sup>72</sup> As part of its comprehensive approach to Somalia, the European Union could offer the experience it has acquired in other countries with respect to strengthening the rule of law in the north of the country, including by conducting missions as part of its common defence and security policy (reform of criminal justice systems; training of police, judicial and corrections officials).

**Provisional timetable**

135. Three sets of measures need to be taken within a year: adoption of the legislative framework required for establishing the specialized courts and the applicable law (six months); recruitment and training of judges based on this

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<sup>70</sup> There are three law departments in Puntland: two in Bosaso (Mogadishu University outpost, University of the Horn of Africa) and one in Garowe, set up by UNDP three years ago (Puntland State University). The law professors are Somali. In Somaliland, law schools have been set up within the University of Hargeisa, Amoud University in Boroma and the University of Burao. UNDP is carrying out a range of training activities in these regions.

<sup>71</sup> Defence counsel capacity-building is also critical: there are reportedly 19 lawyers in Somaliland and 5 lawyers in Puntland (including 2 in Bosaso who are paid by UNDP and assigned to piracy suspects), while there is a glaring need for legal assistance. The fresh graduates from the recently established law schools may help to significantly increase the pool of defence counsel. They could be provided with relevant short-term training.

<sup>72</sup> The assistance of experts from the African Court on Human and Peoples' Rights at Arusha could be enlisted.

legislative framework (four months); construction and equipment of two prisons and courtrooms (eight to ten months).

	<i>Time frames</i>
Legislative reform and signing of international agreements	June 2011
Recruitment of judges	June 2011
Training of judges	August 2011
Construction and equipment of courtrooms	August 2011

### Estimated cost

The cost estimates for the legal, judicial and correctional components are based on figures provided by UNODC where possible.<sup>73</sup> The cost estimates for the extraterritorial Somali specialized court could be confirmed by an additional study.

<i>Jurisdictional and correctional component (Estimated costs in US\$)</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
<b>Legislative reform* (I)</b>			
<b>Total (I): 250,000</b>	<b>250 000</b>	<b>0</b>	<b>0</b>
<b>Common costs* (II)</b>			
Prisons and courtrooms in Puntland and Somaliland			
Construction and equipping of two prisons and specialized courts	7 000 000	500 000	0
Management costs of the prison and court facilities	500 000	500 000	500 000
<b>Total (II): 9,000,000</b>	<b>7 500 000</b>	<b>1 000 000</b>	<b>500 000</b>
<b>Detention* (III) — Two prisons (in Puntland and Somaliland)</b>			
<b>Recruitment and training of prison staff</b>	250 000	250 000	250 000
<b>Cost of prison staff</b>	500 000	500 000	500 000
<b>Transport of prisoners (transfer) — 30,000 to 60,000 USD/flight depending on the distance, up to a maximum of 25 persons per flight</b>	250 000	250 000	250 000
<b>Monitoring of prison conditions</b>			
Oversight committee	125 000	125 000	125 000
Permanent representation of UNODC			
Salaries, transport, security of UNODC staff	500 000	500 000	500 000
Administrative costs of UNODC office	125 000	125 000	125 000
<b>Total (III): 5,250,000</b>	<b>1 750 000</b>	<b>1 750 000</b>	<b>1 750 000</b>

<sup>73</sup> In the table below, the UNODC estimates drawn from its programme (October 2010-October 2015) for the transfer of imprisoned pirates and the improvement of the Somali criminal justice system, are indicated by an asterisk (\*) when they are reproduced verbatim. The other costs are based on UNODC figures.

<i>Jurisdictional and correctional component (Estimated costs in US\$)</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
<b>Prosecution and trial in Puntland and Somaliland: two specialized courts (IV)</b>			
Recruitment and training of staff	250 000	250 000	250 000
Remuneration of judges	200 000	200 000	200 000
Remuneration of prosecutors	200 000	200 000	200 000
Remuneration of registrars	75 000	75 000	75 000
Legal aid	200 000	200 000	200 000
Appearance of witnesses	100 000	100 000	100 000
<b>Total (IV): 3,075,000</b>	<b>1 025 000</b>	<b>1 025 000</b>	<b>1 025 000</b>
<b>Prosecution and trial: one extraterritorial Somali specialized court (V)</b>			
<b>Improvement of facilities</b>	400 000	0	0
<b>Management costs</b>	400 000	400 000	400 000
<b>Security of facilities</b>	75 000	75 000	75 000
<b>Pretrial detention</b>			
Recruitment and training of prison staff	50 000	50 000	50 000
Cost of local prison staff	200 000	200 000	200 000
Transport of prisoners (transfer to Arusha and from Arusha to Puntland or Somaliland)	350 000	350 000	350 000
<b>Prosecution and trial</b>			
Recruitment and training of staff (Judges, offices of the prosecutor and registrar)	100 000	100 000	100 000
Remuneration of judges	450 000	450 000	450 000
Remuneration of prosecutors	300 000	300 000	300 000
Remuneration of registrars	100 000	100 000	100 000
Legal aid	200 000	200 000	200 000
Appearance of witnesses	100 000	100 000	100 000
<b>Total (V): 7,375,000</b>	<b>2 725 000</b>	<b>2 325 000</b>	<b>2 325 000</b>
<b>TOTAL (I+II+III+IV): 24,950,000</b>	<b>13 250 000</b>	<b>6 100 000</b>	<b>5 600 000</b>

### A funding plan

136. **The cumulative funding needs over a period of three years for the legal, jurisdictional and correctional component would be at least \$25 million.**

137. Even with the addition of the \$2 million required to strengthen police capacity in the short term and the costs of economic development projects, such funding needs are far below the overall cost of piracy, which totals in the hundreds of millions of dollars, including the costs of insurance, self-protection measures, naval operations and loss of revenue in key sectors of the region's economics, without factoring in the

incalculable damage inflicted on victims, including loss of human life.<sup>74</sup> If drastic measures are not taken, in particular to combat impunity of pirates, the **cost of piracy** will only increase over time. Likewise, as the number of actions required to battle this scourge multiply, the **costs of counter-piracy** will also continue to increase. It is therefore critical to act immediately and with determination.

138. **Funding sources** are limited to a few States and the European Union, which have directly enhanced the budget of several United Nations agencies and bodies, including UNODC, and to States that have contributed to the trust fund created by the Contact Group on Piracy off the Coast of Somalia in January 2010.<sup>75</sup> That fund is now a source of special funding<sup>76</sup> intended to strengthen the judicial and correctional capacity of States in the region.

139. Several projects in Puntland and Somaliland are already being funded through the trust fund:

Legal reforms	205,225 dollars
Construction of correctional units and training of prison staff	751,140 dollars
Assistance for prosecution	224,786 dollars
Counter-piracy communications	214,000 dollars

140. **Even with the addition of national contributions, at its current level, the trust fund is inadequate to implement the proposed plan** and must be bolstered by new funding sources. In addition to contributions from other countries, such funding could originate from private shipping companies, shipowners and insurance companies, which have yet to be convinced of the need to support the efforts of the international community — which would be to their own benefit — rather than falling back on the pretext that such efforts should come from Governments only. Without widespread awareness of the need to eradicate this scourge before it has devastating consequences, including on maritime trade, no contributing State will feel compelled to provide such funding, particularly as the issue concerns the high seas. Moral conscience impels all public and private actors to contribute.

141. **A high-level regional donors' conference** would provide an opportunity to demonstrate a collective commitment by States, international and regional organizations, and the private sector to furnish the means to combat piracy.

## Conclusion

### **A three-pronged emergency plan, focused on Somalia**

142. If the international community does not act with **extreme urgency**, the piracy economy off the coast of Somalia will continue to thrive, past the point of no return.

<sup>74</sup> The total cost of maritime piracy was estimated at \$7 to \$12 billion in a report prepared by the One Earth Future Foundation, *The Economic Costs of Maritime Piracy*, December 2010.

<sup>75</sup> The donor states to the trust fund are: Cyprus, Denmark, France, Germany, Greece, Japan, the Netherlands, Norway, Sweden and the United States of America.

<sup>76</sup> It is not the only source of funding. The project to renovate the Hargeisa prison in Somaliland was funded in large part by the European Union through its direct contributions to the UNODC budget.

A very limited window of opportunity remains for the international community to act with determination and attempt to win the race. It must avail itself of resources to strike swiftly and forcefully to eradicate this phenomenon.

143. If the international community's response is to be improved, first and foremost, new measures must be developed, within a global and multidimensional context, that **cover three components of the issue: economic, security and jurisdictional/correctional**. Efforts to suppress piracy will be in vain if they are not accompanied by the creation of alternatives to piracy for the Somali people. A new approach must be taken that **finds solutions in the heart of Somalia**, which is at once the principal source and principal victim of piracy.

144. The proposed plan **targets the regions of Puntland and Somaliland as a priority**, relying on the will of regional authorities to combat piracy. In return for international assistance for the economic and social development of their regions, these authorities would take concrete measures to **apprehend those behind acts of piracy, restore the rule of law in areas harbouring pirates and monitor the coasts**, starting with the major pirate bases, with the support of the international community. These measures are a last resort to implementing coercive solutions, which should not be ruled out.

#### **A score and a conductor**

145. The large number of actors implicated in the fight against piracy can at times be dizzying. Using the orchestra as a metaphor, each instrument must have a score that is in harmony with the ensemble, while the ensemble, in turn, must be led by a conductor.

146. The 25 proposals should be laid out in a **road map** that includes various regional and international organizations based on their areas of expertise. Each component of the emergency plan requires the involvement of a range of actors, headed by a lead organization. **The adoption of a Security Council resolution that takes up those major proposals deemed to be relevant, in fulfilment of Council resolution 1918 (2010)**, would underscore the extreme urgency of the measures required and would accelerate their implementation. The other proposals contained in the report, including those on development, could be a task for follow-up by the relevant United Nations agencies.

147. The United Nations has a key role to play in facilitating and coordinating the international community's scaled up efforts to combat piracy off the coast of Somalia and mobilizing States and international organizations to that end. The Secretary-General, acting in close consultation with his Special Representative for Somalia, should contemplate the establishment of an institutional structure to facilitate the implementation of the Security Council resolution under the aegis of a high-level eminent personality with vast United Nations experience.

**Annex 1: Map of Somalia**



Map No. 3690 Rev. 7 UNITED NATIONS  
January 2007

Department of Peacekeeping Operations  
Cartographic Section

Source: United Nations Cartographic Section.

## **Annex 2: List of individuals consulted\***

### **I. United Nations system**

#### **⇒ United Nations Political Office for Somalia (UNPOS)**

- Mr. Augustine MAHIGA, Special Representative of the Secretary-General for Somalia and his colleagues at the United Nations Political Office for Somalia (numerous consultations)

#### **⇒ United Nations Monitoring Group on Somalia and Eritrea**

- Mr. Matt BRYDEN, Coordinator, Monitoring Group on Somalia and Eritrea

#### **⇒ United Nations Office on Drugs and Crime**

##### **– Vienna (UNODC)**

- Mr. Yury FEDOTOV, Executive Director, and his colleagues, in particular Mr. Mark SHAW of the Integrated Programme and Oversight Branch, and Ms. Candice WELSCH, Counsel, Organized Crime and Illicit Trafficking Branch

##### **– Nairobi**

- Ms. Loide LUNGAMENI, Representative, Regional Office in Eastern Africa
- Mr. Alan COLE, Coordinator, Counter Piracy Programme (numerous consultations)
- Ms. Anne-Marie BRINKMAN, Adviser on international development, application of law of the sea and counter-piracy

#### **⇒ International Maritime Organization (IMO)**

- Mr. Efthimios MITROPOULOS, Secretary-General
- Dr. Rosalie BALKIN, Director, Legal Affairs and External Relations Division
- Mr. Koji SEKIMIZU, Director, Maritime Safety Division

#### **⇒ United Nations Development Programme (UNDP)**

##### **– New York**

- Ms. Rebeca GRYNSPAN, Associate Administrator

##### **– Nairobi**

- Ms. Marie DIMOND, Deputy Country Director
- Mr. Tahlil Haji AHMED, Senior Legal Adviser, UNDP/Rule of Law and Security Access to Justice Programme

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\* The Special Adviser is especially grateful for the support received from staff at the Secretariat and United Nations agencies and warmly thanks all individuals who may not be included in this list but who shared their high level of expertise with dedication and competence.

⇒ **United Nations Secretariat**

- Ms. Patricia O'BRIEN, Under-Secretary-General for Legal Affairs and Legal Counsel, and her colleagues, in particular Mr. Frank SMYTH, Mr. Michele AMERI and Mr. Huw LLEWELLYN
- Mr. B. Lynn PASCOE, Under-Secretary-General for Political Affairs, and his colleagues, in particular Ms. Rachel GASSER

## **II. Other international organizations and mechanisms**

⇒ **Contact Group on Piracy off the Coast of Somalia (CGPCS)**

- Mr. Chris HOLTBY, Chairman, Working Group 1 on maritime operational coordination and regional capacity-building
- Mr. Thomas WINKLER, Chairman, Working Group 2 on legal issues and Under Secretary for Legal Affairs of the Ministry for Foreign Affairs of Denmark (numerous consultations)
- High Representative for the United States in his capacity as Chairman of Working Group 3 on relations with the industry (see below)
- High Representative for Egypt, in his capacity as Chairman of Working Group 4 on communication (see below)

⇒ **International Criminal Police Organization (INTERPOL)**

- Mr. Pierre SAINT-HILAIRE, Assistant Director, Directorate of Legal Affairs, Coordinator of the Anti-Piracy Task Force, Lyon (France)
- Mr. Jean-Michel LOUBOUTIN, Executive Director for Police Services, Lyon
- Mr. Awad DAHIA, Head of the Regional Bureau for Eastern Africa, Nairobi

⇒ **North Atlantic Treaty Organization (NATO)/Operation Ocean Shield**

- Commodore Bruce W. BELLIVEAU, Deputy Chief of Staff Operations, Operation Ocean Shield Headquarters, Northwood (United Kingdom)
- Commander Dave GODDARD, Legal Counsel

⇒ **African Union**

- Mr. Jean PING, Chairperson of the African Union Commission
- Mr. Ramtane LAMAMRA, Commissioner for Peace and Security (two consultations)
- Mr. Ben KIOKO, Legal Counsel

⇒ **European Union**

– **Brussels**

- Ms. Catherine ASHTON, High Representative for Foreign Affairs and Security Policy and Vice-President of the European Commission
- Mr. José Manuel BARROSO, President of the European Commission
- Mr. Andris PIEBALGS, Commissioner for Development

– **Eastern Africa and Indian Ocean Region**

- High Representatives of the European Union to Addis Ababa, Dar es Salaam, Djibouti, Mauritius and Nairobi\*\*

– **European Union Operation “Atalanta”**

- Major General Buster HOWES, Commander of Operation Atalanta, Operation EUNAVFOR-Atalanta Headquarters, Northwood (United Kingdom)
- Colonel Richard SPENCER, Chief of Staff, Operation EUNAVFOR-Atalanta Headquarters, Northwood (United Kingdom)
- Rear Admiral Philippe COINDREAU, Commander of the Atalanta (August-December 2010, “De Grasse” Flagship docked in Mombasa)

### **III. States**

⇒ **CHINA**

- Mr. HU Jintao, President of the People’s Republic of China
- Mr. Dai BINGGUO, State Councillor
- High Representatives of China to Dar es Salam, Djibouti and Nairobi

⇒ **DENMARK**

– **Ministry of Foreign Affairs**

- Mr. Thomas WINKLER, Chairman of the Legal Working Group (WG2), Under Secretary for Legal Affairs
- Ms. Mette KNUDSEN, Director of the Africa Department

– **Ministry of Defence**

- Mr. Kristian FISCHER, Deputy Permanent Undersecretary of Defence

⇒ **DJIBOUTI**

- Mr. Ismail Omar GUELLEH, President of the Republic
- Mr. Ahmed Ali SILAY, Minister Delegate to the Minister for Foreign Affairs, Minister in charge of International Cooperation
- Mr. Alain MARTINET, Advocate, Consultant for UNODC

⇒ **EGYPT**

- Mr. Waghi HANAFI, Vice-Minister, Director of Legal Affairs, Ministry of Foreign Affairs of the Arab Republic of Egypt

⇒ **ETHIOPIA**

- Mr. Hailemariam DESALEGNE, Vice Prime-Minister and Minister for Foreign Affairs

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\*\* Very useful meetings were held in various countries in the region with ambassadors of States concerned with counter-piracy.

⇒ **FRANCE**– **Office of the President of the Republic**

- Mr. Nicolas SARKOZY, President of the Republic
- Mr. Jean-David LEVITTE, Diplomatic Adviser to the President of the Republic

– **Ministry of Foreign and European Affairs**

- Ms. Michèle ALLIOT-MARIE, Minister for Foreign and European Affairs (since November 2010)
- Mr. Bernard KOUCHNER, former Minister for Foreign and European Affairs

– **Ministry of Defence**

- Mr. Alain JUPPE, Minister of Defence

⇒ **GERMANY**– **Federal Ministry of Foreign Affairs (Auswärtiges Amt)**

- Mr. Guido WESTERWELLE, Federal Minister for Foreign Affairs
- Mr. Werner HOYER, Minister of State for Foreign and European Affairs
- Ms. Susanne WASUM-RAINER, Legal Director-General
- Mr. Otto LAMPE, Director-General for the United Nations

– **Chancellery**

- Mr. Rolf NIKEL, Deputy Diplomatic Adviser to the Chancellery

– **Federal Ministry of Defence (BMVg)**

- Mr. Christian SCHMIDT, State Secretary
- Rear Admiral Andreas KRAUSE, Chief of the Joint Operations Staff

– **Federal Ministry of the Interior (BMI)**

- Mr. Klaus-Dietrich FRITSCHKE, State Secretary
- Mr. Ralf GÖBEL, Deputy Director-General in charge of Federal Police

⇒ **INDIA**

- Mr. K.V. BHAGIRATH, High Commissioner of India in Tanzania

⇒ **ITALY**– **Ministry of Foreign Affairs**

- Mr. Franco FRATTINI, Minister for Foreign Affairs

– **Ministry of Defence**

- Mr. Giuseppe COSSIGA, Under-Secretary of State for Defence

⇒ **JAPAN**

- Mr. Koro BESSHO, Deputy Minister for Foreign Affairs
- High Representatives of Japan to Djibouti, Nairobi, Paris and Tanzania

⇒ **KENYA**

- Mr. Raila ODINGA, Prime Minister
- Mr. Mutula KILONZO, Minister for Justice, National Cohesion and Constitutional Affairs
- Ms. Amina MOHAMED, Permanent Secretary, Ministry for Justice, National Cohesion and Constitutional Affairs
- Ms. Margret Wanini KIRERI, Director of the Shimo La Tewa prison
- Ms. Rosemelle MOTOKA, Chief Magistrate of the Court of Mombasa
- High Representative of Kenya to the United Nations

⇒ **MALDIVES**

- Mr. Ameen FAISAL, Minister of Defence and National Security

⇒ **MAURITIUS**

- Mr. Navinchandra RAMGOOLAM, Prime Minister, Minister of Defence and Home Affairs and Minister of External Communications
- Mr. Arvin BOOLELL, Minister for Foreign Affairs
- Mr. Yatindra Nath VARMA, Attorney-General and Minister of Justice
- Mr. Somduth SOBORUN, Ambassador, Permanent Representative of Mauritius to the United Nations
- Regional Ministerial Conference on Piracy, 7 October 2010 — High Representatives of regional organizations

⇒ **OMAN**

- Mr. Ahmed MACKI, Minister of the National Economy, Deputy President of the Council for Financial Affairs and Energy Resources

⇒ **PORTUGAL**

- Mr. José Filipe Mendes Moraes CABRAL, Permanent Representative of Portugal to the United Nations

⇒ **RUSSIAN FEDERATION**

- Mr. Vitaly CHURKIN, Permanent Representative of the Russian Federation to the United Nations (two consultations)

⇒ **SEYCHELLES**

- Mr. Joël MORGAN, Minister of the Interior, Environment and Transport

⇒ **SOMALIA**– **Transitional Federal Government**

- Mr. Abdirashid KHALIF, Minister of Public Works and Construction
- Ms. Faduma ABDULLAHI MOHAMUD, Member of Parliament
- Mr. Mohamed Ali NUR, Ambassador of Somalia to Kenya and Permanent Representative of Somalia to UNEP and the United Nations Human Settlements Programme (UN-HABITAT)
- Mr. Elmi Ahmed DUALE, Permanent Representative of Somalia to the United Nations
- Mr. Nur Hassan HUSSEIN (Nur Adde), Ambassador of Somalia to the European Union, Belgium and Italy

– **Regional authorities****Somaliland**

- Mr. Ahmed M. Mahamoud SILANYO, President of Somaliland
- Mr. Mohamed OMAR, Minister of Foreign Affairs and International Cooperation
- Mr. Mohamed Yassin HASSAN, Minister of Fisheries and Marine Resources and of Ports Management
- Mr. Ismail Mumin AAR, Minister of Justice and Judicial Organization (two consultations)
- Mr. Mohamed Rage IBRAHIM, Director-General, Ministry of Justice
- Mr. Liban MOHAMED, Chief of State Protocol and International Cooperation, Ministry of Foreign Affairs and International Cooperation

**Puntland**

- Mr. Abdirahman MOHAMUD FAROLE, President of Puntland
- Mr. Saeed Mohamed RAGE, Minister of Maritime Transport, Ports and Counter-Piracy (two consultations)
- Mr. Abdirizak AHMED, Director-General in charge of Counter-Piracy, member of the Somalian Counter-Piracy Task Force, in his capacity as a representative of the Transitional Federal Government and of Puntland (numerous consultations)

⇒ **SUDAN**

- Mr. Majok GUANDONG, Ambassador of the Sudan to Kenya and Permanent Representative to UNEP and UN-Habitat

⇒ **UKRAINE**

- Mr. Ambassador Yuriy SERGEYEV, Permanent Representative of Ukraine to the United Nations

⇒ **UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND**

- Mr. Henry BELLINGHAM, *Parliamentary Under Secretary of State, Foreign and Commonwealth Office*

⇒ **UNITED REPUBLIC OF TANZANIA**

- Mr. Jakaya KIKWETE, President of the United Republic of Tanzania
- Mr. Hussein Ali MWINYI, Minister of Defence and National Service
- Mr. Mahadhi MAALIM, Deputy Minister for Foreign Affairs and International Cooperation
- Ms. Zara NURU, Diplomatic Adviser to the President
- Mr. Ombeni SEFUE, Permanent Representative of the United Republic of Tanzania to the United Nations
- Ms. Begum TAJ, Ambassador of the United Republic of Tanzania to France

⇒ **UNITED STATES OF AMERICA**

– ***National Security Staff***

- Ms. Michelle GAVIN, *Senior Director for African Affairs*
- Mr. Sean REGAN, *Director Maritime Security Policy*

– ***Department of State***

- Mr. Johnnie CARSON, *Assistant Secretary of State, Bureau of African Affairs*
- Mr. Donald YAMAMOTO, *Principal Deputy Assistant Secretary, Bureau of African Affairs*
- Mr. Harold Hongju KOH, *Legal Adviser*
- Ms. Nerissa COOK, *Deputy Assistant Secretary, Bureau of International Organization Affairs*
- Mr. Kurt AMEND, *Principal Deputy Assistant Secretary, Bureau of Political-Military Affairs* (since 27 September 2010)
- Mr. Thomas COUNTRYMAN, *Principal Deputy Assistant Secretary, Bureau of Political-Military Affairs* (until 27 September 2010)

– ***Department of Defense***

- Ms. Vicki HUDDLESTON, *Deputy Assistant Secretary of Defense, Office of the Secretary of Defense*
- Commander Scott ORGAN, Director, Southern Africa Region, *Office of the Secretary of Defense*

– ***Department of Homeland Security — United States Coast Guard***

- Captain Frederick KENNEY, *Maritime and International Law Office Chief*

- **Permanent Mission of the United States of America to the United Nations**
  - Ms. Susan RICE, Permanent Representative of the United States of America to the United Nations
  - Ms. Rosemary DI CARLO, Deputy Permanent Representative of the United States of America to the United Nations
- **Embassy of the United States of America in Paris**
  - Mr. Charles RIVKIN, Ambassador of the United States to France

#### IV. Private sector

- **Shipping industry**
  - Mr. Philip EMBIRICOS, Immediate Past President, The Baltic and International Maritime Council, London
  - Mr. Peter HINCHLIFFE, Secretary General, International Chamber of Shipping, London
  - Mr. Rob LOMAS, Secretary General, International Association of Dry Cargo Shipowners, London
  - Mr. Jan Fritz HANSEN, Executive Vice President, Danish Shipowners' Association, Copenhagen
- **Maritime transport workers association**
  - Mr. Stephen COTTON, *Maritime Coordinator, International Transport Workers' Federation (ITF)*, London
- **Insurance companies**
  - Mr. Nigel CARDEN, Chairman of the Security Subcommittee, International Group of P&I Clubs; Deputy President of UK P&I Club
  - Mr. Neil ROBERTS, *Senior Executive*, Lloyd's Market Association
  - Mr. Andy WRAGG, *Senior Manager, International Regulatory Affairs*, Lloyd's
- **Banking sector**
  - Mr. Eric OUATTARA, *Deputy General Manager, Risk & Credit Management*, Bank of Africa, Dar es Salam

#### V. Experts

- **Eminent persons**
  - Mr. Abdulqawi Ahmed YUSSUF, Judge, International Court of Justice
  - Mr. Ahmedou OULD-ABDALLAH, former Special Representative of the Secretary-General for Somalia, resident United Nations mediator
  - Mr. Mohamed El Hacem OULD LEBATT, former Minister for Foreign Affairs of Mauritania, former Dean of the Faculty of Law of Nouakchott, Special Envoy of the International Organization of la Francophonie to Chad

– **Researchers**

- Mr. Michael BAKER, *International Affairs Fellow in Residence, Council on Foreign Relations*
  - Ms. Bronwyn BRUTON, *Fellow, One Earth Future*
  - Ms. Jennifer COOKE, *Director of the Africa Programme, Centre for Strategic and International Studies*
  - Dr. André LESAGE, *Senior Research Fellow for Africa, National Defence University*
  - Mr. Martin MURPHY, *Senior Expert, Centre for Strategic and Budgetary Assessments*
  - Dr. Peter PHAM, *Senior Vice President, National Committee on American Foreign Policy*
  - Mr. Gérard PRUNIER, *Expert on East and Central Africa, former researcher at the National Centre for Scientific Research (Centre national de la recherche scientifique — CNRS)*
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