



The Legal Process: The Indian Ocean Commission's Effort to Promote Regional Harmonization of Laws against Piracy

Jacques Belle

Introduction

The situation of persistent instability and conflict in Somalia is directly linked to the rampant scale of piracy which has recently developed from a disorganized endeavour to a highly structured transnational criminal enterprise. Piracy off the coast of Somalia is no longer considered as a regional issue as it has now turned into a global one and the international community has quickly realized that solving this problem is not an easy task and that it cannot be done overnight.

Since its creation in 1984, the Indian Ocean Commission (IOC) which is one of the smallest inter-governmental organization grouping Comoros, France (Reunion Island), Madagascar, Mauritius and Seychelles, has continuously put greater emphasis on the enhancement of regional cooperation particularly at the strengthening of the legal framework for dealing with various maritime threats in the region. Today, piracy is the most worrying maritime threat affecting directly or indirectly the five IOC Member States.

Regional Legal Cooperation with UNODC

With a view to reinforce the legal cooperation existing throughout the region, the United Nations Office on Drugs and Crime (UNODC) in conjunction with IOC, are undertaking an assessment of the laws of the five IOC Member States focusing on their extradition and mutual legal assistance and have since 2008 jointly developed two technical assistance tools in that respect. Soon after, each of the IOC Member States designated their respective focal points to compose the 'Justice' regional platform responsible to coordinate information related to extradition and



mutual legal assistance cases. This marked the very first step made by IOC in improving the cooperation among regional law enforcement agencies.

The Djibouti Code of Conduct

The issue of regional harmonization of anti-piracy laws was further addressed in January 2009 during a meeting in Djibouti organized by the International Maritime Organization (IMO) whereby nine countries initially signed the Djibouti Code of Conduct.

Under this Code, the Signatory States considers the United Nations Convention on the Law of the Sea (UNCLOS) as the international law that sets out the legal framework applicable to combating piracy and armed robbery at sea. They are all committed to review their national legislation in compliance with the UNCLOS with a view to ensure that there are laws in place to criminalize piracy, so that there will be a degree of uniformity of treatment of captured pirates. However, this Code is a ‘soft’ law instrument meaning that it has no legally-binding force. This could perhaps explain why out of the current 18 Signatory States, only two (Seychelles and Kenya) have fulfilled their commitments and are currently prosecuting suspected pirates in their national courts.

Resolution on Maritime Piracy in the IO and the Gulf of Aden

The need to strengthen the legal framework was felt even more in February 2009, soon after Seychelles experienced its first piracy attack and hostages taken. In its 25th Council of Ministers held in Moroni in April 2009, a resolution on maritime piracy in the Indian Ocean region and the Gulf of Aden was adopted unanimously by all IOC Member States. This was considered as a symbolic measure as it was the first resolution that stressed on the need to harmonize at regional level national laws so as to reach a consensual legal text against piracy. This same Resolution also calls upon all maritime forces for stronger mobilization in the effort to fight piracy off the coast of Somalia and this explains the rapid deployment of the European Naval Forces (EUNAVFOR)’s Operations in the region. By then, the number attacks in the Indian Ocean had escalated rapidly.



Regional Ministerial Meetings on Piracy

As a result, in May 2010 on the occasion of the official visit to Seychelles of Baroness Catherine Ashton, the government of Seychelles with the support of the IOC decided to host the very first ministerial regional meeting on piracy. This meeting was of great importance to the Eastern and Southern Africa-Indian Ocean (ESA-IO) countries as it was the first to open up a discussion on developing a regional approach in the fight against piracy. This meeting was followed by a second one hosted by the government of Mauritius in October 2010 whereby a Regional strategy (RS) and a Regional Plan of Action (RPA) for Maritime Security were adopted by the ESA-IO countries.

At this stage, no one can deny that each ESA-IO country is being individually concerned either directly or indirectly by the scourge of piracy which is affecting the general interest of the region and so the burden have to be shared by all in order to accomplish the overall deterrence of maritime piracy. However, sometimes the strong political will of the states to stop piracy as expressed in conferences or in resolutions is not enough.

“Hard” Legal Instrument (Domestic Legislation to Fight Piracy)

The use of ‘hard’ legal instruments by the regional States is an efficient way for them to put into effect their willingness to combat this threat.

As of today, three of the five IOC member states (Seychelles, Mauritius and Reunion) have implemented their own domestic legislation to facilitate the arrest, the prosecution and the repatriation of pirates.

Seychelles was the first member state to amend its laws in relation to the offense of piracy. In March 2010, it modified its Penal code by adapting the articles 101-117 of the UNCLOS Convention. Following this law, Seychelles has signed a total of 15 MOU’s on transfer of suspected pirates and has prosecuted around 60 suspected Somali pirates. Other states like Mauritius are slowly following. In July 2011, they expressed strong commitment by signing a pre-trial prisoner transfer agreement with the European Union (EU), and also adopted in



December 2011, their Piracy and Maritime Violence Bill. Although not directly affected like Seychelles, the Mauritian authorities are conscious of the seriousness of this threat and are currently building a special court of justice to sentence pirates.

France (acting on behalf of Reunion) has enacted a law on January 5, 2011 in relation to the fight against maritime piracy. Its law is similar to Seychelles and Mauritius in the sense that it is in full conformity with the UNCLOS Convention as it adopts the same definition of piracy and refers to the latter for resolving any claims for damages, injury or loss.

Limitations and Challenges: The Overcrowding of Prisons

However, some states such as Seychelles that are accepting suspected pirates for prosecution has been reluctant to take more, due to their limited capacities on their prison facilities. Seychelles currently has 86 Somali pirates in its small prison which represents over 20 percent of its total jail's population; it therefore cannot continue incarcerating large number of Somali pirates. As a result, too many suspected pirates apprehended at sea are simply released without any punishment. This is the unacceptable 'catch and release' situation, which has been widely criticized by former Special Advisor to the UN Secretary General on Legal Issues related to Piracy off the Coast of Somalia, Jack Lang. Lang developed the concept of "Somalization" of prosecution, whereby he insisted that specialized courts in Somalia are to be established in order for Somali authorities to take up their responsibilities in incarcerating their own citizens immediately after conviction.

It is in line with this that countries including Seychelles adopted in July 2010 a law regarding the transfer of sentenced persons to their countries of origin. Under this law, convicted Somali pirates have to serve their sentence or the rest of their sentence in Somalia. In ensuring the full implementation of this law, the Seychelles authorities even went further in signing three MOUs on transfer of the sentenced pirates with the Transitional Federal Government (TFG), Puntland and Somaliland in early 2011. As of today, the government of Seychelles has transferred a total of 17 convicted Somali pirates to prison mainly in Somaliland.



It is well understood that any increase of prosecution capacity must correspond to an increase in prison capacity in Somalia.

The Newly Established IOC-APC

The recent establishment of the IOC Anti-Piracy Cell (IOC-APC) as per the 27th IOC Council of Ministers, will be of great use to the ESA-IO region as it will prepare the latter for the implementation of the immediate actions of the 10th EDF MASE Start-Up program aimed at implementing the above referred RS and RPA for promoting maritime security in the region. The action plan on legal issues which relates to the detention, transfer and prosecution of pirates is currently undertaken by UNODC. Among the immediate actions that will need urgent consideration is the harmonization of laws at the regional level. By 2013, this responsibility will be handed over to Eastern African Community (EAC) who will then become the regional coordinator for the legal related issues of the Maritime Security (MASE) program for a period of five years. The IOC-APC based in Seychelles will be supervising all these activities.

Conclusion

In conclusion, the best remedy to solve the problem of piracy off the coast of Somalia is by establishing an effective cooperation framework between regional states combating piracy, both at the operational and the legal levels. This solution cannot be led by a single country, not even by a single international organization; it requires a concerted action on the part of the international community as a whole. However, the IOC has so far demonstrated a remarkable effort in galvanising regional action in this area, and it is not surprising if today IOC has won a deserved reputation of being the ‘champion’ for mobilizing regional states in the fight against piracy.



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