Brandishing "Legal Tools" in the Fight Against Piracy and Armed Robbery at Sea

CDR James Kraska, JAGC, USN
Howard S. Levie Chair in Operational Law
US Naval War College
44% of 289 piracy incidents worldwide (Jan-Sep 2010)
Internationally Recognized Transit Corridor (IRTC)
Visit, Board, Search and Seizure
Rubik’s Cube

- Flag state of the vessel
- Flag state of the warships
- State of incorporation of the owner of the vessel
- State(s) of incorporation of the cargo owner
- Nationality of the crew
- Nationality of the pirates
Contact Group on Piracy off the Coast of Somalia

1: Naval operations—United Kingdom
2: Prosecution of pirates (judicial)—Denmark
3: Enhance shipping industry awareness—United States
4: Improve public diplomacy—Egypt
• National procedures and decision-making frameworks—prompt decisions
• Post-trial transfer
• Facilitate seafarer witnesses
• Criminalization of associated acts
  – Piracy-related equipment
• Human rights—policy and law
• Legal aspects of piracy financing
CGPCS WG2

• 6th meeting - Copenhagen November 2010
• Legal framework for the transfer of convicted pirates from Kenya and Seychelles to Somalia
  – Serve sentences in the newly constructed UN prison that opened at Hargeisa, Somaliland on November 22, 2010.
  – A model bilateral prisoner transfer agreement could tie the criminal courts in neighboring nations to the prison facility in Somalia.
  – Prisoners must accept the transfer
Djibouti Code of Conduct

(Seychelles, 12-16 October 2009)

Immediate tasks:

• Establish information sharing centres: Sana’a, Mombasa, Dar es Salaam
• Establish Djibouti training centre
• Train HOA officers
• Develop HOA national law, rules and regulations
Djibouti Code of Conduct
(Seychelles, 12-16 October 2009)

Short-term tasks
• Establish HOA MDA (AIS, LRIT, radar communications networks)

Medium-term tasks
• Needs assessment for coast guards (boats, equipment, facilities, training)

Long-term tasks
• Establish HOA maritime infrastructure for safely, security, environmental resources management
New York Declaration

• Commits signatories to develop best management practices for merchant ships flying their flag, and to ensure that vessels on their registry are implementing the measures.

• By July 2010, 10 countries had signed the declaration.
“Legal Toolbox”

• US Counter-Piracy Evidence Collection Guidance
• Kenya Transfer Guidance for piracy Suspects
• Seychelles Transfer Guide
UN Secretary-General

1. Build regional capacity
2. Create a Somali court in a regional state
3. Create a special tribunal in a regional state *without* UN support
4. Create a special tribunal in a regional state *with* UN support
5. Create a regional tribunal
6. Establish an international tribunal
7. Create an UN Security Council piracy court