

Report by Patrick Griggs on the meeting of the Political Affairs Committee of the European Parliamentary Assembly in Brussels on November 17 2009 and the ICLN Conference in The Hague

Background

At the IMO Djibouti Meeting of the Contact Group on Piracy off the Coast of Somalia in January this year, and following the publication of the Djibouti Code, it was decided to create three Working Groups to carry the project forward. Working Group 2 is charged with addressing "judicial aspects of piracy". Ambassador Thomas Winkler from Denmark is the Chairman of this Group.

Having discovered that the Group was to hold its fourth meeting in the week beginning November 23rd, an email was sent to Thomas Winkler on November 20th attaching a copy of the CMI Guidelines (LEG 93/12/1) and suggesting that if his Working Group was planning to assist member states in updating their law on piracy, it might like to use the CMI Guidelines as a starting point. He acknowledged the message with thanks.

The ICLN conference was very well organised, with some high powered speakers including Prof. Vaughan Lowe, a well respected international public law professor at Oxford University, and many other academic and military/naval personnel. Thomas Winkler was also a speaker and played a very active part in the conference proceedings.

In his initial presentation he reported on the outcome of the four meetings of Group 2 which have already taken place. He stressed that there was still much to do but indicated that the Group had already decided that there was no need for further international instruments such as conventions, model laws or codes. The reasons were interesting:

1. It is hoped that the Djibouti Code will, itself, become a Convention in due course and this contains obligations on States Parties to review national piracy legislation and ensure that it complies with the standards set by UNCLOS (Art.11). It follows, the Group feels, that no further instruments would help or are required.
2. The Group has detected that there is an absence of political will on the part of States Parties to the Djibouti Code to exercise the extra-territorial jurisdiction authorised by UNCLOS whereby naval vessels may arrest pirates and render them to the home jurisdiction for trial and punishment. The reason for this lack of will to act is clear:
 - (a) rendering captured pirates is expensive
 - (b) most States have full prisons and do not wish to add to overcrowding by introducing prisoners who have not committed domestic crimes
 - (c) the collection of evidence and subsequent trials would be expensive and a logistical nightmare with the need to repatriate naval and other witnesses to give evidence
 - (d) whether the case against the pirates succeeds or fails, a time will come when the pirates will be released whereupon they will inevitably apply for asylum which will simply add to immigration problems.

For these and other reasons it is understandable that, nice as it would be for there to be some international unification of piracy law, there is little point in such unification if States remain reluctant to apply that law.

The Group is now working towards a more regional solution with the possible creation of "Hybrid Courts". These would be courts set up in stable countries near Somalia, or other piracy hotspots, staffed by local judges with financial and personnel support from concerned States. (The current

agreement with Kenya to render pirates to that jurisdiction for trial and punishment is working but is overwhelmed by the numbers of pirates being transferred.) Work on this will continue.

There seems to be no place, at least at this stage, for the CMI Guidelines. CMI should continue to monitor (at long range) the work of Working Group 2 in case the position changes.

Insofar as the Political Affairs Committee of European Parliamentary Assembly is concerned, it is unclear why it is taking an interest in this topic as it is well outside its terms of reference and it does not have any mandate to promote international solutions.

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