

**Informal meeting of the General Assembly on Piracy
14 May 2010
United Nations Headquarters, New York**

**Statement by Ms. Patricia O'Brien
Under-Secretary-General for Legal Affairs
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**Your Excellency, Ambassador Dr. Ali Abdussalam Treki, President of
the General Assembly of the United Nations,
Excellencies,
Distinguished Participants,
Ladies and gentlemen**

My statement today has three objectives: 1) give a broad overview of the legal framework for the repression of piracy under international law; 2) bring to your attention some specific legal issues that have arisen in particular in the context of Somalia; and 3) highlight some of the actions taken by the General Assembly and the Security Council thus far to address piracy, including off the coast of Somalia.

**Excellencies,
Ladies and Gentlemen, (1. *The legal framework*)**

As we all know, acts of piracy and armed robbery at sea have widespread repercussions, including the disruption of international navigation and trade. Such acts also have significant negative impacts on the lives and livelihoods of seafarers, as well as on the security situation in the regions where Piracy is pervasive.

I would like to start out by emphasizing that international law *does* provide an adequate legal framework for addressing the crime of piracy, but it is also clear that more needs to be done to implement this framework, especially at the national, but also at the regional and international levels.

The legal framework for the repression of piracy under international law is based in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which also reflects customary international law. Other instruments, such as the 1988 SUA (Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation), may also be relevant to combating piracy since some elements of the act of piracy may also constitute offences under such instruments. In addition, for some States, regional and bilateral agreements and arrangements may also be relevant. In the context of Somalia, which I will deal with later, the legal regime is complemented by a number of Security Council resolutions.

It should also be recalled that, in the repression of piracy, States remain bound by other applicable norms of international law. Thus, clearly, apprehension, detention, prosecution and imprisonment must all take place in accordance with a State's international human rights obligations.

Piracy, as defined in UNCLOS, includes any illegal act 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. It is a crime which can only be committed on the high seas or in the Exclusive Economic Zone (EEZ) of a State.

When piratical acts are committed within the territorial waters of a State, they are not qualified as "piracy" under UNCLOS, but are known as "armed robbery at sea" or "armed robbery against ships".

Given that piracy, by definition, can only occur beyond the territorial sea, UNCLOS and customary international law provide for universal jurisdiction over acts of piracy.

Let me take a minute to elaborate on the concept of universal jurisdiction, which is of vital importance in the context of piracy. Universal jurisdiction is criminal jurisdiction *which is* based solely on the nature of the crime (in this case, piracy), and does not have regard to where the crime was committed, nor to the nationality of the alleged or convicted perpetrator, nor to the nationality of the victim, nor does it require any other connection to the State exercising such jurisdiction. Thus, it is the broadest possible legal basis for States to exercise jurisdiction under international law. In the context of piracy, it means that any State may seize a pirate ship or a ship under the control of pirates, any State may arrest the suspects, and any State may prosecute them, pursuant to the provisions of UNCLOS.

Excellencies,

Ladies and Gentlemen, (2. Legal issues that have arisen)

While UNCLOS sets forth a legal framework which allows States wide latitude to take measures against piracy, the responsibility is on States to implement the provisions of UNCLOS within their own national legislation. It is the responsibility of States to ensure that their military and law enforcement officials have the necessary authority under national law to carry out the arrest and prosecution of suspected pirates. It is important, in this regard, to also be aware that under UNCLOS, universal jurisdiction is “permissive”. That is, the exercise of such jurisdiction by States is not an obligation, but a right.

This is not to say that States do not have any firm obligations under UNCLOS in relation to the repression of piracy. In fact, UNCLOS requires that all States “cooperate to the fullest extent possible in the repression of piracy”, (Article 100). This is a broad and meaningful treaty obligation, which States must implement. It is therefore important for States to work together to develop solutions to ensure the criminal accountability of suspected pirates, and the imprisonment of convicted pirates. Some notable examples of such cooperation at the regional level are the ReCAAP Agreement (Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia) and the Djibouti Code of Conduct.

Although the legal basis for the prosecution of pirates under UNCLOS is well-established, some States have encountered substantial practical and legal difficulties in its implementation. These include a lack of national legislation or of updated national legislation, evidentiary issues, coordination issues and a lack of capacity. The Security Council has stated (in resolution 1918) 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”.

One of the factors that has been hindering the effective prosecution of piracy is the fact that many States have either not enacted the national legislation specific to piracy, or their existing legislation is outdated. In that regard, my Office is collaborating with the International Maritime Organization and the United Nations Office on Drugs and Crime in the compilation of national legislation on piracy collected from States. Hopefully, this will serve as a valuable resource for States wishing to review their own national legislation.

Besides national legislation, several other legal issues need to be considered, such as, the procedures for the arrest and detention of suspected pirates at sea, as well as their transfer and extradition to third States where necessary;

the extraterritorial application of human rights obligations to States' naval forces engaged in the repression of piracy and questions related to the use of force where necessary. Additionally, there is the problem of securing the availability of witnesses since most of the victims are seafarers. Coordination amongst States with different legal systems has also posed challenges.

These difficulties are not insurmountable. We have already seen coastal States, seizing States and flag States all undertaking prosecutions.

It goes almost without saying that one of the main impediments to effective legal action against piracy in many parts of the world remains lack of capacity. Many States simply do not have sufficient capacity to apprehend, detain, prosecute and imprison suspected pirates. The United Nations is aware of this and many entities, including the International Maritime Organization (IMO), the United Nations Office on Drugs and Crime (UNODC), the United Nations Development Programme (UNDP), my own office and others are working to assist States to develop their capacity to combat piracy. The Trust Funds established by the Contact Group on Piracy off the Coast of Somalia and by the IMO for the implementation of the Djibouti Code of Conduct can play an important role in this regard.

Excellencies,

Ladies and Gentlemen, *(3. Actions that have been taken by the General Assembly and the Security Council)*

As a principal organ of the United Nations, the General Assembly considers piracy on a yearly basis as part of its discussions under the agenda item: "oceans and law of the sea". The General Assembly has addressed piracy in a number of its resolutions on oceans and the law of the sea, where it has, among other things, urged States to cooperate to suppress this crime as well as to "take appropriate steps under their national law to facilitate the

apprehension and prosecution of those who are alleged to have committed acts of piracy”.

In resolution 64/71 (2009) adopted on 4 December 2009, the General Assembly, recognizing the negative impact that acts of piracy have on seafarers, also invited “all States, the International Maritime Organization and the International Labour Organization to consider possible solutions for the seafarers and fishers who are victims of pirates”. Piracy has also been discussed in depth at two meetings of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, in 2001 and 2008.

Excellencies,

Ladies and Gentlemen,

More particularly in relation to the situation of piracy off the coast of Somalia, which the next panel will address more fully, I would just like to highlight some of the measures that are being taken by the United Nations, and in particular by the Security Council as this forms a significant element of the legal basis for addressing piracy, in the context of Somalia.

As you are aware, the Security Council of the United Nations has repeatedly expressed its grave concern about this ongoing threat and the attendant dangers to shipping in a number of resolutions which relate specifically to the situation in Somalia, notably resolutions 1816 (2008), 1846 (2008), 1851 (2008) and 1897 (2009). These resolutions determine that piracy and armed robbery off the coast of Somalia exacerbate the situation in Somalia, which constitutes a threat to international peace and security. The resolutions were thus adopted under Chapter VII of the UN Charter. It should be recalled, in this regard, that these resolutions also expressly state that they apply only to

the situation in Somalia and should not be considered as establishing customary international law.

Initially, resolution 1816 (2008), allowed States cooperating with the Transitional Federal Government (TFG), for a period of six months, to enter Somalia's territorial waters and to use "all necessary means" to repress acts of piracy and armed robbery at sea. The resolution makes clear that "all necessary means" are to be used "in a manner consistent with such action permitted on the high seas with respect to piracy under international law". It may be recalled that, pursuant to UNCLOS, anti-piracy operations are considered law enforcement operations. Resolutions 1846 and 1897, respectively extended this authorization for further 12-month periods.

In resolution 1851 (2008) the Security Council went a step further and decided that for the subsequent year, States and regional organizations cooperating in the fight against piracy and armed robbery at sea off Somalia's coast, for which prior notification had been provided by Somalia's TFG to the Secretary-General, could "undertake all necessary measures that are appropriate in Somalia for the purposes of suppressing acts of piracy and armed robbery at sea" in accordance with "applicable international humanitarian and human rights law". The resolution also calls upon States to assist Somalia to strengthen its operational capacity to interdict those using Somali territory to plan, facilitate or undertake such acts.

Most recently, in resolution 1918 (2010), which was adopted on 27 April 2010, the Security Council called upon the Secretary-General to prepare 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 a special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements." The

Office of Legal Affairs is working with the Department of Political Affairs, UNODC and other relevant partners in the preparation of the report.

Excellencies,

Ladies and Gentlemen,

To conclude, I wish to recall that the General Assembly has a continuing role in addressing piracy from a global perspective. For example, the General Assembly has consistently urged States (most recently in GA resolution 64/71 paragraph 73) to actively combat piracy and armed robbery at sea by adopting measures, including those relating to bringing the alleged perpetrators to justice, in accordance with international law, and by adopting national legislation.

In the context of piracy off the coast of Somalia, there are a number of issues which remain to be resolved, some of which I have touched upon. Central among these, as also underlined by the Secretary-General, is the need to address the root causes of piracy on land in order to achieve a sustainable long-term solution to the problem of piracy.

The United Nations, including the Office of Legal Affairs, remains committed to supporting the efforts of States in the repression of piracy and has taken a number of actions, as I previously indicated. For example, the Office of Legal Affairs continues to support the work of the General Assembly and the Security Council. It is also assisting Working Group 2 of the Contact Group on Piracy off the Coast of Somalia on legal issues. Going forward, I would like to underscore the continuous need for international cooperation in the repression of piracy.

Thank you. I wish you successful deliberations.