



“REGIONAL STRATEGIES TO COMBAT PIRACY IN EASTERN AFRICA FOR LAW ENFORCEMENT AGENTS”

29th – 30th June 2009 MOMBASA KENYA

SUMMARY OF THE MEETING’S DELIBERATIONS

Introduction

The workshop on “Regional Strategies to Combat Piracy in Eastern Africa for Law Enforcement Agents” was organised by Eastern Africa Police Chief Cooperation Organisation (EAPCCO) together with Hans Seidel Foundation (HSF) and the Institute for Security Studies (ISS). The meeting drew participants from the police and military unit of different EAPCCO member states, members of the diplomatic corps, academia and think tanks, and other stakeholders. Discussions were held on the nature of piracy in the region, the related political and security dynamics, and the legal and security initiatives that exist to counter the problem. The meeting came up with the following recommendations:

1. Formation of a Task Force comprised of law enforcement officers under the umbrella of EAPCCO/INTERPOL. The Task Force terms of reference will include the following:
 - Update the member states regularly on developments of the piracy phenomenon.
 - Explore further options for enhanced collaboration between the relevant agencies engaged in combating piracy including the UNODC and the naval forces currently on the ground.
 - Ensure collection and dissemination of data related to piracy and utilise the INTERPOL I-24-7 system.
2. Development of a regional information sharing framework to facilitate the fight against piracy among the relevant agencies and bodies.
3. Member states and the international community should enhance the capacity of the agencies involved in combating piracy through training and providing essential resources.
4. The states of the region should enhance surveillance and patrol of the Indian Ocean waters and the Gulf of Aden.

5. In the spirit of cooperation, the states of the region should extend judicial cooperation the same way Kenya has.
6. States are urged to debrief the crew after release and share the relevant information amongst themselves.
7. Sustained presence and response is crucial for effectiveness. This includes long term stations for staff and programs to combat piracy.
8. States and organisations are urged to firmly root any response to or support for the fight against piracy in local realities, local requests and local demands.

Finally, the meeting noted with conviction that for effective response to the problem of piracy off the Somalia coast, it is necessary to sufficiently address the root causes of the problem, among them, supporting the Somalia National Authorities and addressing regionally the twin problems of unreported and illegal fishing and dumping of toxic wastes in the region.

Opening Remarks

The meeting's objective was to facilitate the development of a regional response strategy to combat piracy for law enforcement agents. Piracy had been categorized as a major international crime priority by the meeting of EAPPCCO police chiefs in Addis Ababa in 2008. Tapping on the capabilities of the different stakeholders would go a long way in managing piracy and charting the way forward on the long term security of the Somali predicament. The conveners of the meeting in their opening remarks touched on the essence of a multi-sectoral approach when it comes to managing piracy. It was noted that a long term oriented remedy to the piracy menace meant that there is need for a strategic analysis of piracy from the larger human security lens. As piracy posed an immediate threat to the peace and security of the region, for the purposes of mutual concern by the region's states, cooperation and sharing of information on this high priority crime is of essence. The chief guest, Dr Walid Abdelkarim (Director Political Affairs United Nations Political Office for Somalia UNPOS) conveyed the UN Special Representative to Somalia's speech and noted that the piracy issue was just a part of the larger conflict consequence of the Somalia situation. He called for concert diplomacy to the extent that the different actors involved, both diplomatically and in the humanitarian realm in Somalia, should pool resources and capabilities to holistically manage the conflict. Piracy and its management should therefore be part and parcel of conflict analysis.

Piracy and Related Dynamics

The session dealt with presentations that contextualized the piracy predicament from a security architecture, to a foreign policy and a legal perspective. A study of the impact of piracy on the IGAD region noted that the biggest increase in piracy globally had been off the Somali coast, and that the piracy in the region was different from the rest of the world as the pirates captured vessels for ransom rather than for the value of the cargo and or personnel in the vessels. The study gave a critical picture of the well coordinated modus operandi of the Somali pirates; technological strategies, planning and financial variables that sustain piracy were analyzed. The international link to piracy activities included concerns of small arms proliferation which are increasingly being utilised by the pirates and the ransom payments, which could be a great contributor to the increasing piracy incidences.

There were calls for a concerted regional effort towards increasing the diplomatic momentum that seems to have gone down since the last 14th attempt that brought in the TFG administration. There was also need to enhance the capacity of Somali law enforcers to deal with such crimes that are escalated by an intermittent conflict epicentre. Effective piracy management strategies should therefore form part and parcel of the large Somali security sector governance and support in the long term. Security practitioners and their foreign policy counterparts were called upon to collaboratively bring their bureaucratic lenses towards tackling piracy. This provides for a coherent and rational policy on piracy both on the national scale and also in coalesced regional efforts to manage piracy.

On the international law arena, the comity traditions of dealing with the piracy question and legal practice on the same were critically examined – the international customary law practice in the management of piracy, the leading international convention - United Nations Convention on the Law of the Sea (UNCLOS) and specifically UN Security Council Resolutions 1816 and 1851. Of special concern was the largely ignored Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA). Questions of classical international law predicaments connected to treaty exceptionalism and the soft law effect of the same were teased out. It was concluded that was important to critically analyze any connection between the rise of piracy, proliferation of arms and the rise and vulnerabilities towards terrorism. Piracy has certain common attributes internationally but it is regional specific with latter characteristic defined by the internal dynamics of states in conflict.

Responses to Piracy by Government Agencies

This session covered responses to piracy by the different law enforcement members. Both the police in their National Central Bureau (NCB) offices and the maritime police and the navies of the EAPCCO states present gave a critical snapshot of the piracy effect and management efforts undertaken towards that end. A common attribute was the shared element of geo-political and security proximity of Somali's piracy effects and how this shaped their responses. Somalia is bearing the brunt of the piracy attacks, however, Seychelles has had isolated incidences of piracy attacks too. Kenya, Sudan and Tanzania have not had any specific piracy encounters in their territorial waters. Sudan and Tanzania have had cases relating to destruction of vessels and illegal fishing, but no direct piracy cases.

Somalia noted that the security and communication problems in the country made addressing security challenges like piracy complex. The head of the NCB was not working from Mogadishu and was in need of assistance since police duties went on irrespective of the security situation. Somalia also stated that they had no communication with the foreign vessels operating off of its coasts. They called for the international community to deal with them as well as the Puntland and Somaliland administrations that had the capacity to try Somali pirates.

Tanzania was in the process of expanding an existing maritime task force to handle the threat of piracy in Tanzania and the region. There were also ongoing discussions on the country extending judicial cooperation to the international community try capture pirate suspects.

Essentially, some of the navies had limited experience with piracy but Seychelles' Coast Guard had been active in fighting piracy. The island nation which is largely dependent on the sea has been impacted the most outside Somalia by the increasing piracy problem – devastating their

fishing and tourism industry. In addition, ten of its nationals have been held captive though seven have now been released.

Among the regional security agents, the key challenges identified included:

- Lack of important data exchange equipment
- Burden of processing the pirates caused by increasing number of cases, language barrier and lack of equipment to compile evidence e. g. computers and electronic fingerprint taking machines.
- Borstal institutions were inadequate and in need of improvement.
- Lack of capability and adequate resources to effectively patrol and carry out surveillance of the regional waters.

The INTERPOL had formed an INTERPOL Anti-Piracy Taskforce to coordinate the global anti-piracy efforts. One of the proposals was to have strategic options to deal with operational management of piracy including the creation of relevant liaison offices. The INTERPOL has a well developed information and crime management system which could be utilized in populating data on piracy. Yet so far this has been underexploited. Currently, together with the Kenya police, the organisation has facilitated the measurements, photographing and fingerprinting of suspected pirates for purpose of record keeping and identification. This has been exchanged for comparison with INTERPOL member states to establish the pirates' previous criminal records. The same system could be used to tackle the piracy problem on land through analysing for instance, the money trail of the financiers and beneficiaries of the enterprise as well as the movement of the piracy ransoms. However, the INTERPOL data relies on member states' goodwill and they were encouraged to continue enriching it.

In all, the need for collaborative efforts and greater information sharing was underscored. This included the need to debrief released crew members from hijacked vessels. Cooperation with law enforcement agents across borders as well as between the police and navy could not be emphasized enough.

Judicial Responses to Piracy

The current status of judicial involvement with piracy suspects from off the coast of Somalia are: Kenya - 10 convicted, 101 on remand; Seychelles - 23 on remand; Yemen - 20; Somaliland - 50+; Puntland - 20 plus; Netherlands - 5; France - 9 and USA - 1. Kenya's engagement follows the UNSC Resolution 1846, which called for countries to establish an effective legal jurisdiction to bring alleged offenders to justice. The suspects are tried under Section 69 of Kenya's *Penal Code* that provides that: "any person who in territorial waters or upon the high seas commits an act of piracy *jure gentium* is guilty of an offence of piracy." Conviction is liable to imprisonment for life. Kenya and other regional countries have been a logical choice because the arresting states (through their navies) contend that moving the suspects for trial to their country would virtually violate their human rights.

However, key challenges have emerged in the judicial prosecution of the piracy suspects:

- Jurisdictional issues have dogged the process. This has necessitated the use of judicial agreements between Kenya and countries including the USA, the EU and the UK, to facilitate the prosecution of the suspected pirates captured by these states. However, the agreements' nature has been called to question because they are not public and public opinion is that they are could be detrimental to the country' national security. The public does not fully appreciate why the captured pirates have to be stand trial in Kenya and not in the arresting states.
- Logistical and capacity building issues: Kenya's judicial system is underequipped as there is still inadequate international cooperation. There are also fears that suspected pirates will get special treatment over relative to the Kenyan criminal suspects. Moreover, most relevant international conventions are only now being domesticated.
- There is an urgent need to increase the holding capacity of the country's detention facilities. The number of inmates at any one time is about 53, 0000 against a national capacity of 16,000 - about 300 percent over the internationally stipulated standards.
- Confidence in the process is of the essence as it is important for due process to be seen to be followed. The involvement of the international community puts a spotlight on the need to reform the country's criminal and justice system before it can be considered up to the international standards required to prosecute the pirates.

The prosecution of pirates in the region has also raised the profile of the suspected pirates and actors and increased the calls for the observance of human rights. The typical captured suspected pirate is one of a young boy without sophisticated weaponry. The real players in the piracy business are not on trial. Hence, the problem may persist even if the prosecutions are successful. Meanwhile, crew members are an underrepresented group in the piracy chain. They face difficulties when captured; arrested, language barriers, ill treatment and lack of visits from especially where countries affected have no embassy or diplomatic mission close by. This is compounded by the tendency by maritime authorities to view piracy as a state-security issue. Hence the calls for the need to debrief the released crew members and for members states to share any information relevant to assist in fighting piracy.

Programmes to Combat Piracy

The United Nations Office on Drug and Crime (UNODC) has a number of proposed and ongoing activities with respect to strengthening judicial cooperation and capability to try piracy cases in a number of the countries in the region. They proposed to open an EC/UNODC/INTERPOL piracy office in Mombasa. They are engaged in legislative review of criminal and maritime laws in Kenya, Seychelles and Tanzania. They have planned training programmes for both the maritime authorities and the police. They are also providing prosecutorial support, logistics and IT support, witness and trial support and prison renovation.

The Eastern Africa Standby Brigade Coordination Mechanism (EASBRICOM) as part of the African Peace and Security Architecture intends to develop a fully operational and multidimensional integrated Eastern Africa standby force for deployment by 2015, with an initial operational capability by 2010. However, it faces certain challenges which will delay it

having a greater role in the piracy fight. These are infrastructural and human resource capability; insufficient resources and lack of prioritization for support to the effort in fighting piracy; and diversity in culture, standards, naval and military doctrines. Furthermore, the slow response to the security paradigm shift to human and collective security poses another hurdle for the organisation. Pending operational issues include the need to develop a concept for a Rapid Naval deployment. Also the AU has yet to develop a Maritime Concept.

The Foreign Service Institute (FSI) of the Kenya Ministry of Foreign Affairs is already engaged in the training and capacity building of the Foreign Service personnel of Kenya and the TFG's officials on key areas of international relations such as diplomacy. Kenya has been continually called upon by the international community to lead in the fight against piracy and terrorism. Hence, the Institute intends to align itself to assist in combating piracy by providing research and information gathering, establishment of regional training program which will cover coast guard human resource development, capacity building activities in the area of maritime law enforcement through training of law enforcement officers, maritime authority employees, port security officers, immigration officials, reformed pirates and other relevant stakeholders. This will be done in collaboration with local and international bodies.

Conclusion

The meeting came up with the abovementioned key recommendations and also restated that for sustainable success to be realised in the fight against piracy, there is need to address the other underlying factors that have given rise to the escalation of cases of piracy in the region. These include addressing the root causes of piracy as well as greater assistance to the legislative and institutional capacity building initiatives of Somalia and the countries in the region. In addition, there is need to address other maritime security concerns in the region in particular unreported and illegal fishing which continues unabated despite the heavy naval presence in the regional waters. The possibility that illegal fishing rather than piracy could be the greater threat for the regional countries was reiterated.