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The UN Security Council and Organized Criminal Activity: Experiments in International Law Enforcement

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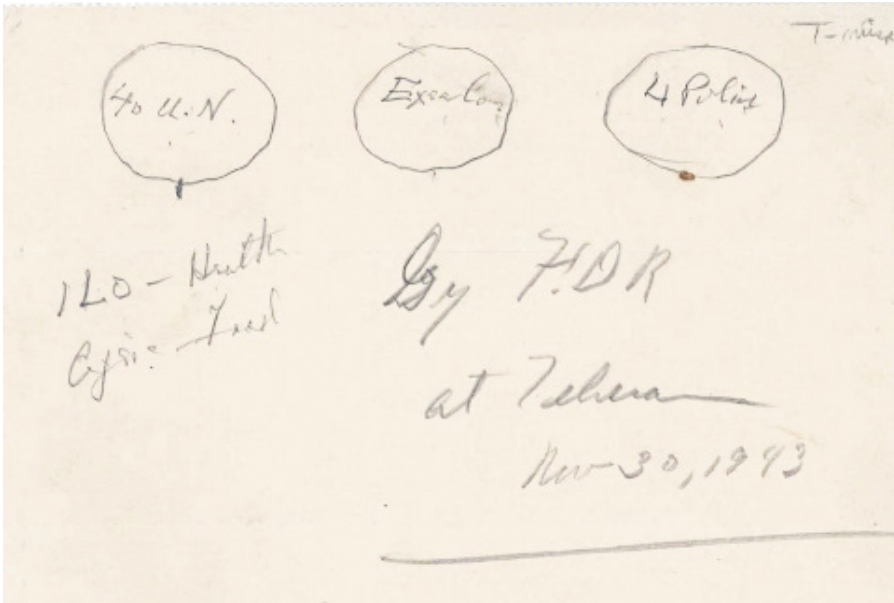
This paper will appear as a chapter in a forthcoming volume: David Malone, Sebastian Einsiedel and Bruno Stagno-Ugarte, eds., *The UN Security Council in the Post-Cold War Era* (Lynne Rienner, forthcoming).

Overview

Over the last ten years, the United Nations Security Council has begun considering organized criminal activity in some situations, including drug trafficking, diamond, mineral and wildlife trafficking, and piracy. This Working Paper reviews this practice, finding that the Security Council has begun to draw on domestic criminal justice discourse and techniques – including criminal investigation, trial, and punitive sanctions. However, the Council has encountered three obstacles in applying these at the international level: 1) sovereignty; 2) limited access to effective law enforcement and judicial capacity; and 3) due process. Experimenting with ways to address these obstacles, the Security Council has developed four modes of international law enforcement: 1) decentralized enforcement (through states' own criminal justice systems); 2) collective enforcement (for example through anti-piracy naval operations off Somalia); 3) direct enforcement (through executive policing and military action by the UN against criminal groups, for example in Kosovo and Haiti); and, increasingly, 4) a regulatory approach (for example through adoption of 'Due Diligence' guidelines requiring companies to remove illicit minerals from their supply chain). The paper reviews how these different experiments have played out, and draws attention to the dangers of the Council raising public expectations that it will act like a judge, meting out justice, rather than as a political forum.

Introduction: from police to jury – to criminal justice techniques?

On 30 November 1943, Franklin Roosevelt was in Teheran, celebrating Winston Churchill's sixty-ninth birthday with Josef Stalin. FDR gave Churchill a Persian vase, and as discussion turned to the post-war order he passed an aide a pencil sketch of what was to become the United Nations:



Source: In the Harry Hopkins Papers, Franklin D. Roosevelt Presidential Library and Museum, Hyde Park, New York, also available at <http://www.fdrlibrary.marist.edu/archives/pdfs/docs/worldwar.pdf>, accessed 11 August 2013.

The three circles represent, from left to right, the forty United Nations (later the General Assembly), with its socio-economic competences below it; the 'Executive Committee' (later the Security Council); and the '4 Police'. This was the first time that the four Allied powers of World War II – the US, UK, USSR and China – were represented as the 'Four Policemen' of the post-war order.

The institutional home that emerged for these Four Policemen was the Security Council, with France joining the four others as a veto power in 1945. Yet the Security Council has come to act not only as a body policing order but also – as the great student of the Security Council, Thomas M. Franck, explained in 2002 – as a kind of a 'jury' enforcing international law. The Council's legal deliberations, Franck explained, are not so much like those of a 'judge' rigidly enforcing the law with only passing consideration of social context and norms, but rather more like 'a global jury', a group of sovereign countries appointed to assess the conduct of one of their peers, 'not without feelings and biases, but whose first concern is to do the right thing by the norms under which we all live'.ⁱ

Yet something has changed in the ten years since Tom Franck made this assessment. As the Council has begun to deal with non-state criminal activity, such as drug trafficking, diamond, mineral and wildlife trafficking, and piracy, its deliberations suggest an approach to law enforcement that draws increasingly on domestic criminal justice discourse and techniques – including criminal investigation, trial, and punitive sanctions. The seeds of these experiments in international law enforcement were planted in the early 1990s, with the action against Saddam Hussein that the United States promoted as a 'police' action to enforce the 'rule of law'.ⁱⁱ The criminal justice concepts spilled over from rhetoric into practice when the Council chose, in Resolution 687 (1991) establishing the post-war order for Iraq, to use its Chapter VII powers to create a judicial body to compensate civil damage claims. This was, as Rosalyn Higgins, later President of the International Court of Justice, said 'very, very different from anything we have expected of the Security Council before'.ⁱⁱⁱ The Council soon realized that demanding investigation, criminal prosecution and trial under Chapter VII was perhaps an even

more useful, robust response short of Chapter VII military action, and used it as the basis of responses to terrorist incidents in Libya,^{iv} Ethiopia^v and to atrocities in the Balkans, Rwanda, Sierra Leone, Cambodia and East Timor.^{vi}

The 1990s also saw Chapter VII sanctions regimes evolve away from trade embargoes imposed on whole states towards targeted sanctions attempting to cut off individuals and non-state groups from financial and social participation in international society, almost like modern international outlaws. Although still – in the 1990s – framed as preventive, rather than punitive, measures, the Council's sanctions arrangements came increasingly to resemble the security control orders used in some domestic criminal justice systems.^{vii} By 2014, the Council was no longer simply targeting the criminal financing of armed groups for sanctions, but sanctioning certain business dealings with 'criminal networks' themselves.^{viii}

1. Obstacles to law enforcement

The turn towards enforcement actions drawn from domestic criminal justice systems might be thought, therefore, to have set the Council up well to deal with the increasing threat that non-state criminal activity has come to be seen to pose over the last two decades to international peace and security. By 2011, the UN Office on Drugs and Crime estimated transnational organized crime revenues at \$870 billion per year, or equivalent to the 16th largest national economy in

the world.^{ix} The 2005 World Summit Outcome Document adopted by the General Assembly expressed 'grave concern at the negative effects on development, peace and security and human rights posed by transnational crime'.^x According to the 2011 report on the *Global Burden of Armed Violence*, of the 526,000 violent deaths in the previous year, only 55,000 could be attributed to armed conflict or terrorism. 396,000 deaths, however, were the result of intentional homicide including interpersonal violence, gang violence and economically motivated crime.^{xi} The 2011 World Development Report emphasized the ties between transnational crime, conflict, and conflict relapse.^{xii}

It is perhaps unsurprising, therefore, that the Security Council has begun to tackle criminal activity and violence related to conflicts already in its agenda. A recent survey suggests that almost three quarters of current UN peace operations operate in environments significantly affected by organized crime. Of these, roughly half have mandates that pertain in any way to dealing with criminal activity, usually through support to host state police institutions, small arms control, or protection of civilians. Few are mandated to tackle criminal groups directly.^{xiii} This chapter explores how these mandates have emerged and been shaped, and in the process identifies three obstacles that the Council has encountered.

First, sovereignty. The privilege of legally defining conduct as 'criminal' and enforcing the resulting criminal law is at the heart of state sovereignty. The Council has faced stiff resistance, particularly from the developing world, when it has sought to tell states how to use its criminal justice powers. The best-known case of such resistance relates to the Council's 'legislative' decision in Resolution 1373 (2001), adopted in the immediate aftermath of the 9/11 attacks, imposing binding obligations on states to adopt certain domestic legislative measures to tackle terrorism, which had previously only been addressed through international treaty arrangements.^{xiv} These legislative measures required states to criminalize certain 'terrorist' conduct, and to use their law enforcement and administrative apparatus to enforce these new criminal norms. At least, in that case, states largely agreed that such 'terrorist' conduct was unacceptable. As we shall see, in dealing with other forms of conduct, such as trafficking, states have not always even been able to agree that it *should* be considered criminal. (The situation of trafficking in nuclear-related technology, considered elsewhere in this volume, was addressed by the Council through a similar 'legislative' action, Resolution 1540 (2004).) The Council has consequently faced less resistance to tackling criminal activity occurring where sovereignty is weakest: on the high seas (in dealing with piracy, long recognized as criminal under international law), in countries where the government has lost effective control over parts of its territory (most notably Afghanistan, Central African Republic, Democratic Republic of Congo, Haiti and Somalia), or in small countries of limited strategic interest to the great powers (such as Guinea-Bissau).

Second, limited access to law enforcement and judicial resources. Criminal violence flourishes where state capacity is weak. So in tackling such violence, the Security Council has had to look elsewhere for the resources to enforce its decisions. As we shall see, effective resources have not always proven easy to identify. States are reluctant to send their police abroad, and even when they have chosen to do so, police forces are traditionally not – unlike military forces – set up for foreign deployment. Transnational criminal networks are. So the Council's law enforcement forays have often found themselves outgunned. In West Africa, for example, some analysts pin the profits from drug trafficking as being on a similar scale to some countries' GDP.^{xv} Meanwhile, the UN's inter-agency response vehicle for building local Transnational Crime Units, the West Africa Coast Initiative, has operated on small fractions of those sums.

The Council's efforts to fill the resulting resource and capacity gap have taken four forms. Most commonly, the Council has simply set down primary rules of conduct, and left it to other international actors to enforce these rules through their own military, criminal justice, customs and financial enforcement systems, and through assistance to the affected state (including through the UN Office on Drugs and Crime (UNODC)), in a *decentralized* fashion. In a second set of cases, notably relating to piracy, the Council has authorized *collective* enforcement of international law: using states' law enforcement, military and judicial capacity, but still leaving it to states to coordinate the use of that capacity amongst themselves. In a third set of cases, including DRC, Haiti, Kosovo and Lebanon, the Council has experimented with the development of capacities for *direct* law enforcement: using UN personnel to investigate, analyze, police, try and in some cases use military force (in peace operations) against criminal activity. And finally, in rare but increasingly frequent cases, especially relating to resource trafficking, the Council has also moved towards a *regulatory* approach. Here it prescribes not only primary rules of conduct, but also secondary rules about how non-state actors, including business actors, must implement those primary rules, especially through 'due diligence' in doing business with specific actors (e.g. in DRC and Eritrea).

The third obstacle the Council has encountered in its experiments in international law enforcement is due process. As Thomas Franck recognized, the members of the Council are not 'bound by the precise scruples underpinning the objectivity of judges' – or even modern criminal trial juries.^{xvi} Yet the growing reliance on criminal justice *discourse* has increased international society's expectations that the Council's decision-making will meet modern expectations of criminal justice *practice*. Accordingly, as I explore further below, the steps taken by states acting under Council Chapter VII authorization to police criminal activity – from terrorism to piracy – is increasingly being tested by state and regional courts against international due process, fair trial and human rights standards. In some cases, such as the international

response to piracy off Somalia, this has posed a major obstacle to the development of an effective law enforcement response to a significant criminal activity.

2. Organized crime and trafficking

Starting during the Cold War, Secretaries-General drew attention to specific trafficking issues relating to conflict situations already on the Council's agenda. For twenty years, UN peace operations in the Balkans, Central America, DRC, Haiti, Somalia and West Africa have all wrestled quietly with the impacts of criminal groups on conflict and peace processes.^{xvii} Starting in the late 1990s, individual Council members also began warning of the threats posed by drug trafficking in Angola, Bosnia and Herzegovina, DRC, Haiti, Iraq, Kosovo, Lebanon, Myanmar and Somalia.^{xviii}

It was the link between drug trafficking and terrorism, however, that moved the issue up the Council's agenda. Following the East Africa embassy bombings of 1998, and building on the approach used in dealing with terrorism in Libya and Sudan, Resolution 1267 (1999) demanded that the Taliban 'cooperate with efforts to bring indicted terrorists [i.e. Usama bin Laden] to justice'. The further measures imposed to encourage compliance by Resolution 1333 (2000), developed by the U.S. and Russia, included a ban on the sale of acetic anhydride, a heroin precursor, to Afghanistan, and a demand that the Taliban eliminate all illicit cultivation of the opium poppy.^{xix} The constraints this law enforcement approach potentially imposed on peace negotiations with the Taliban immediately attracted criticism from Secretary-General Annan.^{xx} That tension between impartial enforcement of the law and the bargaining sometimes required in keeping the peace remains present to this day in the Council's responses to organized crime and trafficking, for example in dealing with drug trafficking political and military actors in Guinea-Bissau.

When the Council adopted Resolution 1373 (2001), which for the first time required all Member States to domestically criminalize a certain form of conduct (terrorism), the Council retained the conceptual link between terrorism and organized crime developed in dealing with Afghanistan, describing the mixture of terrorist and criminal activities as a 'serious challenge and threat to international security'.^{xxi} The counter-terrorism bodies entrusted by the Council with implementation of Resolution 1373 (2001) have, in the subsequent decade, routinely treated the potential links between terrorism and organized crime as falling within their purview; the UN Counter-Terrorism Executive Directorate, for example, has worked with states to build their border management capacities and their criminal justice capacity to tackle money-laundering.

From 2004, a 'crescendo' of reporting from UNODC and the UN's regional Office for West Africa (UNOWA) sounded the alarm regarding the corrupting influence the drug trade was having on West African political and security institutions.^{xxii} Colombian and Venezuelan cocaine trafficking

networks had been building new routes to the European market through West Africa. The Council began to consider whether drug trafficking and organized crime might, in and of themselves, constitute threats to international peace and security – without any specific link to terrorism.^{xxiii} Between 2007 and 2009, the Council adopted a series of Presidential Statements and Resolutions tasking UN bodies in the region with assisting local actors to tackle organized crime, and ultimately describing it as a 'threat to international peace and security' – absent any requirement of a demonstrated link to terrorism.^{xxiv} The Council then began to import the language developed in the West African context into commentary on the impact of drug trafficking on other situations on its agenda, notably Afghanistan and Haiti.^{xxv} In Presidential Statements in late 2009 and early 2010, the Council committed for the first time to address the 'world drug problem' not only through supply side controls but through 'common and shared responsibility' – code in drug control circles for more holistic policies encompassing demand control, as well as eradication and supply controls. It also invited the Secretary-General to consider mainstreaming the issue of drug trafficking as a factor in conflict prevention strategies, conflict analysis, integrated missions' assessment and planning and peacebuilding support.^{xxvii}

2.1 The sovereignty obstacle

Chinese representatives were first to press the point that the Council's consideration of organized crime and trafficking should be limited to countries in conflict or post-conflict situations, or at most to conflict prevention situations.^{xxvii} This gentle pushback became more robust, however, when the American delegation instigated an open debate in April 2012 entitled 'Threats to international peace and security: Securing borders against illicit flows'.^{xxviii} The US representation argued that the Council should not address different forms of commodity trafficking in piecemeal fashion, but instead focus on efforts to strengthen national borders to deal with all trafficking.^{xxix} China responded bluntly that 'border management falls within the sovereignty of Member States', and that the Council should 'avoid duplication of labour and disrupting the functions of other United Nations bodies'.^{xxx} Other Member States clearly felt similarly. The Egyptian Chair of the New York caucus of the Non-aligned Movement (NAM) wrote an open letter to the Council criticizing it for holding the debate and encroaching on state sovereignty.^{xxxi} During the Council debate, the Pakistani, Indian and Cuban delegates all spoke loudly against the Council engaging with the issue on these terms.^{xxxii} Australia, Germany, the UK, the EU and the Secretary-General cautioned that hardening borders should not come at the expense of trade, migration and development.^{xxxiii}

Despite the differences within the Council, the US was able to steer through a Presidential Statement requesting a 'comprehensive survey and assessment of the UN's work' to assist states in countering illicit cross-border trafficking and movement.^{xxxiv} Understanding the limits of the Membership's

appetite for Council activism in this area, the resulting report by the Secretary-General cautiously mapped the roles of 20 UN entities and 3 non-UN bodies (IOM, WCO and INTERPOL), without suggesting new major initiatives.^{xxxv} The role of the UN is explicitly envisaged as one of coordination and technical assistance to states – squarely within the paradigm of ‘decentralized’ law enforcement. In that vein, the Secretary-General has established an internal Task Force on Drug Trafficking and Organized Crime, co-led by UNODC and DPA, to coordinate UN action in these areas – primarily through assistance to states.^{xxxvi}

2.2 Experiments with private enforcement

The enforcement of international counter-narcotics prohibitions falls to states. The role of legitimate business is marginal, except perhaps in the area of anti-money-laundering. But in some cases the Security Council has found that conflict actors and criminal networks have profited from trading licit goods, and has sought to create leverage over conflict actors by using sanctions mechanisms to prohibit trading these goods with actors in that conflict area. In some of those cases, the Council has begun to experiment with an approach to law enforcement that draws on the informal enforcement power of private actors, notably commercial enterprises.

The trend began with the Council’s attempts to constrain UNITA financing through trade in so-called ‘conflict diamonds’ in the 1990s, which also found application in some West African conflicts of the period. These efforts led to the creation of the Kimberley Process Certification Scheme, intended to reduce illicit trade in diamonds through cooperation between states and the private sector, which the Council endorsed in 2003. A decade later, the Council continues to look to the Kimberley Process as a partner in constraining conflict actors.^{xxxviii}

Two years after its endorsement of the Kimberley Process, the Council – acting under Chapter VII – strongly urged member states to implement the ‘comprehensive, international standards embodied in the Financial Action Task Force Recommendations on Money Laundering’, designed to filter dirty money out of financial markets and prevent terrorist financing. The FATF Recommendations, while generated by an inter-governmental body, operate through due diligence carried out by private financial institutions.^{xxxix}

In November 2010, the Council went a step further, having one of its own creations generate guidance for private business actors, when it adopted ‘Due Diligence Guidelines’ prepared at its request by a Group of Experts monitoring implementation of sanctions on the DRC. These were intended to ‘mitigate the risk’ of conflict in eastern DRC arising from the provision of direct or indirect support to illegal armed groups, sanctions busters, and ‘criminal networks and perpetrators of serious violations of international humanitarian law and human rights abuses, including those within the

national armed forces’.^{xl} The Council indicated that sanctions could be imposed against any entity – i.e. including businesses – that failed to exercise due diligence in accordance with those Guidelines. Soon after, these Guidelines were given additional force when the U.S. Congress adopted the Dodd-Frank Act, requiring industries to remove DRC suppliers from their supply-chain.

The next year, the Council adopted a similar due diligence scheme to remove Eritrean extractive enterprises from global supply chains, and extended the regime to the provision of financial services, including insurance and re-insurance, that would facilitate investment in the Eritrean extractive sector.^{xli} A subsequent 2012 resolution recognized that the ‘commerce’ in charcoal through Al-Shabaab controlled areas of Somalia ‘may pose a threat to the peace, security, or stability of Somalia’, and authorized a sanctions committee to impose targeted sanctions against ‘individuals and entities [i.e. charcoal-importing business in the Arabian Gulf] engaged in such commerce’ (emphasis added).^{xlii} 2014 resolutions took a similar approach to entities involved in illicit trade in wildlife in CAR and DRC.^{xliii}

This is new ground for the Council. The emphasis on private business actors as implementers of international norms moves away from a ‘criminal justice’ approach, towards a more ‘regulatory’ mode of enforcing international law.^{xliv} The Council has moved from prescribing primary rules of conduct for states to also prescribe primary rules of conducts also for private business. These ‘guidelines’ are strongly suggestive of secondary rules for states: rules about how they should themselves regulate business.

2.3 Experiments with direct enforcement

To date, Council experimentation with more *direct* UN involvement in enforcement has emerged along two main lines: fact-finding; and executive policing and military action.

2.3.1 Fact-finding

The Council has charged a range of different bodies with fact-finding on specific trafficking and related criminal activities. Through their monitoring and reporting activities, panels of experts have sometimes played a prominent role in helping the Council understand and even adjust sanctions regimes to address criminal trafficking. This has included illicit gem and mineral trafficking in Angola, Central African Republic, Liberia, Sierra Leone, eastern DRC and Eritrea, the illicit charcoal trade between Somalia and the Arabian Gulf, North Korean smuggling activities (including drug trafficking), and wildlife trafficking in CAR and DRC. Yet the Council faces two challenges in further developing this tool.

First – due process. The more these processes begin to resemble judicial fact-finding mechanisms, the higher the probability that members of these panels and commissions will be sued for libel or defamation, or that the sanctions based on their investigations will be challenged on human

rights grounds. This is not an abstract proposition. The report of a Panel of Inquiry established by the Secretary-General, at the request of the Security Council, to examine a massacre in Liberia in 1993 never saw the light of day, because of concerns about the reliability of its conclusions and the risks of defamation liability.^{xlv} The publication of a report by a panel established in 2000 to deal with the exploitation of natural resources in the DRC aroused similar controversy.^{xlvi} And 2012 reporting by an expert group on Somalia suggesting governmental corruption also generated threats of litigation.^{xlvii}

Interestingly, fact-finding mechanisms dealing with criminal trafficking have not become nearly as professionalized as those dealing with atrocity crimes. Two decades of operation of international war crimes tribunals have created an influential epistemic community of lawyers and judges, who have had a dramatic influence on the way the UN system handles atrocity crimes. That community has successfully pushed for the articulation of UN investigation methods to serve both human rights bodies and war crimes tribunals.^{xlviii} It has created a 'shadow' of criminal trial, when the Council has backed atrocity investigations (for example in dealing with Darfur and terrorist bombings in Lebanon).^{xlix} And its efforts have led to constraints on the Council's conflict management discretion that preclude the UN supporting offers of amnesty for war crimes. The absence of similar outcomes for dealing with economically-linked transnational criminal activity may be said to be the result of the absence of any similarly professionalized community or institutionalized forces. As I have explored elsewhere, there are signs that the continuing lack of clarity about which criminal trafficking can legitimately be internationally amnestied may create instability in peace agreements where, as in Colombia, non-state armed groups are deeply involved in organized crime.^l

In fact, this international 'trial' lobby's influence has even, on two occasions, extended into the area of organized crime broadly writ. First, in dealing with piracy, the Council has – as we shall see below – considered a wide range of law enforcement solutions before ultimately, with input from the 'international criminal justice' community, considering creating an international criminal trial process. Second, there is a case in which the international community has supported an internationalized criminal trial process to deal with organized crime groups: the International Commission Against Impunity in Guatemala (CICIG). But this had no Security Council involvement; it was supported entirely by the UN Secretariat.^{li}

The international community has previously considered broadening international trial mechanisms to cover some organized crime. The proposal in 1989 from Trinidad and Tobago that eventually led to the creation of the International Criminal Court contemplated the creation of a world drug trafficking court. Trinidad tried to revive the idea in

2009 by having the crime of 'drug trafficking' added to the ICC Statute. The idea was revived by several Council members at a Council retreat in 2011.^{lii} But further action on this idea seems unlikely in the near future, not least because of questions of cost, and ICC subject-matter jurisdiction.^{liii} Still, some organized criminal activity, such as human trafficking, may in some circumstances already fall within the Rome Statute.^{liiv}

A second factor constraining the Council's use of fact-finding bodies to deal with criminal activity is the question of sovereignty. This is particularly acute in dealing with criminal networks – since it is not unheard of for government actors to participate in those networks, as the Council's recent sanctions on Guinea-Bissau officials make clear.^{liv} Its earlier resolutions dealing with resource trafficking in eastern DRC likewise recognize the penetration of criminal networks into the Congolese armed forces.^{lv} Investigating criminal networks within government may threaten host-state consent and imperil UN staff safety. One can speculate that such reasoning may have influenced the Council's recent decision to ignore the Secretary-General's request to create a panel of experts to 'investigate the identity and activities of those involved in transnational and organized crime in Mali and the subregion, with the possibility of imposing punitive, targeted sanctions'.^{lvii} Interestingly, however, the Council did subsequently impose sanctions on individuals and entities 'providing support for armed groups or criminal networks' through trafficking of resources, including wildlife, in CAR – despite the presence in the country of a UN peacebuilding mission (BINUCA).^{lviii}

2.3.2 Executive policing and military action.

Another area of Council experimentation with direct enforcement against organized crime is in executive policing and military action by peacekeeping forces. Such action has happened more by accident than design. The UN Mission in Kosovo, in particular, found itself dealing with criminal networks in the local police, judicial and procurement institutions.^{lix} But since executive policing mandates are today comparatively rare, this area of practice has not grown significantly. Closely related, however, is the emerging question of military action by UN peace operations against organized crime groups. By far the most robust and successful action was taken by MINUSTAH against gangs in the *bidonvilles* of Haiti in 2007.^{lx} Operations by the Intervention Brigade charged by the Security Council with neutralizing the M-23, an armed group in eastern DRC that was involved in illicit resource trafficking, were, at the time of writing, also viewed as relatively successful. Interestingly, they were led by the same Brazilian Force Commander as the operations in Haiti. MINUSMA, in Mali, has however so far not been tasked with taking executive action against criminal networks in that country, despite acknowledgments by the Council of the relevance of trafficking to MINUSMA's broader stabilization role.

Some questions similar to those raised by executive policing and military action against criminal targets have arisen in the context of targeted sanctions. In the case of the Taliban and Al Qaida sanctions lists, the Council's use of delisting as an incentive to encourage peace talks has laid bare that the original listing was politically motivated, rather than an exercise in justice. This may be no surprise to close observers of the Council, but the use of criminal justice machinery to implement the sanctions regime at the national level has led to expectations amongst the public – and in some judicial quarters – that listing and delisting meets judicial standards.

The line between politics and justice has arguably become even more blurred in the case of Guinea-Bissau. There the Security Council has listed political and military leaders for unconstitutional behaviour. But the alleged involvement of some of those targets in drug trafficking (to which the Council has explicitly referred), the arrest of some of the targets by the US Drug Enforcement Administration, and the Council's own description of the sanctions as 'punitive' raises a basic normative question, with real practical consequences. Are these sanctions intended to facilitate criminal justice, or just to create political leverage?

The larger question here is in which cases the Council will act as a jury, finding that the demands of justice should be tempered by political considerations, and in which cases will it act more like a judge, treating these actors not as partners for peace, but as targets for law enforcement – even military action. Such decisions go to the heart of the Council's political discretion. But the more it adopts the language of 'criminal justice', the more it creates expectations that it will not act politically, but judicially – ignoring political exigencies and dealing out similar punishments to all who violate given legal norms. Its failure to ensure effective punitive action against those it has labelled as suspected criminals and even subjected to criminal trial process – such as Sudanese President al-Bashir – risks steadily eroding its legitimacy in the court of public opinion.

3. Piracy

The trajectory of the Security Council's response to maritime piracy has in many ways mirrored that relating to organized crime and trafficking. In both cases, the issue came onto the Council's agenda through conflict situations already there, with African situations figuring prominently. Over time, the criminal activity in question came to be considered a threat first to regional stability, and then to international peace and security in its own right. And ultimately, the Council decided to consider each issue in global context, through open, thematic debate.

The Somali piracy problem differed, however, from the Council's handling of organized crime and drug trafficking in four key respects. First, the legal definition of piracy as a crime in international law is clear and universally accepted, as is the right of every state to try and punish pirates. The

same was not the case for 'trafficking' or organized crime. Second, piracy involves conduct on the high seas, where the 'sovereignty obstacle' to Council involvement was weak. To the extent that Somali piracy occurred on land, it has been characterized primarily as occurring within Somalia – at the time a collapsed state with a weak government whose consent could relatively easily be solicited by members of the Council. Sovereignty poses a clearer obstacle to Council action in dealing with many other terrestrial criminal activities – arguably including those aspects of piracy conspiracies that occur within stronger states, such as the organization of piracy ransom payments. Third, Somali piracy imposed direct, significant economic costs on the permanent five members of the Security Council (P-5), which few other criminal activities have. (The exception, perhaps, being drug trafficking and terrorism – which have been the other objects of significant Council attention.) And fourth, there were few incentives for the NAM to object to Council action on piracy, unlike with other criminal activities. On the contrary, some NAM members – notably India – have found in the piracy issue an opportunity for strategic power projection, through participation in multilateral maritime enforcement activity in the Indian Ocean.

But the Council has, in a sense, also been a victim of its own success in this effort. In 'solving' the piracy problem (a questionable conclusion itself, as we shall see), it has identified another: the absence of effective judicial capacity to enforce counter-piracy norms to global due process standards.

3.1 Experiments with collective enforcement

While Somalia has been on the agenda of the Security Council for twenty years, it is only in the last ten that piracy has emerged on the international agenda. The collapse of central authority in Somalia in the 1990s led to the rise of local militias, some of whom graduated from protection of fishery stocks to hijack and ransom of vessels passing through the major shipping lanes in the Gulf of Aden. By 2011 the costs of Somali piracy had reached \$7 billion.^{lxi}

Absent Council involvement, international law limited Member States' rights of arrest of piracy suspects to the high seas. Under customary international law and the 1982 UN Convention on the Law of the Sea (UNCLOS), the policing of armed robbery against ships within territorial waters, and the policing of terrestrial involvement in piracy are the responsibility of the territorial state. Yet Somalia, where most of the preparation and hostage-holding took place, lacked the necessary law enforcement and judicial capacity to bring its pirates to justice – the whole reason the issue was on the Council's agenda in the first place.^{lxii} There was a lacuna, which the pirates were profitably exploiting.

The Council responded in June 2008, authorizing Member States' use of force within Somalia's territorial waters (later extended also to Somalia's land territory).^{lxiii} It had learned lessons from its earlier experiences dealing with terrorism,

taking several steps aimed 'at fending off possible criticism [for] acting as a "legislator"', including obtaining explicit Somali government consent, ensuring that the Resolution did not radically alter international law (for example, by specifically protecting existing third party innocent passage rights), and limiting the scope of the authorization in time and space.^{lxiv}

In contrast to their critical response to the Council's counter-terrorism efforts in Resolution 1373 (2001), Member States responded enthusiastically. Numerous multilateral naval operations were initiated: the EU's Operation Atalanta, two NATO operations (Allied Protector and Ocean Shield), a separate maritime task force (TF 151) involving both NATO and non-NATO states (including Australia, New Zealand, Pakistan, the Republic of Korea, Singapore, Turkey and Thailand), as well as operations by China, India, Iran, Japan, Malaysia, and Russia.^{lxv} All of this activity required operational coordination, so in January 2009 Member States set up a Contact Group on Piracy off the Coast of Somalia (CGPCS) outside the UN system, which was soon endorsed by the Council.^{lxvi} It is open to states, international organizations and the private sector, and operates through five working groups, dealing with: 1) military coordination and regional maritime capacity development; 2) legal issues; 3) commercial shipping self-awareness and self-protection, including through promulgating Best Management Practices and the Djibouti Code of Conduct; 4) public communications; and 5) efforts to identify and disrupt the financial networks of pirate leaders and their financiers.

CGPCS has both similarities and differences to the Council's approach taken to other forms of organized crime. The involvement of private sector actors (such as shipping associations) in both the development and implementation of CGPCS norms does echo the 'private enforcement' approach developed by the Council in the resource trafficking context. But whereas enforcement against most organized crime is decentralized, the CGPCS regime provides a coordination mechanism for collective enforcement. The UN Convention against Transnational Organized Crime (a General Assembly legal instrument) creates no system similar to the CGPCS for collective decision-making about the strategic allocation of resources to fight organized crime. As commentators have pointed out, that is a central weakness in the global enforcement of international criminal law.^{lxvii} CGPCS also develops secondary regulatory norms, such as the Djibouti Code of Conduct, designed to coordinate how different international actors (state and non-state) implement the primary rules of conduct created by the Security Council. This somewhat resembles the approach taken by the Council in tasking expert bodies to develop 'due diligence' guidelines to tackle illicit resource trafficking.

Still, as the Council learned, while CGPCS has helped address problems of coordination, it cannot solve another

problem that confronts the Council in its efforts to enforce international law: the limited supply of effective judicial capacity. In fact, the more the problems of coordination in naval interdiction were overcome, the more the problem of limited effective judicial capacity was revealed.

3.2 The due process obstacle

It is one thing to authorize state navies to police international law far from home. It is quite another to ensure that those navies undertake these unaccustomed policing roles in a manner that meets the due process expectations of their home state courts and regional human rights institutions.

States quickly began to treat the counter-piracy regime more as a basis for naval patrols in the Indian Ocean and Gulf of Aden than as a basis for arrest and prosecution of pirates. A Danish ship that captured 10 pirates off Somalia in September 2008 let them loose on a Somali beach.^{lxviii} The British Foreign Office warned its military *not* to detain pirates because of the cost and risk of violating international law.^{lxix} By 2011, the US Congressional Research Service found that 90 percent of all pirates being detained off Somalia were *not* being brought to trial.^{lxx}

The Council, and the GCPCS, recognized this problem and responded by trying to address the judicial capacity deficit. Resolution 1846 (2008) encouraged states to work together to build effective criminal justice capacity in the region.

^{lxxi} The focus was on Kenya and the Seychelles, with legal arrangements put in place for detaining powers to transfer suspected pirates to those countries for trial,^{lxxii} but by mid-2010 there were also reports of pirates being handed over to Somali, Puntland and Yemeni authorities, and discussions of prosecution arrangements between the EU and Mauritius, Mozambique, South Africa, Tanzania and Uganda.

Building effective judicial capacity – and thus deterrence – was always going to take time. In the meantime, attacks rose, from 293 in 2008 to 406 in 2009, and the attack area expanded out into the Indian Ocean as pirates invested the proceeds of successful ransoms in larger, faster ships. In fact, the judicial capacity deficit was not shrinking, but growing. In 2009, the Kenyan High Court found that Kenyan courts did not have jurisdiction to try piracy cases.^{lxxiii} In 2010, a Dutch court found that pirates had spent so long on board a ship while being transferred back to the Netherlands for trial that the standards set by the European Court of Human Rights for detention and trial had been violated.^{lxxiv} And in November 2011, a court in Cologne ruled that Germany had violated the prohibition on torture, inhuman and degrading treatment (Articles 3 ECHR and 7 ICCPR) by transferring Somali pirates to Kenya.^{lxxv}

The Council began to consider whether it might need to create a specialized international piracy court to deal with the capacity deficit. Resolution 1918 (2010) asked the Secretary-

General to report on the options, including mixed special chambers (like those used to try war crimes suspects in Bosnia and Cambodia), a regional tribunal, or an international tribunal.^{lxxxvi} In early 2011, former French Foreign Minister Jack Lang, appointed as a UN special adviser on the issue, recommended a Somalia-based solution: strengthened legislation and detention capacity, and the creation of a Somali extraterritorial jurisdiction court in Arusha, in Tanzania, later to be transferred to Mogadishu (similar to the Scottish court in the Netherlands that had ultimately tried the Lockerbie suspects), with two further special courts in Puntland and Somaliland.^{lxxxvii} Further investigation, however, identified significant legal, constitutional, human resources and resourcing complications, and the Council's interest waned.^{lxxxviii} The idea of establishing specialized piracy courts within national jurisdictions, in contrast, has slowly gained favour.^{lxxxix} Yet donors remain concerned about funding options. The Council has encouraged the shipping industry to pay for effective judicial capacity in the region^{lxxx} – but to little effect. And local states see the emphasis on piracy chambers as potentially diverting resources from other domestic judicial needs, with no guarantee that such chambers would in fact be 'full'.^{lxxxi}

3.3 Lessons learned?

The question began to appear moot, however, when attacks began to decline: 250 in 2010 and 284 in 2011, to 99 in 2012.^{lxxxii} In late April 2013, the US Chair of the CGPCS effectively declared victory over Somali piracy, indicating that steps taken by the CGPCS – naval interdiction, increased ship security, detention, trial and severe sentences – had so 'de-glamorized' piracy in Somalia that the industry was collapsing.^{lxxxiii}

Certainly, the CGPCS regime had generated a lot of enforcement activity. By 2011, there were over 1,000 Somali piracy suspects detained in countries from Belgium to Yemen, from the US to Malaysia.^{lxxxiv} But there are reasons to doubt that this decline is the result of a successful strategy of deterrence. As we have seen, most pirates are in fact *not* tried; they are released, for reasons of cost and legal constraints. There is no hard evidence that the factors cited by the Chair of the CGPCS have indeed influenced into Somali pirate decision-making. Moreover, the decline in attacks can also be explained by very different factors. International data make clear that the ransom obtained from each successful attack rose steadily from an average of \$600,000 per vessel in 2007 to \$4.7 million per vessel in 2011.^{lxxxv} There may simply be fewer attacks now because fewer are needed to sustain the piracy workforce and their supporters and investors. And improvements in the economic and security situation within Somalia must also be considered: piracy recruits may now have safer, more attractive livelihood options on land.

Yet some actors in the Council seem to see the 'success' of the Somali piracy response as a model for action against piracy in other regions. Piracy in the Gulf of Guinea has risen steadily in recent years: in 2010 there were 45 attacks; in

2011, 64.^{lxxxvi} UN officials have been raising concerns with the Council since July 2009.^{lxxxvii} In October 2011, the Council called for strengthened regional cooperation and welcomed an assessment mission by the UN Secretariat to recommend further steps. That mission warned, the following January, of 'catastrophic' consequences of inaction.^{lxxxviii} In February the Council called on states to increase collective enforcement actions such as joint naval patrols, and regional law enforcement, with the UN playing a facilitative role. As the Deputy Secretary-General made clear later that year, the UN's response to piracy in the Gulf of Guinea specifically sought to 'rely on the lessons learned from Somalia'.^{lxxxix}

Yet there are reasons to think that differences in the political contexts of Somalia and the Gulf of Guinea may limit the transferability of the Somali piracy response model. In the Somali context, the Transitional Federal Government was unable to control piracy, and consented to the Council authorizing collective enforcement action. In contrast, in the Gulf of Guinea context, the 2011 UN assessment mission heard from some interlocutors that there were 'possible political motivations for some of the pirate attacks that may seek to use piracy as a weapon to affect political developments in specific regional States.'^{xc} This was a reference to Nigeria. Piracy may be the latest manifestation of a deeply entrenched and criminalized war economy in the Niger Delta. Nigeria seems much less likely to support international involvement in responding to piracy than was Somalia.

On 19 November 2012, the Council held its first open debate on piracy as a global threat to international peace and security notably instigated by a leading NAM country, India.^{xcii} India's strong concern about piracy is not surprising: much of its trade passes through the Gulf of Aden, its nationals constitute seven percent of the world's seafarers, and Indian nationals are the second-largest group of Somali piracy hostages (after Filipinos).^{xciii} Some speakers in this debate, notably the British Permanent Representative, recognized that piracy 'is organized crime' thriving 'in places where the rule of law is weak or has broken down'.^{xciii}

The British representative clearly had in mind the waters off Somalia and in the Gulf of Guinea. Other countries might point, however, to the London offices of the private security companies, shipping agents and financial houses that participate in the payment of piracy ransoms. The Council has condemned the payment of such ransoms, but taken few operational steps to force states to enforce that condemnation.^{xciv} The Council has contemplated the creation of an anti-piracy court with jurisdiction over 'anyone who ... intentionally facilitates piracy operations, including key figures of criminal networks involved in piracy who illicitly plan, organize, facilitate, or finance and profit from such attacks'.^{xcv} And France and Russia have both called for sanctions against such individuals.^{xcvi} Yet the shadow of the British veto is such that any such exercise of enforcement powers seems unlikely to follow such networks into British

jurisdiction. Ultimately, exactly what constitutes 'piracy' may not be so clearly agreed as the members of the Council had thought. Powerful states seem likely to be reluctant to allow the Council to have the last word on that question, demonstrating the enduring obstacle posed by sovereignty to the Council's involvement in international law enforcement.

4. Conclusions: the politics of international law enforcement

The Security Council's approach to organized crime, trafficking and piracy has drawn it into a variety of law enforcement experiments. The Council has moved furthest, fastest, where the criminal activity in question threatened P-5 interests, the country was already on the Council's agenda, and no state with influence in the Council had a particular reason to limit such experimentation. The cases that have exhibited these traits so far have been drug trafficking in Afghanistan and Guinea-Bissau, piracy off the coast of Somalia, mineral trafficking from DRC and Eritrea – and most recently, wildlife trafficking in central Africa.

The sovereignty and resource obstacles have been particular drivers of Council experimentation. The limited willingness or capacity of states to deliver effective international law enforcement resources has forced the Council to look for alternative solutions, including creating international criminal justice mechanisms and, increasingly, encouraging the involvement of private sector actors. The 'regulatory' approach that may be emerging, using outside expertise to help develop norms to be enforced following Council endorsement, offers an important supplement to the Council's repertoire, but also raises a series of questions around participation and voice in the development of these norms.

The Council also continues to struggle with integrating this 'law enforcement' approach with a conflict management approach. This is a result of the 'due process' obstacle thrown up by attempting to import criminal justice techniques from the domestic to the international plane. The Council's absolute political discretion is hard to reconcile with visions of 'rule of law' born within the context of the *Rechtsstaat*, in which executive action is subject to judicial review and constrained by individual rights. The use of criminal justice discourse and techniques has created expectations that those treated as outlaws will be brought to justice; yet the Council ultimately prefers, in some cases such as Afghanistan and Guinea-Bissau, to treat these actors not as targets for law enforcement, but partners for peace. However politically wise, this risks creating perceptions of unequal treatment before the law amongst those whose expectations of justice have been stoked by Council rhetoric.

The simple reality is that the Security Council is a political body, not a forum for justice. It does not treat like cases alike. It may conclude that some instances of violence warrant not punishment, but conflict resolution, whether because of the traits of the case, or because of its own limited access to effective law enforcement capacity. In making such choices, the Council works not just like a 'jury' of peers, with room for 'feelings and biases', but – perhaps as FDR envisaged 70 years ago – like a community police force, exercising considerable operational and tactical discretion. The danger for the Council is that over time, an over-reliance on criminal justice discourse may create a dangerous gap between its practice and public expectations of the Council as an enforcer of the international rule of law. An adjustment of rhetoric – and possibly also of practice – may be warranted.

ⁱ Franck, *Recourse to Force*, pp. 186-187.

ⁱⁱ Malone, *The International Struggle over Iraq*, pp. 67-68.

ⁱⁱⁱ Higgins, *Problems & Process*, 184.

^{iv} See S/RES/731 (1992), 21 January 1992, S/RES/748 (1992), 31 March 1992, S/RES/883 (1993), 11 November 1993, and S/RES/1192 (1998), 27 August 1998. And see Plachta, 'The Lockerbie Case'.

^v S/RES/1044, 31 January 1996; S/RES/1054, 26 April 1996; S/RES/1070, 16 August 1996.

^{vi} In creating or supporting the ICTY, ICTR, SCSL, Extraordinary Chambers in the Courts of Cambodia, and the Special Panels in East Timor.

^{vii} Cockayne, 'Unintended Justice'.

^{viii} S/RES/2134 (2014), 28 January 2014.

^{ix} UNODC, *Estimating Illicit Financial Flows*.

^x UN Doc. A/RES/60/1, 24 October 2005, para. 111. See also paras 112-115.

^{xi} Geneva Declaration, *Global Burden of Armed Violence 2011*, p. 4.

^{xii} World Bank, *WDR 2011: Conflict, Security and Development*.

^{xiii} Kemp et al., 'The Elephant in the Room', p. 12.

^{xiv} Talmon, 'The Security Council as World Legislature'.

^{xv} UNODC, 'Drug Trafficking as a Security Threat in West Africa'.

^{xvi} Franck, 'Interpretation and Change', p. 229.

^{xvii} See the case studies in Cockayne and Lupel, eds., *Enemies or Allies?*

^{xviii} Security Council Report, *Update Report No. 1*, 4 December 2009.

^{xix} S/RES/1333 (2000), 19 December 2000. See also S/PRST/2003/7, 18 June 2003; and UN Doc. SC/8850, Press Statement, 9 October 2006; and S/RES/1817 (2008), 11 June 2008.

- ^{xx} Crosette, 'Tough Sanctions Imposed', *New York Times*.
- ^{xxi} S/RES/1373 (2001), 28 September 2001, OP 4.
- ^{xxii} The term was used by Antonio Maria Costa, former UNODC Executive Director. See S/PV.6277, 24 February 2010, p. 21.
- ^{xxiii} See Cockayne and Williams, 'The Invisible Tide'; and Cockayne, 'The Criminalization of West Africa and the Sahel'.
- ^{xxiv} S/RES/1829 (2008), 4 August 2008; S/RES/1876 (2009), 26 June 2009; S/PRST/2009/20, 10 July 2009; S/RES/1885 (2009), 15 September 2009; S/PV.6212, 5 November 2009; and S/PRST/2009/29, 5 November 2009.
- ^{xxv} See S/RES/1890 (2009), 8 October 2009; and S/RES/1892 (2009), 13 October 2009.
- ^{xxvi} See S/PRST/2009/32, and the discussion in S/PV.6233, both 8 December 2009; and S/PRST/2010/4, and S/PV.6277, 24 February 2010.
- ^{xxvii} S/PV.6277, 24 February 2010, p. 10; S/PV.6668, 23 November 2011, p. 25.
- ^{xxviii} See S/PV.6760, 25 April 2012.
- ^{xxix} *Ibid.*, pp. 18-19.
- ^{xxx} *Ibid.*, p. 11.
- ^{xxxi} UN Doc. S/2012/257, 25 April 2012.
- ^{xxxii} S/PV.6760, 25 April 2012, pp. 8, 17, 29.
- ^{xxxiii} *Ibid.*, p. 12, 16, 25.
- ^{xxxiv} S/PRST/2012/16, 25 April 2012.
- ^{xxxv} UN Doc. S/2012/777, 19 October 2012.
- ^{xxxvi} See the briefing to the Council on this Task Force in S/PV.6565, 24 June 2011.
- ^{xxxvii} See S/RES/1459 (2003), 28 January 2003.
- ^{xxxviii} See for example S/RES/2134 (2014), 28 January 2014, on CAR.
- ^{xxxix} See S/RES/1615 (2005), 29 July 2005, OP 7.
- ^{xl} S/RES/1952 (2010).
- ^{xli} S/RES/2023 (2011), 5 December 2011.
- ^{xlii} S/RES/2036 (2012), 22 February 2012, OP 23.
- ^{xliii} S/RES/2134 (2014), 28 January 2014 and S/RES/2136 (2016), 30 January 2014.
- ^{xliv} On the 'regulatory' mode see Cockayne and Malone, 'The UN Security Council: 10 Lessons from Iraq on Regulation and Accountability'.
- ^{xlvi} But see Wako, 'The Carter Camp Massacre'.
- ^{xlvi} See UN Doc. S/2003/1027, 23 October 2003, paras 9-32.
- ^{xlvii} BBC, 'Somalia anger at corruption claims in leaked UN report', *BBC News*, 17 July 2012.
- ^{xlviii} See Pillay, 'Human Rights Investigations and their Methodology'.
- ^{xlix} In both cases, the Security Council mandated an investigation which led to the institution of criminal trial proceedings, before the ICC (for Sudan) – see S/RES/1564 (2004), 18 September 2004; S/RES/1593 (2005), 30 March 2005 – and the specially-created Special Tribunal for Lebanon – see S/RES/1595 (2005), 7 April 2005; S/RES/1757 (2007), 30 May 2007.
- ^l James Cockayne, 'Strengthening Mediation to Deal with Criminal Agendas', Oslo Forum Paper No. 002, Centre for Humanitarian Dialogue, Geneva, November 2013.
- ^{li} Hudson and Taylor, 'The International Commission Against Impunity in Guatemala'.
- ^{lii} Anonymous official in the UN Secretariat.
- ^{liii} The ICC declined in June 2013 to open an investigation into sexual abuse by Catholic priests in part on the grounds of lacking subject-matter jurisdiction.
- ^{liv} See Rome Statute, Article 7(g).
- ^{lv} See S/RES/2048 (2012), 18 May 2012.
- ^{lvi} S/RES/1952 (2010).
- ^{lvii} UN Doc. S/2013/189, 26 March 2013, pp. 161-17.
- ^{lviii} S/RES/2134 (2014), 28 January 2014. See also the very similar language in S/RES/2136 (2016), 30 January 2014, on DRC.
- ^{lvix} See Friesendorf, 'Problems of Crime-Fighting by "Internationals" in Kosovo'.
- ^{lx} Cockayne, 'The futility of force'.
- ^{lxi} Oceans Beyond Piracy, 'The Economic Costs of Piracy 2011'.
- ^{lxii} See Treves, 'Piracy, Law of the Sea, and Use of Force'.
- ^{lxiii} S/RES/1816 (2008), 8 June 2008, OP 7; S/RES/1851, 6 December 2008, OP 6.
- ^{lxiv} Treves, 'Piracy, Law of the Sea, and Use of Force'; on the consent issue see Letter to SC President, 27 February 2008 referenced in doc. S/2008/323, 12 May 2008; and S/PV.5902 at pp. 2-5.
- ^{lxv} See e.g. S/2012/783
- ^{lxvi} S/RES/1897 (2009), 30 Nov 2009.
- ^{lxvii} Standing, 'Transnational Organized Crime and the Palermo Convention: A Reality Check'.
- ^{lxviii} US Office of Naval Intelligence, 'Worldwide Threat to Shipping, Mariner Warning Information', 17 October 2008, para. 10.
- ^{lxix} Rivkin Jr. and Casey, 'Pirates Exploit Confusion about International Law', *Wall Street Journal*, 19 November 2008.
- ^{lxx} *Piracy off the Horn of Africa*, 27 April 2011.

- ^{lxxi} S/RES/1846 (2008), 2 December 2008.
- ^{lxxii} See for example 'Exchange of letters for the conditions and modalities for the transfer of persons having committed acts of piracy and detained by the European Union-led Naval Force (EUNAVFOR), and seized property in the possession of EUNAVFOR, from EUNAVFOR to Kenya' in OJ (2009) L79/49, annex to EU Council decision 2009/293CFSP of 26 February 2009.
- ^{lxxiii} *In re Mohamud Mohamed Dashi & 8 ors* [2009] eKLR, Mombasa HC, Misc. Application 434 of 2009; Bellish, 'After a Brief Hiatus'.
- ^{lxxiv} LJN: BM8116, Rechtbank Rotterdam, 10/600012-09.
- ^{lxxv} Verwaltungsgericht Köln, 25 K 4280/09.
- ^{lxxvi} S/RES/1918 (2010), 27 April 2010, OP4. The recommendations are contained in S/2010/394, 26 July 2010.
- ^{lxxvii} UN Doc. S/2011/30, 25 January 2011.
- ^{lxxviii} S/RES/1976 (2010), 11 April 2011, OP 26; S/2011/360, 15 June 2011.
- ^{lxxix} See for example S/RES/2015, 24 October 2011.
- ^{lxxx} S/RES/1976 (2010), 11 April 2011, OP 27.
- ^{lxxxi} UN Doc. S/2012/50, 20 January 2012.
- ^{lxxxii} IMO Data.
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- ^{lxxxix} UK House of Commons, Foreign Affairs Committee, 'Piracy off the coast of Somalia', 20 December 2011.
- ^{lxxxv} UK House of Commons Foreign Affairs Committee, December 2011.
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- ^{lxxxvii} S/PRST/2010/20, 10 July 2009.
- ^{lxxxviii} UN Doc. S/2012/45, 19 January 2012.
- ^{lxxxix} S/PV.6865, 19 November 2012, p. 2.
- ^{xc} S/2012/45, para. 60.
- ^{xc} S/PV.6865, 19 November 2012, p. 9.
- ^{xcii} IMB and OBP, 'The Human Cost of Somali Piracy 2011', p. 18.
- ^{xciii} *Ibid.*
- ^{xciv} S/RES/2077 (2012), 21 November 2012.
- ^{xcv} S/RES/2015, 24 October 2011, OP 17.
- ^{xcvi} S.PV/6865, 19 November 2012, pp. 5, 6.

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