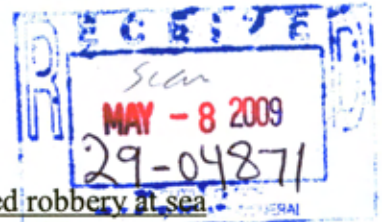


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Note to Mr. Nambiar



Possible judicial accountability mechanism to combat piracy and armed robbery at sea

1. Further to the discussion we had on Thursday, 5 May, in the Secretary-General's meeting with senior advisers when the matter of piracy was raised, I wish to brief you on a meeting I had today with Ambassador Martin Ney, Deputy Permanent Representative of Germany, on that issue (German non-paper attached). It has recently become evident that States are actively contemplating solutions to the wide range of legal problems regarding criminal accountability in respect of piracy. The Russian Federation, among others, have been expressing an interest in the idea of establishing an international court for piracy.
2. While the current agreement between the EU and Kenya on the transfer of suspects for their prosecution in Kenyan courts appears to be working well, it seems clear that this arrangement does not offer a viable long-term solution to the problem. The shortcomings of this arrangement include the lack of jurisdiction of some States, procedural problems and issues of physical capacity.
3. Among others, the German Government has been actively considering ideas of creating a new international judicial mechanism to hold perpetrators of the crimes in question accountable. Two options were mentioned: (1) an internationalized chamber embedded in a national judiciary following the model of the Extraordinary Chambers in the Courts of Cambodia (ECCC); or (2) a treaty-based "stand-alone" international court based in the region following the model of the Special Court for Sierra Leone (SCSL).
4. We expressed interest but at the same time we raised some reservations about option (1) because of our experience with the concept of a "hybrid" chamber within a national jurisdiction. We also noted that the SCSL model (option 2) has been a great success that served its purpose very well.
5. The question was raised as to whether an international court could be based on an agreement between the European Union and the African Union "with a blessing by the Security Council". In that regard, we expressed interest but cautioned whether such an arrangement might have the potential to exclude many States, including several key States such as the Russian Federation, the United States and others.
6. While noting that we would certainly be available for and interested in continued discussions, I pointed out that the matter was within the prerogative of States and that OLA would not for the moment assume a pro-active role in this regard. We are of course following this topic very closely and in that regard we mentioned our active participation in the promising work of the "Contact Group on Piracy off the Coast of Somalia".
7. We will continue to follow this issue closely and will keep you informed of any new developments and will furnish more detailed reports as the matter evolves.

Patricia O'Brien  
7 May 2009

cc.: Mr. Le Roy  
Mr. Pascoe  
Mr. Kim  
Mr. Haysom

MAY - 8 2009