

**UNIVERSITY OF PIRAEUS**



**DEPARTMENT OF MARITIME STUDIES**

**POSTGRADUATE STUDIES**

**MSc Shipping Management Program**

**MODERN MARITIME PIRACY AND  
INTERNATIONAL LAW - DEVELOPMENTS,  
PROBLEMS AND PROSPECTS**

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**MND19019**

**A master's thesis presented  
to the Department of Maritime Studies  
in partial fulfillment of the requirements  
for the Masters' degree  
in the Shipping Management**

**PIRAEUS**

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**October 2020**

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“The Masters’ Thesis has been unanimously approved by the Tripartite Graduation Committee, which has been assigned by Special General Assembly of the Department of Maritime Studies of the University of Piraeus, according to the regulations of the Masters’ Program in Shipping Management.

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- Dionysios Polemis
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The approval of the Masters’ thesis from the Department of Maritime Studies of the University of Piraeus does not imply acceptance of the writer’s opinion.”

*To my Family.*

## **I. ACKNOWLEDGMENT**

I would like to express my sincere appreciation to my supervisor Dionysios Polemis for his valuable contribution, continuous support, and collaboration during the conduction of my academic thesis: “Modern Maritime Piracy and International Law - Developments, Problems and Prospects”.

**MODERN MARITIME PIRACY AND INTERNATIONAL LAW –  
DEVELOPMENTS, PROBLEMS AND PROSPECTS**

<b>ABSTRACT.....</b>	<b>1</b>
<b>AIM.....</b>	<b>2</b>
<b>CONDITIONS.....</b>	<b>2</b>
<b>I. THE PHENOMENON OF MODERN PIRACY .....</b>	<b>4</b>
1. <i>The areas where the problem occurs and its size. ....</i>	4
2. <i>The causes of piracy in Somalia. ....</i>	7
3. <i>The pirates and their ways of action .....</i>	8
4. <i>Definition – What is Piracy .....</i>	9
5. <i>Is piracy terrorism?.....</i>	14
<b>II. THE INTERNATIONAL COMMUNITY AND THE APPLICATION OF INTERNATIONAL LAW AGAINST.....</b>	<b>19</b>
6. <i>International Cooperation in Combating Piracy .....</i>	19
7. <i>Action of the International Community and International Law .....</i>	23
8. <i>The capture of pirates.....</i>	28
9. <i>Prosecution of Pirates .....</i>	29
(1) <i>WHY UNIVERSAL JURISDICTION FOR THE PROSECUTION OF PIRATES?.....</i>	29
(2) <i>PRACTICAL ISSUES IN THE IMPLEMENTATION OF UNIVERSAL JURISDICTION...30</i>	
(3) <i>UNCLOS – SUA AND CRIMINAL PROSECUTION OF PIRATES.....</i>	31
10. <i>Issues related to the detention and prosecution of pirates .....</i>	33
11. <i>Persecution of Pirates in Kenya .....</i>	36
12. <i>International Criminal Court to deal with piracy .....</i>	38
13. <i>Application of human rights law .....</i>	39
14. <i>After the arrest – the European Convention on Human Rights.....</i>	41
15. <i>The use of private security companies.....</i>	43
16. <i>Pros and cons of equipping merchant ships.....</i>	46
<b>III. CONCLUSIONS.....</b>	<b>49</b>
<b>IV. REFERENCES .....</b>	<b>51</b>

**ANNEX “A”:** Decisions of the UN Security Council 1814, 1816, 1838, 1846, 1851, 1897 (ANNEX “A” is provided as a separate document because it only refers to the United Nations Security Council Decisions)

**MODERN MARITIME PIRACY AND INTERNATIONAL LAW –**  
**DEVELOPMENTS, PROBLEMS AND PROSPECTS**

**ABSTRACT**

Since 2006 and according to statistics that is being processed by ICC-IMB<sup>1</sup> that follows the phenomenon of piracy worldwide, shows that piracy has been particularly revived in the Horn of Africa and Somalia region and in Nigerian Delta. There are two reasons for this: the collapse of the Somali state and the anarchy that has prevailed in the country in the absence of a state entity, and on the other hand the particularly attractive incentive to collect ransoms for the release of merchant ships and hostages been held hostage, that in other terms translated to millions of dollars per year. With around 21,000 merchant ships sailing from the Mediterranean to the Red Sea and the Indian Ocean on an annual basis<sup>2</sup>, the international community has paid close attention to the issue and its treatment.

In this dissertation we will deal with the issue of piracy in modern times as an international crime dealt with by a set of legal rules of international law as well as the secondary issue of dealing with pirates who are arrested, since as we will see around it arises particular legal issues of International Law. We will examine also some issues that arise from the practical application of the legal framework dealing with piracy and pirates and the effectiveness of this framework, its adequacy and the contribution of international law to the prevention and dealing with the phenomenon

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The International Maritime Bureau (IMB) is part of International Chamber of Commerce (International Chamber of Commerce – ICC). Department of IMB is the Piracy Reporting Center located in Kuala Lumpur, Malaysia. Operates 24/7 to report acts of piracy and armed robbery. The service is financially funded by shipping companies; its services are free and available for all ships regardless of flag.

<sup>2</sup> According to Suez Canal Statistics for year 2008, 21415 were the transit of vessels. In 2019 was a reduction of 18880 transits due to global economic crisis. For updates check [www.suezcanal.gov.eg](http://www.suezcanal.gov.eg).

of modern piracy. We will present and examine specific thoughts that have created in global maritime community to tackling the phenomenon by involving and using the services of private security companies. We will deal with main conclusions that come from the examination of all main factors. For the elaboration of the dissertation we examine all the bibliography stated, and additionally a number of electronic sources that due to huge data provided it were not deemed appropriate to mention. Particularly important were the conclusions of the conferences for piracy that took place in the British CHATHAM HOUSE<sup>3</sup> and in the Italian ISTITUTO AFFIERI INTERNATIONALI<sup>4</sup>. Additionally were examined a series of primary sources of The United Nations (UN resolutions, reports of UN Secretary General), IMO<sup>5</sup> etc.

## **AIM**

The aim of the dissertation is to examine the existing framework of International Law about modern piracy and to report modern developments to confront piracy, also discover problems to apply all modern techniques and to analyze challenges for the maritime operations.

## **CONDITIONS**

In order to follow a realistic approach we take into account the following conditions:

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<sup>3</sup> British Institute of International Relations, CHATHAM HOUSE Conference Report, OCT 2009 “PIRACY AND LEGAL ISSUES”. In electronic format [www.chathamhouse.org.uk](http://www.chathamhouse.org.uk)

<sup>4</sup> IAI, Conference Report, Rome 16 JUNE 2009 “ADDRESSING TH RESURGENCE OF SEA PIRACY LEGAL, POLITICAL, AND SECURITY ASPECTS” [www.iai.it](http://www.iai.it)

<sup>5</sup> IMO is a UN body that prepares and issues regulatory treaties that complement the existing legal framework and regulate global shipping issues.. Because of the international nature of the shipping economy, It is fully understood that action to improve safety in maritime activities It would be more effective if they were carried out collectively than by individual countries acting unilaterally and without coordination with others.



A. We will focus in modern piracy and will not refer to the chronological problem that exists centuries ago in the maritime community.

B. Concerns and issues will be presented, concerning the international community on the basis of tackling modern piracy and pirates under international law.

C. The issue of dealing with pirates considered to be as integral to confront modern piracy because they are the recipients of the effects of International Law and is crystal clear that their relation with the crime is inseparable. So dealing with piracy contains the confrontation of pirates.

D. The issue of involvement in piracy of private security companies will be examined also because of the debate that has opened up to the international community on whether or not it can contribute to tackling piracy and, of course, whether this is legal under international law.

E. Although maritime piracy is spread around the globe we will focus in the greater area of Somalia, because of the unique situation there, and because the methods and the tactics of the pirates in Somalia, that represent in a high percentage the total activity of maritime piracy.

## II. THE PHENOMENON OF MODERN PIRACY

### 1. The areas where the problem occurs and its size.

Piracy has a timeless presence in human history, and the current time period leading up to the completion of the second decade of the 21st century is considered a serious problem by mostly all governments and the shipping family. For a long time, piracy was extremely rare and was limited to specific areas of the developing world. On the other hand, the situation regarding piracy today is completely different from the recent past. The result is that the safety of the high seas, in recent years, in some parts of the world is not a given. The factors contributing to the outbreak are social and economic impoverishment and political instability. The best-known example, which has been in the spotlight for the past years, is piracy in the Gulf of Aden and the Indian Ocean., areas in the immediate vicinity of Somalia<sup>6</sup>.<sup>7</sup>

Pirate attacks are usually categorized into the following four types<sup>8</sup>:

- robberies, armed or not: mainly aimed at stealing money, crew personal belongings, and ship equipment
- permanent piracy of ships (the most widespread in the Far East), with the aim of sometimes turning them into ghost ships (with falsified data) for their further use in cargo fraud
- piracy of ships for the theft of their cargo and

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<sup>6</sup> Somalia has extensive coasts north, east and southeast in the Gulf of Aden and the Indian Ocean respectively, as it is located at the eastern tip of the African Continent, an area known as « Horn of Africa ». It borders Ethiopia and Djibouti to the west and northwest, while in the southwest with Kenya. The average per capita GDP of the country is 600\$ USD annually, performance that brings it to the bottom of the world rankings in terms of prosperity indicators. See: <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>, latest data available.

<sup>7</sup> D. Dalaklis, 2009, Topic presentation «Sea transport and Piracy: The Geopolitical Dimension », at the conference organized by Supreme Joint War College on the subject « Illegal Immigration and Modern Piracy as Threats to International and Regional Security » 25-26 Nov. 2009.

<sup>8</sup> British HM Foreign & Commonwealth Office. FCO, Focus International: Piracy and armed robbery at sea, January 1999

- piracy and kidnappings for ransom

The last two categories saw the largest increase in the 20th and 21st century, most notably attacks on ships sailing off Somalia, East Africa and the Nigerian coast of West Africa. (Niger Delta).

The International Maritime Bureau (IMB) Piracy Reporting Center (PRC)<sup>9</sup> gathers information about pirate attacks. In the annual report that is available online statistics and descriptions of events are reported as well as the most dangerous areas where piracy occurs today.



Pic. 1: Map of piracy incidents as it is published in the site of IMB.

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<sup>9</sup> The basic services provided by the Center are: collection from all reporting vessels for the presence or movement of suspicious vessels or for attempts or finally boarding ships and armed robberies and informing adjacent ships and police authorities. Issues regular reports of piracy and armed robbery through scheduled broadcasts with Inmarsat-C through the service of safety-NET . Ships may also receive these reports by contacting the IMB-PRC.

It also compiles and analyzes all the information it has received and issues summary reports on piracy and armed robbery to the institutions concerned, including IMO.

According with IMB reports (except the reports that are published in the IMB webpage, in section «[piracy prone areas and warnings](#)»<sup>10</sup>) the most dangerous areas for piracy today are as follows;

**a. Countries of Southeast Asia and Indian Ocean.**

Bangladesh, Indonesia, Malakka Straits, Malaysia, South China Sea, Philippines, Singapore, Vietnam.

**b. Africa and Gulf of Aden.**

Tema (Ghana), Lagos & Bonny River (Nigeria), Dar Er Salaam (Tanzania), Conakry (Guinea), Gulf of Aden, Eritrea, Somalia.

**c. South and Central America and Caribbean.**

Brazil, Peru (Callao).

**d. Rest of World**

Arabic Sea, Vicinity of Oman, West Indian Ocean, Vicinity of Madagascar and Seychelles.

As of the size of piracy today, as shown in the recent report on piracy for 2019 of IMB, **the problem worldwide is real and the number of attacks is fluctuating**. Since 2010 the number of attacks is decreasing (162 cases in 2019, instead 445 cases in 2010) due to safety measures that vessels are taking. The number of attacks off the Somali coast fell dramatically to just eight in the five-year period between 2015 and 2019. Piracy attacks in Somali waters peaked in 2011, when 160 attacks were recorded, and incidents had soared to 358 during the the five-year period between 2010 and 2014. This drop is widely regarded as a result of concerted efforts to reduce crimes at sea. Counter-piracy measures prove to be fruitful. In light of growing numbers of oil tankers transiting the Gulf of Aden, crime began to spread from the streets of Mogadishu onto the waterways between the Horn of Africa and the Arabian Peninsula. In recent times, freight forwarders have begun to reap the results of the extensive military and naval support that was provided by the international community in response to spiking incidents of maritime crime. However, piracy-related violence has not fully been eradicated, but has rather shifted from the Horn of Africa to the Gulf of Guinea and

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<sup>10</sup> [www.icc-ces.org/index.php](http://www.icc-ces.org/index.php),

Southeast Asian waters. In 2019, the most perilous territorial waters for ships included the waterways of Nigeria, Indonesia, and Malaysia/Singapore. The number of acts of piracy and armed robbery against ships, which were reported to the Organization to have occurred or been attempted, were 193 incidents worldwide in 2019. In 2018, 223 incidents were reported. We are thus seeing a decrease of about 14% at the global level, and the lowest number of reported incidents at the global level since 1996<sup>11</sup>.

From the data referred to above, it emerges that the areas most affected by acts of piracy and armed robbery against ships in 2019 were West Africa (67 incidents), the Straits of Malacca and Singapore (45 incidents) and the South China Sea (34 incidents), followed by the South America Pacific region (14 incidents), the South America Caribbean region (12 incidents), and the Indian Ocean (10 incidents).

The total number of incidents of piracy and armed robbery against ships reported to the Organization as having occurred or having been attempted from 1984 to the end of December 2019 has risen to 8,186. The data reveals that the total number of crew reported as taken hostage/kidnapped or missing in 2019 is the highest in the last five years at 173 crew members, over 87% of who were kidnapped in West Africa, followed by the South China Sea and Latin American regions.<sup>12</sup>

## **2. The causes of piracy in Somalia.**

Composed of a former British protectorate and an Italian colony, Somalia was formed as a country in 1960, when the two regions merged. Since then, its development has been delayed by territorial claims to Somali-inhabited areas in Ethiopia, Kenya and Djibouti. The end of the Cold War inevitably affected this region as well. In 1991, President Barre was ousted by his opponents, who failed to agree on a replacement and plunged the country into anarchy, lawlessness and gang conflict. Until the change of regime, there was a rudimentary coast guard in

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<sup>11</sup> ICC-IMB Piracy and Armed Robbery Against Ships – Annual Report 2019

<sup>12</sup> As above.

operation, which was partly enough to fight piracy. From 1991 to 1995, the presence of a multinational military force under the auspices of the UN (UNOSOM), provided the necessary deterrent to illegal action at sea.

From 1995 to 2000, local fishermen launched "attacks" on fishing vessels registered in countries (like Spain) which are not adjacent to the area, considering that the catches in their area belonged to them. Between 2000 and 2004, as fishing activities by foreign countries continued, fishermen began to occupy these vessels.<sup>13</sup> In 2005-2006, the rise of the Islamists to power plunged the country back into utter chaos. The occupied ships (fishing vessels), in turn were used as "bases" (mother-ships) for the further expansion of pirate activity over long distances from land or for attacks on ships with greater value load, i.e. the known from history. And as shipping companies were worried about the fate of the crew (since the cargo is always insured) They offered some money to release them seamen and in this way they managed to whet the appetite of the Somali pirates even more. From the summer of 2008 onwards there is an obvious upgrade in the organization / capabilities of the pirates mainly due to the financial possibility provided by the ransom they received.<sup>14</sup>

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<sup>13</sup> The general anarchy that prevails in Somalia, combined with its location in the Horn of Africa, a region rich in catches, has made Somalia an ideal destination for many European fishing companies. State-of-the-art ships enter the unguarded Somali territorial waters illegally and suck up the country's maritime wealth, making huge profits and leading local fishermen to despair. Western waste treatment companies have also been using Somali waters for almost a decade to dump nuclear, industrial and hospital waste, as confirmed by UN agencies. Suffering only the negative consequences of globalization and none of its benefits, a dynamic reaction of the local population was a natural consequence.

<sup>14</sup> Realizing the profits of piracy, as ransom was usually paid, the local heads of the community began to assist the pirates, sharing the profits together. The assessment reached for the distribution of ransoms by the Workshop of International Expert Group on Piracy off the Somali Coast, that took place in Nairobi - Kenya, 10-21 November 2008, under the auspices of the UN (under the Special Representative of the Secretary General of the UN to Somalia Ambassador Ahmedou Ould - Abdallah) with title «Piracy off the Somali Coast» was the following: 20% for the bosses of the organization, 20% of building infrastructure for future missions (guns, fuel, cigarettes, food, etc. ), 30% for the perpetrators and 30% for the government members.

### **3. The pirates and their ways of action**

Somali pirates attack boats off the north coast of Somalia in the Gulf of Aden. They use automatic weapons and rockets (Rocket Propelled Grenades - RPG's) for intimidation in order to obtain boarding the vessel in order to seize and loot it. If the attack is successful, the boat is eventually taken hostage off the coast of Somalia and ransom is required for the safe release of the boat and crew.

Recent attacks suggest that pirates have resumed attacking boats off the east and south coasts of Somalia. Some attacks have spread and taken place off the coast of Kenya and the coast of Tanzania. Somali pirates are dangerous and willing to use their automatic weapons and RPG's against ships in order to stop them. The pirates in order to attack farther away from the coast (till 1000 n.m.) they follow the tactic of the so called mother ships. These ships maybe fishing boats or sailing boats of the specific areas. These boats maybe also, as said before, piracy victims and used to transport smaller vessels (skiffs) in the open sea till they reach the maritime shipping lines. It is of course obvious that no real fishing boat from Somalia (and possibly from the surrounding countries of the region) it's not logical (for financial reasons only) to fish 600 or 1000 n.m. from the coast line, because that contains high risk for the physical safety of the boat itself (since due to financial hardship and lack of controls the situation of fishery vessels is bad) on the other hand would have disproportionately high costs for local fishermen so the (possibility) fishing would not be of financial interest.

### **4. Definition – What is Piracy**

The legal definition of piracy and therefore the most widely used is the one mentioned in the article 101 of the United Nations Convention on the Law of the Sea Montego Bay 1982 (UNCLOS subsequently). According with the UNCLOS as piracy is defined anyone of the following actions:

a. any unlawful act of violence or detention, or any act of robbery committed for selfish purposes by the crew or passengers of a private ship or airplane, and will be directed:

(i) Offshore, against another ship or aircraft, or against persons or property on board the ship or aircraft.

(ii) Against a ship, aircraft, persons or goods in an area outside the jurisdiction of any state.

b. any act of voluntary participation in the operation of a ship or aircraft, aware of the facts which make it a pirate ship or aircraft.

c. any act of inciting or intentionally facilitating one of the acts described above<sup>15</sup>

Also the article 103 (UNCLOS) refers the «definition of a pirate ship or aircraft»:

A ship or aircraft shall be deemed to be pirated if the persons exercising effective control over it intend to commit one of the acts referred to in Article 101. The same is effective if the ship or aircraft has been used to commit any such an act, for as long as as long as it remains under the control of the persons responsible.

The crime of piracy is considered an international crime, and in fact it is the oldest according to customary but also conventional international law (UNCLOS)<sup>16</sup>. It is the first of the crimes of international law that has allowed the exercise of the jurisdiction of any state<sup>17</sup> in the open sea to achieve the criminal

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<sup>15</sup> United Nations Convention on the Law of the Sea (UNCLOS) art. 101, 10 Dec. 1982, which was transferred as is from Geneva Convention on the High Seas, 29 Apr. 1958. The IMB International Maritime Bureau provides a broader definition: «the act of boarding any vessel for the purpose of committing theft / robbery or any other crime ... and with the intention or the possibility of using force in the commission of that act ». This definition has no legal force and is used for statistical purposes only.

<sup>16</sup> See. M.N. Marouda, «Piracy as an international crime», in the collective work Security and Piracy in the Open Sea, St Perrakis – Gr. Tsaltas, Pub. I. Sideris, 2006.

<sup>17</sup> P. Siousouras, 2009, presentation entitled «Legal Framework for Tackling Piracy in the Light of International Law», in the conference that organized by Supreme Joint War College on the subject «Illegal Immigration and Contemporary Piracy as Threats to International and Regional Security», 25-26 Nov. 2009: According to International Law, on the high seas, only a public ship can exercise power over a merchant ship (military or equivalent) of the flag state that it also bears under certain conditions. In only three cases (exceptions) the UNCLOS provides the ability



repression. Jurisdiction over the crime of piracy therefore belongs to all states, so it is universal (Universal Jurisdiction – UJ) – in fact in its absolute form - since in cases of piracy the relationship of pirates or victims with a state is not considered.

The justification for the exemption from the exclusive jurisdiction of the flag State on the high seas is the fact that a pirate ship either does not have a flag, or has but actually acts contrary to the lawful conduct imposed by the possession of the flag. In this sense, international law recognizes on warships or publicly owned vessels interference with pirate ships to suppress piracy.<sup>18</sup> This is provided for in the article 107 of UNCLOS, with title «Ships and aircraft entitled to seize for piracy purposes», during which the seizure:

Can only be done by warships or military aircraft or from other ships or aircraft with obvious distinctions that they belong to a civil service and are authorized for that purpose.

It is even interesting that according to the article 105 of UNCLOS with title « Seizure of a pirate ship or aircraft »:

Any State may seize a pirate ship or aircraft on the high seas or elsewhere outside the jurisdiction of any other State, as well as a ship or aircraft captured and controlled by pirates, and to apprehend persons and seize their assets on board. The courts of the State which carried out the seizure may decide on the one hand on the penalties to be imposed, on the other hand, the measures to be taken in relation to ships, aircraft or assets, subject to the rights of third parties acting in good faith.

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possibility for warships or ships exercising public authority to exercise jurisdiction as exceptions to the principle of jurisdiction of the flag State. These are the following: harassment, constant persecution and piracy. Reference to. K. Ioannou & A. Strati, Suggestions of the Law of the Sea, Athens-Komotini, A.Sakkoulas, 1996, page. 222.

<sup>18</sup> See. P. Sioussouras reference to E.Roukouna, International Law, A.Sakkoulas, Athens, 1982, page 185.

However, if the investigation into the suppression of piracy is fruitless, according to Article 106 bearing a title “Liability for seizure without sufficient data”, the State whose ship carried out the search is liable. It states exactly that:

In the event that the seizure of a ship or aircraft suspected of piracy has taken place without sufficient evidence to justify it, the confiscating State shall be liable to the State whose nationality bears the ship or aircraft for any loss or damage caused by the confiscation.

The recognition of the universal jurisdiction of states is due to the fact that the international legal order does not have independent mechanisms for the suppression and punishment of certain acts, which are considered to be directed against the international community as a whole. States thus undertake to suppress these crimes, whether or not there is a specific link to the national legal order. However, universal jurisdiction because it is co-existent (that is, all states have jurisdiction over an action or situation) is likely to create conflict problems<sup>19</sup>.

Even the definition of piracy per se UNCLOS raises some issues. This is because it sets three conditions for it to be considered an international crime **jure gentium**<sup>20</sup>:

- There is an act of unlawful violence or detention or robbery (looting). It is rightly pointed out in the literature that the wording “illegal violence” is a tautology, insofar as any act of violence is illegal under international law, as long as it is not a legal defense<sup>21</sup>.
- This illegal act should be carried out by the crew or passengers of a private ship. Obviously, piracy does not mean violence that comes from a warship or public vessel at the expense of another ship. It

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<sup>19</sup> See. P. Siousouras as above, reference to K. Ioannou & A. Strati.

<sup>20</sup> See. Michael Bahar, 2006, «Attaining Optimal Deterrence at Sea: A Legal and Strategic Theory for Naval Anti-Piracy Operations» page. 16, published in VANDERBILT JOURNAL OF TRANSNATIONAL LAW, Vol. 40- 2006. <http://ssrn.com/abstract=982679> 2010. See. M.N. Marouda, «Piracy as an international crime

<sup>21</sup> See P.Siousouras as above reference to K. Ioannou & A. Strati, Suggestions of the Law at the Sea page 224.

could, however, be considered as piracy an illegal act committed either by a warship seized by insurgents (article 102 of UNCLOS), or a public ship flying the flag of a non-internationally recognized entity. This happened in May 1975, when the merchant vessel *Mayarez* with US flag arrested by Cambodian patrol boat in Siam Bay offshore, 60 nautical miles from the coast of Cambodia, during the Khmer Rouge period. As the Pol Pot regime had not gained international recognition from a large number of states, the US considered the arrest as piracy. *jure gentium*<sup>22</sup>.

- To take place “in the open sea” or in “place outside the jurisdiction of any State”. Of course piracy *jure gentium* we also have in the EEZ or in the border zone, provided that its prosecution does not conflict with the sovereign rights of the coastal State in the EEZ or its specific responsibilities in the border area it has adopted <sup>23</sup>.
- The commission of illegal acts takes place from ship to ship, thus excluding illegal acts that occur from the outset on the target ship. Thus, the attitude of crew members or acts of violence by passengers are not part of the conceptual scope of piracy of articles 101, 103.
- In addition, piracy (according to its definition UNCLOS) does not include acts of violence instigated or supported by national actors (States-Governments), while the law of some states when the crime of piracy is committed for ideological or political reasons absolves the perpetrators from their individual responsibility (although this concerns subjective nature of the crime governed by national law). Certain acts of violence, unrecognized as wars by third countries, insurgents on board ships and acts of terrorism while do not recommend typical piracy, states many times try to do so. As the

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<sup>22</sup> See P. Siousouras reference to M.N. Marouda, Piracy as an international crime page 41.

<sup>23</sup> See P. Siousouras reference to article 58 (2) of UNCLOS, where it states that the provisions of Articles 88-115, hence the articles 100-107 related piracy apply to the EEZ provided that they are not incompatible with the EEZ status.

debate on the relationship between terrorism and piracy is open, we will consider this issue separately in the next paragraph.

Demonstrative of the issues raised by the definition of UNCLOS is the case of Santa Maria, cruise ship with Portuguese flag. On January 22, 1961 it was occupied by gunmen, who first boarded as passengers. After killing members of the crew, they declared that they were waging a revolutionary struggle against its dictatorial regime of Salazar in Portugal. After negotiations with American ships that approached Santa Maria, the militants landed in Brazil, where they were granted political asylum. Their act was not considered piracy **jure gentium** because exactly it took place on the same vessel and not against it<sup>24</sup>. In this way, however, a large number of terrorist acts are ruled out because they take place from the very beginning on the same ship and not against another ship. In addition, the perpetrators of these acts when they have no selfish motives but politically there is a very serious possibility that their illegal acts will not be considered as pirate.

From the above we conclude that the distinction between the various forms of illegal activity at sea, violent or not, such as smuggling, trafficking and piracy and the distinction between pirates, terrorists and guerrillas, is legally vital and a key to correctly approach the current phenomenon of piracy. However, in the political circles of some countries today, there is a pervasive impression that jurists of international law are ready to admit that when we go from theory to practice the existing legal framework is not enough to confront piracy. Of course there are also opposing voices arguing that the existing International Law<sup>25</sup> provides all the necessary tools to deal effectively with the phenomenon.

## **5. Is piracy terrorism?**

Typically to understand the connection between piracy and terrorism is the case of the Italian ship Achille Lauro (1985), which was occupied by members of

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<sup>24</sup> As above

<sup>25</sup> Geneva Convention on the High Seas of 1958 (articles 14, 15, 16, 17, 18, 19, 20, 21, 22) whose basic forecasts were maintained in UN Convention on the Law of the Sea (UNCLOS), 1982,(articles 100I, 101, 102, 103, 104, 105, 106, 107),\_

[http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm)

Front for the Liberation of Palestine. These people initially boarded as passengers and at some point during the trip, took control of the ship. Holding passengers as hostages, they threatened to blow up the ship if Israel did not release 50 Palestinian prisoners. When their request was rejected, killed an American - Jewish passenger in a wheelchair, and thrown his body into the sea. Although the US described the act as piracy, the perpetrators were convicted by Italian courts of acts of terrorism. It is noted, however, that at that time terrorist acts on a ship did not constitute an international crime. And that is exactly why the Italian government, realizing the gap, took the initiative that led to the Rome Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988. (Convention for the **Suppression of Unlawful Acts against the Safety of Maritime Navigation** 1988 - SUA Convention, SUA onwards) in order to fill the legal gap created by UNCLOS. Although it does not specifically mention piracy, however, states are obliged to criminalize a number of illegal acts and terrorist acts that take place on a vessel, but without establishing universal jurisdiction for their crimes in their suppression. In fact most of what is provided by the SUA offenses would be acts of piracy if committed under UNCLOS, such as e.g. the “armed robbery at sea”.<sup>26</sup> However, SUA has not yet been widely accepted by the international community, although it operates in addition to UNCLOS<sup>27</sup>.

Modern piracy as a phenomenon in the post 9/11 era attracts the special interest of the international community for the additional reason that in several cases there is a possibility of linking piracy with terrorist acts. As mentioned earlier, a great deal of debate has begun and several states are trying to identify the crime of piracy (other than that) with that of terrorist acts on the high seas, mainly because in this way they seek to exercise their universal jurisdiction.<sup>28</sup>

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<sup>26</sup> Complementing the SUA is the 2005 Protocol which further covers the commission of crimes related to piracy and terrorist acts but has not yet been ratified by all Member States.

<sup>27</sup> See. P. Siousouras as above *ref. to*. M.N. Marouda, «Piracy as an international crime»..., page. 45

<sup>28</sup> See. Bjøm Møller, 2009, «MARITIME TERRORISM AND NAVAL STRATEGY» DIIS REPORT 2009:02, Danish Institute for International Studies, DIIS Copenhagen 2009. Electronic format in [www.diis.dk](http://www.diis.dk).

We estimate that this interest will increase in the future, since there are already serious indications for the connection of piracy with international and local terrorism in several parts of the world where the phenomenon of piracy occurs. This connection can take the form of a direct or indirect link between pirate groups and extremist Islamist organizations, as well as the movement of capital and weapons between them. Al Qaeda's expressed desire to develop capabilities is also well known "maritime terrorism" as it appears open on various Jihadist sites on the internet <sup>29</sup>.

One issue that creates the conditions for a possible identification of piracy with terrorism is the fact that terrorism, unlike piracy, does not have an internationally agreed (legal) official definition. While the international community has tried to give a commonly accepted definition of terrorism, this has not been possible. According to common sense, terrorism usually involves the manifestation of indiscriminate violence with a political, usually objective, purpose. Nevertheless, terrorism, as a motive for committing a crime, is nowhere mentioned as a feature that differentiates the commission of a crime. (e.g. of those covered by the SUA). Consequently, due to the above and mainly due to the lack of definition of terrorism, most of the so-called anti-terrorism conditions occur (e.g. SUA mentions the word terrorism only in its preamble) to cover a wide range of offenses, including acts of piracy.

Another treaty considered a counterterrorism treaty is the 1979 International Convention against the Taking of Hostages. The crime of hostage-taking, as enshrined in this treaty, clearly covers the illegal hostage-taking of crews of vessels for ransom. A criminal offense systematically committed by pirates off the coast of Somalia, without constituting a terrorist act.

With this category of contracts, states are required to incorporate into their domestic criminal law the offenses referred to in them in order to ensure the required continuity of the existing legal framework of the International Criminal Law and in domestic jurisdiction. That way they will not be created «safe havens»,

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<sup>29</sup> See article of ICT's Jihadi Websites Monitoring Group, with title «[Maritime Terrorism in the Eyes of Al-Qaeda](http://www.ict.org.il/Articles/tabid/66/Default.aspx)» in the web site of Israeli International Institute for Counter-Terrorism (ICT). <http://www.ict.org.il/Articles/tabid/66/Default.aspx>

lack of an institutional framework in the domestic jurisdiction and the possibility of impunity for those who commit these offenses will be minimized since the Member States of these conventions are obliged to either extradite or prosecute those charged with such offenses (**aut dedere aut judicare**).

In conclusion, it follows from the above that while the existing conditions mentioned above are beneficial against the crime of piracy and related offenses, which may not fall strictly within the definition of piracy but are in fact piracy, nowhere do they associate piracy and do not equate piracy with "terrorism".

Apart from the theoretical approach, in fact, in the case of Somalia, there seems to be some connection between the pirates and the extremist Islamist organization Al Shabaab. The UN monitoring team in Somalia in its report on the arms trade states that money taken as ransom by pirates is used to buy weapons used in the conflict in Somalia.<sup>30</sup>

There, groups supported by local regimes commit atrocities as IMB notes<sup>31</sup> armed robberies at sea, (act of piracy if committed on the high seas). The central government characterizes them as terrorists (not guerrillas) and along with it do the same for some countries which this characterization serves, as it allows them to be more easily involved in the interior of the country.

It is obvious that a clear distinction between terrorism and piracy is impossible, since terrorism, piracy, revolutions and organized crime are often overlapping activities. Some circles, of course, see advantages in categorizing piracy as terrorism. Mainly because, in their view, this would "legitimize" and encourage - politically - the international community to take, under "international co-operation", precautionary action against pirates.

Some countries are trying to mobilize Western countries to enforce anti-piracy, anti-human rights and anti-piracy laws. However, given the seriousness of the crime of piracy and the very serious financial risks for global shipping, markets and trade, it is rather unlikely that there will be more incentive in the states to

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<sup>30</sup> Report of the Monitoring Group on Somalia according to the decision of the SC (Security Council resolution) 1811 (2008), United Nations, 10 December 2008.

<http://daccessdds.un.org/doc/UNDOC/GEN/N08/604/73/PDF/N0860473.pdf?OpenElement>

<sup>31</sup>

See IMB Annual Report 2009

ensure effective and dissuasive sanctions against pirates or at least that is how they should be.

Some pirate activities may be detected and dealt with in the context of counter-terrorism activities and by those responsible for countering international terrorism, but piracy is not in itself terrorism and should not be treated as terrorism. The standard acts of piracy off the coast of Somalia appear to be in fact piracy and not terrorism. However, specific actions may involve a number of offenses related to terrorist acts and activities. These should be addressed on a case by case basis.

In conclusion, piracy is already an offense for which universal jurisdiction is provided and the label of "terrorism" is not required to be considered a pirate act as a very serious crime with international (legal) consequences.



### **III. THE INTERNATIONAL COMMUNITY AND THE APPLICATION OF INTERNATIONAL LAW AGAINST**

#### **6. International Cooperation in Combating Piracy**

Tackling piracy by the international community is a high priority as, in addition to the obvious threat to the freedom and physical security of merchant ships, the interests at stake in the threatened freedom of movement of goods and goods by sea are enormous. This is why the international community has institutionally protected the right to free navigation. Let us not forget, after all, that the obstruction of the freedom of navigation – especially the so-called choke points (points of convergence of sea routes, literally "drowning points") - has been the cause of several heated conflicts in the history of mankind. Acts such as piracy provoke an international reaction both unilaterally and collectively.<sup>32</sup>

Since 1983 the International Maritime Organization (IMO), belongs to the UN, based in London has been working to tackle piracy by organizing a piracy reporting system and launching a series of initiatives that have been systematically part of an anti-piracy plan since 1998. The aim is to develop a series of local agreements for the implementation of anti-piracy measures such as e.g. the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) and a series of meetings for consultation and further organization at local level to address the phenomenon<sup>33</sup>.

In the context of the fight against piracy, the IMO issues summary reports (from those issued by its Member States) for episodes of piracy and armed robberies against vessels, containing event descriptions to help prevent future events. The IMO has also issued the Best Management Practices (BMP) that

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<sup>32</sup> After the terrorist attack (In the beginning, the US called it piracy) in Achille Lauro 1985 the UN General Assembly requested (General Assembly Resolution 40/61) by the IMO "to study the problem of terrorism on or against ships with a view to proposing appropriate measures". As we said, the result of the event and the IMO proposals was the SUA (1988).

<sup>33</sup> April 2005 Sanaa, Yemen for States in the Red Sea and Gulf of Aden was repeated in January 2006 in Oman, corresponding to the Straits of Malacca and Singapore to 2005 and the Caribbean, South Asia, Pacific and West and Central Africa in 2006.

Merchant ships must follow to prevent and better deal with piracy incidents while its legal department elaborates on various piracy-related legal issues and provides guidance to state governments to investigate a pirate attack.<sup>34</sup>

Several UN bodies address piracy and promote international co-operation. IMO works very closely with the UN Office on Drugs and Crime (UNODC), which plays a key role in international action against international organized crime and in the development of relevant legislative approaches to tackling it. UNODC issues useful guidelines and procedures to assist warships in conducting their investigations.

The United Nations Office for Somalia coordinates the activities of the various organizations dealing with Somalia, noting that piracy is only one symptom of a much wider problem.

There are a large number of other cooperation initiatives. Some of these have already been mentioned, such as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP).<sup>35</sup>

This initiative, involving since 2004, 16 Asian countries with an information exchange center (RECAAP Information Sharing Center – ISC), in collaboration with the IMO, aims to create and develop capabilities, the exchange of information, and the suppression of piracy in the area. As regards piracy off the coast of Somalia, the co-operation of all states in the region interested in resolving the piracy problem has been organized under the agreed (Djibouti Code of Conduct)<sup>36</sup>, by which the IMO directives entered into force in January of 2009.

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<sup>34</sup> Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships (adopted November 2001) IMO resolution A.922(22). Electronic format in [www.imo.org](http://www.imo.org)

<sup>35</sup> <http://www.recaap.org/about/pdf/recaap%20agreement.pdf>

<sup>36</sup> "... the undersigned states declare their intention to cooperate as far as possible, and in accordance with international law, to suppress piracy and armed robbery against ships, share and report relevant information ..., detain ships suspected of piracy and armed robbery against ships, ensure that persons who commit or attempt to commit acts of piracy and armed robbery against ships will be arrested and prosecuted; and will facilitate full care, treatment and repatriation of seafarers, fishermen and other ship personnel and passengers victims of acts of piracy or armed robbery against ships, in particular those who have suffered violence. Participants intend to

The agreement follows a cooperation strategy similar to ReCAAP, although it is more complex. The Code of Conduct urges countries in the region to adopt appropriate legislation to prosecute pirates and to develop coastguard capabilities, so that when foreign navies leave the region they can tackle the problem.

The piracy Contact Group on the Somali coast is also focused on the problem of piracy (Contact Group on Piracy off the Coast of Somalia), an institution of the international community consisting of 24 states and 5 international organizations (EU, NATO, African Union, UN Secretariat and IMO) and was established with the encouragement of the Security Council on 14 January 2008. The CGPCS is an ad hoc cooperation of a group of countries with vested interests to better confront with piracy. The team has four different working groups with substantial work being done in various fields. The second working group, led by Denmark, is responsible for dealing with piracy and legal issues. The work is very serious but the proposals are confidential and not disclosable. The issue that proposes is discussed at the Contact Group conferences.

The last conference held on September 10, 2009 in New York announced the creation of a donation account opened at the initiative of Japan (IMO Djibouti Code Trust Fund ) with the funds will support anti-piracy activities in the region such as information centers in Kenya, Tanzania and Yemen and a law enforcement training center in Djibouti. Especially on the issue of information exchange, there are other initiatives for greater exchange of information between states.

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cooperate fully in apprehending, investigating and prosecuting persons who have committed seizure of suspected ships and goods on the ships in question, rescue of ships, persons and goods are subjected to acts of piracy. These acts will be in accordance with international law.

The Code of Conduct also covers the possibilities of joint actions, such as the boarding of police officers on patrolling ships or aircraft of another signatory.

The Code of Conduct further calls for the establishment of national centers focused on piracy and armed robbery against ships and the exchange of information concerning the incidents reported. The parties intend to use the information exchange centers for piracy in Kenya, United Republic of Tanzania and Yemen, which should be located in the regional Maritime Rescue Coordination Centre in Mombasa, Sub-Regional Coordination Centre in Dar er Salaam, kin a regional maritime information center will be established in Sanaa.”

[http://www.imo.org/about/mainframe.asp?topic\\_id=1773&doc\\_id=10933](http://www.imo.org/about/mainframe.asp?topic_id=1773&doc_id=10933).

EUROPOL, in example, decided to facilitate the exchange of information on piracy for the benefit of the international community.

In addition to previous multilateral instruments, there are bilateral agreements and memoranda of understanding (MOUs) signed between the states wishing to transport the captured pirates (US, UK, EU) to prosecute them and the states that receive them (Kenya) and prosecute them. It should be noted here that even when such a memorandum exists, this does not create any obligation on the part of the State which has agreed to prosecute to accept a detainee.

To confront piracy off the coast of Somalia, The UN Security Council adopted a series of resolutions<sup>37</sup> to facilitate international cooperation in preventing and combating acts of piracy. The initial impetus was the need to avoid attacks on ships carrying food under the auspices of the UN World Food Program.<sup>38</sup>

The reaction of the international community peaked especially in the case of Somalia when in December 2008 the UN Security Council in Resolution 1851 called:

“...all states and organizations with the means to take an active part in the fight against piracy and armed robbery off Somalia by deploying naval forces and military aircraft and by seizing and detaining vessels and weapons used in their execution of offenses”

Decision 1846 - earlier than 1851 but with a similar wording as to the possibilities of action of the forces involved - caused the EU Naval Operation "ATALANTA". It was preceded in October 2008, at the request of UN Secretary-General Ban Ki-Moon, by NATO's "Allied Provider" operation.

NATO is mandated by the UN Security Council (resolutions 1814, 1816 and 1838 of 2008) to accompany World Food Program cargo vessels bound for Somalia. The operation started in mid-October 2008 and was completed in December 2008, when the mission was undertaken by the EU Operation "ATALANTA" . Since March 2009, NATO has been involved in the Horn of

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All resolutions are contained in Annex A.

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Primarily, the resolutions 1814(2008), 1816(2008), 1838(2008), 1846(2008), and 1851(2008), 1897 (2009)

Africa again with the launch of a new operation, the "Allied Protector". The operation was carried out by a force of five naval units that were part of NATO's STANDING MARITIME GROUP 1 – (SNMG1). After its expiration in June 2008, by decision of NATO Defense Ministers, "Allied Protector" was replaced by "Ocean Shield".

## **7. Action of the International Community and International Law**

According to Article 100 of UNCLOS, all Member States must cooperate, to the greatest extent possible to suppress piracy on the high seas or in any other place, which is not within the jurisdiction of a state.

Any state can capture and seize a pirate ship or aircraft - or a ship or aircraft captured by pirates - arrest persons and seize goods on board (Article 105 universal jurisdiction). The courts of the state that made the arrest and seizure will then decide on the sanctions to be imposed as well as what will happen to the ships, aircraft or goods (Article 105). Any warship or public (e.g. coastguard, port police, etc.) or military aircraft or other clearly marked state vehicle can capture pirates (Article 107).

International customary law sets out the basic principles governing the use of force when it is required to be used to stop and arrested (legally) a ship on the high seas.<sup>39</sup>

Although piracy is a common crime, naval units or other state vessels (port police / coast guard) are used to deal with it. It is often said in shipping circles that confronting piracy is "the job of states and navies". Naval vessels (and other state vessels) are entitled to enforce the rule of law since the work of anti-piracy is primarily a police work (which goes beyond the classic tactics assigned to military units). In carrying out this police mission, it is logical that armed force may be

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<sup>39</sup> These principles were considered in another context (institutional) by the International Court for the Law of the Sea, in the case of the ship *Saiga 2* ([http://www.itlos.org/start2\\_en.html](http://www.itlos.org/start2_en.html)). See also the case of *SS "Im Alone"* (Canada/USA, 1935), U.N.R.I.A.A, VOLUME III, p. 1609 and *The Red Crusader* (Commission of Enquiry, Denmark–United Kingdom, 1962), I.L.R., Vol. 35, p. 485

used, especially during a possible pursuit. Naval vessels in that case must be careful about the size of force to be used as in no case should it exceed what is required by the situation.

In cases of organized missions (NATO, EU) specific Rules of Engagement are issued against piracy (Rules of Engagement) which determine when, how and where force will be used to achieve the mission. This is a bit strange as a practice since we have rules of engagement in military operations and not in law enforcement cases. In the latter it should be self-evident that as much violence is used as is required to enforce the law, but in practice this is not as simple as it sounds and regulatory frameworks for the use of force such as the Rules of Engagement are drawn up. In case of death or serious injury, for reasons of protection of human rights but also for humanitarian reasons in the western forces, a relevant judicial investigation is required.

The above is the framework for action against piracy. In general, it is clear, but we must not lose sight of the fact that they are dealing with the phenomenon on the high seas. (by definition). If the coastal states also function effectively in the area of their sovereignty – coastal zone and land – then the action is effective and confronting piracy is highly likely to be successful.

But what happens when piracy takes place off the coast of a collapsing state (failed state) as it happens in Somalia. Here it is understood that the phenomenon of piracy is in direct proportion to the level of inefficiency / instability of the government of the coastal state. Piracy is an international offshore crime and when the same acts occur in the territorial waters of a sovereign state, they constitute crimes (in the category of armed robberies or kidnappings, etc.), and cannot be dealt with by foreign naval forces (because the coastal state has the responsibility and the right to crack down on any criminal activity within its sovereignty). The failing states, however, are unable to control any activity on their shores and in the coastal zone, as it is impossible to maintain some form of police and coast guard. The concept of territorial waters per se in such a state is controversial as no one can control it<sup>40</sup>.

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<sup>40</sup> The Transitional Federal Government of Somalia (TFG) recognizing the weakness, with

The international community is aware of the problem with Security Council decisions (Res 1814, 15 May 2008, 1816, 2 June 2008, 1838, 7 October 2008, 1846, 2 December 2008, 1851, 16 December 2008), tried to solve the problem of Somalia. Recognizing that external intervention in Somali territorial waters may be required to combat piracy - in the absence of a coastguard and effective state authorities capable of enforcing the law and prosecuting pirates - and after the request of the Transitional Federal Government of Somalia (TFG) the Security Council authorizes patrolling forces in the area to operate within Somali Territorial Waters. Of course, in its decisions, the Security Council explicitly states that all the measures taken in the above decisions concern exclusively the case of Somalia and in no case can they be a customary rule of international law.

According to the 1816<sup>41</sup> and 1846<sup>42</sup> (which are based on Chapter VII of the UN Charter) the action of foreign naval forces can be undertaken in territorial

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letter to the UN Secretary General has temporarily ceded its sovereignty to the international community.

<sup>41</sup> RES 1816; “7. *Decides* that for a period of six months from the date of this resolution, States cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary General, may:

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

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

*Requests* that cooperating States take appropriate steps to ensure that the activities they undertake pursuant to the authorization in paragraph 7 do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State.

*Affirms* that the authorization provided in this resolution applies only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that it shall not be considered as establishing customary international law, and affirms further that this authorization has been provided only following receipt of the letter from the Permanent Representative of the Somalia Republic to the United Nations to the President of the Security Council dated 27 February 2008

waters of Somalia, but only "in cooperation" with the government (although the decisions consider that this has already been requested by the Transitional Federal Government of Somalia (TFG) by a letter she had sent to the UN Secretary General).

Here we must note that with the conditions set for action within the Somali territorial waters (permission by TFG etc.) the resolutions practically do not legally enhance the action of the patrols in the area of international forces and do not provide any additional possibility to them which is not already available under International Law. Especially for the entry into the territorial waters and the territory of Somalia, TFG could in any case have directly authorized foreign states to conduct law enforcement operations within them. It is estimated that the reason why the international community turned to the Security Council was the fact that the capabilities and influence of the power actually exercised by the TFG were not generally accepted by the states invited to operate in the region, so it was deemed necessary to invoke Article VII for operations coverage. (The same observation

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(S/2008/XXX) conveying the consent of the TFG.

<sup>42</sup> RES 1846<sup>10</sup>. *Decides* that for a period of 12 months from the date of this resolution States and regional organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General, may:

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

(b) Use, within the territorial waters of Somalia, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery at sea<sup>11</sup>. *Affirms* that the authorizations provided in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law; and *affirms further* that such authorizations have been provided only following the receipt of the 20 November letter conveying the consent of the TFG;”



applies to UNSCR 1851, 16 December 2008, since it also sets the same conditions for operations within the sovereignty of Somalia).<sup>43</sup>

The Security Council's handling so far has been generally effective, especially given the Somali Government's inability to handle the problem. But from a legal point of view, the phraseology used in the decisions created a debate because it was considered to extend the crime of piracy to territorial waters, even of a collapsing state, which is contrary to the definition. China in particular has warned that Resolutions 1816 and 1838 should not be taken as a precedent, (Although it was positive in its approach to the Security Council) apparently defending the basic principle of "non-involvement" in the internal affairs of a sovereign state. As for the definition of piracy and the possibility of it extending into territorial waters, this would only be legally possible with a new treaty / convention that would adequately amend the existing UNCLOS definition, regardless of whether the coastal state has the ability to exercise its sovereign rights within the Territorial waters or not, like Somalia.

## **8. The capture of pirates**

Another area of international law that needs to be further examined is that of the arrest, detention and prosecution of pirates as well as the reintegration of pirates into society. Regarding the first point (for detention and prosecution we will dedicate the following chapter), It is generally accepted that action against pirates cannot be developed by individuals, since this practice (the so-called privateering) has been denounced for over 150 years with the Paris Declaration of 1856. At present, it is only permissible to hire security guards on board to protect the crew and cargo as a simple measure of self-defense (although experts and government officials point out that the possible presence of weapons on board poses further practical and legal problems and strongly recommend that there be no weapons on board at all)<sup>44</sup>.

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<sup>43</sup> Empowers the use of force with the phrase «all necessary means».

<sup>44</sup> Egypt, for example, considers the entry of weapons even on board ships into its territorial waters as an act of illegal import of weapons.

The general belief is that anti-piracy operations should be undertaken by naval forces (warships or public vessels). Naval units when they operate also have these limitations. Suspected ships may be stopped and inspected (boarding inspection Article 110 of UNCLOS), but they cannot seize them and arrest their crews unless there is sufficient evidence that they have been involved in piracy, even if weapons are found on them. The problem here is that of the approximately 3,000 ships sailing off the coast of Somalia on a regular basis, two-thirds are likely to have weapons, often in self-defense against pirates. To extend a military operation on the coast, on Somali territory, to pirate sanctuaries (such as small ports, coves, etc.), while it is theoretically allowed under Decision 1851 of 16 December 2008, of Security Council of UN provided that the condition has been requested by TFG (and it is easy to notify the Secretary-General if this is decided - the second condition) is considered extremely unlikely and far from the intentions of the international community.

In case of intervention on the coast, there would be restrictions on the action of Western forces, since even in the use of force there are limits because it must be necessary, proportionate and cannot be used preventively. Experts have not yet agreed on how to use force against the pirates (to arrest them). Some experts constitute the doctrine of "gradual response"<sup>45</sup>, of Daniel P. CONNELL, professor of international law, and for confronting piracy. According to this doctrine, the use of force is allowed even before the attack, provided that the humanitarian principles are respected. The doctrine is based on the significant difference between the use of force in self-defense and the use of force in law enforcement at sea.

## **9. Prosecution of Pirates**

### **(1) WHY UNIVERSAL JURISDICTION FOR THE PROSECUTION OF PIRATES?**

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<sup>45</sup> D. P. O'Connell, *The Influence of Law on Sea Power* (Annapolis, Naval Institute Press, 1975); *The International Law of the Sea* (New York-Oxford: Clarendon Press, 1982)

Despite the fact that in the international community the opinion is circulating (limited and mainly in conservative circles) that International Law in its current form is too liberal to deal with an atavistic activity such as piracy<sup>46</sup> in practice, however, the opposite view seems to prevail, namely that international law provides the necessary legal framework to deal with the persecution and extradition of Somali pirates.<sup>47</sup>

As we have seen in previous chapters, no ambiguity and uncertainty exists in international law on this since one of the oldest, its clearest and least controversial provisions are that any country can prosecute any pirate who happens to capture. For hundreds of years, the pirate has been treated as *hostis humani generis*, that is the enemy of all humanity<sup>48</sup> and has a special legal status which is mainly due to the following reasons. Firstly, international shipping passes through defined routes, and it is on these shipping lanes that piracy occurs. Thus, pirates, who do not discriminate between the nationalities of the targets, endanger international trade. The attacks increase the cost of goods and the prices of insurance premiums, and therefore have an aggravating effect on international trade in general. Recent attacks have further highlighted the apparent international character of the act. An occupied ship may belong to one nation and fly the flag of another, carry the cargo of a third destined for five other countries. The crew in turn may consist of nationals of even more states. Thus piracy concerns and threatens the interests of all countries involved.

Secondly, according to the definition of piracy, the acts of pirates are not adopted and cannot be blamed on a state or their country<sup>49</sup>.

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<sup>46</sup> Eugene Kontorovich, Feb. 2010, (DRAFT) article «A GUANTÁNAMO ON THE SEA: THE DIFFICULTY OF PROSECUTING PIRATES AND TERRORISTS» California Law Review. <http://ssrn.com/abstract=1371122>

<sup>47</sup> "While there is an adequate legal framework within which pirates can be apprehended and prosecuted, sometimes the political will does not exist.", statement of Condoleezza Rice in United Nations Security Council 6046th Meeting, 16 Dec. 2008. <http://www.un.org/News/Press/docs/2008/sc9541.doc.htm>.

<sup>48</sup> Edward Coke, III Institutes on the Laws of England 113 (1797); Lassa Oppenheim, International Law: A Treatise, § 272, 325-26 (1905).

<sup>49</sup> Kenneth C. Randall, Universal Jurisdiction under International Law, 66 Tex. L. Rev. 785,

So it is obvious that when another state seeks to persecute them, it is unlikely that their country will protest because the pirates are just robbers, who do not show solidarity with anyone.

While the above reasons why piracy was historically a crime that brought about universal jurisdiction can be further developed and analyzed and possibly have some complexity, the law is simple. Each vessel that patrols the Horn of Africa (in the case of Somalia) can prosecute any pirate he catches, even if the pirate has never attacked a ship of the patrolling vessel state.

## (2) PRACTICAL ISSUES IN THE IMPLEMENTATION OF UNIVERSAL JURISDICTION

The exercise of universal jurisdiction to prosecute piracy while legally clear and unambiguous, in practice in very few cases has been implemented, but has been implemented. According to a study, the cases of piracy for which universal jurisdiction was exercised from 1998 to 2007 was less than 1% of the cases reported to the IMO. Of the 754 reported cases of piracy in international waters, only 4 exercised universal jurisdiction. No universal jurisdiction was exercised in any of the attempted acts of piracy. With the increase of the phenomenon in the region of Somalia we have an increase in the exercise of universal jurisdiction with Kenya having the share of the lion with 79% of the 12 cases, i.e. 9 of them.<sup>50</sup>

The states whose naval forces patrol the Gulf of Aden know that any country can prosecute pirates in accordance with the requirements of their domestic law. The whole process, however, entails huge costs and creates many unresolved practical issues. For these reasons, they prefer to extradite pirates to Kenya for trial (except in rare cases) or to release them. United Kingdom, the United States and the EU in May 2009 all signed memoranda of understanding with Kenya stating that pirates captured by their forces would be transported there to stand trial. So far Kenya has nothing to do with the crimes that committed in any of the cases that have been transferred there. But it seems that Kenya has been

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793 (1988).

<sup>50</sup> Eugene Kontorovich and Steven Art, 6 Dec. 2009, Study “ The Limits of Judicial Altruism : An Empirical Examination of Universal Jurisdiction for Piracy”. <http://ssrn.com/abstract=1519518>

selected for convenience due to proximity but also willingness to take on the task of persecuting pirates despite the fact that all the states of the world could just as easily pursue persecution in the same way, if they had the will.

In some cases, some states have raised concerns about the possibility of prosecuting pirates. Denmark, for example, said it could not punish the pirates<sup>51</sup> despite being one of the first European countries to prosecute Serbian officers for crimes committed against Bosnian Muslims in the Yugoslav civil war and thus in exercising universal jurisdiction<sup>52</sup>.

International law therefore does not prevent any country from prosecuting pirates.

### (3) UNCLOS – SUA AND CRIMINAL PROSECUTION OF PIRATES

Despite its universal jurisdiction, UNCLOS does not lay down rules on criminal prosecution of pirates. However, in the event that a ship is attacked, then the offense committed is most likely to fall under the jurisdiction of the SUA. This applies whether the offense is piracy (committed in international waters) or not. SUA allows its Member States to prosecute the perpetrators of the crimes provided for in it and, in addition, obliges them to have sufficient national law to cover the offenses provided for therein. Thus, states that have endorsed and ratified the SUA are either obliged to extradite or prosecute suspects arrested on their territory, regardless of the place where the offense was committed. UNCLOS, on the other hand, obliges states to cooperate in repression of piracy but does not explicitly impose an obligation to prosecute pirates<sup>53</sup>.

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<sup>51</sup> Julian Isherwood, Pirates released on beach, Politiken, 24 Sept, 2008.

<http://politiken.dk/newsinenglish/article572053.ece>

<sup>52</sup> Luc Reydams, *Universal Jurisdiction: International and Municipal Perspectives* (2003). “To be sure, the civil law European jurisdictions, prosecution require an affirmative statute. The Danish universal jurisdiction law appears to authorize prosecution only when it is mandated by international law, rather than permitted.” and “But such statutory lacunae can be easily corrected where there is a political interest and prosecuting.”

<sup>53</sup> However, the UNCLOS obligation for States to cooperate in the fight against piracy can be interpreted as meaning that each State who has the opportunity to take action against piracy and

UNCLOS says nothing about the transfer of suspects under the jurisdiction of another State, while the SUA provides that the master of the vessel may disembark a suspect in a port of another State (Article 8 (1)) and sets out a specific procedure for this. The basic obligation falls on the port state which is obliged to pick up the suspect, unless there is a very good reason to refuse it. Upon receipt of the suspect, it is up to the judicial authorities of the state to decide whether to prosecute him for the crime of piracy or for the crime described in the SUA, in accordance with the national law of the State which received the suspect.

The Security Council, in its resolutions on piracy in Somalia, emphasizes and insists on the universal jurisdiction provided by UNCLOS (no reference is made to any other treaty). Surprisingly, SUA, while having 149 signatories, which account for 92.75% of global shipping tonnage (according to the IMO), is not accepted by them, and the result is that the number of prosecutions under the SUA is listed in a single case: a strange incident in the USA involving a rather insane cook, who seized a trawler. The reluctance of the signatory states to the SUA may be due, in part, to a lack of guidance on where and how the treaty can be implemented.<sup>54</sup>

## **10. Issues related to the detention and prosecution of pirates**

Recent experience shows that 50-60% of captured pirates have been released by the seafarers who captured them. The results of a relevant study are noteworthy remarkable that show statistically that the percentage of pirates who, when arrested, end up in trial and are finally convicted<sup>55</sup>.

The most recent case of pirates released was the case of the Dutch frigate HNLMS Evertsen which captured 13 pirates on December 2, 2009 and released them on 17 December after the EU failed to find a country to put them on trial. The

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fails to do so in breach of its duty under international law. (Commentary of the International Law Commission on the provision of the 1958 High Seas Convention on which the UNCLOS was based).

<sup>54</sup> Eugene Kontorovich, *International Decisions* (9th Cir. 2008); -- *United States v. Shi*, 525 F.3d 709, 103 *American Journal of International Law*. # 2 (April 2009).

<sup>55</sup> Eugene Kontorovich and Steven Art, 6 Dec 2009 «The Limits of Judicial Altruism: An Empirical Examination of Universal Jurisdiction for Piracy»

pirates were being held on the deck of the warship and as the Dutch Ministry of National Defense said "the situation was not pleasant". They were released near Djibouti and transported to their ship which the frigate was towing until that moment. Despite the EU's agreements with Kenya and the Seychelles, neither country has agreed to pick up and bring in the suspects. Tanzania also refused to bring in the suspects despite the fact that the pirates were using a stolen Tanzanian-flagged ship whose hostage was being held hostage in Somalia.

This demonstrates the challenges facing the international community from the lack of an effective piracy prosecution system.

What is worse is that the practice gives the impression here and there (but especially to the pirates themselves) that there is a lack of political will - not unjustly many times - to bring the pirates or suspected pirates to justice. This in turn results in the crews of warships / public vessels avoiding the capture and detention of pirates as they know that in the end they will not be prosecuted.

In an act of piracy, more than one authority may have criminal jurisdiction due to the different nationalities involved in that act: that of the pirates, the crew, the passengers, the unit that carried out the arrest, the owner of the vessel, the owners of the cargo, the ports of the area and the flag of the vessel. The good thing about piracy is that under international law piracy is an international crime and as mentioned all states have jurisdiction to prosecute pirates without the need for any of the previous national authorities to be legally involved, due to the universal jurisdiction.

However, the first condition before a person is transferred to a state for trial is for that state to have the necessary national law. Both UNCLOS and SUA must be transposed into national law to facilitate this process. In this direction and for the creation of the appropriate legal framework, the relevant instructions issued by the IMO also aim (in the form of recommended actions, as the IMO does not have any legal power to enforce them) implementing the provisions of UNCLOS on the Prevention and Punishment of the Crime of Piracy.<sup>56</sup>

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<sup>56</sup> Recommendations To Governments For Preventing And Suppressing Piracy And Armed Robbery Against Ships MSC/Circ.622/Rev.2.

Another problem that arises is that although the Security Council, as we have seen, in its resolutions provides a clear mandate (under certain conditions) to tackle piracy both in Somali territorial waters and in its territory, **the national law of most states does not allow criminal prosecution for offenses committed in Somali territorial waters (as this is not piracy according to its international definition)** unless the act is an offense provided for in the SUA and so on.

The next serious issue that has arisen is the willingness of states to prosecute. So far, the impression has been created that many Western countries are unwilling to enter the criminal prosecution process, effectively stripping them of this right. This may be due to the fear of some states that pirates will seek asylum after serving any prison sentence<sup>57</sup>.

In other countries their jurisdiction may not be established to the extent required by UNCLOS, for example the jurisdiction of a State may be limited to vessels flying a flag. Other states do not prosecute offenses if they are not fully in progress, but only if the pirates actually carried out the attack and were arrested during it. Some pirates have been arrested during or after a failed vessel attack. Although there have been few trials in Europe and the US (e.g those involved in the attack on Samanyolu who is in the Netherlands), There is a strong sense that the West would prefer (as absurd as it sounds) the burden of prosecution to be borne by countries in the region such as Kenya, Tanzania and the Seychelles.

However, apart from the issue of the political will of some states to prosecute, it is also very difficult to successfully build such a prosecution due to the difficulties in gathering evidence, the investigation and the trial in general. Although the characteristics of piracy as a crime are not unique however,

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<sup>57</sup> Archives of the British Parliament, for statements of the Minister of Defense UK, 22 / 2009 11.21 am (UK Parliament records)

The Parliamentary Under-Secretary of State, Ministry of Defence (Baroness Taylor of Bolton): Baroness Taylor of Bolton: My Lords: "... that is precisely why we have developed the agreement such as the one I mentioned we have with Kenya. HMS "Cumberland" apprehended pirates and we had the agreement with Kenya, which means that they are now to stand trial in that country. There are difficulties. We are aware of the danger of bringing pirates here who would want to claim political asylum, which is why we are looking at our domestic laws. Our arrangement with Kenya provides us with a satisfactory situation at the moment."



capturing, detaining and transporting pirates for trial are separate special challenges (what is their status, what and how are their human rights guaranteed). The final decision on whether to prosecute them can take several weeks. In the meantime, suspects should be detained on board their ship or on a warship or merchant ship that captured or transported them after their capture (meanwhile none of these ships are designed for the safe and humane detention of suspects). Until it is decided whether the prosecution will be prosecuted by the state that captured the pirates, whether they will be transferred to a third state or whether they will be released, there is a risk of destroying the evidence (especially since even the most trained groups on warships e.g. USN VBSS (Visit, Board, Search, and Seizure) - highly trained former SEALs, admittedly, do not have the necessary training to collect and retain evidence).

Pirates, on the other hand, are well-informed (at least their leaders), use the Internet, know the evidence, and increasingly destroy them (e.g., throw their weapons into the sea before being caught etc.).

There are other problems due to the fact that arrest is made elsewhere and prosecution and trial are practiced elsewhere, e.g. those who captured the pirates and are responsible for the initial collection of information and the drafting of the case do not know in many cases (even for weeks) what the status and conditions of detention in the third state are where criminal proceedings will be instituted and whether the police, prosecutors and judges have the necessary resources to complete their work properly.

A further difficulty arises from the fact that the authority arresting the pirates does not know what standards to apply when conducting the initial investigation, which is normal since it does not know where the case will be tried in advance. That is why some of the states involved in anti-piracy operations are deploying security officers on their warships or even judicial officers who have special training and specialization in police and pre-trial proceedings (e.g. UK, US). But this is not the rule for all ships.

Even if a case reaches the court, securing the crew's oral testimony requires huge costs and valuable time so that the crew can attend the trial. This requires the shipping community, which is predominantly affected by piracy to support

encouraging witnesses, whether masters or crew members, to attend the trial and at least cover their expenses to do so.

It is clear from the above that better and more international cooperation is needed in order for the criminal prosecutions that are practiced to be successful. The exchange of information is very important since in the area even the basics are difficult, to recognize e.g. and to identify the pirates is particularly difficult. In Somalia in particular there are no papers, they do not know how to read and write, they do not know when and where they were born and in some cases who their parents are. The range of pirates ranges from former fishermen who know the sea, to paramilitaries who are good fighters to operators of complex military devices such as GPS and radios.

## **11. Persecution of Pirates in Kenya**

Kenya is one of only two countries in the region (both semi-autonomous regions of Somalia (Somaliland, Puntland)) willing to pursue pirates (along with the Seychelles). Kenya is the mainstay and has the most developed judicial and criminal system, investigative procedures and administrative support. Piracy is a potential threat and a serious problem for stability throughout the region but the possibilities for dealing specifically with semi-autonomous regions are very limited despite the fact that they are willing to cooperate at regional level. Even in Kenya, however, there are basic shortcomings so that Somali pirates can be brought to justice. It is obvious that if the international community wanted Kenya to bear the burden of prosecuting or even imprisoning pirates, it must continue to support Kenya (but also and the other countries in the region) to improve its judicial infrastructure and the organization of the judiciary and the penitentiary system in order to create the appropriate opportunities for the proper administration of justice.

The prosecutors of Kenya face practical problems. The decision to extradite from the state that captured the pirates happened to pass through the capital of that state first before it reached Nairobi (for approval to disembark pirates) and then to Mombasa (the port of delivery of pirates to the Kenyan authorities). This not only

delays the issuance of an approval for the disembarking of pirates in Kenya but the worst problem is the possibility of prosecutors in Mombasa not to find sufficient evidence to prosecute when the request reaches them.

Kenya's judicial system lacks basic capabilities. One of the most pressing issues is the lack of shorthand in the courts and since the record keeping process is done manually, this often causes difficulties and delays and sometimes results in incomplete or non-official records. It is necessary to install modern recording systems to remove this anachronistic difficulty. Somali translators may not be available at trial to translate for pirates. Prosecutors need more training and, more generally, the judiciary as a whole needs more support to ensure that those prosecuted have the right to a fair trial.

Another serious problem is the inability of pirates to be legally represented: Kenya's penal system does not provide the accused with legal aid - the accused's right to a lawyer - unless he is charged with murder. The collection and processing of data is hampered by the lack of forensic facilities in Mombasa, insufficient means of transportation, and limited office space. Prisons are also overcrowded.

The United Nations Office on Drugs and Crime (UNODC) already supports the judiciary and penitentiary system in Kenya and through funds flowing into the region from the EU the situation has improved considerably, however the challenges remain. Assistance must be provided efficiently and intelligently due to the management weaknesses of the systems of these countries but also due to the specificities that exist due to the general situation. For example, in a war-torn region, many Somali pirates have severe wounds that require medical attention. But this treatment, although it concerns the inalienable human rights of the detainee, where it is financially supported by funds from the economic community and is made selectively only for Somali pirates suspected of being in a penitentiary, can be considered preferential treatment of other detainees in Kenya prisons but also of the Kenyan prison guards themselves and have negative consequences (for their physical safety) for the detainees themselves.

The reform of the penitentiary system and the improvement of prisons in Kenya are slow, because the system needs a wider improvement of the penitentiaries regardless of the needs that arose after the new requirements brought

about by the criminal prosecution of the pirates. The needs, however, are urgent. The Attorney General of Kenya stated on September 12, 2009 that: "If the international community does not step up its aid, then very soon Kenya will say... so far, enough".

## **12. International Criminal Court to deal with piracy**

Given the problem we have previously mentioned with regard to the prosecution of pirates by states at the national level, various proposals have been made public for the establishment of an international tribunal to prosecute pirates, or the extension of the jurisdiction of the existing International Criminal Court to include piracy. There is minimal support for these proposals<sup>58</sup>. This is due to the fact that the international community, judging by the experience of other International Courts of Justice, has concluded that a new international tribunal would take a long time (perhaps years) to be set up due to the requirement for signature and approval by national parliaments or the governments of the states concerned by its treaty and its operation would be extremely costly both financially and in terms of human resources.

In addition, neither the new court nor the International Criminal Court can solve the problem of the detention of convicted pirates. The establishment of an International Court of Justice is required only when there is no other judicial body to try a particular crime. But there are countless national courts for piracy. What is most needed is the development of the capability of the courts of the regional states as well as a greater willingness to be prosecuted by national justice systems in other states.

## **13. Application of human rights law**

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<sup>58</sup> Sandeep Gopalan, National University of Ireland, Maynooth - [Stephanie Swtzer](#), School of Law, University of Dundee; University College Dublin (UCD) - School of Law «Pirates of the Aden: A Tale of Law's Impotence», May 14, 2009 <http://ssrn.com/abstract=1404506>.

In the classical law of nations, pirates were considered both criminals and enemies in the military sense of the word. This meant that they had the disadvantages of both categories. They could be arrested and judged unlike prisoners of war.

If confronted on the high seas by a warship, the use of lethal force was the most likely reaction against them. International law considered transporting them to a port to be prosecuted in an aggravated process for the country that arrested them. Thus it was acceptable for them to be sentenced to death by summary procedure and they were usually executed on the ship that captured them.<sup>59</sup>

In short, the pirates had a regime similar to that of today's illegal fighters: the state that arrests them has the discretion to treat them either as military or as criminals.

In modern international law, the situation has changed dramatically. Pirates are not considered warlords under the law of war, and they are certainly not considered illegal fighters.<sup>60</sup>

Except in cases of self-defense, naval forces cannot fire pirates, but must try to capture them. In this case, and given that the pirates were captured by the armed forces and should be held, even for a short time, on the warships that captured them, it is generally accepted that they should be provided with all the protections of prisoners of war, at least as a precaution.<sup>61</sup>

International law theorists working on the theory around the Geneva Conventions support that operation against pirates, when it takes place in Somali territorial waters, it could potentially be described as an "armed conflict of a non-

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<sup>59</sup> ...Blackstone 71 ("As therefore he has renounced all the benefits of society and government, and has reduced himself to the savage state of nature, by declaring war against all mankind, all mankind must declare war against him"); Oppenheim, *International Law*, § 278 at 330

<sup>60</sup> Common Article 3 of the third Geneva Treaty.

<sup>61</sup> Michael Bahar, *Attaining Optimal Deterrence At Sea: A Legal And Strategic Theory For Naval Anti-Piracy Operations*, 40 *Vand. J. Transnat'l L.* 1, 36, 45-46 (2007). ("In the case of Somalia today, . . . captured pirates would, and should, receive Geneva Conventions treatment, but they should also remain eligible for prosecution.").

international nature". According to this approach, pirates enjoy the protection of the common Article 3 of the Geneva Conventions.<sup>62</sup>

In short, pirates today enjoy the protection and rights of criminals, as well as some of the protections provided for prisoners of war without suffering any of the weaknesses of either of these two statuses.

Indeed, since pirates are civilians onboard civilian vessels, the patrolling warships can do nothing, until the suspected pirates attempt to board another ship. It is not an international crime to board a Somali fishing boat, even if it is equipped with AK-47s and RPGs. (As one of the captured pirates testified: "In Somalia whoever does not have a weapon is dead"). If the pirates are not intercepted in the narrow time window that begins when they develop speed to approach the target ship and before they board it, then the incident progresses from piracy to hostage-taking. Once control of the vessel is acquired, there is a lot of pressure to start negotiations with them.

The use of force against pirates carries the risk of being accused of violating International Humanitarian Law. In some cases, the accusations may not be invalid. An example is the episode of November 2008 when an Indian frigate sank a "mothership" pirate vessel in the Gulf of Aden. It soon emerged that the ship was in fact a Thai trawler that was captured by pirates. Unfortunately only one of the 16 innocent crew members survived.<sup>63</sup>

Following UNSCR 1851 (Dec. 2008) which gives, as mentioned above, the right to use force within Somali sovereignty, criticism began that such action could cause significant losses to the civilian population, due to the difficulty of distinguishing between pirates and civilians. In recent years, international lawyers and NGOs have increasingly scrutinized regular military decisions regarding the proportionality of the use of force and the wider legitimacy of such decisions. In operations of the armed forces against non-uniformed fighters and terrorist groups, national forces have been accused in several cases of violation of the principles of

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<sup>62</sup> This interpretation has also been accepted by the US Supreme Court, *Hamdan v. Rumsfeld*, 548 U.S. 557, 630-32 (2006).

<sup>63</sup> Herald Tribune, November 27, 2008 "Ship sunk by Indian Navy had been hijacked that day". India has claimed that pirates on trawlers opened fire against the frigate.

humanitarian law. But operating in an environment where the distinction between armed and civilian is not easy, it goes without saying that it is not unlikely that you are trying to apply International Criminal Law to violate or be accused of violating International Humanitarian Law. This is the problem that warships / public vessels face in dealing with piracy. Even the possibility of a state being blamed for the loss of a civilian life prevents states from taking decisive action if they have no immediate reason to do so.

#### **14. After the arrest – the European Convention on Human Rights**

The treatment of captured pirates is subject to specific guarantees provided by international law. Human treatment, arbitrary detention, the right to be brought before a judicial authority in a timely manner, the right to a fair trial, his non-transfer to a country where the death penalty is in force or where fundamental human rights do not apply, are obligations arising from conditions such as Convention Against Torture, the European Convention on Human Rights, and the International Covenant on Civil and Political Rights for the Contracting States. Most states in the Horn of Africa have signed the latest Pact.

European states whose warships patrol off the coast of Somalia are part of the European Convention on Human Rights (ECHR). Although these states act with the power of Security Council resolutions (see above), these resolutions make it clear, explicitly, that human rights remain in force and must be protected.<sup>64</sup>

The ECHR imposes a number of obligations regarding the treatment, capture, detention and transport of pirates.

The issue that arises in the case of pirates concerns the requirement that persons not be arrested unless certain criteria are met, including the requirement that the detainee be brought to justice immediately (Article 5). The questions that arise are: whether the Convention is in force "outside the jurisdiction of a State", if

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<sup>64</sup> For example, paragraph 14 of 1846 (2008) calls on States to co-operate in investigating and prosecuting suspects of piracy and armed robbery in accordance with international human rights law.

the Convention requires states to grant the right of judicial supervision of pirates being held offshore, and if so how can this requirement be applied in practice?

The ECHR applies to persons within the jurisdiction of a State (Article 1). In cases outside this area (geographically) of jurisdiction it has now been agreed to apply when the person / persons is under the control of the state. Much of the relevant case law of the European Court of Human Rights and national courts concerns the operational activities of state armed forces in other countries, for example forces that are part of the multinational force in Iraq and Afghanistan. In the case of Al Skeini in the courts of the United Kingdom, the Government has acknowledged that military prisons in other countries controlled by the United Kingdom Armed Forces fall within its jurisdiction to apply the ECHR<sup>65</sup>. But do these decisions also apply to offshore shipping operations? At what stage do pirates come under the control of the army?

The detention of pirates can be divided into three categories. First, when pirates are arrested and detained for the purpose of being transferred to the state whose unit arrested them for prosecution. It is relatively clear here that the ECHR applies. In a related case, that of Medvedyev, involving a French warship that captured a Cambodian-flagged ship suspected of drug trafficking and escorted it to Brest, where after 13 days (due to travel) legal proceedings began.<sup>66</sup> A French court has ruled against France for failing to report judicially to the French authorities on the French warship's actions in a timely manner, arguing that there was insufficient evidence to support Medvedyev's arrest under both international and national law. France appealed to Supreme Court of Strasbourg. The court rejected the allegation that the defendants on board Medvedyev had not appeared before the judicial authorities immediately because there was no reasonable alternative to bringing them within the 13 days required to reach the port of Brest.

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<sup>65</sup> Judgments - Al-Skeini and others (Respondents) v. Secretary of State for Defence (Appellant) Al-Skeini and others (Appellants) v. Secretary of State for Defence (Respondent) (Consolidated Appeals <http://www.parliament.the-stationery-office.co.uk/pa/ld200607/ldjudgmt/jd070613/skeini-1.htm>

<sup>66</sup> <http://www.echr.coe.int/echr/>, art. 3394/03.



Second, when pirates are arrested and detained, possibly for a few weeks, with a view to being transferred to a third country to be prosecuted. In this case a whole range of factors are likely to be taken into account by a court which would be called upon to consider such a case. And the court is possibly to decide according to Medvedyev's previous case.

Third, when the pirates are arrested and it is not known who will prosecute them. If pirates are detained on the warship / public vessel that captured them, then the ship must be considered to be under state jurisdiction to comply with the ECHR, as well as if the detention takes place at a consulate or embassy. If the pirates are being held on their own ship until a decision is made on what to do, then there is some uncertainty as to the application of the ECHR.

If there is an obligation to judicially monitor the detention of pirates on the high seas then, as is reasonable, questions arise as to how this will be ensured. Some countries are already using technical means (video links) by which detainees are brought before the judicial authorities. The detailed application of the ECHR in dealing with pirates is not clear in all cases but the Strasbourg Court of Human Rights is expected to provide further clarification on the matter.

## **15. The use of private security companies <sup>67</sup>**

Due to piracy, and especially in the Gulf of Aden, more and more shipping companies are discussing the feasibility and possibility of equipping their ships or hiring private security companies to protect their ships. This debate has serious legal and political implications.

The possibility of using lethal force to protect a merchant ship depends primarily on the legal framework of the flag State of the ship, secondly, from the legal framework of the state of nationality of the persons involved <sup>68</sup> and thirdly by

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<sup>67</sup> Alexandra Schwartz, 2009, «Corsairs in the Crosshairs: A Strategic Plan to Eliminate Modern Day Piracy» New York University School of Law.  
[http://works.bepress.com/alexandra\\_schwartz/1/](http://works.bepress.com/alexandra_schwartz/1/)

<sup>68</sup> American citizens are required to meet the requirements described in the American Code (Article 922, Title 18).

the legal framework of each State whose ports the aforementioned vessel approaches. There must therefore be a basic framework of commonly accepted rules in order to be able to combine the (often incompatible) legal frameworks that apply in different countries and flag States.

States treat the use of force differently. Most of the relevant legislation is based on the logic that the use of lethal violence is allowed only in cases of self-defense and only if life is directly threatened (as a supreme legal good). Private security companies, however, are ready to use deadly force to protect their property (as a legal asset). There is a fine line here since the good of life is superior to the good of property.

Already a number of private security companies (Private Security Companies - PSCs) offer their services to shipping companies. Most of them provide small security teams whose role is to advise the master on security issues. They train the crew, and oversee the organization of the defense and the development of physical obstacles that will prevent the boarding of pirates. Their presence has a positive effect on the morale of the crew and when they board the ship they provide an extra level of safety and vigilance. This increases the ship's defenses and makes it more difficult for pirates to board the ship, thus reducing the chances of a pirate attempt succeeding against that ship.

The measures taken and the practices applied and followed by each security service company are arbitrary. This in itself highlights the need for a regulatory framework and creates the need to develop a certification system for these companies. This certification would allow shipping companies to control and have an idea of the quality of services (and especially staff) they purchase. This practice would also distinguish those companies that are authorized to provide such "sensitive" services from those that are not. Private security companies do not have a specific status according to international law while those that have armed private vessels to escort merchant vessels do not know for sure what is the legal status that covers their activities.

In addition to this vague point there are a number of legitimate measures to protect a merchant vessel, except to the use of deadly force, and there may be private security companies' to have some place of activity and contribution to the

increase of the passive defense of a ship. These include the use of long range acoustic devices (Long Range Acoustic Devices - LRADs), fire hoses, firearms that launch nets, tazers (electric shock weapons) and marine flares while there has been some discussion about the use of trained dogs.

Passive measures include the ability to locate and monitor the position and movement of a merchant vessel based on internet, provide pre-sail advices on crew training or strengthening the ship's passive defense and the use of barbed wire, barriers-obstacles and grids on the bridge windows to reinforce them against rocket attacks (RPGs).

Hiring security personnel, especially when they are armed, raises a number of legal issues. Legally the master of a boat has control and authority over his boat, crew and occupant security personnel in any case. In the framework of the International Convention for the Safety of Human Life at Sea (Safety of life at Sea - SOLAS) no one can deviate from the principle and the will of the master in making decisions that have to do with the safety of the crew and the environment. It is obvious that if someone else decides to start and cease fire (possibly fatal) in a conflict with pirates, other than the master, then this may be some embroilment. The problem can be overcome if there are serious and clear Rules of Engagement (ROE), approved by the flag State of the vessel, clearly defining the conditions under which weapons may be used and the stages in which the violence escalates from warning shots to the execution and destruction of pirates' boats instead of using deadly firing against the pirates.

Apart from the shipping companies, the insurance companies are also very interested in any measure that strengthens the defense of the vessels. The complication here, however, lies in the fact that in the legislation of most states, in case an application of illegal measures and practices is found on a boat, then the insurance coverage does not apply, and in the event of a problem like this, no compensation may be paid (e.g. as in the UK under the UK Marine Insurance Act 1906). From an insurance point of view, it is obvious that the presence of weapons on a ship increases the risks to which it is exposed and therefore increases the risk of an insurance company.

Further legal issues arise when armed speedboats leased by the owner company are used to protect a ship. In these cases, the armed escort is legally part of the ship it protects, leading again to the same problem of who has the control, as mentioned earlier. The issue is further complicated when the escort vessel has a different flag than the protection vessel.

## **16. Pros and cons of equipping merchant ships**

The use of private armed security guards is a result of increased piracy activity on important and busy sea routes. Most of the ships that fall victim to piracy do not have armed protection.

Piracy is expected to continue in the future, as the huge benefits for pirates outweigh the risks and dangers that they face. The possible escalation of violence (e.g. case MAERSK ALABAMA), the improvement of the weapons of the pirates (possibly also due to the financial possibility created by the ransom), and the continuously increasing capabilities (including the use of satellite phones by pirates, long range boats, vessel monitoring technology such as AIS (automated identification system) and greater availability of financial resources) recommend the use of private security companies.

Ongoing shipping protection operations in the area can protect merchant vessels only to a certain extent and under certain conditions (convoys, meeting points, proximity of forces to the event in progress). Effective deterrence depends on the visible presence of naval units but also on the reliability that their action is effective. Due to the size of the area, the capabilities of the navy, especially if adequate flying surveillance and intervention equipment are not available, are practically limited. While the same problem applies to their visible presence, however whenever pirates are perceived their presence this (so far) has acted as a deterrent.

What has been minimized is the credibility of the powerful naval forces, which is due to the fact that pirates who are arrested are not facing the consequences of the law, but are often get released. If more persecution was practiced against the pirates the perception of impunity within the pirate

community could be differentiated and change the cost / benefit ratio of piracy activities (although as has been ascertained by some of the pre-investigative acts carried out, most Somali pirates are only afraid of being executed).

In addition, private security companies have the advantage of being in direct contact with the boat and its owner who have taken over the guard (regular involvement) in contrast to the naval forces which operate in the area to deal with the problem as a whole (approach at the operational-strategic level). Finally, the use of passive protection measures (non-existence of weapons and development of non-lethal defense devices) on board the vessel, by private security companies can protect the ship up to a certain point, since in the end it will not stop a pirate attack but it can delay it (until help arrives).

On the other hand, some fundamental arguments are put forward against the use of private (especially armed) security personnel on merchant vessels. UNCLOS anti-piracy provisions (Articles 100 - 110) make it clear that piracy is a problem to be addressed by governments and navies / public vessels. The right of free movement on the high seas should be guaranteed by the governments of the states and their navies. Private security companies have no formal status under international law. According to UNCLOS, only government vessels can capture ships that are engaged in piracy activities. The question therefore arises as to whether an attack by a private equipped speedboat on another ship does not in turn constitute an act of piracy.

A merchant vessel would rather avoid risking to be legally considered liable for damages, for any injuries or loss of life of crew members, collateral damages and be able to capture pirates without sufficient evidence enough to ensure that at end the pirates will be prosecuted. In addition, the use of force increases the risk and likelihood of an environmental disaster.

From the above we come to a conclusion (perhaps a paradox one) that hiring private security companies probably does not help in the protection and safety of seafarers. The risk of an escalation during an attempted piracy, to end with exchange of fire between pirates and crew members, highly increases the risk that the shipping community can take on. The common argument used by private security companies is that the mere existence of visible weapons discourages

pirates. However, this argument is being considered after events have already been reported (the case of BBC Portugal and the case of an attack on two French trawlers) where the pirates were willing to exchange fire although they eventually withdrew.

Until the threat of piracy is reduced, it is a given that private security companies will continue to play their role. Respectively, there will continue to be conflicting views on whether the recruitment of armed security guards on merchant ships is effective or desirable. It is clear that the legal issues concerning the rules of engagement for privately armed speedboats, issues of jurisdiction, insurance issues and the legal status of these companies and their staff need further consideration.

#### IV. CONCLUSIONS

As we have seen the phenomenon of piracy except the violation of the law, is a crime against humanity and an act with economic - social - political causes that is on the rise. In addition, piracy is present and as it seems it will be present in the near future. The obvious and first conclusion is that any approach to the problem other than legal should focus on all three of the above categories of factors. Any approach must be based on international cooperation and joint action at all levels. The first indications are that the international community has understood this and remains to take the necessary action measures in this direction.

The current legal framework of International Law is in principle sufficient to deal with the phenomenon of piracy, but it has some weaknesses that are mainly found in the prosecution of pirates. The issue of prosecuting pirates must be settled immediately. Today, the right of universal jurisdiction from a pluralistic right of states because it is not exercised by states has become a loop in the administration of justice and leaves many piracy perpetrators unpunished. This is a more serious problem than it seems at first as it triggers the genesis of other would-be pirates and therefore needs to be addressed, and it is also a matter of prestige for the international community.

The international community must complement the existing legal framework in a clear and unambiguous manner. As this process is time consuming one possible approach is to precede arrangements, aid and support at regional level. (e.g. Kenya, Seychelles) to have a fully operational and acceptable network of investigative and judicial capacity to administer justice.

At the same time, it should clarify the issue of political will at the state level so that the phenomenon of impunity and the release of pirates does not recur. States may have to agree to the adoption of a universal (as well as jurisdiction) code of procedural conduct for arrested pirates so that phenomena of discontinuity of international law do not occur. Another issue of immediate priority that the international community needs to clarify, has to do with the legal status of pirates and consequently with their rights, since it is obvious that the "enemy of the human

race" has begun to be treated in a more humane way. It clearly has human rights which need to be clarified and concretized so that all those involved can apply a single code of conduct to those arrested on suspicion of piracy.

With regard to the creation of a new criminal court for piracy, we have seen that this is not required as there are innumerable national courts capable of administering justice. What is most needed is to build the capability of the courts of the regional states as well as a greater willingness to be prosecuted by national justice systems in other states.

In addition, the serious legal issues of private security companies need to be addressed because the assignment to them of a project similar to what is currently undertaken by the navies / public vessels of the countries is visible in the near future. The approach here must be realistic because the presence of these companies is growing and as a choice of security solution by shipowners will be the usual in the foreseeable future. It is therefore better to resolve issues concerning their institutional role, capabilities and regulate their services in a controlled manner than to keep their operation unclear and arbitrary.

Finally, the acquisition / use of weapons on merchant ships is a seriously controversial issue. What we must strive for as an international community in principle is that any acquisition / use of weapons be lawful (acquisition as provided by the legal status of the flag state and use only in self-defense). A closer look, however, could easily lead us to conclude that a new legal framework is needed at the international level to regulate the acquisition and use of weapons on merchant ships in order to adhere to a common practice of all flags. The view we hold is that this framework should prevent the acquisition of weapons and should definitely be restrictive. This will protect against arbitrariness and the reckless use of violence and retaliation, acts that only escalation and tension can bring.



## V. REFERENCES

1. Collective Project Security and Piracy on the Open Sea, St. Perrakis – Gr. Tsaltas, pub. I. Sideris, 2006.
2. P. Siousouras, 2009, paper entitled "Legal Framework for Tackling Piracy in the Light of International Law", at the conference organized by Supreme Joint War College on "Illegal Immigration and Modern Piracy as Threats to International and Regional Security", 25-26 Nov. 2009.
3. D. Dalaklis, 2009, paper entitled "Maritime Transport and Piracy: The Geopolitical Dimension", at the conference organized by Supreme Joint War College on "Illegal Immigration and Modern Piracy as Threats to International and Regional Security", 25-26 Nov. 2009.
4. CHATHAM HOUSE Conference Report, OCT 2009 "PIRACY AND LEGAL ISSUES". [www.chathamhouse.org.uk](http://www.chathamhouse.org.uk).
5. IAI, Conference Report, Rome 16 JUNE 2009 "ADDRESSING THE RESURGENCE OF SEA PIRACY LEGAL, POLITICAL, AND SECURITY ASPECTS" [www.iai.it](http://www.iai.it).
6. [www.icc-ccs.org/index.php](http://www.icc-ccs.org/index.php).
7. ICC-IMB Piracy and Armed Robbery against Ships – Annual Report 1 January – 31 December 2009.
8. Michael Bahar, 2006, «Attaining Optimal Deterrence at Sea: A Legal and Strategic Theory for Naval Anti-Piracy Operations» page 16, VANDERBILT JOURNAL OF TRANSNATIONAL LAW, Vol. 40 - 2006 <http://ssrn.com/abstract=982679>
9. Bjørn Møller, 2009, «MARITIME TERRORISM AND NAVAL STRATEGY» DIIS REPORT 2009:02, Danish Institute for International Studies, DIIS Copenhagen 2009. [www.diis.dk](http://www.diis.dk)
10. <http://www.ict.org.il/Articles/tabid/66/Default.aspx>.
11. [www.imo.org](http://www.imo.org).
12. Eugene Kontorovich, Feb. 2010, Draft article "A Guantanamo on the sea: The difficulty of prosecuting pirates and terrorists" California Law Review. <http://ssrn.com/abstract=1371122>

13. Eugene Kontorovich and Steven Art, 6 Dec. 2009, study “The Limits of Judicial Altruism: An Empirical Examination of Universal Jurisdiction for Piracy”. <http://ssrn.com/abstract=1519518>
14. Archives of the British Parliament for statements of the Deputy Minister of Defense, Baroness Taylor of Bolton, 22 1 2009 11:21 am (UK Parliament records).
15. DecisionforAlSkeini <http://www.parliament.the-stationery-office.co.uk/pa/ld200607/ldjudgmt/jd070613/skeini-1.htm>.
16. Alexandra Schwartz, 2009, «Corsairs in the Crosshairs: A Strategic Plan to Eliminate Modern Day Piracy» New York University School of Law.

## ANNEX - A

### Resolution 1814

The situation in Somalia

Abstract S/RES/1814 (2008) Security Council Distr.: General 15 May 2008  
08-34379 (E) \*0834379\* Resolution 1814 (2008)

Adopted by the Security Council at its 5893rd meeting, on 15 May 2008

The Security Council, Recalling its previous resolutions concerning the situation in Somalia, in particular resolution 733 (1992), resolution 1356 (2001), resolution 1425 (2002), resolution 1725 (2006), resolution 1744 (2007), resolution 1772 (2007), resolution 1801 (2008) and resolution 1811 (2008), and the statements of its President, in particular those of 13 July 2006 (S/PRST/2006/31), 22 December 2006 (S/PRST/2006/59), 30 April 2007 (S/PRST/2007/13), 14 June 2007 (S/PRST/2007/19) and 19 December 2007 (S/PRST/2007/49),

Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, Reiterating its commitment to a comprehensive and lasting settlement of the situation in Somalia through the Transitional Federal Charter (TFC), stressing the importance of broad-based and representative institutions reached through a political process ultimately inclusive of all, as envisaged in the TFC, and reiterating its support for Somalia's Transitional Federal Institutions (TFIs) to take this forward, Reiterating the need for agreement on a comprehensive and lasting cessation of hostilities and a roadmap for the remainder of the transitional process, including free and democratic elections in 2009 as set out in the TFC, Welcoming the continued efforts by Prime Minister Nur "Adde" Hassan Hussein and his Cabinet, under the leadership of President Abdullahi Yusuf Ahmed and supported by the Transitional Federal Parliament, to advance the political process and implement the transitional period, as required by the TFC, in particular the agreement to prepare a timetable for the Constitutional Process leading to a referendum in 2009, the presentation of the Reconciliation Strategy of the Transitional Federal Government (TFG), engagement with clan and local leaders across the country, and efforts to implement the National Security and Stabilisation Plan and to improve public finance management including budgetary and fiscal processes, and supporting efforts to make further progress in all these areas, S/RES/1814 (2008) 2 08-34379 Welcoming the commitment of all Somali parties that have agreed to engage in dialogue with each other with a view to establishing peace and security in Somalia, urging all Somali parties to honour these commitments and to resort to peaceful means only to resolve their disputes, further welcoming the supporting role of the United Nations, in particular the practical support of the Special Representative of the Secretary-General (SRSG) and the United Nations Political Office for Somalia (UNPOS) to help progress this dialogue, and supporting in this regard the start on 12 May 2008 of discussions between the parties in Djibouti,

Welcoming the Secretary-General's report on Somalia of 14 March 2008 (S/2008/178), in particular its assessment that the political situation in Somalia currently provides a renewed opportunity for the international community to give practical support to domestic initiatives, including an increased presence of United

Nations personnel and, subject to broad-based political and security agreements and conditions on the ground, the deployment of a United Nations peacekeeping operation to succeed the African Union Mission to Somalia (AMISOM), Welcoming the Secretary-General's support for a comprehensive United Nations strategic approach for peace and stability in Somalia, aligning and integrating political, security and programmatic efforts in a sequenced and mutually reinforcing way, and endorsing ongoing work by the United Nations to support the political process in Somalia and to determine options for re-locating United Nations staff to Somalia, Commending the work of the SRSG, Mr. Ahmedou Ould-Abdallah, and of UNPOS, reaffirming its strong support for his work, in particular his leading role in coordinating international efforts, and requesting that all parties, as well as international organizations, the United Nations country team and Member States support and work in close coordination with him at all times, Reaffirming its condemnation of all acts of, and incitement to, violence inside Somalia, expressing its concern at all acts intended to prevent or block a peaceful political process, and expressing its further concern at such acts and incitement continuing.

Underlining the importance of providing and maintaining stability and security throughout Somalia, and underscoring the importance of disarmament, demobilization and reintegration of militia and ex-combatants in Somalia, Emphasizing the contribution that AMISOM is making to lasting peace and stability in Somalia, welcoming in particular the continuing commitment of the Governments of Uganda and Burundi, regretting the recent loss of a Burundian soldier, condemning any hostility towards AMISOM, and urging all parties in Somalia and the region to support and cooperate with AMISOM, Underlining that the full deployment of AMISOM will help facilitate the full withdrawal of other foreign forces from Somalia and help create the conditions for lasting peace and stability there,

Taking note of the letter dated 20 February 2008 from the Chairperson of the African Union (AU) Commission to the Secretary-General, which was annexed to the Secretary-General's report of 14 March 2008, and of the reply from the Secretary-General of 23 April 2008 (S/2008/309),  
S/RES/1814 (2008) 08-34379 3

Emphasizing the continued contribution made to Somalia's peace and security by the arms embargo imposed by resolution 733 (1992), as elaborated and amended by resolutions 1356 (2001), 1425 (2002), 1725 (2006), 1744 (2007) and 1772 (2007), and reiterating its demand that all Member States, in particular those in the region, comply fully with it, Expressing deep concern at the human rights situation in Somalia, and taking note of the Resolution on Somalia adopted at the 7th Session of the Human Rights Council, and of the renewal by the Human Rights Council of the mandate for the Independent Expert on Somalia, Expressing its serious concern at the worsening humanitarian situation in Somalia and the continuing difficulties for humanitarian organizations operating in Somalia, including humanitarian access and security for humanitarian personnel, and reaffirming the humanitarian principles of humanity, neutrality, impartiality and independence, Determining that the situation in Somalia continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. Requests the Secretary-General to continue and intensify his efforts, working together with the international community, to promote an ongoing political process which is ultimately inclusive of all, including by assisting the TFIs in this regard and in delivering services to the Somali people;
2. Strongly supports the approach proposed by the Secretary-General's report of 14 March 2008, welcomes his intention to provide an updated comprehensive, integrated United Nations Strategy for peace and stability in Somalia, aligning and integrating political, security and programmatic efforts in a sequenced and mutually reinforcing way, and to include an assessment of the capacity of UNPOS to implement the Strategy, and requests that he submit the updated version to the Security Council within 60 days from the adoption of this resolution;
3. Approves the Secretary-General's proposal in his report of 14 March 2008 to establish a joint planning unit in the office of the SRSG to facilitate effective and efficient implementation of the integrated strategy;
4. Welcomes the Secretary-General's recommendation, as set out in his report of 14 March 2008, to relocate UNPOS and the country team headquarters from Nairobi to Mogadishu or an interim location in Somalia in order to help deliver the comprehensive, integrated United Nations strategy in Somalia, and requests the Secretary-General to establish the necessary security arrangements for such a relocation, and to update the Security Council when he submits the Strategy referred to in paragraph 2 above;
5. Decides that UNPOS and the United Nations country team shall, in promoting a comprehensive and lasting settlement in Somalia and through the promotion of the ongoing political process, enhance their support to the TFIs with the aim of developing a constitution and holding a constitutional referendum and free and democratic elections in 2009, as required by the TFC, and facilitating coordination of the international community's support to these efforts, and requests S/RES/1814 (2008) 4 08-34379 the Secretary-General within 60 days from the adoption of this resolution to report on progress with this work;
6. Recalls its intention to take measures against those who seek to prevent or block a peaceful political process, or those who threaten the TFIs or AMISOM by force, or take action that undermines stability in Somalia or the region, and therefore requests the Committee established pursuant to resolution 751 (1992) (herein after "the Committee") to provide, within 60 days from the adoption of this resolution, recommendations on specific targeted measures to be imposed against such individuals or entities;
7. Recalls its intention to strengthen the effectiveness of the United Nations arms embargo on Somalia, states its intention to take measures against those who breach the arms embargo, and those who support them in doing so, and therefore requests the Committee to provide, within 60 days from the adoption of this resolution, recommendations on specific targeted measures to be imposed against such individuals or entities;
8. Requests the Secretary-General to continue his contingency planning for the possible deployment of a United Nations peacekeeping operation in Somalia to succeed AMISOM, including of possible additional scenarios, in close contact with

UNPOS, the United Nations country team and other United Nations stakeholders, taking account of all relevant conditions on the ground, and considering additional options for the size, configuration, responsibility and proposed area of operation of the mission depending on different conditions on the ground, requests the Secretary-General to update on progress in his planning in the report referred to in paragraph 5 above, and expresses its willingness to consider, at an appropriate time, a peacekeeping operation to take over from AMISOM, subject to progress in the political process and improvement in the security situation on the ground;

9. Welcomes the Secretary-General's undertaking, as set out in his letter of 23 April 2008 to the Chairperson of the AU Commission, to provide additional United Nations technical advisers to the AU's Strategic Plans and Management Unit in Addis Ababa, and encourages the Secretary-General to continue to explore with the AU Commission Chairperson, in coordination with donors, ways and means to strengthen United Nations logistical, political and technical support for the AU, to build the AU's institutional capacity to carry out its commitments in addressing the challenges it faces in supporting AMISOM, and to assist AMISOM's full deployment, to the extent possible and as appropriate, with the goal of achieving United Nations standards, and to update the Council in the report referred to in paragraph 5 above;

10. Reiterates its call upon Member States to provide financial resources, personnel, equipment and services for the full deployment of AMISOM and upon Member States of the African Union to contribute to AMISOM in order to facilitate the withdrawal of other foreign forces from Somalia and help create the conditions for lasting peace and stability there, urges those Member States which have offered to contribute to AMISOM to fulfil such commitments, recognizes that more needs to be done to harness increased support for AMISOM, and takes note of the Secretary-General's proposals for harnessing such support, as set out in his letter of 23 April 2008; S/RES/1814 (2008) 08-34379 5

11. Reiterates its support for the contribution made by some States to protect the World Food Programme maritime convoys, calls upon States and regional organizations, in close coordination with each other and as notified in advance to the Secretary-General, and at the request of the TFG, to take action to protect shipping involved with the transportation and delivery of humanitarian aid to Somalia and United Nations-authorized activities, calls upon AMISOM troop-contributing countries, as appropriate, to provide support to this end, and requests the Secretary-General to provide his support to this effect;

12. Strongly supports and encourages the ongoing humanitarian relief efforts in Somalia, recalls its resolution 1502 (2003) on the protection of humanitarian and United Nations personnel, calls on all parties and armed groups in Somalia to take appropriate steps to ensure the safety and security of AMISOM, United Nations and humanitarian personnel, demands that all parties ensure timely, safe and unhindered access for the delivery of humanitarian assistance to all those in need, wherever they may be, and urges the countries in the region to facilitate the provision of humanitarian assistance, including the timely, safe and unhindered passage of essential relief goods into Somalia by land or via air and sea ports;

13. Requests the Secretary-General to strengthen ongoing efforts for establishing a United Nations-led mechanism for bringing together and facilitating

consultations between humanitarian organizations operating in Somalia, the TFG, donors and other relevant parties in order to help resolve issues of access, security and provision of humanitarian relief throughout Somalia, and further requests him to report on progress in the report referred to in paragraph 5 above;

14. Requests the Secretary-General to establish an effective capacity within UNPOS to monitor and enhance the protection of human rights in Somalia, and to ensure coordination, as appropriate, between UNPOS, the Office of the High Commissioner for Human Rights and the Human Rights Council Independent Expert, and further requests the Secretary-General to report on progress in achieving this in the report referred to in paragraph 5 above;

15. Supports the ongoing efforts of the United Nations, the African Union and interested Member States, in close cooperation with the TFG, to develop security sector institutions in Somalia, and requests the SRSG to enhance his coordination role in this area, aligning relevant United Nations programmes and Member States' activities;

16. Condemns all and any violations of human rights and international humanitarian law, calls upon all parties in Somalia to respect fully their obligations in this regard, and calls for those responsible for such violations in Somalia to be brought to justice;

17. Reaffirms its previous resolutions 1325 (2000) on women, peace and security, and 1674 (2006) and 1738 (2006) on the protection of civilians in armed conflict, and stresses the responsibility of all parties and armed groups in Somalia to take appropriate steps to protect the civilian population in the country, consistent with international humanitarian, human rights and refugee law, in particular by avoiding any indiscriminate attacks on populated areas;

18. Reaffirms its previous resolution 1612 (2005) on children and armed conflict and recalls the subsequent conclusions of the Security Council Working S/RES/1814 (2008) 6 08-34379

Group on Children in Armed Conflict pertaining to parties to the armed conflict in Somalia (S/AC.51/2007/14);

19. Recalls that, pursuant to Article 65 of the United Nations Charter, the Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request;

20. Decides to remain actively seized of the matter.

### **Resolution 1918**

The situation in Somalia

Abstract

S/RES/1918 (2010) Security Council Distr.: General 27 April 2010 10-33139 (E)

\*1033139\* Resolution 1918 (2010)

Adopted by the Security Council at its 6301st meeting, on 27 April 2010

The Security Council, Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008), 1851 (2008) and 1897 (2009),

Continuing to be gravely concerned by the threat that piracy and armed

robbery at sea against vessels pose to the situation in Somalia and other States in the region, as well as to international navigation and the safety of commercial maritime routes, Reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”), in particular its articles 100, 101 and 105, sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities, Reaffirming also that the authorizations renewed in resolution 1897 (2009) apply only with respect to the situation in Somalia and shall not affect the rights, obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscoring in particular that resolution 1897 shall not be considered as establishing customary international law,

Stressing the need to address the problems caused by the limited capacity of the judicial system of Somalia and other States in the region to effectively prosecute suspected pirates, Noting with appreciation the assistance being provided by the United Nations Office on Drugs and Crime (UNODC) and other international organizations and donors, in coordination with the Contact Group on Piracy off the Coast of Somalia (“CGPCS”), to enhance the capacity of the judicial and the corrections systems in Somalia, Kenya, Seychelles and other States in the region to prosecute suspected, and imprison convicted, pirates consistent with applicable international human rights law,

Commending the role of the EU operation Atalanta, North Atlantic Treaty Organization operations Allied Protector and Ocean Shield, Combined Maritime S/RES/1918 (2010) 2 10-33139 Forces’ Combined Task Force 151, and other States acting in a national capacity in cooperation with the Transitional Federal Government (the TFG) and each other, in suppressing piracy and armed robbery at sea off the coast of Somalia, including by bringing persons suspected of piracy to justice, Commending the efforts of the Republic of Kenya to date to prosecute suspected pirates in its national courts and imprison convicted persons, and encouraging Kenya to continue these efforts, while acknowledging the difficulties Kenya encounters in this regard, Also commending the efforts to date of other States to prosecute suspected pirates in their national courts,

Acknowledging the decision of the Seychelles to engage in the prosecution of suspected pirates, and welcoming in particular their decision on 6 February 2010 to consider hosting a regional prosecution centre, Commending the decision by the CGPCS to create the International Trust Fund supporting initiatives of the Contact Group on Piracy off the Coast of Somalia administered by the UNODC to defray the expenses associated with prosecution of suspected pirates and to support other counter-piracy initiatives, welcoming the contributions of participating States and encouraging other potential donors to contribute to the fund,

Welcoming the adoption of the CGPCS regional capability needs assessment report and urging States and international organizations to provide fullest possible support to enable early implementation of its recommendations,

Commending those States that have amended their domestic law in order to criminalize piracy and facilitate the prosecution of suspected pirates in their national courts, consistent with applicable international law, including human rights law, and stressing the need for States to continue their efforts in this regard,



Noting with concern at the same time that the domestic law of a number of States lacks provisions criminalizing piracy and/or procedural provisions for effective criminal prosecution of suspected pirates,  
 Acknowledging the ongoing efforts within the CGPCS to explore possible mechanisms to more effectively prosecute persons suspected of piracy and armed robbery at sea off the coast of Somalia,  
 Emphasizing that peace and stability within Somalia, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a durable eradication of piracy and armed robbery at sea off the coast of Somalia, and further emphasizing that Somalia's long-term security rests with the effective development by the TFG of the National Security Force and Somali Police Force, in the framework of the Djibouti Agreement and in line with a national security strategy,  
 Being concerned over cases when persons suspected of piracy are released without facing justice and determined to create conditions to ensure that pirates are held accountable,

1. Affirms that the failure to prosecute persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia undermines anti-piracy efforts of the international community; S/RES/1918 (2010) 10-33139 3
2. 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;
3. Welcomes in this context the progress being made to implement the IMO Djibouti Code of Conduct, and calls upon its participants to implement it fully as soon as possible;
4. Requests the Secretary-General to present to the Security Council within 3 months a report 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 CGPCS, the existing practice in establishing international and mixed tribunals, and the time and the resources necessary to achieve and sustain substantive results;
5. Decides to remain seized of the matter.

### **Resolution 1838**

The situation in Somalia

Abstract S/RES/1838 (2008) Security Council Distr.: General 7 October 2008  
 08-53884 (E) \*0853884\* Resolution 1838 (2008) Adopted by the Security Council at its 5987th meeting, on 7 October 2008

The Security Council, Recalling its resolutions 1814 (2008) and 1816 (2008),  
 Gravely concerned by the recent proliferation of acts of piracy and armed robbery at sea against vessels off the coast of Somalia, and by the serious threat it poses to the prompt, safe and effective delivery of humanitarian aid to Somalia, to international navigation and the safety of commercial maritime routes, and to

fishing activities conducted in conformity with international law, Noting with concern also that increasingly violent acts of piracy are carried out with heavier weaponry, in a larger area off the coast of Somalia, using long-range assets such as mother ships, and demonstrating more sophisticated organization and methods of attack, Reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities, Commending the contribution made by some States since November 2007 to protect the World Food Programme (“WFP”) maritime convoys, and, the establishment by the European Union of a coordination unit with the task of supporting the surveillance and protection activities carried out by some member States of the European Union off the coast of Somalia, and the ongoing planning process towards a possible European Union naval operation, as well as other international or national initiatives taken with a view to implementing resolutions 1814 (2008) and 1816 (2008), Noting recent humanitarian reports that as many as three-and-a-half million Somalis will be dependent on humanitarian food aid by the end of the year, and that maritime contractors for the WFP will not deliver food aid to Somalia without naval warship escorts, expressing its determination to ensure long-term security of WFP deliveries to Somalia and recalling that it requested the Secretary-General in resolution 1814 (2008) to provide his support for efforts to protect WFP maritime convoys, S/RES/1838 (2008) 2 08-53884 Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, Taking note of the letter dated 1 September 2008 of the President of Somalia to the Secretary-General of the United Nations expressing the appreciation of the Transitional Federal Government (“TFG”) to the Security Council for its assistance and expressing the TFG’s willingness to consider working with other States, as well as regional organizations, to provide advance notifications additional to those already provided, in accordance with paragraph 7 of resolution 1816 (2008), to combat piracy and armed robbery at sea off the coast of Somalia, Recalling that in the statement of its President dated 4 September 2008 (S/PRST/2008/33) it welcomed the signing of a peace and reconciliation agreement in Djibouti and commended the Special Representative of the Secretary-General for Somalia, Mr. Ahmedou Ould-Abdallah, for his ongoing efforts, and emphasizing the importance of promoting a comprehensive and lasting settlement in Somalia, Recalling also that in the statement of its President dated 4 September (S/PRST/2008/33) it took note of the parties’ request in the Djibouti Agreement that the United Nations, within a period of 120 days, authorize and deploy an international stabilization force and looking forward to the Secretary-General’s report due 60 days from its passage, in particular a detailed and consolidated description of a feasible multinational force, as well as a detailed concept of operations for a feasible United Nations peacekeeping operation, Emphasizing that peace and stability, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a full eradication of piracy and armed robbery at sea off the coast of Somalia, Determining that the incidents of piracy and armed robbery against vessels in

the territorial waters of Somalia and the high seas off the coast of Somalia exacerbate the situation in Somalia which continues to constitute a threat against international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. Reiterates that it condemns and deplores all acts of piracy and armed robbery at sea against vessels off the coast of Somalia;
2. Calls upon States interested in the security of maritime activities to take part actively in the fight against piracy on the high seas off the coast of Somalia, in particular by deploying naval vessels and military aircraft, in accordance with international law, as reflected in the Convention;
3. Calls upon States whose naval vessels and military aircraft operate on the high seas and airspace off the coast of Somalia to use on the high seas and airspace off the coast of Somalia the necessary means, in conformity with international law, as reflected in the Convention, for the repression of acts of piracy;
4. Urges States that have the capacity to do so to cooperate with the TFG in the fight against piracy and armed robbery at sea in conformity with the provisions of resolution 1816 (2008);
5. Urges also States and regional organizations, in conformity with the provisions of resolution 1814 (2008), to continue to take action to protect the World S/RES/1838 (2008) 08-53884 3 Food Programme maritime convoys, which is vital to bring humanitarian assistance to the affected populations in Somalia;
6. Urges States, as requested in particular by International Maritime Organization resolution (“IMO”) A-1002(25), to issue to ships entitled to fly their flag, as necessary, advice and guidance on appropriate precautionary measures to protect themselves from attack or actions to take if under attack or the threat of attack when sailing in waters off the coast of Somalia;
7. Calls upon States and regional organizations to coordinate their actions pursuant to paragraphs 3, 4 and 5 above;
8. Affirms that the provisions in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of member States under international law, including any rights or obligations under the Convention, with respect to any situation, and underscores in particular that this resolution shall not be considered as establishing customary international law;
9. Looks forward to the report of the Secretary-General requested in paragraph 13 of resolution 1816 (2008) and expresses its intention to review the situation with respect to piracy and armed robbery at sea against vessels off the coast of Somalia with a view, in particular, upon the request of the TFG, to renewing the authority provided in paragraph 7 of resolution 1816 (2008) for an additional period;
10. Decides to remain seized of the matter

### **Resolution 1846**

The situation in Somalia

Abstract S/RES/1846 (2008) Security Council Distr.: General 2 December 2008  
08-63029 (E) \*0863029\* Resolution 1846 (2008)

Adopted by the Security Council at its 6026th meeting, on 2 December 2008

The Security Council, Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008) and 1838 (2008), Continuing to be gravely concerned by the threat that piracy and armed robbery at sea against vessels pose to the prompt, safe and effective delivery of humanitarian aid to Somalia, to international navigation and the safety of commercial maritime routes, and to other vulnerable ships, including fishing activities in conformity with international law, Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, Further reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities, Taking into account the crisis situation in Somalia, and the lack of capacity of the Transitional Federal Government (“TFG”) to interdict pirates or patrol and secure either the international sea lanes off the coast of Somalia or Somalia’s territorial waters,

Taking note of the requests from the TFG for international assistance to counter piracy off its coasts, including the 1 September 2008 letter from the President of Somalia to the Secretary-General of the United Nations expressing the appreciation of the TFG to the Security Council for its assistance and expressing the TFG’s willingness to consider working with other States and regional organizations to combat piracy and armed robbery at sea off the coast of Somalia, the 20 November 2008 letter conveying the request of the TFG that the provisions of resolution 1816 (2008) be renewed, and the 20 November request of the Permanent Representative of Somalia before the Security Council that the renewal be for an additional 12 months, Further taking note of the letters from the TFG to the Secretary-General providing advance notification with respect to States cooperating with the TFG in S/RES/1846 (2008) 2 08-63029 the fight against piracy and armed robbery at sea off the coast of Somalia and from other Member States to the Security Council to inform the Council of their actions, as requested in paragraphs 7 and 12 of resolution 1816 (2008), and encouraging those cooperating States, for which advance notification has been provided by the TFG to the Secretary-General, to continue their respective efforts, Expressing again its determination to ensure the long-term security of World Food Programme (WFP) maritime deliveries to Somalia, Recalling that in its resolution 1838 (2008) it commended the contribution made by some States since November 2007 to protect (WFP) maritime convoys, and the establishment by the European Union (EU) of a coordination unit with the task of supporting the surveillance and protection activities carried out by some member States of the European Union off the coast of Somalia, as well as other international and national initiatives taken with a view to implementing resolutions 1814 (2008) and 1816 (2008),

Emphasizing that peace and stability within Somalia, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a full eradication of piracy and armed robbery at sea off the coast of Somalia, Welcoming the signing of a peace and reconciliation Agreement (“the Djibouti Agreement”) between the TFG and

the Alliance for the Re-Liberation of Somalia on 19 August 2008, as well as their signing of a joint ceasefire agreement on 26 October 2008, noting that the Djibouti Agreement calls for the United Nations to authorize and deploy an international stabilization force, and further noting the Secretary-General's report on Somalia of 17 November 2008, including his recommendations in this regard,

Commending the key role played by the African Union Mission to Somalia (AMISOM) in facilitating delivery of humanitarian assistance to Somalia through the port of Mogadishu and the contribution that AMISOM has made towards the goal of establishing lasting peace and stability in Somalia, and recognizing specifically the important contributions of the Governments of Uganda and Burundi to Somalia, Welcoming the organization of a ministerial meeting of the Security Council in December 2008 to examine ways to improve international coordination in the fight against piracy and armed robbery off the coast of Somalia and to ensure that the international community has the proper authorities and tools at its disposal to assist it in these efforts, Determining that the incidents of piracy and armed robbery against vessels in the territorial waters of Somalia and the high seas off the coast of Somalia exacerbate the situation in Somalia which continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. Reiterates that it condemns and deplores all acts of piracy and armed robbery against vessels in territorial waters and the high seas off the coast of Somalia; S/RES/1846 (2008) 08-63029 3
2. Expresses its concern over the finding contained in the 20 November 2008 report of the Monitoring Group on Somalia that escalating ransom payments are fuelling the growth of piracy off the coast of Somalia;
3. Welcomes the efforts of the International Maritime Organization ("IMO") to update its guidance and recommendations to the shipping industry and to Governments for preventing and suppressing piracy and armed robbery at sea and to provide this guidance as soon as practicable to all Member States and to the international shipping community operating off the coast of Somalia;
4. Calls upon States, in cooperation with the shipping industry, the insurance industry and the IMO, to issue to ships entitled to fly their flag appropriate advice and guidance on avoidance, evasion, and defensive techniques and measures to take if under the threat of attack or attack when sailing in the waters off the coast of Somalia;
5. Further calls upon States and interested organizations, including the IMO, to provide technical assistance to Somalia and nearby coastal States upon their request to enhance the capacity of these States to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines;
6. Welcomes initiatives by Canada, Denmark, France, India, the Netherlands, the Russian Federation, Spain, the United Kingdom, the United States of America, and by regional and international organizations to counter piracy off the coast of Somalia pursuant to resolutions 1814 (2008), 1816 (2008) and 1838 (2008), the decision by the North Atlantic Treaty Organization (NATO) to counter piracy off the Somalia coast, including by escorting vessels of the WFP, and in particular the decision by the EU on 10 November 2008 to launch, for a period of

12 months from December 2008, a naval operation to protect WFP maritime convoys bringing humanitarian assistance to Somalia and other vulnerable ships, and to repress acts of piracy and armed robbery at sea off the coast of Somalia;

7. Calls upon States and regional organizations to coordinate, including by sharing information through bilateral channels or the United Nations, their efforts to deter acts of piracy and armed robbery at sea off the coast of Somalia in cooperation with each other, the IMO, the international shipping community, flag States, and the TFG;

8. Requests the Secretary-General to present to it a report, no later than three months after the adoption of this resolution, on ways to ensure the long-term security of international navigation off the coast of Somalia, including the long-term security of WFP maritime deliveries to Somalia and a possible coordination and leadership role for the United Nations in this regard to rally Member States and regional organizations to counter piracy and armed robbery at sea off the coast of Somalia;

9. Calls upon States and regional organizations that have the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and relevant international law, by deploying naval vessels and military aircraft, and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery off the coast of Somalia, or for which there is reasonable ground for suspecting such use;

S/RES/1846 (2008) 4 08-63029

10. Decides that for a period of 12 months from the date of this resolution States and regional organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General, may:

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

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

11. Affirms that the authorizations provided in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law; and affirms further that such authorizations have been provided only following the receipt of the 20 November letter conveying the consent of the TFG;

12. Affirms that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) do not apply to supplies of technical assistance to Somalia solely for the purposes set out in paragraph 5 above which have been exempted from those

measures in accordance with the procedure set out in paragraphs 11 (b) and 12 of resolution 1772 (2007);

13. Requests that cooperating States take appropriate steps to ensure that the activities they undertake pursuant to the authorization in paragraph 10 do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State;

14. Calls upon all States, and in particular flag, port and coastal States, States of the nationality of victims and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such victims and witnesses and persons detained as a result of operations conducted under this resolution;

15. Notes that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (“SUA Convention”) provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation; urges States parties to the SUA Convention to fully implement their obligations under said Convention and cooperate with the Secretary-General and the IMO to build judicial capacity for the S/RES/1846 (2008) 08-63029 5 successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia;

16. Requests States and regional organizations cooperating with the TFG to inform the Security Council and the Secretary-General within nine months of the progress of actions undertaken in the exercise of the authority provided in paragraph 10 above;

17. Requests the Secretary-General to report to the Security Council within 11 months of adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery in territorial waters and the high seas off the coast of Somalia;

18. Requests the Secretary-General of the IMO to brief the Council on the basis of cases brought to his attention by the agreement of all affected coastal States, and duly taking into account the existing bilateral and regional cooperative arrangements, on the situation with respect to piracy and armed robbery;

19. Expresses its intention to review the situation and consider, as appropriate, renewing the authority provided in paragraph 10 above for additional periods upon the request of the TFG;

20. Decides to remain seized of the matter.

## **Resolution 1851**

The situation in Somalia

Abstract S/RES/1851 (2008) Security Council Distr.: General 16 December 2008  
08-65501 (E) \*0865501\* Resolution 1851 (2008) Adopted by the Security Council at its 6046th meeting, on 16 December 2008

The Security Council, Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), and 1846 (2008), Continuing to be gravely concerned by the dramatic increase in the incidents of piracy and armed robbery at sea off the coast of Somalia in the last six months, and by the threat that piracy and armed robbery at sea against vessels pose to the prompt, safe and effective delivery of humanitarian aid to Somalia, and noting that pirate attacks off the coast of Somalia have become more sophisticated and daring and have expanded in their geographic scope, notably evidenced by the hijacking of the M/V Sirius Star 500 nautical miles off the coast of Kenya and subsequent unsuccessful attempts well east of Tanzania, Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, including Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law, Further reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities, Again taking into account the crisis situation in Somalia, and the lack of capacity of the Transitional Federal Government (TFG) to interdict, or upon interdiction to prosecute pirates or to patrol and secure the waters off the coast of Somalia, including the international sea lanes and Somalia's territorial waters, Noting the several requests from the TFG for international assistance to counter piracy off its coast, including the letter of 9 December 2008 from the President of Somalia requesting the international community to assist the TFG in taking all necessary measures to interdict those who use Somali territory and airspace to plan, facilitate or undertake acts of piracy and armed robbery at sea, and the 1 September 2008 letter from the President of Somalia to the Secretary-General of the UN expressing the appreciation of the TFG to the Security Council for its assistance and expressing the TFG's willingness to consider working with other S/RES/1851 (2008) 2 08-65501 States and regional organizations to combat piracy and armed robbery off the coast of Somalia, Welcoming the launching of the EU operation Atalanta to combat piracy off the coast of Somalia and to protect vulnerable ships bound for Somalia, as well as the efforts by the North Atlantic Treaty Organization, and other States acting in a national capacity in cooperation with the TFG to suppress piracy off the coast of Somalia, Also welcoming the recent initiatives of the Governments of Egypt, Kenya, and the Secretary-General's Special Representative for Somalia, and the United Nations Office on Drugs and Crime (UNODC) to achieve effective measures to remedy the causes, capabilities, and incidents of piracy and armed robbery off the coast of Somalia, and emphasizing the need for current and future counter-piracy operations to effectively coordinate their activities, Noting with concern that the lack of capacity, domestic legislation, and clarity about how to dispose of pirates after their capture, has hindered more robust



international action against the pirates off the coast of Somalia and in some cases led to pirates being released without facing justice, and reiterating that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (“SUA Convention”) provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation, Welcoming the report of the Monitoring Group on Somalia of 20 November 2008 (S/2008/769), and noting the role piracy may play in financing embargo violations by armed groups, Determining that the incidents of piracy and armed robbery at sea in the waters off the coast of Somalia exacerbate the situation in Somalia which continues to constitute a threat to international peace and security in the region, Acting under Chapter VII of the Charter of the United Nations,

1. Reiterates that it condemns and deplores all acts of piracy and armed robbery against vessels in waters off the coast of Somalia;
2. Calls upon States, regional and international organizations that have the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution, resolution 1846 (2008), and international law, by deploying naval vessels and military aircraft and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use;
3. Invites all States and regional organizations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials (“shipriders”) from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under this resolution for acts of piracy and armed robbery at sea off the coast of Somalia, provided that the advance consent of the TFG is obtained for the S/RES/1851 (2008) 08-65501 3 exercise of third state jurisdiction by shipriders in Somali territorial waters and that such agreements or arrangements do not prejudice the effective implementation of the SUA Convention;
4. Encourages all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact between and among states, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia’s coast; and recalls that future recommendations on ways to ensure the long-term security of international navigation off the coast of Somalia, including the long-term security of WFP maritime deliveries to Somalia and a possible coordination and leadership role for the United Nations in this regard to rally Member States and regional organizations to counter piracy and armed robbery at sea off the coast of Somalia are to be detailed in a report by the Secretary-General no later than three months after the adoption of resolution 1846;
5. Further encourages all states and regional organizations fighting piracy

and armed robbery at sea off the coast of Somalia to consider creating a centre in the region to coordinate information relevant to piracy and armed robbery at sea off the coast of Somalia, to increase regional capacity with assistance of UNODC to

arrange effective shiprider agreements or arrangements consistent with UNCLOS and to implement the SUA Convention, the United Nations Convention against Transnational Organized Crime and other relevant instruments to which States in the region are party, in order to effectively investigate and prosecute piracy and armed robbery at sea offences;

6. In response to the letter from the TFG of 9 December 2008, encourages Member States to continue to cooperate with the TFG in the fight against piracy and armed robbery at sea, notes the primary role of the TFG in rooting out piracy and armed robbery at sea, and decides that for a period of twelve months from the date of adoption of resolution 1846, States and regional organizations cooperating in the fight against piracy and armed robbery at sea off the coast of Somalia for which advance notification has been provided by the TFG to the Secretary-General may undertake all necessary measures that are appropriate in Somalia, for the purpose of suppressing acts of piracy and armed robbery at sea, pursuant to the request of the TFG, provided, however, that any measures undertaken pursuant to the authority of this paragraph shall be undertaken consistent with applicable international humanitarian and human rights law;

7. Calls on Member States to assist the TFG, at its request and with notification to the Secretary-General, to strengthen its operational capacity to bring to justice those who are using Somali territory to plan, facilitate or undertake criminal acts of piracy and armed robbery at sea, and stresses that any measures undertaken pursuant to this paragraph shall be consistent with applicable international human rights law;

8. Welcomes the communiqué issued by the International Conference on Piracy around Somalia held in Nairobi, Kenya, on 11 December 2008 and encourages Member States to work to enhance the capacity of relevant states in the region to combat piracy, including judicial capacity;

S/RES/1851 (2008) 4 08-65501

9. Notes with concern the findings contained in the 20 November 2008 report of the Monitoring Group on Somalia that escalating ransom payments are fuelling the growth of piracy in waters off the coast of Somalia, and that the lack of enforcement of the arms embargo established by resolution 733 (1992) has permitted ready access to the arms and ammunition used by the pirates and driven in part the phenomenal growth in piracy;

10. Affirms that the authorization provided in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under UNCLOS, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law, and affirms further that such authorizations have been provided only following the receipt of the 9 December 2008 letter conveying the consent of the TFG;

11. Affirms that the measures imposed by paragraph 5 of resolution 733

(1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) shall not apply to weapons and military equipment destined for the sole use of Member States and regional organizations undertaking measures in accordance with paragraph 6 above;

12. Urges States in collaboration with the shipping and insurance industries, and the IMO to continue to develop avoidance, evasion, and defensive best practices and advisories to take when under attack or when sailing in waters off the coast of Somalia, and further urges States to make their citizens and vessels available for forensic investigation as appropriate at the first port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity;

13. Decides to remain seized of the matter

### **Resolution 1897**

The situation in Somalia

Abstract S/RES/1897 (2009) Security Council Distr.: General 30 November 2009 09-62465 (E) \*0962465\* Resolution 1897 (2009) Adopted by the Security Council at its 6226th meeting, on 30 November 2009 The Security Council,

Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008), and 1851 (2008), Continuing to be gravely concerned by the ongoing threat that piracy and armed robbery at sea against vessels pose to the prompt, safe, and effective delivery of humanitarian aid to Somalia and the region, to international navigation and the safety of commercial maritime routes, and to other vulnerable ships, including fishing activities in conformity with international law and the extended range of the piracy threat into the western Indian Ocean, Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, including Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law, Further reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 ("The Convention"), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,

Again taking into account the crisis situation in Somalia, and the limited capacity of the Transitional Federal Government (TFG) to interdict, or upon interdiction to prosecute pirates or to patrol or secure the waters off the coast of Somalia, including the international sea lanes and Somalia's territorial waters, Noting the several requests from the TFG for international assistance to counter piracy off its coast, including the letters of 2 and 6 November 2009 from the Permanent Representative of Somalia to the United Nations expressing the appreciation of the TFG to the Security Council for its assistance, expressing the TFG's willingness to consider working with other States and regional organizations to combat piracy and armed robbery at sea off the coast of Somalia, and requesting that the provisions of resolutions 1846 (2008) and 1851 (2008) be renewed for an additional twelve months,

S/RES/1897 (2009) 2 09-62465

Commending the efforts of the EU operation Atalanta, which the European Union is committed to extending until December 2010, North Atlantic Treaty Organization operations Allied Protector and Ocean Shield, Combined Maritime Forces' Combined Task Force 151, and other States acting in a national capacity in cooperation with the TFG and each other, to suppress piracy and to protect vulnerable ships transiting through the waters off the coast of Somalia, Noting with concern that the continuing limited capacity and domestic legislation to facilitate the custody and prosecution of suspected pirates after their capture has hindered more robust international action against the pirates off the coast of Somalia, and in some cases has led to pirates being released without facing justice, regardless of whether there is sufficient evidence to support prosecution, reiterating that, consistent with the provisions of the Convention concerning the repression of piracy, the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("SUA Convention") provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation, and stressing the need for States to criminalize piracy under their domestic law and to favourably consider the prosecution, in appropriate cases, of suspected pirates, consistent with applicable international law, Commending the Republic of Kenya's efforts to prosecute suspected pirates in its national courts, and noting with appreciation the assistance being provided by the United Nations Office of Drugs and Crime (UNODC) and other international organizations and donors, in coordination with the Contact Group on Piracy off the Coast of Somalia ("CGPCS"), to support Kenya, Somalia and other States in the region, including Seychelles and Yemen, to take steps to prosecute or incarcerate in a third state after prosecution elsewhere captured pirates consistent with applicable international human rights law, Noting the ongoing efforts within the CGPCS to explore possible additional mechanisms to effectively prosecute persons suspected of piracy and armed robbery at sea off the coast of Somalia, Further noting with appreciation the ongoing efforts by UNODC and UNDP to support efforts to enhance the capacity of the corrections system in Somalia, including regional authorities, to incarcerate convicted pirates consistent with applicable international human rights law, Welcoming the adoption of the Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, and the establishment of the International Maritime Organization (IMO) Djibouti Code Trust Fund (Multi-donor trust fund- Japan initiated), as well as the International Trust Fund Supporting Initiatives of the CGPCS, and recognizing the efforts of signatory States to develop the appropriate regulatory and legislative frameworks to combat piracy, enhance their capacity to patrol the waters of the region, interdict suspect vessels, and prosecute suspected pirates, Emphasizing that peace and stability within Somalia, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a durable eradication of piracy S/RES/1897 (2009) 09-62465 3 and armed robbery at sea off the coast of Somalia, and further emphasizing that

Somalia's long-term security rests with the effective development by the TFG of the National Security Force and Somali Police Force, in the framework of the Djibouti Agreement and in line with a national security strategy, Determining that the incidents of piracy and armed robbery at sea off the coast of Somalia exacerbate the situation in Somalia, which continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. Reiterates that it condemns and deplores all acts of piracy and armed robbery against vessels in the waters off the coast of Somalia;
2. Notes again its concern regarding the findings contained in the 20 November 2008 report of the Monitoring Group on Somalia (S/2008/769, page 55) that escalating ransom payments and the lack of enforcement of the arms embargo established by resolution 733 (1992) are fuelling the growth of piracy off the coast of Somalia, and calls upon all States to fully cooperate with the Monitoring Group on Somalia;
3. Renews its call upon States and regional organizations that have the capacity to do so, to take part in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and international law, by deploying naval vessels, arms and military aircraft and through seizures and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use;
4. Commends the work of the CGPCS to facilitate coordination in order to deter acts of piracy and armed robbery at sea off the coast of Somalia, in cooperation with the IMO, flag States, and the TFG and urges States and international organizations to continue to support these efforts;
5. Acknowledges Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law, and calls upon States and interested organizations, including the IMO, to provide technical assistance to Somalia, including regional authorities, and nearby coastal States upon their request to enhance their capacity to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines, and stresses the importance of coordination in this regard through the CGPCS;
6. Invites all States and regional organizations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials ("shipriders") from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under this resolution for acts of piracy and armed robbery at sea off the coast of Somalia, provided that the advance consent of the TFG is obtained for the exercise of third state jurisdiction by shipriders in Somali territorial waters and that such agreements or arrangements do not prejudice the effective implementation of the SUA Convention;
7. Encourages Member States to continue to cooperate with the TFG in the fight against piracy and armed robbery at sea, notes the primary role of the TFG in S/RES/1897 (2009) 4 09-62465 the fight against piracy and armed robbery at sea, and decides that for a period of twelve months from the date of this resolution to

renew the authorizations as set out in paragraph 10 of Resolution 1846 (2008) and paragraph 6 of Resolution 1851 (2008) granted to States and regional organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General;

8. Affirms that the authorizations renewed in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law; and affirms further that such authorizations have been renewed only following the receipt of the 2 and 6 November 2009 letters conveying the consent of the TFG;

9. Affirms that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) do not apply to weapons and military equipment destined for the sole use of Member States and regional organizations undertaking measures in accordance with paragraph 7 above or to supplies of technical assistance to Somalia solely for the purposes set out in paragraphs 5 above which have been exempted from those measures in accordance with the procedure set out in paragraphs 11 (b) and 12 of resolution 1772 (2007);

10. Requests that cooperating States take appropriate steps to ensure that the activities they undertake pursuant to the authorizations in paragraph 7 do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State;

11. Calls on Member States to assist Somalia, at the request of the TFG and with notification to the Secretary-General, to strengthen capacity in Somalia, including regional authorities, to bring to justice those who are using Somali territory to plan, facilitate, or undertake criminal acts of piracy and armed robbery at sea, and stresses that any measures undertaken pursuant to this paragraph shall be consistent with applicable international human rights law;

12. Calls upon all States, and in particular flag, port, and coastal States, States of the nationality of victims and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, to ensure that all pirates handed over to judicial authorities are subject to a judicial process, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such as victims and witnesses and persons detained as a result of operations conducted under this resolution;

13. Commends in this context the decision by the CGPCS to establish an International Trust Fund to support its initiatives and encourages donors to contribute to it; S/RES/1897 (2009) 09-62465 5

14. Urges States parties to the Convention and the SUA Convention to fully implement their relevant obligations under these Conventions and customary

international law and cooperate with the UNODC, IMO, and other States and other international organizations to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia;

15. Welcomes the revisions by the IMO to its recommendations and guidance on preventing and suppressing piracy and armed robbery against ships, and urges States, in collaboration with the shipping and insurance industries, and the IMO, to continue to develop and implement avoidance, evasion, and defensive best practices and advisories to take when under attack or when sailing in the waters off the coast of Somalia, and further urges States to make their citizens and vessels available for forensic investigation as appropriate at the first port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity;

16. Requests States and regional organizations cooperating with the TFG to inform the Security Council and the Secretary-General within nine months of the progress of actions undertaken in the exercise of the authorizations provided in paragraph 7 above and further requests all States contributing through the CGPCS to the fight against piracy off the coast of Somalia, including Somalia and other States in the region, to report by the same deadline on their efforts to establish jurisdiction and cooperation in the investigation and prosecution of piracy;

17. Requests the Secretary-General to report to the Security Council within 11 months of the adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery at sea off the coast of Somalia;

18. Requests the Secretary General of the IMO to brief the Security Council on the basis of cases brought to his attention by the agreement of all affected coastal States, and duly taking into account the existing bilateral and regional cooperative arrangements, on the situation with respect to piracy and armed robbery;

19. Expresses its intention to review the situation and consider, as appropriate, renewing the authorizations provided in paragraph 7 above for additional periods upon the request of the TFG;

20. Decides to remain seized of the matter.