

21 June 2011



United Nations

# Security Council

## SC/10287

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Department of Public Information • News and Media Division • New York

Security Council  
6560<sup>th</sup> Meeting (AM)

### **NEED FOR SPECIALIZED COURTS UNDERLINED AS SECURITY COUNCIL HEARS BRIEFING**

#### **ON SOARING HUMAN, COMMERCIAL COSTS OF PIRACY OFF SOMALI COAST**

##### **Secretary-General's Special Representative, Legal Counsel Outline Options**

Citing the “incalculable” human and commercial costs of piracy off the Somali coast, as well as the escalating violence and expanding geographic scope of pirate attacks, the top United Nations legal official today presented the Security Council with detailed options for establishing specialized courts to try suspects in Somalia and the wider Horn of Africa region.

“Strengthening the rule of law in Somalia [is] the guiding principle for creating such courts,” said Patricia O’Brien, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, as she briefed the Council on the modalities outlined in a report submitted by the Secretary-General on the legal and practical viability of setting up anti-piracy courts in Somalia, including the creation of new specialized chambers within existing courts, and on establishing an extra-territorial but Somali-led judicial body.

The report drew its recommendations from an exhaustive study by Jack Lang, the Secretary-General’s Special Adviser on Legal Issues Related to Piracy off the Coast of Somalia, she said. The involvement of the Office for Legal Affairs was driven by two key factors: the availability of legal experts among the Somali diaspora to add impetus to the development of specialized courts; and the need to disrupt the activities of the financiers and planners of piracy.

She said the United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC) were working to develop the capacity of courts in Somalia’s “Somaliland” and “Puntland” regions to prosecute piracy cases to international standards. A total of 290 cases had been concluded or were ongoing in “Puntland”, while 94 had been completed or were ongoing in “Somaliland”. Based on that experience, it would take about three years to bring trials up to international standards. The UNDP and UNODC court and prison programmes would cost \$24 million over the next three years, she said, adding that salary and security costs would likely increase if international experts were deployed to help develop trial capacity. Hampering the programmes were outdated criminal and procedural codes, as well as a shortage of trained judges and other legal professionals.

Ms. O’Brien went on to say that her Office had sought the views of Somalia’s Transitional Federal Government, regional authorities in “Somaliland”, “Puntland” and Galmadug, as well as Government officials in the United Republic of Tanzania, Kenya, Seychelles, Mauritius and Djibouti, regarding the establishment of a specialized court in their region or country. Transitional Somali officials, as well as those of “Puntland” and Galmadug, had expressed a preference for establishing such a court inside Somalia, and a willingness to agree on an exact location.

Further, she said the Government of the United Republic of Tanzania had stated its willingness to host the court within the current premises of the International Criminal Tribunal for Rwanda in Arusha, and had called for the timely construction of prisons inside Somalia to avoid having to incarcerate those convicted on Tanzanian territory for lengthy periods of time. Noting that the Tribunal had confirmed that

one courtroom, office space, and cells for 30 piracy suspects could be made available, she cautioned that serious security concerns had been raised because the Tribunal's premises were shared with other global bodies. She stressed that the timelines and costs of establishing an extra-territorial court were difficult to determine, but the Office of Legal Affairs was ready to examine in greater depth any of the options outlined in the Secretary-General's report, if the Council decided to mandate the Secretary-General to do so.

As Council members addressed the subject, they all expressed their commitment to supporting the international fight against piracy, with many calling for a focus on its root causes, which would entail a serious effort to bolster socio-economic development in Somalia and East Africa. The representative of the Russian Federation said the report created a sufficient basis for further movement towards the establishment of a system for prosecuting pirates, but expressed regret over the reticence of the Somali Transitional Federal Government to establish anti-piracy courts abroad, especially since it clearly could not prosecute the large numbers of alleged pirates on its own.

However, the representative of the United Kingdom said the report set out clearly that the Transitional Federal Government and Somalia's regional administrations did not support an anti-piracy court outside Somalia. "We believe that it would be wrong to disregard their views," he said, adding that the report also set out the challenges and difficulties of establishing such a court. It seemed clear that it would not be workable in the near term for legal and other reasons, he said, adding that the proposal should be set aside while efforts and money were focused instead on supporting national court and prison capacity.

Stressing that a determined, cohesive Government was needed to steer the implementation of court decisions, Nigeria's representative pointed out that piracy had not yet received the desired robust response from the Transitional Federal Government. It was important to work on prevention, including by reviving Somalia's national industries, she said. Somalia should also revise its laws to provide a sound legal basis for prosecution.

Also speaking today were the representatives of Portugal, India, Brazil, United States, France, Lebanon, Germany, China, South Africa, Colombia, Bosnia and Herzegovina, Gabon and Somalia.

The meeting began at 10:10 a.m. and ended at 12 noon.

#### Background

The Security Council met this morning to consider the situation in Somalia, focusing on the Secretary-General's report on the modalities for establishing specialized Somali anti-piracy courts (document S/2011/360), which is based on a detailed study of the issue by Jack Lang, Special Adviser on Legal Issues Related to Piracy off the Coast of Somalia.

According to the detailed survey, strengthening the rule of law in Somalia remains the guiding principle underlying the proposed establishment of specialized anti-piracy courts. The legal and practical considerations include the constitutional and legal basis inside Somalia; adequate criminal and procedural legislation for the prosecution of suspected pirates; sufficient numbers of trained judges and other legal professionals; security; imprisonment facilities; financing; and the timeline for establishing such courts. "These same considerations are also fundamental in respect of the establishment of an extra-territorial Somali court," the Secretary-General adds.

Since publication of the Secretary-General's report of 26 July 2010 (document S/2010/394), the report says, the number of States prosecuting acts of piracy off the Somali coast in their own courts has risen from 10 to 20, and the total number of prosecutions has nearly doubled, from 528 to 1,011. Kenya is holding 119 suspected pirates and has convicted 50; Seychelles is holding 64 and has convicted 41; the United States is holding 28 and has convicted 8; and Yemen has convicted all 120 pirates detained in its territory.

However, the largest number of detained piracy suspects so far is inside Somalia, the report notes. "Puntland" is holding 290, with about 240 convicted, "Somaliland" has 94 and has convicted 68, while the south-central region of Somalia has detained 18 suspected pirates. With respect to the

establishment of specialized courts inside Somalia, the report notes that trials currently being conducted by courts in "Puntland" and "Somaliland", with United Nations assistance, are expected to reach international standards in around three years. That schedule may be accelerated if suitable international experts, including from the Somali diaspora, can be identified and recruited. That will open the way for naval States to enter into agreements on the transfer of suspects apprehended at sea to courts for prosecution in those Somali regions.

According to the report, it remains necessary to revise Somali law so as to provide a sound criminal and procedural basis for such prosecutions. It is not possible to determine at the present stage the timeline for the establishment and functioning of a Somali anti-piracy court in another State within the region. The factors affecting such a determination would include, among other things, the views of the States concerned and the relevant Somali authorities; the need for a Somali constitutional and legislative basis for such court; and the need for an adequate criminal and procedural basis in Somali law for piracy prosecutions.

#### Briefing

PATRICIA O'BRIEN, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, said the human cost of piracy off the Somali coast was incalculable, and the commercial cost very high. The increasing number of piracy incidents, the escalation of violence and the expanding geographic scope of the attacks were "extremely worrying". Piracy showed the increasing interdependence of States and people in a globalized world, she said. "The number and diversity of States and organizations with a stake in finding a solution provides strong evidence of this, with human welfare, commercial and security interests remaining under serious threat."

Describing the Secretary-General's report as timely, she said the report of his Special Adviser on Legal Issues Related to Piracy off the Coast of Somalia addressed comprehensively the operational, jurisdictional and economic aspects of piracy and set out an emergency plan. It brought together, for the first time, all facets of the problem and made concrete suggestions for action, including the establishment of three specialized anti-piracy courts. The Special Adviser's report stated that strengthening the rule of law in Somalia was the guiding principle for creating those courts, she said, noting that it also assessed the legal and practical considerations, on the basis of information provided in its five annexes.

She noted that the United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC) were working to develop the capacity of courts in "Somaliland" and "Puntland" to conduct anti-piracy prosecutions to international standards. The report drew on that experience to assess the modalities for establishing a specialized court inside Somalia and an extra-territorial one in another State within the region. It would take about three years to bring trials up to international standards, she said, adding that a total of 290 cases had been concluded or were ongoing in "Puntland", while 94 had been completed or were ongoing in "Somaliland".

The UNDP and UNODC court and prison programmes would cost \$24 million over the next three years, she said, adding that salary and security costs would likely increase if international experts were deployed to help develop trial capacity. Hampering the programmes were outdated criminal and procedural codes and a shortage of trained judges and other legal professionals. The Office of Legal Affairs had sought the views of the Transitional Federal Government, Somali regional authorities in "Somaliland", "Puntland" and Galmudug, as well as those in the United Republic of Tanzania, Kenya, Seychelles, Mauritius and Djibouti, regarding the establishment of a court in their region or country.

Officials of the Transitional Federal Government, "Puntland" and Galmudug had expressed a preference for establishing the court inside Somalia, as well as a willingness to agree on an exact location. The Government of the United Republic of Tanzania had stated its willingness to host the court within the current premises of the International Criminal Tribunal for Rwanda in Arusha, and had called for the timely construction of prisons inside Somalia to avoid having to incarcerate those convicted on Tanzanian territory for lengthy periods of time.

Noting that the Tribunal had confirmed that one courtroom, office space, and cells for 30 piracy suspects could be made available, she said that it had also stated that its premises were located within the

International Conference Complex, which it shared with other global bodies. That raised serious security concerns about hosting a Somali anti-piracy court there, she said, noting that the United Nations Department of Safety and Security had called for a full security risk assessment and recommended that stand-alone premises be found instead.

She went on to note that the Seychelles Government had said that the proposal for an extra-territorial court needed further consideration before the Council could prepare a response. The Government of Mauritius supported the idea, but said that it could not presently host such a court due to practical difficulties and capacity constraints. It was difficult to estimate the timeline and costs relating to the establishment of an extra-territorial court, she said, adding that the views of the States concerned, and the need to negotiate an agreement between the Somali authorities and a host State, must be taken into account.

### Statements

VITALY CHURKIN (Russian Federation) said the report created a sufficient basis for further movement towards the establishment of a system for prosecuting pirates. Noting particularly the readiness of the United Republic of Tanzania to host such a court on its territory, he nevertheless agreed that strengthening national judicial systems and organs was a necessity. The Russian Federation regretted the reticence of the Somali transitional authorities to establish anti-piracy courts, especially since it was clear that they could not prosecute the large numbers of alleged pirates on their own, he said, underscoring the importance of making clear to them the benefits of international assistance in that area. The Russian Federation would explore different ways to address the issue, as well as other challenges highlighted in the report.

JOSÉ FILIPE MORAES CABRAL (Portugal) said the establishment of anti-piracy courts would be a way to jump-start a Somali-based solution to the problem of piracy and other security challenges. The Secretary-General's thorough report identified key challenges, particularly the need to generate the requisite political will. The recommendation to consider hosting such a court at the International Criminal Tribunal for Rwanda in Arusha might be the most practical way to begin the process, he said, pointing out that the Tribunal's facilities and experts could be essential in getting the anti-piracy courts up and running. At the same time, he emphasized that the courts' jurisprudence must be based on Somali law, since the ultimate solution could only be found in-country.

HARDEEP SINGH PURI (India) said that effectively tackling piracy would not only require the strengthening of capacity-building efforts inside Somalia, but in neighbouring countries as well. Such assistance must include the strengthening of law-enforcement, prosecutorial and judicial capacities, a task already under way with the support of UNODC. Welcoming efforts by UNDP to improve prison and detention facilities in Somalia, he expressed support for the establishment of anti-piracy courts outside the country as long as they were based on Somali law and manned by Somali judges. However, such courts could not be compared to — or confused with — international tribunals set up to try war crimes, he said, stressing, "pirates are merely just another class of criminal" and must be tried as such.

MARK LYALL GRANT (United Kingdom), underlining his Government's commitment to the fight against piracy, said it continued to promote counter-piracy naval operations by the European Union and the North Atlantic Treaty Organization (NATO). It provided direct support to regional players, including the Seychelles Coast Guard, and supported the targeting of pirate leaders. It was also working to identify how development work could be most effectively targeted to undermine piracy. The United Kingdom strongly supported viable legal solutions, he said, recalling that his country had given \$8 million to UNODC in the past year with the aim of building the capacity of local courts in the region. As for the proposed creation of an anti-piracy court in Arusha, he said it would not be able to handle the problem. The United Kingdom was willing to consider the prosecution of piracy suspects in national courts on a case-by-case basis, he said, encouraging all flag States to show a similar willingness.

U. JOY OGWU (Nigeria) said that overcoming the jurisdictional and legislative challenges required international cooperation. Welcoming the estimated timeline of two to three years for developing the legal framework to set up court capacity, she said the regional diaspora could play a role in that regard. To foster regional cooperation, Nigeria supported enhanced coordination and information-sharing among

regional judicial authorities, law-enforcement agencies, regional organizations and anti-money-laundering groups. Stressing that a determined, cohesive Government was needed to steer implementation of court decisions, she pointed out that piracy had not yet received the desired robust response from the Transitional Federal Government. It was important to work on prevention, including by reviving Somalia's national industries, she said. Somalia should also revise its laws to provide a sound legal basis for prosecution. Regarding extra-territorial courts, she said suspected pirates could be prosecuted by any court of sufficient competence inside Somalia and the wider region.

REGINA MARIA CORDEIRO DUNLOP (Brazil) said piracy had not only exacerbated the already grave situation inside Somalia, but had spread far beyond the country's borders to become a major threat to regional and international peace and security. As for the establishment of anti-piracy courts, Brazil supported the strengthening of capacities within Somalia. The international community must explore ways to upgrade and enhance prosecutorial mechanisms, while considering also how better to address the root causes of piracy, especially the need for actions on land that could mitigate the impact of criminal activity at sea, she said.

DAVID DUNN (United States), while commending efforts by UNODC and UNDP to help "Puntland" and "Somaliland" carry out anti-piracy trials and update their legal and judicial structures, said extra-territorial courts were not a viable option at the present time, owing to opposition by Somalia itself, as well as other countries in the region. Indeed, the report made clear that establishing such courts would require major amendments to the Somali Constitution, and perhaps even to the Transitional Federal Charter. Such an exercise could not be carried out while the country faced so many other pressing issues, he stressed, adding that his country supported the establishment of a dedicated piracy-focused court or chamber in one neighbouring States or more, so long as it was manned by local judicial officials. However, the Council must not forget that incarceration was perhaps the most significant restraint on prosecuting pirates, he said, urging "Somaliland" and "Puntland" to elaborate and pass legislation that might improve prison conditions. The United States also encouraged the international community to provide any assistance that might help in that regard.

GÉRARD ARAUD (France), pointing out that the lack of prosecutions had only encouraged more piracy, said that since the beginning of 2011, pirates had attacked 171 times and hijacked 26 vessels. A Filipino sailor and four Americans had recently been killed. He noted that 90 per cent of the suspected pirates had been released because they could not be tried, and commended the Governments of Kenya, Seychelles and the United Republic of Tanzania for prosecuting suspects. He pointed out, however, that they could not face the scale of the problem, and a new, pragmatic solution was needed. A Somali solution was crucial, he stressed, pointing out that many experts from the Somali diaspora could help. An off-site Somali court was feasible, and could be set up temporarily in the United Republic of Tanzania, he said, adding that the use of infrastructure from the residual mechanisms of the International Criminal Tribunal for Rwanda would involve only marginal costs. Setting up outside Somalia would be the easiest solution, he said, describing the \$7 million price tag needed to do so as relatively small.

NAWAF SALAM (Lebanon), while praising Governments in the region for having offered to host extra-territorial courts within their jurisdictions, emphasized that priority should still be given to strengthening courts inside Somalia. It was necessary to explore more avenues to secure the jurisdictional basis for prosecuting suspected pirates under Somali law, he said, adding that he looked forward to further dialogue with the Transitional Federal Government and others on the modalities for bringing offenders to justice. He went on to note that legal prosecution was not the only solution, and called for socio-economic development in order to prevent piracy. The international community must keep one step ahead of the pirates, and the United Nations and its agencies must be involved, he stressed.

MIGUEL BERGER (Germany) said pirates must ultimately be prosecuted and imprisoned inside Somalia, and the urgent establishment of adequate structures in the country was crucial to realizing that goal. "We, therefore, share the objective to assist the Somali justice system to prosecute piracy suspects in accordance with international standards, in particular fair trial and due process guarantees, and to imprison those convicted in accordance with international human rights standards, thereby enabling States to transfer suspects to Somalia." Noting the challenges relating to the establishment of a Somali anti-piracy court in a third State within the region, he said numerous uncertainties showed the need for a further and more thorough exploration of that option.

WANG MIN (China) said there had been some positive progress in prosecuting suspected pirates, even as the peace process in Somalia still faced challenges amid rising piracy. China supported all international anti-piracy efforts and believed that the report laid the groundwork for future work in that regard. He called on the international community to help strengthen institutional capacity-building within Somalia and in neighbouring countries in the region. Pointing out that the roots of piracy off the Somali coast had grown on land, he stressed that the Transitional Federal Government and the international community must find a balanced way to address both its symptoms and causes.

DOCTOR MASHABANE (South Africa) said piracy off the Somali coast could only be resolved through a comprehensive approach aimed at defeating the socio-economic, political and security challenges faced on land. Unreported fishing in Somali coastal waters remained a problem, he pointed out, underlining the need to promote the rule of law. Any extra-territorial mechanism established must be fully compatible with Somalia's legal framework and take the view of the regional authorities into account. The creation of courts in Somalia and the wider region would require considerable financial resources, more prison infrastructure, and measures to address security concerns, he said, stressing also that any special court must be a national one, and that there should be no disparity in terms of facilities. The views on the Transitional Federal Government and regional Governments must be taken into account when setting up the courts, he added, welcoming the capacity-building support provided by UNDP and UNODC to strengthen national institutions and train judicial officers in "Puntland" and "Somaliland". It was important to consider developing sustainable mechanisms to address piracy and end impunity, he said, encouraging States to criminalize piracy in their national jurisdictions.

NÉSTOR OSORIO (Colombia) said the United Nations must continue to provide assistance in order to ensure the prosecution of piracy as a serious crime, and that criminal codes were established in line with the rules of due process. It was important to give priority to the training of lawyers, judges and other legal professionals, and to give them time to conduct trials, he said, commending the training programmes conducted by UNDP and UNODC. Noting that the Transitional Federal Government did not want a specialized court established outside the country, he said any decision to set up a new court must have its support and be staffed by Somali professionals. It was also important to address the root causes of piracy, notably the need for socio-economic development, he added.

IVAN BARBALIĆ (Bosnia and Herzegovina) said the report provided a "good basis" for creating instruments to counter piracy off the Somali coast, which remained a source of deep concern for his Government. Capacity-building measures and reinforcing State authority would have a significant impact in combating piracy, he said, adding that Somalia and the international community should continue to work in a coordinated manner to strengthen the country's security sector. He went on to say that strengthening the rule of law inside Somalia and a long-term solution for counter-piracy activities should be the basic parameters for establishing specialized courts, or new anti-piracy sections within existing courts. The establishment of such courts inside Somalia or in any third State would require the necessary constitutional and legislative basis, he said, expressing concern that Somalia's criminal procedure codes were "critically outdated" and contained numerous inconsistencies. Urging UNDP and UNODC to continue helping to prepare the necessary legislation for processing pirates, he also noted that whatever option was adopted for establishing specialized courts, the Council must consider the overall shortage of adequate courtrooms, correction facilities and other necessary infrastructure, both in Somalia and other countries in the region.

Council President NOEL NELSON MESSONE (Gabon), speaking in his national capacity, noted the importance of strengthening judicial and penitential capacities inside Somalia, especially in "Somaliland" and "Puntland", and welcomed the efforts of UNDP, UNODC and the African Union Mission in Somalia (AMISOM) in fighting piracy on the ground. At the same time, the Somali authorities must continue to rehabilitate their prison facilities and bring the country's legal codes up to international standards. Gabon recognized the position of the Somali transitional authorities, as well as that of officials in "Somaliland" and "Puntland" that the establishment of extra-territorial courts would be difficult at the present time, he said, urging the international community to continue working with Somali officials to find solutions to the challenges posed by piracy.

IDD BEDDEL MOHAMED (Somalia), welcoming the Secretary-General's report and the Legal Counsel's briefing, said that, due to recent turmoil in his country, culminating in the Prime Minister's resignation last week, the Transitional Federal Government had not had time to digest the report. Somalia's input on the subject at hand would be provided as soon as a new Government was formed and a

new Prime Minister appointed, most likely within the next week, he said, adding that the Transitional Federal Government attached great importance to the fight against piracy and looked forward to working with the Council on that issue.

Ms. O'BRIEN, taking the floor a second time, reiterated the Secretary-General's deep commitment to combating piracy off the Somali coast, saying that she and the Secretary-General would work proactively to find solutions and help the Council with its deliberations on the matter.

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