



COUNCIL
102nd session
Agenda item 14

C 102/14/3
26 May 2009
Original: ENGLISH

PROTECTION OF VITAL SHIPPING LANES

Piracy and armed robbery against ships in waters off the coast of Somalia

Note by the Secretary-General

SUMMARY

Executive summary:	This document reports on developments pertaining to the piracy-related issue off the coast of Somalia, since the Council's 101st session
Strategic direction:	6.2
High-level action:	6.2.2
Planned output:	6.2.2.1
Action to be taken:	Paragraph 32
Related documents:	C 101/10 and C 101/D, paragraph 10(a).2

Introduction

1 The Council, at its 101st regular session, noted, *inter alia*, information provided by the Secretary-General relating to the piracy issue off the coast of Somalia, in particular on actions taken pursuant to resolution A.1002(25). It also noted information relating to United Nations Security Council resolution 1838 (2008) as well as the general outline of the brief the Secretary-General intended to present to the Security Council, at its session on 20 November 2008.

Security Council resolution 1844 (2008)

2 On 20 November 2008, the Security Council, at its 6019th meeting, adopted resolution 1844 (2008) on an arms embargo against Somalia to strengthen it by specifying sanctions on violators and expanding the mandate of the Committee set up by resolution 751 (1992) (the 751 Committee) that oversees the ban.

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3 Security Council resolution 1844 (2008) expresses, in its preamble, grave concern over the reported increase in acts of piracy and armed robbery at sea against vessels off the coast of Somalia and notes the role piracy may play in financing embargo violations by armed groups. This resolution was adopted by the Security Council, acting under Chapter VII of the Charter of the United Nations and enables the imposition of travel restrictions and an asset freeze which would be applied to individuals and entities that engaged in activities that threatened the peace and the political processes and obstructed humanitarian assistance, in addition to those that breached the weapons ban, which was put in place by resolution 733 (1992) as amended by subsequent related resolutions.

4 The Security Council charged the 751 Committee with the task of examining allegations of violations of the arms embargo, designating individuals and entities to be on a list of those subjected to sanctions and regularly reviewing that list for accuracy. It also authorized the 751 Committee to consider requests for humanitarian exemptions and report at least every 120 days to the Security Council.

5 In a related provision, Member States of the United Nations are encouraged to submit to the 751 Committee the names of individuals or entities to be included on the list, along with a detailed statement of the case against them.

6020th meeting of the Security Council

6 On 20 November 2008, the Security Council, at its 6020th meeting, considered the Report of the Secretary-General of the United Nations on the situation in Somalia (S/2008/709). In accordance with the understanding reached in the Security Council's prior consultations, the provisions of Security Council resolution 1816 (2008) and the agreement with the affected coastal States, the Security Council invited the IMO Secretary-General, to address it, under rule 39 of its provisional rules of procedure.

7 The Secretary-General provided the Security Council with information about the scope, extent and impact of the problem; indicated that this was a matter of grave concern to the Organization and the maritime community at large; and advised that the concerns of the Organization are threefold, namely to:

- protect seafarers, fishermen and passengers on ships sailing off the coast of Somalia and in the Gulf of Aden;
- ensure the safe delivery of humanitarian aid to Somalia effected by ships chartered by the World Food Programme; and
- preserve the integrity of the shipping lane through the Gulf of Aden, given its strategic importance and significance to shipping and trade east and west of the Suez Canal.

8 The Secretary-General outlined a series of actions the Security Council might consider to address the situation and requested the Security Council to take appropriate action:

- to extend the validity of the mandate in paragraph 7 of Security Council resolution 1816 (2008);

- to call upon States interested in the safety and environmentally sound function of shipping activities, that have the capacity to do so, to take part actively in the fight against piracy and armed robbery against ships (including “mother ships”) off the coast of Somalia and in the Gulf of Aden;
- to strengthen and enhance the provisions of Security Council resolutions 1816 (2008) and 1838 (2008), particularly with respect to having clear rules of engagement for participating units to facilitate the disruption of pirate operations; and
- to urge States, with due regard to their obligations under international law, to establish an effective legal jurisdiction to bring alleged offenders to justice.

9 The Secretary-General paid tribute to the efforts of members of the international community, alliances of States and regional organizations (including NATO and the European Union, in particular) to address the issue by dispatching naval forces and military aircraft to patrol the vast area off the coast of Somalia and in the Gulf of Aden and by escorting vessels used by the World Food Programme to provide humanitarian relief to the Somali people.

10 The Secretary-General also stated that the Organization was doing everything possible to increase awareness of the problem and, in co-operation with the shipping industry, to advise ships to take practicable avoidance, evasion and defensive measures, while, through the technical co-operation programme, endeavouring to assist countries in the region to build capacity to add their contribution to the overall efforts, including putting in place any necessary relevant legislation.

11 The Secretary-General concluded by stating that a coordinated and coherent response at the international and national level is, therefore, necessary for the safety and well-being of seafarers; for the seamless delivery of humanitarian aid to Somalia; for the protection of the marine environment against casualties that may have a catastrophic impact on it; and for the shipping industry to continue to serve the seaborne trade and the world economy efficiently and effectively and concluded by emphasizing that the Security Council’s decisions would be instrumental in achieving these objectives and also that IMO stood by to assist in any way that might be required.

12 The record of the deliberations of the 6020th meeting of the Security Council, including the full text of the statement by the Secretary-General, can be found in United Nations document S/PV.6020.

Security Council resolution 1846 (2008)

13 On 2 December 2008, the Security Council, at its 6026th meeting, adopted resolution 1846 (2008) on acts of piracy and armed robbery against vessels in territorial waters and the high seas off the coast of Somalia, which had been proposed by Belgium, Croatia, France, Greece, Liberia, the Republic of Korea, Panama, Spain and the United States and which, *inter alia*, called upon States and regional organizations that had the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, by deploying naval vessels and military aircraft, and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery off the coast of Somalia, or for which there were reasonable grounds for suspecting such use.

14 The Security Council, through resolution 1846 (2008), decided that, for a period of 12 months from 2 December 2008, States and regional organizations cooperating with the Transitional Federal Government of Somalia (TFG) in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General of the United Nations, might:

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

15 In addition, Security Council resolution 1846 (2008), *inter alia*:

“ 3. *Welcomes* the efforts of the International Maritime Organization (“IMO”) to update its guidance and recommendations to the shipping industry and to Governments for preventing and suppressing piracy and armed robbery at sea and to provide this guidance as soon as practicable to all Member States and to the international shipping community operating off the coast of Somalia;

4. *Calls upon* States, in cooperation with the shipping industry, the insurance industry and the IMO, to issue to ships entitled to fly their flag appropriate advice and guidance on avoidance, evasion, and defensive techniques and measures to take if under the threat of attack or attack when sailing in the waters off the coast of Somalia;

5. *Further calls upon* States and interested organizations, including the IMO, to provide technical assistance to Somalia and nearby coastal States upon their request to enhance the capacity of these States to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines;

.....

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

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15. *Notes* that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (“SUA Convention”) provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible

for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation; *urges* States parties to the SUA Convention to fully implement their obligations under said Convention and cooperate with the Secretary-General and the IMO to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia;

.....

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

International Conference on piracy around Somalia

16 At its 101st session, the Council was advised that the Special Representative of the United Nations Secretary-General for Somalia (SRSG) had announced the launch of a plan aimed at resolving the issue of piracy and armed robbery against ships off the coast of Somalia and the SRSG had been informed of the readiness of the Organization to assist and to share the expertise and experience gained through dealing with the situation off Somalia over the last three years and with the issue of piracy and armed robbery against ships, generally, over the last 25 years.

17 Subsequently, the International Conference on Piracy around Somalia (the Conference), co-chaired by the Minister of Foreign Affairs of Kenya and the SRSG, was held in Nairobi at the ministerial level for regional actors. The Conference welcomed the efforts of regional States and organizations to establish means of cooperation in the fight against piracy. Participants resolved to cooperate with each other and with regional and international organizations, to combat piracy at sea and address the root causes on land. In this regard, the Conference noted in its communiqué that “the strengthening and enlarging of the Transitional Federal Institutions and the urgent improvement of the security situation on land are critical to reducing piracy off Somalia”. In addition, during the Conference, officials from the Transitional Federal Government of Somalia, the Alliance for the Re-Liberation of Somalia and the Somali regions of “Puntland” and “Somaliland” agreed to create a working group in the near future that would examine the way in which Somalia could work together with the international community to eradicate piracy and armed robbery at sea from their shores.

Security Council resolution 1851 (2008)

18 On 16 December 2008, the Security Council, at its 6046th meeting, adopted resolution 1851 (2008) on fight against piracy and armed robbery at sea off the coast of Somalia, which had been proposed by Belgium, Croatia, France, Greece, Liberia, the Republic of Korea, Panama, Spain and the United States.

19 The Security Council, through resolution 1851 (2008), invited all States and regional organizations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials (“shipriders”) from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under this resolution for acts of piracy and armed robbery at sea off the coast of Somalia, provided that the advance consent of the TFG is obtained for the exercise of third State

jurisdiction by shipriders in Somali territorial waters and that such agreements or arrangements do not prejudice the effective implementation of the SUA Convention.

20 In the same resolution, the Security Council encouraged all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact between and among States, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia's coast.

21 In addition, Security Council resolution 1846 (2008), *inter alia*:

“ 5. *Further encourages* all states and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to consider creating a centre in the region to coordinate information relevant to piracy and armed robbery at sea off the coast of Somalia, to increase regional capacity with assistance of UNODC to arrange effective shiprider agreements or arrangements consistent with UNCLOS and to implement the SUA Convention, the United Nations Convention against Transnational Organized Crime and other relevant instruments to which States in the region are party, in order to effectively investigate and prosecute piracy and armed robbery at sea offences;

.....

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

Contact Group on Piracy off the coast of Somalia

22 On 14 January 2009, 24 States and 5 regional and international organizations¹ formed the “Contact Group on Piracy off the Coast of Somalia (CGPCS)”. The group was convened by the United States pursuant to the initiative announced on 16 December 2008 by the US Secretary of State and was formed in response to Security Council resolution 1851 (2008), which called for States and regional organizations fighting piracy off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact on all aspects of combating piracy and armed robbery at sea.

¹ Participating in the meeting were representatives from Australia, China, Denmark, Djibouti, Egypt, France, Germany, Greece, India, Italy, Japan, Kenya, the Netherlands, Oman, the Republic of Korea, the Russian Federation, Saudi Arabia, the Somalia Transitional Federal Government, Spain, Turkey, the United Arab Emirates, the United Kingdom, the United States and Yemen, as well as the African Union, the European Union, the North Atlantic Treaty Organization (NATO), the United Nations Secretariat and IMO.

- 23 The CGPCS established four working groups tasked to address the following focus areas:
- Working Group 1, to address activities related to military and operational coordination and information sharing and the establishment of the regional coordination centre and is convened by the United Kingdom with the support of IMO. This group had its first meeting on 24 and 25 February 2009 and its second meeting on 7 and 8 May 2009 at the IMO Headquarters;
 - Working Group 2, to address judicial aspects of piracy and is convened by Denmark with the support of UNODC. This group met for the first time in Vienna on 5 March 2009 and the second time in Copenhagen on 5 and 6 May 2009;
 - Working Group 3, to address the strengthening of shipping self-awareness and other capabilities and is convened by the United States with the support of IMO. This group met at IMO Headquarters on 26 and 27 February 2009. The report of the outcome of this group, in relation to Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia, has been submitted, on the basis of the decisions of the group, for consideration by MSC 86 (document MSC 86/18/2 (Secretariat refers)); and
 - Working Group 4, to address the issue of improving diplomatic and public information on all aspects of piracy and is convened by Egypt. This group met in Cairo on 16 March and 25 May 2009.

24 The second meeting of the CGPCS took place in Cairo on 17 March 2009 and the next meeting has been scheduled to take place in New York on 29 May 2009.

Report of the Secretary-General of the United Nations pursuant to Security Council resolution 1846 (2008)

25 The Security Council, through resolution 1846 (2008), requested the Secretary-General to report on ways to ensure the long-term security of international navigation off the coast of Somalia, including the long-term security of World Food Programme (WFP) maritime deliveries to Somalia, and a possible coordination and leadership role for the United Nations in this regard to rally Member States and regional organizations to counter piracy and armed robbery at sea off the coast of Somalia.

26 The report (United Nations document S/2009/146 dated 16 March 2009) studies the piracy situation, examines the political, legal and operational activities that have been undertaken by Member States, regional organizations, the United Nations and its partners in the fight against piracy and armed robbery at sea off the coast of Somalia and concludes with observations on ways in which the long-term security of international navigation off the coast of Somalia, including seaborne humanitarian deliveries to Somalia, can be secured and outlines the role that the United Nations can play at this stage.

27 In preparing the report, the Secretariat of the United Nations consulted, *inter alia*, with the Secretariat and a considerable number of the suggestions and advice provided are reflected in the report. In addition, the report provides an overview of the work done by the Organization since 2007 and makes, *inter alia*, reference to the outcome and achievements of the Djibouti meeting.

28 The Secretary-General of the United Nations concludes the report by welcoming the active role being played by the Organization and relevant United Nations bodies and encourages Member States of the United Nations and regional organizations to make full use of these forums.

Monitoring Group on Somalia

29 Operative paragraph 9.3 of resolution A.1002(25), requested the Secretary-General to establish and maintain co-operation with the Monitoring Group on Somalia.

30 The Monitoring Group on Somalia established by Security Council resolution 1853 (2008) visited the Organization on 22 May 2009 and explored opportunities for co-operation and support to their maritime related investigations in order to try and identify arms smugglers, financiers and organizers of piracy, piracy militias and other violators, who are a clear threat to the peace, stability and security of Somalia.

Other actions

31 Since the last session of the Council, the Secretary-General has continued to brief Ministers and senior officials of Member States, Heads of London-based Diplomatic Missions and Permanent Representatives to the Organization on the situation off the coast of Somalia, in the Gulf of Aden and in the west Indian Ocean region requesting their support in facilitating a coordinated and cohesive response, at the international and national level, for the safety and wellbeing of seafarers; for the continued viability of transporting humanitarian assistance to Somalia; for the shipping industry; and for the minimization of detrimental effects the situation may have on world trade and commerce.

Action requested of the Council

32 The Council is invited to note the information contained in this document and comment as it deems appropriate.
