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**Integration and coordination of efforts by the
United Nations Office on Drugs and Crime and by
Member States in the field of crime prevention and
criminal justice: other crime prevention and criminal
justice matters**

Countering maritime piracy off the coast of Somalia**Report of the Executive Director***Summary*

The present report is submitted pursuant to Commission on Crime Prevention and Criminal Justice resolution 19/6, entitled “Countering maritime piracy off the coast of Somalia”, in which the Commission requested the Executive Director to submit a report to it at its twentieth session on the implementation of that resolution.

The report provides an overview of the response of the United Nations Office on Drugs and Crime (UNODC), within its mandates and in coordination with the international response, to the threat of maritime piracy off the coast of Somalia. The report also explains the strategy and main achievements of UNODC in terms of technical assistance and capacity-building to strengthen the criminal justice systems of requesting States in the East Africa and Horn of Africa regions and in Somalia itself.

The report further reviews the actions taken by UNODC in its role as fund manager of the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia, which was established in January 2010.

* E/CN.15/2011/1.



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I. Introduction

1. The present report is submitted pursuant to paragraph 3 of Commission on Crime Prevention and Criminal Justice resolution 19/6, in which the Commission requested the Executive Director of the United Nations Office on Drugs and Crime (UNODC) to submit a report to it at its twentieth session on the implementation of that resolution.

2. In that resolution, the Commission noted the UNODC mandate to assist Member States in the fight against maritime piracy through the provision of technical assistance and capacity-building targeted at strengthening the criminal justice systems of requesting States. It also noted the role of UNODC in administering the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia.

II. Background: maritime piracy off the coast of Somalia

A. Trends in piracy off the coast of Somalia

3. Piracy is a crime of growing global concern. In the first three weeks of 2011, 31 piracy attacks were recorded, of which six were successful and resulted in the taking of 136 new hostages. The number of piracy attacks has risen steadily since 2007. Between 2000 and 2007, there were an average of 26 acts of piracy reported annually off the coast of Somalia.¹ That number surged to 111 in 2008, and in 2009 the International Maritime Bureau reported over 400 piracy attacks globally, attributing the rise to an “unprecedented number of attacks” off the coast of Somalia, in the Gulf of Aden and farther away in the Red Sea and Indian Ocean.² As shown in figure I, that number climbed even higher in 2010, reaching 445 attacks globally.³

4. While the number of attacks remained high, increased naval patrols in the affected waters and self-protection measures taken by ships have effectively reduced the success rate of the attacks. In 2007, 63 per cent of attacks were successful, in 2008, 34 per cent and in 2009, 21 per cent. However, 2010 saw that figure climb again to 26.6 per cent, as piracy attacks became more organized and more violent.

5. The expanding geographic reach of incidents of piracy carried out by Somali pirates was also a negative indicator. While most attacks initially occurred within 50 nautical miles of the Somali coast, with increased naval presence in that region,

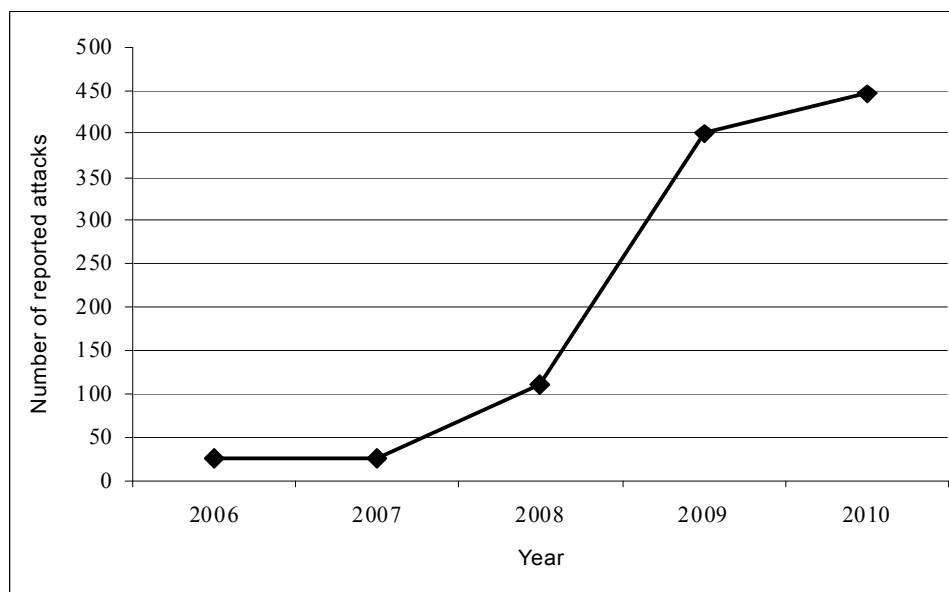
¹ *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (United Nations publication, Sales No. E.10.IV.6), p. 193.

² International Chamber of Commerce, International Maritime Bureau, *Piracy and Armed Robbery against Ships: Annual Report — 1 January-31 December 2009* (London, January 2010), p. 25. According to the publication *The Globalization of Crime*, the prevalence of global piracy reached its peak between 1999 and 2003, with between 350 and 450 attacks reported annually, occurring principally in the South China Sea and the Malacca Straits. An effective and coordinated international response led to a significant decrease in incidents of piracy in subsequent years (see *The Globalization of Crime*, p. 193).

³ International Chamber of Commerce, International Maritime Bureau, *Piracy and Armed Robbery against Ships: Annual Report — 1 January-31 December 2010* (London, 2011), p. 6.

in 2009 and 2010 attacks have been occurring more than 1,000 nautical miles off the coast, in the Indian Ocean and encroaching on the territorial waters of Kenya, Madagascar, Seychelles and the United Republic of Tanzania. Those longer-range attacks are facilitated by the use of “mother ships”, which are used to carry provisions and to launch the smaller skiffs that typically carry out the attacks. Pirates are also becoming more heavily armed; with increasing frequency they are reported to be equipped with automatic weapons and rocket-propelled grenades.⁴

Figure I
Piracy attacks globally^a



Source: *Piracy and Armed Robbery against Ships: Annual Report — 1 January-31 December 2010* (see footnote 3 above), pp. 5-6.

^a The numbers of attacks recorded by the International Maritime Bureau are limited to those that are reported to them; higher estimates are made by the European naval force off the coast of Somalia. What the figures show indisputably is the dramatic increase in piracy attacks, owing almost entirely to piracy off the coast of Somalia.

6. While piracy has typically been committed for the purpose of stealing a vessel or its cargo, piracy off the coast of Somalia has focused on hijacking vessels in order to hold the vessels and hostages for ransom.⁵ According to the International Maritime Bureau, once pirates have hijacked a vessel, it is sailed towards the Somali coast and a ransom demand for the release of the vessel and crew is made.⁶ In 2010, approximately 790 crew members were held hostage, and as previously noted, a further 136 hostages were taken in the first three weeks of 2011. While some successful rescues have taken place and some hostages have been released

⁴ *Piracy and Armed Robbery against Ships: Annual Report — 1 January-31 December 2009* (see footnote 3 above), pp. 21-23.

⁵ A/CONF.213/3, para. 1.

⁶ *Piracy and Armed Robbery against Ships: Annual Report — 1 January-31 December 2009* (see footnote 2 above), p. 22.

once ransoms were paid, 746 crew and passengers are thought to remain in hostage situations at present.

B. Drivers and effects of piracy in Somalia

7. Piracy off the coast of Somalia is reported to have originally emerged as a vigilante response to illegal fishing and dumping in the country's territorial waters. Today, however, the predominant motivation for most piracy attacks seems to be economic factors resulting from the social and economic situation of Somalia.⁷

8. The pervasiveness of piracy in Somalia is a symptom of the wider lack of security and weak rule of law in that country. Somalia has been without a central Government for over 20 years; its executive power is divided among the semi-autonomous region of Puntland, the independent State of Somaliland and the Transitional Federal Government of Somalia, which does not have effective control over its sovereign territory or its capital, Mogadishu. The country lacks the ability to police its coastline and territorial waters and the administrative, judicial and law enforcement capacity to take sufficient action against pirates.

9. Somalia's ongoing state of insecurity has stunted its economy and left its citizens with few opportunities for legitimate gainful employment. In 2008, it was reported that 1,400 young Somali men were involved in maritime piracy.⁸ The increased incidence of piracy in 2009 and 2010 would suggest that an even greater number are involved today. Some of the men recruited are skilled fishermen; others, such as those recruited from Somali camps for internally displaced persons, are merely persons looking for an opportunity to escape their desperate situations. One convicted pirate claimed that for an attack resulting in a \$1 million ransom payment, an individual pirate could earn up to \$10,000, which is more than three years' salary in legitimate local business.⁹ While the amount of every ransom payment is not made public, their average value seems to be increasing; in 2010, many were reported in the range of \$3 million to \$9 million.¹⁰ Given the potential rewards and the lack of alternatives, the weak threat posed by law enforcement is an insufficient deterrent to this illicit activity.

10. The Security Council has noted that piracy not only thrives on the instability of Somalia but also serves to perpetuate the country's development problems.¹¹ The Transitional Federal Government's efforts to establish rule of law are being undermined by the pirates' disregard for the law and threatened by armed groups who are thought to be profiting from ransom payments.⁹ The Security Council has also expressed concern over the growing evidence that those committing piracy are beginning to engage in other forms of serious criminal activity, such as smuggling

⁷ *The Globalization of Crime* (see footnote 1 above), p. 196.

⁸ International Expert Group on Piracy off the Somali Coast, *Piracy off the Somali Coast* (Nairobi, November 2008), p. 32, final report on the workshop commissioned by the Special Representative of the Secretary-General for Somalia, Nairobi, 10-21 November 2008.

⁹ *The Globalization of Crime* (see footnote 1 above), p. 199.

¹⁰ International Maritime Organization, Maritime Knowledge Centre, *Current Awareness Bulletin*: vol. XXII, No. 1 (January 2010), vol. XXII, No. 2 (February 2010), vol. XXII, No. 4 (April 2010), vol. XXII, No. 9 (September 2010), and vol. XXII, No. 10 (October 2010).

¹¹ See Security Council resolution 1950/2010.

contraband and trafficking in persons.¹² The threat of piracy in Somalia's coastal waters has disrupted the delivery of essential humanitarian and peacekeeping assistance, on which approximately 70 per cent of its population is dependent,¹³ and attacks occurring in some of the world's most important shipping lanes continue to have a negative economic impact on States of the region, the shipping industry and international trade.

III. The international response to piracy off the coast of Somalia

A. International coordination

11. Piracy is a complex and serious problem, the solution to which requires a high level of commitment and coordination at the international level. The Security Council has noted the threat to international peace and security that piracy off the coast of Somalia poses and has adopted a number of resolutions aimed at engaging the international community in a response against it. In, inter alia, resolutions 1816 (2008), 1838 (2008), 1846 (2008), 1851 (2008), 1897 (2009) and 1950 (2010), the Council has called upon States that have the capacity to do so to deploy naval vessels and military aircraft to patrol the affected waters, criminalize piracy in domestic law and take part in the investigation and prosecution of suspected pirates. In its resolution 1950 (2010), the Council encouraged Member States to support Somalia, at the request of the Transitional Federal Government, to strengthen the country's capacity to bring to justice those who are using its territory to plan, facilitate or carry out acts of piracy and armed robbery at sea. The General Assembly, in its resolution 63/111, among others, similarly recognized the need for international cooperation in combating maritime piracy and called on States to take appropriate steps under their national laws to facilitate the apprehension and prosecution of suspected pirates.

12. Pursuant to Security Council resolution 1851 (2008), the Contact Group on Piracy off the Coast of Somalia was established in January 2009 as a voluntary, ad hoc international forum mandated to coordinate international efforts in the fight against piracy off the coast of Somalia. The Contact Group operates through four thematic working groups: Working Group 1, on military and operational coordination, information-sharing and capacity-building; Working Group 2, on legal issues; Working Group 3, on strengthening shipping self-awareness and other capabilities; and Working Group 4, on public information. The Contact Group has engaged the participation of numerous countries and relevant international organizations.¹⁴ In January 2010, at the request of the member States of the Contact Group, the Secretary-General established the Trust Fund to Support the Initiatives of States Countering Piracy off the Coast of Somalia.

¹² S/2010/556, para. 6.

¹³ World Food Programme, "Countries: Somalia", available online from www.wfp.org/countries/somalia.

¹⁴ As of November 2010, the Contact Group had 53 participants. The international organizations include the African Union, the League of Arab States, the European Union, the International Criminal Police Organization (INTERPOL), the International Maritime Organization, the North Atlantic Treaty Organization, and the United Nations Secretariat.

13. UNODC serves as the secretariat of Working Group 2, on legal issues, and has provided various forms of support, including analyses of legal complexities involved in prosecuting suspected pirates and the collection of information on relevant national legal systems.

14. As piracy is both an aggravating factor and a result of the instability in Somalia, addressing the threats posed by piracy and minimizing its causal factors on land are essential for finding a sustainable solution for Somalia. The Secretary-General, in his report pursuant to Security Council 1897 (2009), noted the role that counter-piracy efforts must play within the overall strategy of implementing the Djibouti peace agreement¹⁵ and in restoring Somalia to a state of normalcy.¹⁶

B. International legal framework

15. The primary international legal framework applicable to piracy is the 1982 United Nations Convention on the Law of the Sea,¹⁷ which establishes in its article 100 that all States have an obligation to cooperate to the fullest possible extent in the repression of piracy.¹⁸ Pursuant to article 101 of the Convention, piracy includes any illegal acts of violence, detention or depredation committed for private ends by the crew or passengers of a private ship against another ship, or persons or property on board that ship. To constitute an act of piracy, such acts must be committed on the high seas, outside the territorial jurisdiction of any State, but including States' exclusive economic zones. When committed within a State's territorial waters, such acts are referred to as "armed robbery at sea".¹⁹ Some acts of piracy may also constitute offences under other international legal instruments, such as the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,²⁰ the International Convention against the Taking of

¹⁵ The peace and reconciliation agreement (Djibouti peace agreement) was the outcome of a meeting held between the Transitional Federal Government of Somalia and the Alliance for the Re-Liberation of Somalia, facilitated by the United Nations, from 31 May to 9 June 2008. The principal aims of the agreement are to ensure the cessation of all armed confrontation and a political settlement for a durable peace; promote a peaceful environment; avoid a security vacuum; and facilitate the protection of the population, the unhindered delivery of humanitarian assistance and the convening of a reconstruction and development conference.

¹⁶ S/2010/556, para. 3.

¹⁷ United Nations, *Treaty Series*, vol. 1833, No. 31363. The 1958 Convention on the High Seas (United Nations, *Treaty Series*, vol. 450, No. 6465) contains provisions relating to piracy very similar to those of the Convention on the Law of the Sea.

¹⁸ The International Law Commission observed in its commentary that "[a]ny State having an opportunity of taking measures against piracy, and neglecting to do so, would be failing in a duty laid upon it by international law. Obviously, the State must be allowed a certain latitude as to the measures it should take to this end in any individual case." (*Yearbook of the International Law Commission, 1956*, vol. II (United Nations publication, Sales No. 1956.V.3 (Vol. II)), p. 282.)

¹⁹ A definition of "armed robbery at sea" is contained in International Maritime Organization Assembly resolution A.1025(26) of 2 December 2009 (Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships, para. 2.2).

²⁰ United Nations, *Treaty Series*, vol. 1678, No. 29004.

Hostages²¹ and the United Nations Convention against Transnational Organized Crime.²²

16. Piracy is a crime of universal jurisdiction, meaning that any State may seize a pirate ship on the high seas or in the exclusive economic zone of any other State, arrest the persons on board and prosecute them.²³ This has permitted States with naval forces in the area to actively engage in bringing those responsible for acts of piracy to justice.

C. Action at sea

17. International naval forces, including European Union operation Atalanta, the North Atlantic Treaty Organization (NATO) operations Allied Protector and Ocean Shield and Combined Maritime Forces' Combined Task Force 151, and forces of States acting in their national capacities, have been patrolling the waters off the coast of Somalia to suppress acts of piracy and armed robbery at sea. The Security Council, in its resolution 1846 (2008), expanded the potential patrolling areas by granting authorization to States and regional organizations cooperating with the Transitional Federal Government to enter Somali territorial waters and use all necessary means to repress acts of piracy and armed robbery at sea. That authorization was renewed in Security Council resolutions 1897 (2009) and 1950 (2010).

18. The effectiveness of naval operations has been increasing, resulting in growing numbers of arrests and prosecutions.²⁴ The Secretary-General and the International Maritime Bureau have noted the critical role that international naval forces are playing in the prevention of piracy and have commended their progress in containing the threat of piracy in the region.²⁵

19. However, the approximately 740 pirates who are undergoing prosecution are only a fraction of the more than 2,000 pirates estimated to have been captured since 2008. It is estimated that 90 per cent of pirates captured by naval forces have not been prosecuted,²⁶ but were released after their firearms and other equipment were seized. The principal reason cited is lack of evidence to support prosecution, which is often undertaken only if there is clear evidence of a pirate attack.²⁷ The report of the Special Adviser to the Secretary-General on legal issues related to piracy off the coast of Somalia notes that the "catch and release" policy that allows pirates to go free without prosecution consolidates their impunity, and because of the potential benefits, the risks involved do not act as a deterrent.²⁸

²¹ General Assembly resolution 34/146, annex.

²² United Nations, *Treaty Series*, vol. 2225, No. 39574.

²³ See article 58, para. 2, and article 105 of the United Nations Convention on the Law of the Sea.

²⁴ S/2010/91, para. 122.

²⁵ See S/2009/146 and International Maritime Bureau, *Annual Report*, 2009, p. 25.

²⁶ S/2011/30, annex, para. 14.

²⁷ S/2010/394, para. 20.

²⁸ See S/2011/30.

D. Criminal justice response

1. National prosecutions

20. Upon apprehending suspected pirates off the coast of Somalia, the detaining entity must decide if and where the suspects should be taken to face justice.²⁹ Because of a lack of confidence in the Somali judicial process on the part of many States with naval forces in the region, the return of detained pirates to Somalia has not generally been considered a viable option, although some States have released piracy suspects to either Puntland or Somaliland. Law enforcement efforts internal to Somalia have also brought a significant number of piracy suspects to justice. It is estimated that, in total, 350 suspected and convicted pirates are being held in Somaliland and Puntland.

21. In most cases, States detaining piracy suspects at sea are reluctant to try the suspects at home when there are no other State interests involved. To date, Belgium, France, Germany, the Netherlands, Spain and the United States of America have all undertaken prosecutions, generally when the attack in question was on one of its flagged ships or its naval force. Of the individuals tried in those cases, seven have been convicted of piracy, while proceedings continue against 43 suspects.

22. States in the region have made a significant contribution to piracy prosecutions. Kenya, Maldives, Oman, Seychelles, the United Republic of Tanzania and Yemen have all conducted prosecutions against suspected pirates, either through the exercise of universal jurisdiction over piracy under national law or following the arrest of suspected pirates within their territorial waters. Approximately 328 suspected and convicted pirates were being held in those States at the time of writing.³⁰ Although not a precondition to transfer, some patrolling countries have signed transfer agreements with States in the same region that are willing to accept suspected pirates for trial. Canada, China, Denmark, the United Kingdom of Great Britain and Northern Ireland, the United States and the European Union all signed transfer agreements with Kenya, although the agreements were later formally rescinded.³¹ Seychelles has signed transfer agreements with the United Kingdom, the United States and the European Union, all three of which are also seeking transfer agreements with Mauritius.

2. Other options for prosecutions

23. The Security Council, in its resolution 1918 (2010), requested the Secretary-General to present a report on possible options to further the aim of prosecuting and

²⁹ Many States choose, for policy reasons, not to engage in capture operations but prefer to confiscate equipment and release the individuals to avoid domestic legal issues, the inconvenience of sailing to a prosecuting country and the obligation to provide witnesses for the subsequent trial. A lack of sufficient evidence to pursue criminal charges requires naval forces to release piracy suspects.

³⁰ An additional 17 persons tried for piracy in Kenya were acquitted.

³¹ On 1 September 2010, Kenya rescinded all of the transfer agreements, having given six months notice, but is actively renegotiating the terms of the agreements, and is still accepting piracy transfers on a case-by-case basis. The European Union is leading efforts to determine the current status of the agreements and discussions have begun with the Government of Kenya to see what amendments may be necessary to ensure transfers to Kenya for trial will continue.

imprisoning persons responsible for acts of piracy off the coast of Somalia. The report submitted by the Secretary-General³² explored seven options for piracy prosecutions, including the national prosecutions model. The other options included the establishment of an extraterritorial Somali court and various modalities of special chambers and dedicated tribunals. On 26 August 2010, the Secretary-General appointed Jack Lang as his Special Adviser on legal issues related to piracy off the coast of Somalia, with a mandate to identify any additional steps that could be taken to achieve and sustain substantive results in prosecuting piracy.³³

24. The report of the Special Adviser, published on 25 January 2011, makes a number of proposals aimed at providing immediate steps to “assist States in the region, as well as other States, to prosecute and imprison persons who engage in piracy”. The Special Adviser states that “the lack of correctional capacities is the main obstacle to prosecuting pirates, in Somalia as well as in the other States in the region”.³⁴

25. The report of the Special Adviser calls for UNODC support for and engagement in three of the proposals, relating to the adoption of missing legislative provisions to complete the Somali counter-piracy body of law; the construction of two prisons, in Puntland and Somaliland; and the strengthening of the rule of law in Somalia by establishing a court system comprising a specialized court in Puntland, a specialized court in Somaliland and an extraterritorial Somali specialized court.³⁵ Providing such support would require a substantial upscaling of the Counter-Piracy Programme, but is consistent with the strategy of the programme to provide a criminal justice response to the problem of piracy off the coast of Somalia within the UNODC mandates in the areas of criminal justice and combating serious crime.

IV. Response of the United Nations Office on Drugs and Crime

26. Piracy off the coast of Somalia is a serious crime, and UNODC, as an organization charged with helping States to combat drugs and crime and to strengthen their criminal justice systems within the framework of the rule of law, has an important role to play in ensuring an effective criminal justice response to the problem.

27. The Security Council, in its resolutions 1851 (2008), 1897 (2009), 1918 (2010) and 1950 (2010), acknowledged the role of UNODC in providing technical assistance to States in the fight against piracy, specifically in developing the legal frameworks and judicial and law enforcement capacities necessary to enable the prosecution and incarceration of suspected and convicted pirates. The General Assembly, in its resolution 64/179, encouraged Member States to support UNODC in continuing to provide targeted technical assistance to enhance the capacity of affected States to combat piracy, including by assisting Member States in creating an effective law enforcement response and strengthening their judicial capacity. The Commission on Crime Prevention and Criminal Justice, in its resolution 19/6, noted

³² S/2010/394.

³³ See S/2010/451.

³⁴ S/2011/30, annex, para. 109.

³⁵ Ibid., paras. 119-135.

the role of UNODC in providing technical assistance, upon request, in the areas of capacity-building in the criminal justice sector and the implementation of conventions in countering maritime piracy off the coast of Somalia.

28. At its fifth session, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, in its resolution 5/6, requested UNODC to provide technical assistance to help Member States to apply the provisions of the Convention to new and emerging forms of transnational organized crime, including piracy.

29. The Contact Group on Piracy off the Coast of Somalia, at its seventh meeting, noted the “excellent results” being achieved by UNODC in its programme of capacity-building work in the region and encouraged the international community to give its full support to those activities.³⁶

30. Briefings on the work of the UNODC Counter-Piracy Programme were given to Member States in Vienna on 11 February, 10 May and 6 December 2010.

A. Support for ongoing prosecutions and detention

1. Strategy

31. In May 2009, UNODC launched the Counter-Piracy Programme from its Regional Office for Eastern Africa, in Nairobi, aimed at enhancing criminal justice capacity in piracy prosecutions, within the framework of the regional programme for East Africa. The Counter-Piracy Programme has a three-stage strategy to enhance the regional criminal justice response to piracy immediately while also working towards a longer-term solution of self-sufficiency in Somalia.

32. The short-term objective of the programme is to build the criminal justice capacity of States willing to undertake piracy prosecutions to ensure that suspected pirates handed over by other States are afforded a fair and efficient trial and humane imprisonment. Significant progress has been made towards achieving that objective. Activities under this aspect of the programme have been concentrated mainly in Kenya and Seychelles, though UNODC continues to engage actively with other States of the region that are interested in UNODC support to prepare them to undertake piracy trials.

33. The medium- and long-term objectives of the programme are focused on building criminal justice capacity in Somalia. As an initial step, UNODC hopes to elevate the prison conditions in Somalia to a level that meets minimum international standards so as to permit the transfer of convicted Somali pirates to serve their sentences in their home country. The ultimate goal of the programme is to help Somalia to restore to its criminal justice system a capacity that will allow for Somali pirates to be brought to justice through fair trials administered by Somali courts.

34. UNODC counter-piracy initiatives seek to ensure that investments made under the rubric of piracy also have a far-reaching and sustainable impact on criminal

³⁶ Statement from the Contact Group on Piracy off the Coast of Somalia, United Nations Headquarters, 10 November 2010. Available from the United States Department of State website (www.state.gov/t/pm/rls/othr/misc/151795.htm).

justice systems in the region. UNODC is conscious of the requirement for broader capacity-building in Somalia and other East African countries in areas falling within the mandate of UNODC, such as anti-corruption and rule of law, and is hopeful that the work done through the Counter-Piracy Programme will create opportunities to expand UNODC programming in the region. Figure II illustrates the breakdown of UNODC programming by sector of the criminal justice system as a percentage of funds spent.

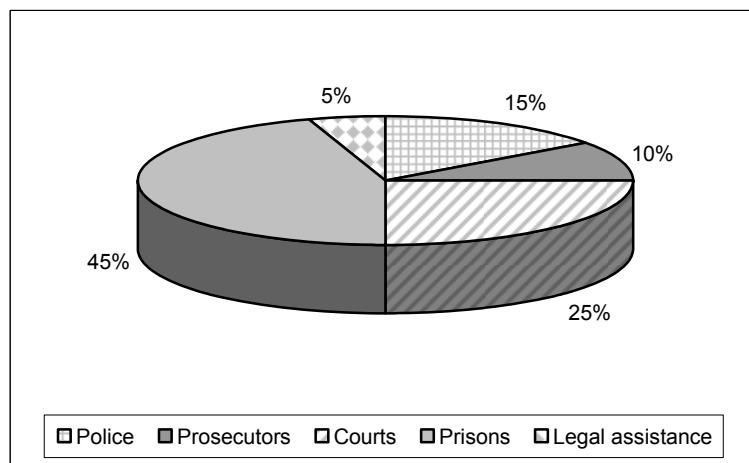
35. In close cooperation with interested States and the International Criminal Police Organization (INTERPOL), the UNODC Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism will host a conference in Nairobi, from 17 to 19 May 2011 on illicit financial flows linked to piracy off the coast of Somalia. The conference will bring together members of the Contact Group on Piracy off the Coast of Somalia, concerned international and regional organizations and interested parties from both the public and the private sector to address how the effective use of anti-money-laundering tools can contribute to the disruption of acts of piracy in the region.

36. In implementing the Counter-Piracy Programme, UNODC works very closely with other relevant organizations and agencies, such as the International Maritime Organization, the United Nations Development Programme (UNDP), INTERPOL, the Office of Legal Affairs of the Secretariat, including its Division for Ocean Affairs and the Law of the Sea, and the Department of Political Affairs, in order to ensure a coordinated and effective response.

Figure II

Breakdown of the United Nations Office on Drugs and Crime programming by sector

(Percentage of funds spent)



2. Regional prosecutions

37. States wishing to participate in the international response to piracy by accepting for prosecution suspected pirates apprehended by foreign navies operating in the region must have the necessary capacity in their domestic institutional and legal frameworks. Upon the request of States in the region indicating that they will

prosecute suspected pirates, UNODC carries out a comprehensive needs assessment to gauge the State's criminal justice capacity to take on the role. Assistance is then provided on the basis of the needs identified.

38. Kenya and Seychelles have, to date, been the principal recipients of UNODC capacity-building initiatives in the region. Investments have been made in supporting necessary legal reform and increasing the capacity of law enforcement, judicial bodies and prison services through technical assistance, improvements to infrastructure and the provision of essential equipment. UNODC also provides support for ongoing trials, including by ensuring that the rights of the accused are upheld.

39. Since May 2009, UNODC has delivered approximately \$5 million and \$4 million of assistance to the criminal justice systems of Kenya and Seychelles, respectively, to support piracy prosecutions. In that same time, Kenya has accepted the transfer of 136 piracy suspects, 50 of whom have been convicted in six separate trials.³⁷ In Seychelles, three piracy trials have been completed since January 2010,³⁸ resulting in 31 convictions, and a further 16 suspects captured by the Seychelles Coast Guard are undergoing trial. The objective of UNODC has been to promote the fairness and effectiveness of those trials.

40. UNODC has facilitated bilateral negotiations on transfer agreements, repatriation, witness provision and protection, and the effective and appropriate use of international legal instruments. UNODC legal experts have also provided targeted support to assess and revise national legal frameworks for prosecuting piracy, as needed.

(a) Support for Kenya

41. The support provided to Kenya has been guided by the country's domestic counter-piracy strategy: suspected pirates are handed over from foreign navies to Kenyan authorities in the coastal city of Mombasa, which has become the location for piracy-related police investigations, criminal trials and pretrial detention. Convicted pirates are transferred to one of five other Kenyan prisons identified by the Kenya Prisons Service to serve their sentences. Significant improvements have been made across the country's criminal justice system, to its police, prosecution service, courts and prisons, since May 2009, when the programme began.

42. UNODC has helped to prepare the Kenyan police in Mombasa to handle piracy cases. They have been trained in modern investigative techniques and provided with the necessary equipment and knowledge to carry out piracy investigations and case management. Exhibit holding rooms and secure stowage for firearms have been renovated in the police headquarters in Mombasa, and a number of police vehicles have been refurbished to enable forensic examination of evidence and exhibits in Nairobi.

³⁷ Two of those trials have been completed, as a result of which 10 pirates transferred by the United States in 2006 have been sentenced to 8 years of imprisonment each and 8 pirates transferred by the United Kingdom have been sentenced to 20 years of imprisonment each. A further case involving 17 pirates arrested by the United States resulted in an acquittal that was upheld on appeal.

³⁸ One of those trials involved suspects transferred by the European Union, and two involved suspects arrested by Seychelles. Sentences from 6 to 22 years were handed down.

43. UNODC has trained members of the Kenyan prosecution service in the law of the sea, advocacy and criminal evidence, and has sponsored their participation in international piracy conferences. Legal research resources have been supplemented by subscriptions to electronic legal databases, hard copies of Kenyan case law and texts on international law. The prosecutor's office has been provided with basic office equipment and a car, and the payment of airfares for prosecutors travelling between Nairobi and Mombasa. The skills, knowledge and resources those prosecutors have gained are transferable beyond piracy trials.

44. UNODC has also worked with the Attorney-General's office on legal issues. Guidance for navies was developed in collaboration with the Kenyan prosecution service to streamline the handover of piracy suspects and ensure that evidence collected conformed to Kenyan evidentiary rules. UNODC supported Kenyan prosecutors in assessing and drafting legislative amendments to the Merchant Shipping Act, 2009,³⁹ on which piracy prosecutions are based, which are currently under consideration.

45. A substantial amount of assistance has been provided to Kenya's courts. To ease the caseload of the Mombasa court, UNODC supported Kenyan officials in a review of all remand cases at Shimo La Tewa prison, near Mombasa. The review, which resulted in the immediate release of 517 detainees, had broad effects beyond those gaining their liberty: court and prosecution resources were freed up, and overcrowding in the prison was lessened. Given the success of the programme, UNODC is supporting the Government so that it can successfully undertake similar remand review exercises with other prison authorities in Kenya.

46. To increase the physical capacity of Kenya's courts, UNODC undertook a major refurbishment of an abandoned courthouse on the property of Shimo La Tewa prison. In June 2010, the Shimo La Tewa court was opened by the Kenyan Minister of Justice and has since been the venue for trials for piracy and other serious crimes. The court is the most advanced in Kenya, with modern standards of security and equipment for video evidence. Courts have also been aided by the introduction of computers to help case management and the refurbishment of courthouse holding cells to improve ventilation, sanitation, lighting and fire safety. Magistrates overseeing piracy cases have participated in international conferences and learning exchanges, and have been provided with legal research resources.

47. UNODC provides continuing support to piracy prosecutions to enhance their effectiveness and to ensure that the accused are afforded fair trials. UNODC provides interpretation services to Somali piracy suspects at trial to allow them to understand and participate in the hearings. In Kenya, there is no State-supported legal aid mechanism; UNODC has arranged and funded defence counsel for piracy suspects who would otherwise lack representation. UNODC provides support for civilian witnesses to travel to Kenya to provide testimony and has achieved 100 per cent attendance of those witnesses at piracy trials, with interpretation as required.

48. The focus of the prison assistance in Kenya has been on improving the conditions of Shimo La Tewa prison, where piracy suspects are held pending trial.

³⁹ Prior to the introduction of the Merchant Shipping Act, 2009, piracy cases in Kenya were prosecuted under the Penal Code.

For security and human rights reasons, and under the guidance of the national authorities, the work of UNODC seeks to benefit the entire prison population equally. UNODC support has made it possible to double the prison's supply of water for washing and drinking, double its sewage capacity, rebuild the kitchen facilities and clean and repaint the prison. All detainees were provided with sleeping mats and blankets, the prison's classrooms and vocational workshops were supplied with new books and materials, and the prison health facility was restocked with equipment and supplies. Similar improvements to prison water supplies, sanitation systems and medical facilities have been commenced in five other Kenyan prisons where convicted pirates may serve their sentences. UNODC has also invested in the female wards of each of those prisons to ensure that female detainees and their accompanying infants are afforded improvements equivalent to those enjoyed by their male counterparts.

49. To improve living conditions for staff, UNODC has begun to build staff housing and medical and recreational facilities. A study tour of United Kingdom prisons has been arranged for senior prison staff to build the capacity of prison management.

50. Aware of the challenge Somali detainees face being imprisoned far from home, UNODC has arranged for a local non-governmental organization to make regular visits to them to distribute basic goods, such as toothbrushes and sandals, that would generally be provided to Kenyan prisoners by their relatives, and assist the detainees in corresponding with family members in Somalia. To promote integration with other prisoners, Somali detainees have been offered English and Swahili language courses.

(b) Support for Seychelles

51. In Seychelles, UNODC assistance has been centralized on the island of Mahe, where the country's only prison, courthouse and police criminal investigation unit are located. Developing the capacity and skills of the Seychelles police and coast guard has been one priority. Initial training in the handling of piracy cases has been provided, and a needs assessment, completed jointly with INTERPOL, was carried out with a view to developing a more comprehensive training programme that will address some identified institutional weaknesses in a sustainable manner. To support staff development, a dedicated police training coordinator has been recruited, and, at the request of the Seychelles Commissioner of Police, UNODC has arranged for two police officers to be attached to Seychelles police to assist in investigations of piracy and other crimes. The enhanced human capacity, improved facilities and equipment provided by UNODC will benefit Seychelles law enforcement capability to carry out investigations and handle evidence.

52. Seychelles prosecutors have been provided with training in the law of the sea, criminal evidence and advocacy, and with needed office equipment and legal resources. The larger problem facing prosecutors, however, was capacity, since the island State's small prosecution staff was overburdened by the growing number of piracy cases. At the request of the Seychelles Government, UNODC has provided additional prosecutors to the Attorney-General's office, seconded from donor States. This additional support helps to ensure that all criminal trials in Seychelles are conducted with due care and diligence. Handover guidance for naval authorities on

the transfer of piracy suspects and evidence was also prepared in cooperation with the Seychelles authorities.

53. The judges of the Supreme Court have been prepared to hear cases of piracy. Their awareness has been raised in regard to law of the sea and evidential issues related to piracy. They have been provided the necessary legal research resources and have been supported in participating in international piracy conferences. The courtroom has been furnished with transcription equipment.

54. As in Kenya, UNODC provides interpretation services to Somali piracy suspects at trial and facilitates the attendance of civilian witnesses. UNODC also provides funding to the Seychelles State legal aid fund to compensate for services provided to Somali piracy suspects.

55. UNODC has commenced a substantial upgrade and expansion of the only prison in Seychelles. As requested by the Seychelles Government, a dedicated prison mentor has been provided to assist with the development of modern prison management practices. Recently, UNODC supported a training event in which 90 per cent of Seychelles prison staff were trained in a full range of custodial skills and practices.

(c) Regional expansion

56. Despite the successes achieved in Kenya and Seychelles, a sustainable regional effort requires States to share responsibility for the prosecution of suspected pirates. UNODC therefore continues to engage with other States in the region that are considering undertaking piracy-related prosecutions.

57. At the request of their Governments, UNODC has assessed the preparedness of Maldives and Mauritius to hold piracy trials and detain pirates. The United Republic of Tanzania has announced that it may accept the transfer of suspected pirates from States whose navies patrol the coast off Somalia. An assessment of Yemen's capacity to conduct piracy prosecutions has been undertaken, and a counter-piracy initiative is being developed in coordination with the broader UNODC country programme. An assistance programme for Mauritius has been developed pending the signing of transfer agreements by that country.

3. Somalia

58. The UNODC Counter-Piracy Programme has begun to implement the second phase of its programme in Somalia (currently in Puntland and Somaliland). Its objective is to ensure secure and humane imprisonment for those sentenced by local courts and to improve imprisonment regimes to allow for the transfer of convicted pirates from States of the region back to Somalia to serve the remainder of their sentences. While the situation in Somalia poses great challenges for programme implementation, UNODC considers this work critical to any viable counter-piracy effort; Somalia is not only the country of origin of most piracy suspects, but has also, in Somaliland and Puntland, prosecuted and imprisoned more of those responsible for acts of piracy and armed robbery at sea than any other State. The long-term solution to piracy depends on Somalia having a credible and effective law enforcement response to the problem.

(a) Support for Somalia

59. The programme to build capacity in Somalia is currently providing critical technical assistance in the areas of prison reform, legal reform and capacity-building in relation to prosecutions.

60. UNODC began work in the corrections area in Somalia in January 2010, with the full support of the Transitional Federal Government and the authorities of Puntland and Somaliland. In cooperation with the United Nations Development Programme (UNDP), UNODC has been making physical improvements to two prisons, one in Somaliland and one in Puntland. Hargeisa prison, in Somaliland, was opened on 22 November 2010 with unrivalled facilities. Additional work on prisons' workshops, women's detention facilities and staff housing has been agreed upon. Prisoners throughout Somaliland, who generally did not have adequate clothing, are being provided with prison uniforms for the first time, and a programme in which detainees will learn sewing skills is under way.

61. Prison staff capacity and prison management practices have been developed. Standing orders developed by a UNODC prison expert have been distributed, and training on modern correctional practice, such as prisoner categorization in line with international standards for prison management, has been provided to prison staff and managers.

62. The UNODC prosecutorial training programme, which commenced in October 2010, addresses piracy-related prosecutions, but also the capacity to carry out prosecutions in Somalia more generally. That capacity-building programming will complement UNDP assistance being given to the police, judiciary and defence counsel.

63. Reform of the legislative framework necessary for piracy prosecutions has been advanced in Somalia. In July 2010, UNODC brought together legal experts from the Transitional Federal Government, Puntland and Somaliland, and assisted them in drafting new anti-piracy legislation that has been adopted in Puntland and is currently before the other two legislative bodies. Legislative work continues, with emphasis on prison laws and prisoner transfer agreements.

(b) Future engagement in Somalia

64. UNODC has prepared a prisoner transfer programme that would provide the necessary conditions for sentenced Somali pirates to be transferred to Somalia to serve their sentences in humane conditions, consistent with United Nations minimum standards and norms. The Contact Group on Piracy off the Coast of Somalia and the Special Adviser on legal issues related to piracy off the coast of Somalia have placed emphasis on the critical importance of such a programme, since many countries of the region have made the ability to transfer Somalis convicted of piracy back to Somalia following their sentencing a condition for further prosecutions.

65. Therefore, a goal in the next phase of UNODC counter-piracy initiatives is to ensure that the prison accommodation in Somalia meets minimum international standards. That work, which would encompass construction and monitoring of new prisons in Somalia (in Somaliland and Puntland) by independent experts, as well as mentoring, will require long-term engagement and significant donor support. The

Special Adviser has called upon the international community to ensure that the work is funded as a priority.

66. Plans have been made to bring together regional prosecuting States and the custodial departments of Somalia to see if progress can be made on the transfer of convicted pirates back to Somalia. This is another critical area in which UNODC is responding to the requests of Working Group 2 of the Contact Group and the recommendations of the Special Adviser's report.

67. UNODC has also begun work on a programme that would build the necessary capacity and infrastructure to enable piracy trials to take place within Somalia in Somaliland and Puntland. The programme concept is being considered by the donor States and has been identified by the Special Adviser as an important component of the long-term goal of rebuilding the rule of law in Somalia.

B. Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia

68. In January 2010, on the request of the member States of the Contact Group on Piracy off the Coast of Somalia, the Secretary-General established the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia. The objective of the Fund, according to its terms of reference, is to help to defray the expenses associated with the prosecution of suspected pirates, as well as other activities related to implementing the Contact Group's objectives regarding combating piracy in all its aspects. UNODC engages with the Trust Fund in two separate roles: UNODC is the manager of the Trust Fund and is also a beneficiary of its funding for carrying out substantive projects.

69. The secretariat of the Fund is the Department of Political Affairs of the Secretariat. Governance is provided through a Board consisting of 10 member States of the Contact Group (on a rotating basis), chaired by the Department of Political Affairs.⁴⁰ As at 15 January 2011, the Trust Fund had received a total of \$6,521,217 in contributions from 12 member States.

70. Since its inception, the Fund has considered 20 projects and approved 10, with a total value of \$4,220,371. The approved projects include UNODC initiatives aimed at strengthening Kenyan, Seychelles and Somali criminal justice systems to fight piracy, a UNDP project to support civilian policing capacity in Somalia and a United Nations Political Office for Somalia communications and media initiative that reinforces the work of Working Group 4 of the Contact Group.

71. In accordance with the terms of reference of the Fund, the fund manager, together with the Secretariat, will prepare an annual consolidated narrative progress and financial report to the Board and to each donor in May 2011.

⁴⁰ The seats on the Board are divided as follows: three for regional and piracy-affected States and the remaining seven for donors. The International Maritime Organization, the United Nations country team and UNODC have non-voting seats on the Board, and the fund manager is an ex officio member. Board members were intended to serve a two-year term, but, owing to the high degree of interest among Member States in the initial years of the Fund, a term-sharing arrangement was agreed so that members would rotate after one year.

V. Conclusions and recommendations

72. UNODC activity in the area of counter-piracy has scaled up swiftly in response to the growing urgency of the issue and its impact on global security, trade and development. The nature of the response has been consistent with the existing UNODC mandate for criminal justice reform within the framework of the rule of law, and every effort has been made to ensure that the initiatives undertaken have a broader scope and impact for the criminal justice systems of the region as a whole.

73. The Office is now in a position of consolidation and retrenchment, ensuring that the counter-piracy efforts are integrated into core UNODC work in the region, including the Regional Programme for Eastern Africa, and through the development of an integrated country programme for Somalia, which will include a broader range of UNODC technical assistance expertise. This will likely result in a further increase in UNODC commitment and support in the region. The UNODC Counter-Piracy Programme will continue to engage actively and be guided by the response of the international community.

74. The Commission may wish to consider the following:

(a) Encouraging Member States and other donors to provide extrabudgetary resources to support the work of UNODC to assist Member States in countering piracy off the coast of Somalia and to contribute to the Trust Fund;

(b) Encouraging more States in the region to undertake prosecutions of suspected pirates captured off the coast of Somalia;

(c) Requesting UNODC to increase the volume of activities it undertakes in Somalia and to establish an integrated Somali country programme;

(d) Asking UNODC to evaluate what lessons can be learned from its rapid response to piracy off the coast of Somalia and how those lessons can be applied;

(e) Requesting UNODC to examine how lessons learned from the Counter-Piracy Programme could be used to provide assistance to prevent and combat other forms of maritime crime, such as drug trafficking and the smuggling of migrants;

(f) Requesting UNODC to examine how its expertise in anti-money-laundering, developed through its Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism, can assist the efforts of Member States and the Contact Group on Piracy off the Coast of Somalia to track the financial flows from piracy off the coast of Somalia;

(g) Requesting UNODC to submit a report to the Commission at its twenty-first session on the implementation of the Counter-Piracy Programme and the administration of the Trust Fund, and inviting UNODC to continue to provide technical briefings to Member States on these topics on a regular basis.