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COMMENTARY

Editors: Jacek Foks (Editor-in-Chief), Łukasz Adamski, Beata Górka-Winter, Leszek Jesień,
Agnieszka Kondek (Executive Editor), Łukasz Kulesa, Marek Madej, Ernest Wyciszkievicz

UN Security Council Resolution of 27 April 2010 on Prosecution of Piracy

by Rafał Kownacki

In resolution no. 1918 of 27 April 2010 the UN Security Council has once again addressed the issue of piracy off the coast of Somalia. The resolution, issued in connection with problems with prosecution of persons responsible for piracy, may lead to creation of an international tribunal for prosecution of suspected pirates.

The UN Security Council resolutions adopted up to now concerning piracy were intended to restore security of international shipping and peace as defined in Chapter VII of the United Nations Charter,¹ however the 27 April resolution focuses on the problem of prosecuting persons responsible for piracy and imprisoning convicted pirates. The criminalization of piracy is a *ius cogens* norm in the catalogue of sources of international law, and therefore all states have the obligation to combat piracy and prosecute persons responsible for piracy. In this connection the resolution cites the limited capacity of the judicial system in Somalia to effectively prosecute pirates. The situation did not improve following the adoption in Djibouti in January 2009 by states in the region of a code of conduct for combating piracy, containing an undertaking to coordinate prosecution and judicial measures.

Security Council resolution 1918 reiterates that one of the fundamental goals of operations conducted by NATO (Ocean Shield), the EU (Atalanta) and other institutions is—in addition to prevention and prosecution—bringing persons responsible for piracy to justice. It states that this is the obligation of the entire international community, and not only countries in the region, and that in view of the distances involved, cultural differences and right of defendants to a court trial within a reasonable period of time, non-African states should not bring pirates to justice before their own prosecution services. They do have an obligation to provide institutional and material assistance enabling efficient and just judgment of piracy suspects in the countries of origin. For this purpose the experience should be put to use that has been gained by the working group on judicial issues of the Contact Group on Piracy off the Coast of Somalia coordinated by Denmark and created in January 2009 on the basis of Security Council Resolution 1851. This group, made up of representatives of governments, international organizations and business, provided major support for reform of ineffective judicial and prison systems in Somalia, Kenya and other states in the region. The creation by the Contact Group of the International Trust Fund (ITF) to combat piracy has enabled sources to be obtained for training of judges, state prosecutors and prosecution service personnel. In cooperation with the government of the Seychelles a regional centre for prosecution of pirates was set up in March 2010 in Victoria.

It is in the interest of all states—especially those that obtain profits from sea trade—to support the actions of the Contact Group and ITF as an incentive to the African states in the combating of piracy. Collapse of this process might mean that an international piracy tribunal has to be set up. Security Council 1918 requires the UN Secretary-General to present a report, within three months, on the potential for bringing pirates to trial. The following options are under consideration: maintaining national jurisdiction while the international community provides material support establishing mixed chambers in domestic courts with international components; creating a special regional court and international piracy tribunal. The last scenario would mean long-term and high costs for the UN, and for individual states, forced to incur additional expenses in connection with prosecution and judicial procedures and holding of convicted persons. In an effort to avoid this, the EU and developed countries need above all to increase funding for the ITF. This will not only serve their economic interests but would also be a factor contributing to increased efficiency in trying persons responsible for piracy off the coast of Somalia.

¹ See: R. Tarnogórski, "International Action against Somali Pirates," *Bulletin* (PISM) No. 8 (540), 2 February 2009.