

SIMULATED TRIALS CATALOGUE

GLOBAL MARITIME CRIME PROGRAMME

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Launched in 2009, the Global Maritime Crime Programme (GMCP) supports United Nations Member States through the comprehensive strengthening of criminal justice to combat maritime crimes including piracy, smuggling of migrants, trafficking in persons and trafficking of illegal substances. As part of this support, UNODC GMCP provides prosecutors, legal practitioners and judges with training and expert advice to better prepare and conduct prosecutions of maritime crime cases. This training catalogue aims to guide national judicial authorities through the exercise of simulated trials that serve to test domestic legal frameworks, investigative and prosecutorial preparation and court proceedings through maritime crime case scenarios. These exercises seek to address on the ground challenges, including those of case preparation, evidence handling, advocacy and legal submissions. The ultimate objective is to ensure a legal finish to maritime crimes by strengthening the jurisdictional and criminal laws and practices of countries to effectively prosecute piracy and other maritime crime.

In order to maximise the results of the training, UNODC GMCP has on several occasions cooperated with INTERPOL in the delivery of simulated trials as part of annual US and French Navysea exercises: OBAMGAME Express and GRAND AFRICAN NEMO in West Africa, CUTLASS EXPRESS in East Africa, TRADEWINDS in the Caribbean, CARAT in South Asia and SEACAT in the Pacific Ocean.

By means of this cooperation with international partners, UNODC GMCP aims to develop the capacity of law enforcement officials at sea to collect and preserve evidence during sea operations so that such evidence can be effectively used by the prosecution and judicial personnel in court. This coordination between agencies allows participants to test the entire criminal justice chain and provides an overall framework that ranges from command and control to maritime force responses, and subsequently includes the handing over and transfer of evidence to ensure a fair and efficient trial. The ultimate aim is to ensure that there is no impunity to maritime crime. The continuum from sea to land is fully covered in the trial simulation.

By delivering these training courses, UNODC contributes directly to the Sustainable Development Goals: SDG 5.14.16 and 17.









GMCP CORE ACTIVITIES



1. Law Enforcement



2. Detection/ Interdiction



3. Investigation



4. Prosecution



5 Detention



6. Regional Cooperation

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SUBSTANTIVE KEY AREAS OF A SIMULATED TRIALS EXERCICE

EARLY ENGAGEMENT OF PROSECUTORS

One of the on-going challenges for both common law and civil law states is the lack of meaningful early engagement with prosecutors. In common law states, investigators routinely complete enquiries and then submit the case to the relevant prosecuting body, whilst in many civil law states the prosecutor is often not equipped to shape and strategize the investigation in an effective manner. In both legal traditions, this results in a substantial risk of a case being compromised at trial. In response, therefore, the simulation will demonstrate the benefits of early engagement through pre-boarding legal advice and will highlight the range of strategic and operational decision-making options that are likely to be encountered.

PRELIMINARY CHALLENGES

Legal arguments about jurisdiction continue to be an important factor in maritime criminal justice. UNODC therefore proposes to train practitioners in the formulation and drafting of legal arguments and to then provide them with the opportunity to make oral presentations before either a single judge or magistrate or a panel of judges drawn from states within a particular region. A constructively critical and encouraging approach will be taken so that practical skills are honed and practitioners become able to present arguments in a cogent manner.

CASE HANDLING BY PROSECUTORS

The simulation will tease out issues of fundamental concern to prosecutors such as charging decisions, concurrent jurisdiction, international cooperation, the disclosure/service of documents on the defence and court, human rights considerations (in particular with respect to detention issues and fair trial safeguards) and the drafting of opening notes and skeleton arguments (which will then be used in the formal opening or subsequent progression of of the simulated case).

CASE HANDLING BY DEFENCE

It is proposed that, where the local dynamic allows, defence lawyers will be included within a simulation in order to foster a better understanding between prosecution and defence of their respective roles and responsibilities. Where this is not feasible, a separate simulation will be held for defence lawyers. One of the key objectives will be to avoid the creation of unmeritorious applications, written submissions and oral presentations and to foster the understanding that the best interests of the client should prevail.

TRIAL PREPARATION AND TRIAL PROCESS

It is anticipated that the simulation workshops for trial preparation will address important on-going challenges, including:

- Advocacy/Examination of witnesses: this remains a constant concern. The art
 of advocacy demands a reasoned, well-considered and planned approach in
 the examination and cross-examination of witnesses. UNODC intends to hold
 simulated hearings where witnesses will be called and the parties given the
 opportunity to rehearse. This should allow prosecutors and defence to build and
 enhance their skills in the examination of witnesses (including inter alia 'hostile'
 witnesses, the 'honest but mistaken' witness and contradictory statements by
 witnesses).
- Witnesses: most coastguards, investigators and law enforcement officials are
 unaccustomed to giving evidence before trial courts. Consequently, they can
 come across as awkward or defensive when being examined or cross-examined.
 The 'simulation' will help witnesses to give evidence in a coherent, clear manner
 and learn to handle cross-examination.
- Evidential challenges: the focus on continuing challenges includes search and seizure strategy, exhibit collection, handling and management, detention issues, initial examination of witnesses and suspects, retrieval of digital evidence and covert techniques. As part of the simulation, investigators will be required to develop their case strategy and to log and record decisions. These will then be used in the trial phase.
- Direct and indirect/circumstantial evidence: both judges and prosecutors are required to evaluate evidence. A prosecutor will need to analyse the strength of the evidence in a matter when bringing it to prosecution and determining how to appropriately present the case to the court. A judge, meanwhile, in order to arrive at a verdict, must be able to determine the respective strength and weaknesses of the evidence that is before the court and to decide what is evidentially made out to the criminal standard as opposed to merely plausible. In a trial, whether in a civil law or a common law system, evidence builds and supports a case as to what took place and who was responsible for it. Most practitioners (lawyers, prosecutors and judges) will have little difficulty in understanding and assessing direct evidence. It is usually not difficult to decide whether a piece of direct evidence proves or disproves a fact directly. For

instance, if a witness gives eyewitness testimony, describing what he or she saw, heard or did, subject to assessing the credibility and reliability of that witness, the effect of that evidence, if true, is easy to understand.

In contrast, indirect evidence presents more difficulties. It does not directly point to a fact - rather, it must be used to piece together what might be described as a jigsaw in order to arrive at an inference. In a judicial context, such an inference must be an inescapable one. It is the inference that links the indirect evidence to the fact that the party using it or adducing it is seeking to prove.

In many jurisdictions, the use of and reliance upon indirect/circumstantial evidence has not won favour with either prosecutors or the judiciary. More often than not, judges (particularly in civil law jurisdictions) will not permit the prosecution to present its case based on indirect/circumstantial evidence, on the basis that indirect evidence can often be construed as hearsay. In maritime crime cases generally and in particular in drugs or arms trafficking cases (including organised crime) where the incriminating evidence may be thrown overboard, investigators and prosecutors will more often than not have to build their case on circumstantial evidence. There is little experience across the regions in building cases based on indirect/circumstantial evidence and, indeed, where investigators and prosecutors have tried to proceed on such a basis, they have met with a level of judicial hostility.

Intelligence led investigations covert techniques: traditionally, criminal
investigations into serious criminality, including drug trafficking, were almost
invariably reactive in nature. However, with a rise in transnational crime and the
increasing capability of law enforcement to gather and analyse intelligence,
proactive investigations are being used with more frequency in a wide range
of jurisdictions to combat both serious and organised crime, which invariably
includes maritime crimes.

The move from reactive to proactive investigations has brought changes in traditional working practices across both civil law & common law systems. It demands closer coordination and cooperation between agencies and necessitates a particular focus on the role of the prosecutor.

The commencement of proactive investigations and the opportunity provided for the investigator to detect and interdict suspects as criminality is taking place means that it usually includes the deployment of covert, intrusive techniques (special investigative means). This means that any deployment will invariably involve a breach of the right to a private life, which will have to be justified by those carrying out or authorising the operation.

It is therefore important for law enforcement, prosecutors and judges to have an understanding of intelligence and intelligence development and, in particular, of the ways in which intelligence may be used and should be protected in a criminal case. Increasingly, challenges are made before courts as to whether there was a proper intelligence basis for a proactive investigation, particularly where covert deployment has taken place. Similarly, in prosecutions where entrapment or provocation is being alleged by the defence or where there is underlying intelligence relevant to key evidential aspects of a case, the court may be asked to reach significant findings of facts by reference to intelligence material.

CASE MANAGEMENT ISSUES FOR JUDGES AND MAGISTRATES

Active Case Management (ACM) is the efficient and expeditious management of criminal cases. The primary objective is to ensure that cases are dealt with in a timely manner from the very start (i.e. from the first contact between a suspect and any criminal justice agency) to the final disposal of the case. ACM aims to ensure the fulfilment of the obligations contained in various human rights instruments that an accused person be tried without undue delay. The 'simulation' will explore how judges and magistrates manage a case once it enters the judicial phase. Many states have given effect to ACM through dedicated laws, rules or guidelines which require all criminal justice agencies to ensure that cases are processed justly and expeditiously, though, in practice, adjournments are routinely granted without any real explanation.

PLEASE NOTE THAT THE ABOVE SUBSTANTIVE KEY AREAS OF A SIMULATED TRIAL CAN BE TESTED SEPARATELY AS INDIVIDUAL EVENTS, OR IN A COMBINED AND COMPREHENSIVE TRIAL FORMAT.



CATEGORY I. SIMULATED TRIAL – TEST OF INVESTIGATION AND PROSECUTORIAL PROCEDURES

INVESTIGATION: SUPPORT TO LAW ENFORCEMENT AGENCY

1.1 FOCUS ON INVESTIGATION

This simulated trial format aims at testing and improving investigations and law enforcement agencies' work at sea. This event especially focus on:

- OPERATION PLANNING
- INTERDICTION
- EVIDENCE COLLECTION: continuing challenges include search and seizure strategy, exhibit collection, handling and management of evidence, detention issues, initial examination of witnesses and suspects, retrieval of digital evidences and covert techniques. Investigators will be required to develop their case strategy and to log and record decisions



- HARMONIZED STANDARD OPERATING PROCEDURES (SOPS)
- INTELLIGENCE LED INVESTIGATIONS/COVERT TECHNIQUES: emphasizes the importance of law enforcement officials, prosecutors and judges having an understanding of intelligence and intelligence development and, in particular, of the ways in which intelligence may be used and should be protected in a criminal case.
- TRANSNATIONAL INVESTIGATION
- ARREST / SEIZURE / CONTROL TECHNIQUES

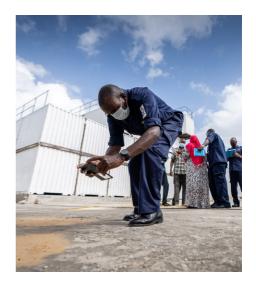
The first part of this activity will start at sea, often in coordination with international partners. A specific scenario will be designed in coordination with relevant national law enforcement authorities (and international partners where possible) and may be based on any type of maritime crime, depending on the needs of participating countries. The second part of the activity will take part in court and will focus on analysing the methods used by relevant law enforcement agency officers to handle evidence, to give testimony to the judiciary and to perform cross-examination.

PROSECUTION: SUPPORT TO PROSECUTORS

1.2 FOCUS ON PROSECUTION

This simulated trial format aims at testing and improving prosecution capacity, especially the continuum from law enforcement action at sea to legal proceedings on land. This trial will specifically focus on:

- HANDLING OF EVIDENCE
- TRIAL PREPARATION
- ADVOCACY
- LEGAL SUBMISSION
- EARLY ENGAGEMENT OF PROSECUTORS: including emphasis upon the benefit of early engagement through pre-boarding legal advice and the range of strategic and operational decision-making options that are likely to be encountered



- INTELLIGENCE LED INVESTIGATIONS: including emphasis upon the importance of law enforcement, prosecutors and judges having an understanding of intelligence and intelligence development and, in particular, of the ways in which intelligence may be used and should be protected in a criminal case.
- CASE HANDLING BY PROSECUTORS
- **DIRECT AND INDIRECT/CIRCUMSTANTIAL EVIDENCE:** in maritime crime cases in general and in drugs or arms trafficking (including organized crime) cases in particular, incriminating evidence may be thrown overboard and investigators and prosecutors will more often than not have to build their cases on circumstantial evidence.
- SEIZURE AND DETENTION
- CASE HANDLING BY DEFENCE

The first part of this activity will start at sea, in coordination with international partners. A specific scenario will be designed in liaison with national law enforcement authorities and potential international partners and may be based on any type of maritime crime, depending on the needs of affected countries. The second part of the activity will occur in a court, with focus on available tools for prosecutors in preparation for trial, legal argumentation, handling and securing of evidence and preparation of cross-examination.

LOGISTICS AND SKILLS CHECK LIST FOR CATEGORY 1

NOTE: GMCP requires that all judicial, prosecution or law enforcement personnel nominated nominated to attend GMCP SIMULATED TRIAL must be part of a relevant institution who will participate in trials related to maritime crime in their own countries.

SIMULATED TRIAL LOCATIONS

The first part of the activity will happen at sea during a maritime exercise.

The second part of the simulated trial will be conducted where possible within a courtroom of the participating country or alternatively in a dedicated conference venue or online.

SIMULATED TRIAL STRUCTURE

The first part at sea will be organized in coordination with both national and international partners for one or two days.

The trial will be organized across several days and will follow the legal proceedings of the country in which the activity is held.

SIMULATED TRIAL REQUIREMENTS

- Simulated trial participants, depending on their role in the simulated trial, must belong to an institution or law firm with a mandate to participate in criminal actions related to maritime crime in their country.
- · Participants will be tasked to conduct legal proceedings as if the trial was real.
- Participants will be grouped into three teams a prosecution team, a defence team and judges, in addition to a group of witnesses
- Members of the maritime law enforcement agency involved in the interception, arrest and collection of evidence may be called in as witnesses during trial
- Law enforcement agencies involved in the simulated trials as well as some relevant members of the prosecution may participate in the sea exercise.

SIMULATED TRIAL LENGTH

- · Two weeks preparation of the trial
- · Three to four days of the trial

THE CATEGORY 1 SKILLS BEING TESTED WILL INCLUDE (NON-EXHAUSTIVE):

- The chain of events upon receipt of intelligence and identification of a lawful basis for the interdiction
- · Swiftness of the boarding team and crime scene management
- · The manner in which evidence is recorded, collected and stored
- Aspects of the detention and decision-making process prior to the transfer of the alleged perpetrators
- The pertinence of the interview strategy
- The efficiency of the investigation strategy
- · Interaction between the investigation team and boarding team
- Interaction between the various national agencies with focus on information sharing
- Applicable procedures in securing cooperation with other countries and/or regional and international organizations (if applicable)





CATEGORY II. SIMULATED TRIAL – TESTING THE NATIONAL LEGAL FRAMEWORK

TEST DRAFT LAWS

SPECIFIC LAWS ON PIRACY, TRAFFICKING IN ILLEGAL COMMODITIES (DRUGS, ARMS ETC), HUMAN TRAFFICKING, ILLEGAL FISHING, MARITIME POLLUTION

2.1 FOCUS ON A SPECIFIC BILL

This simulated trial format aims at testing a specific bill in order to identify gaps and weaknesses and thus ensure the final legislation will have the intended results and function. This includes a focus on the definition of the infraction, sanctions and the jurisdiction of the court. It is designed to provide the judicial personnel involved in future maritime crime cases with an experience of a test trial by trying out a future legal framework. During the session, the participants will act as if they were in a real case scenario and thereby test the prosecution element of the judicial chain, including case preparation, advocacy and legal submissions.



TEST DRAFT LAWS

GENERAL MARITIME LEGAL FRAMEWORK – STATE ACTION AT SEA

2.2 FOCUS ON A MARITIME LEGAL FRAMEWORK

This simulated trial format aims at testing the full legal framework of a state action at sea, including the capacity to prosecute offenders of maritime crime, by focusing on the definition of infraction, sanctions and the jurisdiction of the court. It will encompass factors such as the jurisdiction of the court, the definitions and related sanctions of maritime crimes and all legal proceedings necessary to ensure a legal finish.

It will help to identify gaps and weaknesses in the state action at sea framework to ensure the proper functioning of any project that is aimed at reforming legal procedures related to maritime criminality. It is designed to provide the judicial personnel involved in future maritime cases with an experience of a test trial by trying out the future legal framework.

During the session, the participants will act as if they were in a real case scenario and thereby test the prosecution element of the judicial chain, including case preparation, advocacy and legal submissions.



TEST EXISTING LAWS

SPECIFIC LAW: PIRACY, ILLEGAL TRAFFICKING IN DRUGS, ARMS, PERSONS ETC, ILLEGAL FISHING AND MARITIME POLLUTION

2.3 FOCUS ON AN EXISTING SPECIFIC LAW

This simulated trial format aims at testing an existing law subject to a specific maritime crime such as piracy, illegal trafficking in drugs, weapons, persons, illegal fishing or maritime pollution.

It is designed to provide the judicial personnel involved in maritime crime cases, including the prosecution and law enforcement, with an experience of a test trial to familiarize relevant personnel with the specifics of a law related to maritime crime. The scenario used in such simulated trials will focus on a specific type of maritime criminality and will provide an opportunity to analyse issues related to state action at sea frameworks, prosecution and judicial proceedings. During this event, the participants will act as if they were in a real case scenario, testing all steps of the criminal justice chain including jurisdiction, arrest, case preparation, evidence handling, advocacy and legal submissions.



TEST EXISTING LAWS

GENERAL MARITIME LEGAL FRAMEWORK: COMPLEX SCENARIOS COMPRISING OF SEVERAL TYPES OF MARITIME CRIMES

2.4 FOCUS ON AN EXISTING GENERAL MARITIME LEGAL FRAMEWORK

This simulated trial format aims at testing the full spectrum of the legal framework related to maritime crime in one or several countries

It is designed to provide all personnel involved in maritime crime cases, including the prosecution and law enforcement personnel, with an experience of a trial. It aims to make all relevant personnel familiar with the provisions of the existing legal frameworks on maritime crime. The scenario used in such a simulated trial will encompass several types of maritime criminality and will provide an opportunity to analyse issues related to state action at sea, prosecution and judicial proceedings. During the session, the participants will act as if they were in a real case scenario, testing all steps in the criminal justice chain including jurisdiction, arrest, case preparation, evidence handling, advocacy and legal submissions.



LOGISTICS AND SKILLS CHECK LIST FOR CATEGORY 2

NOTE: GMCP requires that all participants to the GMCP SIMULATED TRIAL must represent a relevant institution who is or will be part of prosecuting maritime crime in their own countries.

SIMULATED TRIAL LOCATIONS

The simulated trial will be conducted where possible within a courtroom of the participating country or alternatively in a dedicated conference venue or online.

SIMULATED TRIAL STRUCTURE

The trial will be organized across several days and will follow the legal proceedings of the country in which the activity is held.

SIMULATED TRIAL REQUIREMENTS

- Simulated trial participants, depending on their role in the simulated trial, must belong to an institution or law firm with a mandate to participate in criminal actions related to maritime crime in their country.
- Participants will be tasked to conduct legal proceedings in the same way as if the trial had been real
- Participants will be grouped into three teams a prosecution team, a defence team and judges, in addition to a group of witnesses

SIMULATED TRIAL LENGTH

- · Two weeks preparation of the trial
- · Three to four days of the trial

THE CATEGORY 2 SKILLS BEING TESTED WILL INCLUDE (NON-EXHAUSTIVE):

- · Timely preparation of the case
- · Information sharing with the team
- · Raising in limine issues
- · Drafting of the opening note and charges
- · Jurisdictional issues
- Presenting the exhibits and arguments on admissibility of evidence including digital evidence
- · Addressing the difference between evidence and intelligence
- · Proving the elements of the offences (i.e. actus reus and mens rea)
- · Advocacy skills: examination in chief, cross-examination and closing submission



CATEGORY III. SIMULATED COURT PROCEEDINGS

NATIONAL COURT PROCEEDINGS

3.1 FOCUS ON NATIONAL LEGAL COURT PROCEEDINGS

This simulated trial format aims at testing all legal proceedings at a national level in order to ensure that the entire penal chain works and that there are no legal loopholes or errors that would prevent the prosecution of criminals. The focus is mainly on national procedural law, especially on:

- APPLICATION OF LEGAL PROCEDURE
- JURISDICTION
- HANDLING OF EVIDENCE: continuing challenges include search and seizure strategy, exhibit collection, handling and management of evidence, detention issues, initial examination of witnesses and suspects, retrieval of digital evidence and covert techniques. Investigators will be required to develop their case strategy and to log and record decisions.
- CROSS-EXAMINATION
- PRELIMINARY CHALLENGES: including the formulation and drafting of legal arguments and the
 opportunity for practitioners to make oral and written presentations before either a single judge or
 magistrate or a panel of judges drawn from the relevant state's judiciary.
- **CASE HANDLING BY PROSECUTORS:** issues of fundamental concern to prosecutors such as charging decisions, concurrent jurisdiction, international cooperation, the disclosure/service of documents to the defence and court, human rights considerations, and the drafting of opening notes and outline of arguments.
- **WITNESSES:** supporting witnesses to give evidence in a coherent and clear manner and handle cross-examination.
- CASE MANAGEMENT ISSUES: the simulation will explore how judges and magistrates manage a case once it enters the judicial phase.
- REMOTE TRIALS
- HANDLING OF DIGITAL EVIDENCE



TRANSNATIONAL PROCEEDINGS

3.2 FOCUS ON TRANSNATIONAL LEGAL PROCEEDINGS

This type of simulated trial aims at testing all legal proceedings at a transnational level in order to ensure that the entire chain of penal procedure works and that there are no legal loopholes or errors or conflicting transnational legal processes - including diplomatic issues - that would prevent the prosecution of criminals. This type of simulated trial mainly focuses on transnational procedure and agreements, especially on:

- MUTUAL LEGAL ASSISTANCE
- TRANSNATIONAL CROSS-EXAMINATION
- CASE HANDLING BY DEFENCE: by ensuring the inclusion of defence lawyers where feasible with the objective of avoiding unmeritorious applications, written submissions and oral presentations and to foster the understanding that the best interest of the client must be upheld.
- WITNESSES OUTSIDE OF THE COUNTRY: where the trial takes place (foreign witnesses), including by helping such witnesses to give evidence in a coherent and clear manner and learn to handle cross-examination, and by facilitating evidence given by witnesses over video link if applicable.
- CASE MANAGEMENT ISSUES: including exploring how judges and magistrates manage a case once it enters the judicial phase.
- REMOTE TRIALS
- HANDLING OF EVIDENCE AND DIGITAL EVIDENCE
- HANDOVER AGREEMENTS
- EXTRADITION



LOGISTICS AND SKILLS CHECK LIST FOR CATEGORY 3

NOTE: GMCP requires that all judicial, prosecution and law enforcement members nominated to attend GMCP SIMULATED TRIAL must be part of a relevant institution who will participate in trials related to maritime crime in their own countries.

SIMULATED TRIAL LOCATIONS

The simulated trial will where possible be conducted within a courtroom of the participating country or alternatively in a dedicated conference/event venue or online.

SIMULATED TRIAL STRUCTURE

The trial will be organized across several days and will follow the legal proceedings of the country in which the activity is held.

SIMULATED TRIAL REQUIREMENTS

- Simulated trial participants, depending on their role in the simulated trial, must belong to an institution or law firm with a mandate to participate in criminal actions related to maritime crime in their country.
- Participants will be tasked to conduct legal proceedings in the same way as if the trial had been real
- Participants will be grouped into three teams a prosecution team, a defence team and judges, in addition to a group of witnesses
- Members of the maritime law enforcement agency involved in the interception, arrest and collection of evidence may be called in as witnesses during trial
- Law enforcement agencies involved in the simulated trials, as well as some relevant members of the prosecution, may participate in the sea exercise.

SIMULATED TRIAL LENGTH

- · Two weeks preparation of the trial
- · Three to four days of the trial

THE CATEGORY 3 SKILLS BEING TESTED WILL INCLUDE (NON-EXHAUSTIVE):

- · Timely preparation of the case
- · Addressing jurisdictional matters (including concurrent jurisdiction)
- The efficiency of the mechanism for mutual legal assistance (i.e. the formal timeline, protocols, availability of interpreters/translators etc.)
- Testing the mechanism for extradition (i.e. the enforcement of bilateral agreements and/or other relevant conventions)
- · Factoring in the human rights dimension
- · Interaction and coordination with regional and international partners if applicable
- Consideration of other ongoing parallel investigations (i.e. tracing/proceeds of crimes etc.) and relevance to the present proceedings





IF YOU WOULD LIKE TO KNOW MORE ABOUT WHAT UNODC IS DOING TO SUPPORT STATES TO COMBAT MARITIME CRIME, PLEASE VISIT: HTTPS://WWW.UNODC.ORG/UNODC/EN/PIRACY/INDEX.HTML

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