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**World crime trends and emerging issues and responses in
the field of crime prevention and criminal justice**

**Outcome of the Expert Group Meeting on Transnational
Organised Crime at Sea, held in Vienna, Austria on 5-6
April 2016**

Summary

The present document reflects the proceedings and the recommendations of the Chairs of the Expert Group Meeting on Transnational Organized Crime Committed at Sea, convened on 5-6 April 2016 in Vienna, Austria, pursuant to Commission on Crime Prevention and Criminal Justice resolutions 20/5 and 22/6 on “Promoting international cooperation and strengthening capacity to combat the problem of transnational organized crime committed at sea”. The reconvened meeting of experts held in April 2016 was attended by experts who also participated in the first Expert Group Meeting held in November 2012, as well as experts identified by the Regional Groups.

* E/CN.15/2016/1.

I. Introduction

1. The *purpose* of this meeting was to advance work on a series of issues in relation to Transnational Organised Crime (TOC) committed at sea, as the next step in the process, which began in November 2012 with Expert Group Meeting (EGM), as endorsed in resolution 22/6 from the CCPCJ in 2013. The *objective* was thus to explore and consider possible recommendations on the basis of lessons learned since then and in the light of current challenges to combat TOC at sea; networks for criminal justice and crime prevention capacity building; and exploring opportunities for better cooperation in information-sharing and awareness raising in maritime crime matters.

2. The *outcomes* from this meeting are documented at the end of this paper, identifying options for further UNODC activities in the area of combatting TOC at sea; issues / challenges requiring specific attention and where possible, initiatives that could be further examined by UNODC with a view to developing programming. The views and outcomes expressed in this paper are entirely those of the meeting Chairs.

TOC committed at sea in general

3. Experts highlighted the importance of raising awareness with regard to maritime crime and the law of the sea, before engaging in capacity building, whilst also undertaking a coordinated effort to combat TOC at sea. In order to build capacity, States must have political ownership and support within their national legal systems, particularly with respect to issues of jurisdiction. If such preconditions are not in place, regardless of the amount of money and resources expended, efforts will wither if there is no political will to prioritize them. Further, overcoming ‘sea blindness’ is a necessary step in supporting continued efforts in capacity building. In recognising the holistic approach that must be taken to maritime crime issues as reflected in the United Nations Convention on the Law of the Sea (UNCLOS), it is vital that stakeholders appreciate that maritime crime impacts development, and that there are significant developmental aspects to combatting TOC at sea.

4. Legislation and regulatory capacity building should focus upon awareness and training more so than global harmonisation of legislation, which could be challenging due to the variety of influences – such as legal history and pre-existing laws – that affect the ability of new laws to ‘fit’ within the existing legal system. Reaching consensus on a single framework or set of draft laws that is useable by all States is unrealistic. States should thus be encouraged to develop their own legal frameworks to address maritime crime issues, and to share information with agencies and other organisations as a means of seeking common understandings and gathering options for consideration. Some experts noted, for example, that fisheries crime is predicated on other forms of crime including illegal transactions and corruption, money laundering, illegal transport of species, and illicit drug trafficking, which requires a multi-window approach. In combatting this issue, it is therefore necessary to focus on a comprehensive solution, criminalizing those components of the criminal ‘value chain’ that are more readily addressed within each jurisdiction. It is, of course, possible that some illegal, unreported and unregulated fishing (IUU) is state-sponsored and thus must be analysed in a broader

security context; however this should not delay action in relation to States which wish to develop their capacity to deal with fisheries crime as a TOC at sea issue.

5. It was highlighted that incorporating capacity building into existing structures may be more appropriate than creating entirely new structures or arrangements. When providing capacity building options there must be a high level of awareness as to how each State structures its law enforcement jurisdiction at sea before presenting them with an omnibus of legislative experience. For a coast guard network to work effectively, States should have some clarity about their jurisdiction, mandate and powers. Greater focus on discussing jurisdictional issues in order to have more effective coastal and flag state cooperation is required. Moreover, law enforcement at sea is expensive, and states might consider how they can implement intelligence based policing, thus creating models that are more cost effective. Although intelligence and detection /monitoring can be amongst the most difficult elements of capacity to build, they are essential to sustainable improvement. Additionally, even if jurisdiction is established with respect to the coastal State's law enforcement officials, there may be no prosecution framework in place. Legislative frameworks and prosecution training are thus equally essential. A further option discussed at the EGM was for well-resourced States to help fill the gaps for partners who are unable to create the same structures. States should further consider the use of satellite tracking and open sources on the internet.

6. Human rights considerations are having an increasingly direct effect on maritime operations. Whilst of course a positive development, it was observed that some decisions appeared to entrench inflexible – in the maritime context - procedural requirements. One expert noted that rights should not be applied in such a manner that makes it virtually impossible to hold accountable those who commit violations at sea. Some recent cases, it was argued, show evidence of a lack of knowledge and appreciation by the judiciary of the challenges that accompany maritime law enforcement. In a number of recent rulings, for example, offenders were acquitted as a result of lack of promptness, inhuman and degrading conditions, and significant delays as a result of the rights enshrined in various instruments. One issue is the requirement that anyone arrested or detained shall be brought promptly before a judicial authority. However, the application of this requirement in a nuanced manner can be difficult where promptness is not defined or there is no capacity to contextualise that requirement for maritime operations. At the time of drafting of some of these international instruments, the difficulties associated with expanded offshore jurisdictions and extended transit times of over 48 hours to shore were perhaps not fully understood. One option for addressing this problem could be to amend relevant international instruments to include some flexibility regarding the assessment of 'promptness' when dealing with operations at sea. Maritime experts must also seek to create greater awareness on this issue amongst, inter alia, the judiciary.

Some specific TOC at sea challenges

Cooperation and Coordination

7. Many experts agreed that reaching a level of international coordination is difficult given that there is a continuing problem of coordination amongst international organisations and in international external training providers, in relation to awareness raising opportunities, as well as a lack of ability to coordinate the delivery of an efficient package of training. Importantly, when aiming to

establish or advance basic levels of cooperation and coordination, it is generally more effective to use existing frameworks than to set up new and separate ones. Rather than focusing on any particular model, many experts agreed that States should cooperate to compile a compendium of experiences and practices to be used for maritime cooperation. (For some regional bodies, cooperation is part of a common fisheries policy whereby combined operations are regularly undertaken with multiple national units, providing an effective model for use of resources). Experts noted however that States in other regions – such as Eastern Africa - do not necessarily have the same types of mature security structures in place and there may not be any effective frameworks that can therefore be leveraged for such purposes. Cooperative networks are being established with different levels of formality, from ‘gentleman’s agreements’ (informal and legally non-binding) and information sharing to more formalised arrangements, such as integrated coastguard networks where capacity is shared. Another example is the conduct of coordinated patrols as opposed to joint patrols. The point, however, was that the wide variety of such arrangements should be assembled into a compendium of experience so as to provide mature options for States to consider in terms of best fit with their capacities and regional arrangements and context.

8. Transnational coastguard cooperation is a necessary step in improving responses to TOC at sea. This requires intelligence gathering and information sharing; flag state and coastal state cooperation; and potential for action on the high seas against stateless vessels and on the basis of flag state consent. There are several coast guard fora that could be utilised for such purposes. The utility of coastguard networks can be increased by various means including 24/7 secure communication through National Central Bureaux, gathering information and recording sightings data regarding vessels of interest in a common database, inter-agency cooperation and analysis, and using coast guard fora as a network of networks. Given several coast guard fora already exist for various regions such as the Arctic, North Pacific and Mediterranean, this creates the potential for a future global network for cooperation in combatting TOC at sea.

9. Some experts noted the benefits associated with Shiprider agreements, which give law enforcement personnel the authority to board certain vessels in another State’s territorial waters. Shiprider agreements are not easy to enforce as they generally involve a wide range of subsidiary issues apart for jurisdiction - including logistics and administration. Many States also have different requirements for safety and in relation to liability matters. Shiprider agreements can be self-authorizing, providing an enabling framework for a State to enter another coastal state’s waters for law enforcement purposes, but most are not. Other such arrangements have institutionalised pre-authorization, allowing States to give notice and then entering coastal waters. Further implementation of external waters licenses, which have also given rise to successful prosecutions, is an option to be considered. This requires robust coordination agreements with relevant marine management organisations, otherwise vessels can be accused of fraudulent licensing, registration, bribery and so on. External waters licencing also allows the flag state to have control over a vessel that might flee a coastal State’s jurisdiction.

10. There are many opportunities encouraging States to build networks for exchange of information.¹ Some issues relate to law enforcement specialist training and the duplication of work amongst agencies. The UNODC Global Programme on Building Effective Networks against Organized Crime (BENATOC) works together with INTERPOL, WCO, CEPOL and others to increase the global network of law enforcement. Other areas of implementation of BENATOC include strengthening capacities to target illicit financial flows and through facilitation of working contacts among financial intelligence and financial investigation entities. These mechanisms can be utilised to enhance maritime cooperation through promotion of coordinated action among specialised law enforcement units, and utilising the proposed network of regional and international law enforcement organizations. UNODC is well advanced in creating networks of networks for information sharing and training opportunities. It has also developed specialized software for the exchange of specialized information.

11. Similarly, INTERPOL uses systems of notices to communicate information about crimes, criminals and threats around the globe. In relation to TOC at sea, purple notices are used to deal with vessels fishing illegally. These purple notices seek or provide information on modus operandi, objects, devices and concealment methods used by criminals at sea. Cases may include instances of vessels painting over their vessel names at sea, fraudulent documentation and information relating to shell companies, fraudulent flags, customs fraud and so on. Red notices are also used for crew background checks. More needs to be done by States and networks in fighting other crimes associated with fishing vessels -economic, corporate and environmental crime, as well as information sharing – as an important component of dealing with TOC committed at sea.

National Perspectives

12. In order to combat TOC at sea, it would be useful to create more rapid and more efficient methods of sharing information and analysis of issues concerned. For example, as noted previously, how States deal with characterising detention at sea in national jurisdictions is little understood or explored. For example, some States do not make arrests at sea; rather they detain at sea. However, this complicates issues such as custodial interrogation at sea. In other jurisdictions, detentions at sea are still governed by laws on arrest, and thus require presentation before a court within a set limited timeframe.

Countering the traffic of illicit narcotics by sea

13. Trafficking of illicit narcotics in the Indian Ocean is a significant problem requiring improved legal responses. Incidents of heroin trafficking have arisen because many land based routes have to some extent been suppressed by law enforcement and cooperation between States in relation to policing land borders. The issue in the Indian Ocean is lack of, or perceived lack of, legal finish options: cargo is seized and destroyed but the vessel is often released with its crew to continue on its journey as the vessel is unflagged. UNCLOS article 110 permits a right of visit to board an unflagged vessel, however there are two associated issues. First, confirming the flag can be problematic when some States and registries do not have easily contacted offices for the purposes of documentation confirmation.

¹ Including GA RES 5/25 of 15.11.2000 on the UNTOC and SC RES 2195 - 19 December 2014 on Links between terrorism and TOC.

Second, lack of legal clarity on whether absence of jurisdiction allows a boarding state to assert its own jurisdiction over an unflagged vessel remains evident.

14. The maritime drug interdiction system is fragile given that trafficking of drugs by sea is complex, pervasive and global. It is necessary to build resilience system wide and to improve whole of government processes. Many experts agreed that the practical implementation of article 17 of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which enables jurisdiction over illicit traffic by sea, is lacking. The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks contains a number of provisions relating to cooperation frameworks that are also potentially underutilised. Whilst UNODC authored a 2004 Practical Guide for competent national authorities under article 17 of the 1988 Drug Convention, experts agreed this document requires an update to address evolving trends and issues.² Many States are hemmed in by practical, jurisdictional, and tactical realities. However, some associated measures evident in a bilateral experience – such as the exchange of forms so information can be transmitted more rapidly and provide answers without needing translation – have proven very effective. However, the experts uniformly agreed that the article 17 structure and supporting guidance requires urgent updating.

On transnational organized fisheries crime

15. Information sharing does not need new mechanisms; it can be as informal as two States talking to each other or using existing mechanisms. Many experts agreed that important legal limitations – but also some uncertainties - attach to the activities that law enforcement vessels can undertake in international waters or when navigating through the exclusive zone of another state, when encountering illegal, unreported and unregulated fishing (IUU) activities. Many States are willing to share details, contacts and information about IUU fishing vessels. They are willing to build this network to combat IUU fishing. However, legislation in some States still does not reflect UNCLOS and thus there is no jurisdiction available to prosecute maritime crimes. As a result, the UNODC Global Maritime Crime Programme (GMCP) is operating across several regions to improve maritime law enforcement frameworks and enhance criminal justice capacity. It also supports international cooperation through the Indian Ocean Forum on Maritime Crime (IOFMC), established in 2014 to build policy development and cooperation around the region.

16. The UNCLOS framework for maritime security works through the establishment of different maritime zones with different levels of jurisdiction, rights and obligations. The 1995 UN fish stocks agreement is an implementing agreement to UNCLOS and currently has 83 States parties. In terms of enforcement it provides for broad flag state jurisdiction and responsibilities such as a duty to enforce, investigate immediately and fully, ensure compliance, impose sanctions and cooperate with other States parties. The fish stocks agreement also has specific provisions relating to regional and sub-regional cooperation and enforcement. The issue of how to increase cooperation is something that States must consider, as is how such cooperation would work in the criminal investigation and prosecution

² Spain made a formal request that the 2016 UNGASS meetings should include discussion on article 17 of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs And Psychotropic Substances.

context. States are familiar with enforcement measures regarding fisheries and high seas fish stocks, but are unfamiliar with cases involving trans-shipments from the exclusive economic zone of coastal States.

Jurisdiction and stateless vessels

17. Establishing jurisdiction is a significant problem for combatting TOC at sea. States should focus on more particularized enforcement jurisdiction to allow maritime agents to board a vessel. Experts pointed out that jurisdiction is accepted by some States on the basis of signing the relevant instrument, but that occasionally this process does not follow through in terms of implementing enforcement jurisdictions. Some States have jurisdictions that allow them – if there are suspicions of illegal activities with respect to a stateless vessel – to search that vessel. Some States also believe that they have the power to divert such stateless vessels, and also to prosecute. However, the legal bases for boarding, search and prosecution must all be separately established and implemented. As such, there is a need to address some of the implementation gaps in the international legal framework through legislation, bearing in mind the need for development and capacity building.

18. Stateless vessels are an important issue for TOC at sea. Criminals may falsify registration and the vessel's flag, or make fraudulent customs registrations and landings. This deliberate act by the criminal network – seeking to effectively render a vessel stateless in the hope of avoiding examination - may also result in illegally caught fish being stateless, with no country of origin and complying with no sanitary measures or obligations. Consequently, there is a need to stress responsibility amongst flag States to implement authority over vessels without nationality. On the high seas, there are perceptions of a lack of enforcement jurisdiction to hold offenders in unflagged vessels accountable for their actions. Many States do not have domestic authority to exercise that jurisdiction. Debate exists as to what actions can be taken against a stateless vessel. The participating experts agreed that if a State is party to the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, it should exercise jurisdiction over vessels without nationality. (Article 110 of UNCLOS allows a right of visit for States to board such a vessel). Furthermore, even if a vessel is stateless – there is still the nationality of the members of the crew, and thus opportunities to engage in mutual legal assistance with the state of the nationality of the crew. Articles 21 and 22 of UN fish Stocks agreement also provide for jurisdiction over stateless vessels, but the precise scope of enforcement is not established. States must therefore look at ways to tackle the issue of stateless vessels and jurisdiction, given there is some lack of international clarity, although some certainty may exist at the domestic level.

Chairs' recommendations based on their observations arising from the Expert Group Meeting

19. The Chairs' observations arising out of the meeting of experts on transnational organized crime committed at sea held in Vienna on 5-6 April 2016, have given rise to the following recommendations for consideration by UNODC. In general, the current broad approach to criminal justice capacity building along the entire criminal justice chain by UNODC remains essential; the following recommendations simply address specific issues. It should also be noted that the

important issue of use of force and Rules for Use of Force in maritime law enforcement was not dealt with and it is recommended that this matter be placed on the agenda of the next EGM. It is also to be recalled that there are other organizations and agencies with overlapping and cross-cutting mandates, and that cooperation remains essential.

TOC committed at sea in general

20. Capacity building programming must dedicate some resources to overcoming sea blindness as a preliminary step in capacity building. In carrying out programming and capacity building in the area of TOC committed at sea, it is essential that initial work on awareness raising, and overcoming 'sea blindness' be carried out in advance, so as to create a receptive environment. This preliminary awareness raising should focus not only upon the general institutional and legal framework associated with TOC committed at sea, but also on points of specific interest to the assisted State, such as the potential benefits for the blue economy, maritime security and governance, and for progress in associated criminal justice issues (such as broader law reform opportunities) of taking action in relation to TOC committed at sea within their jurisdiction.

21 Some South East Asian experts particularly pointed to an urgent need to improve cooperation and coordination in public awareness raising, as an adjunct to strengthening capacity building in relation to TOC committed at sea as an economic and development issue.

22. Capacity building in relation to combatting TOC committed at sea should emphasize the broader utility and employability of the capacity gains envisaged. It is important that awareness as to specific challenges – for example, in relation to bringing suspects in custody before a tribunal within legislated timeframes – should be specifically raised as issues for legislators, judges and prosecutors to consider in advance. The risk of not raising awareness of the need for maritime nuance to be applied in relation to such general jurisdictional matters can create the counter-productive perception that prosecuting TOC committed at sea is too complicated and difficult to repay investment.

23. Focus and nuance in relation to the most receptive and appropriate 'windows' into TOC committed at sea for each State is important. In discussing capacity building in relation to TOC committed at sea with individual States, it is vital that the wider value chain of a specific crime, and its associated offences (such as corruption, document fraud, etc.), form part of the capacity building discussion; each of these links in the value chain offers a criminal justice 'window' into combatting TOC committed at sea.

24. Focus upon inter-operability of laws and mechanisms, not harmonization. Harmonization of laws in relation to TOC committed at sea should not always be the aim of capacity building – such an objective can set the capacity building bar impossibly and unnecessarily high. Legislative reform should be nuanced and particularized, whilst aiming for the overall outcome of inter-operable mechanisms and processes.

25. In relation to capacity building work for maritime law enforcement jurisdiction and allocation of policing powers, it is essential to first examine the assisted State's existing arrangements so that reforms and improvements are coherent within existing structures and legal arrangements. Grave concerns were expressed over the

serious impact of TOC committed at sea in the Southeast Asia region upon the economic and social development of countries in that region. The vital need to improve cooperation among countries in order to address the issue, and public campaigns for awareness raising of the matter, were also noted. The international community is encouraged to provide assistance to strengthen capacity in order to tackle these issues.

Cooperation and coordination:

26. Capacity building should better utilize the cooperative potential of the UN Convention against Transnational Organized Crime (UNTOC) in relation to maritime crime and TOC at sea. The UNTOC, as a tool useful in combatting maritime crime and TOC at sea, should be more fully incorporated into maritime crime capacity building programming and initiatives. Bearing in mind the broader international law framework for combatting TOC at sea, the under-utilised processes available in UNTOC need to be better explained and applied.

27. It is essential that an internal network, and a focal point for capacity building in relation to combatting TOC committed at sea, be established early in any capacity building process; this focal point should be used as, amongst other things, the training coordinator and timetable in relation to external providers of capacity building support. The importance of assisting States to create internal networks and focal points in relation to TOC committed at sea, as a precondition to further capacity building, cannot be overstated. In order to reduce duplication and inefficiencies, external States and organizations involved in capacity building to address TOC committed at sea should devolve training timetabling, to the extent possible, onto such focal points, so as to create opportunities for more cooperative and efficient capacity building work.

28. Compile a compendium of experience / examples of practices and models for setting up basic maritime domain awareness (MDA) and information sharing mechanisms / processes, and maritime law enforcement networks, with States that lack – but wish to establish - such mechanisms, processes, and networks. There is no single optimal model for setting up an MDA / information sharing system for a State, or in a region, with no existing system. Nor is there a single optimal model for establishing a maritime law enforcement dialogue and experience-sharing forum. What would be much more useful is a compendium of existing practice which can inform discussions between assisted States and capacity builders as to appropriate and workable options. This will create opportunities for better fitting, and more efficient, MDA and information sharing capacity building, and the development of responsive and appropriate fora for maritime law enforcement networking.

Countering the traffic of illicit drugs by sea

29. The ‘users guide’ for Article 17 of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances should be reinvigorated and made more practical. In parallel with the request by member States of the Indian Ocean Forum on Maritime Crime (IOFMC) for UNODC GMCP to take on the role of facilitating Article 17 requests, the EGM was, very strongly, of the view that UNODC should as a matter of priority, reinvigorate work on Article 17. However, it was noted that this new work should result in an updated and simplified ‘user’s guide’ for Article 17 and associated processes, and should incorporate new forms and templates (including for requests and responses), as well as practical guidance on associated maritime crime and TOC at sea issues, and guidance reflecting recent

practice in this area. Effective application of Article 17 is dependent upon a degree of common understanding of terminology, jurisdiction, and procedure in relation to international cooperation in combatting the illicit traffic of drugs by sea.

30. Explore the potential for the Article 17 process to be replicated in support of a broader maritime law enforcement effort. Article 17 – as an already widely accepted mechanism - could prove to be a useful source of tools and processes for employment in combatting TOC committed at sea more broadly.

Transnational organized fisheries crime

31. Work in relation to the criminal justice and crime prevention aspects of transnational organized fisheries crime must continue, given the significance of fisheries for development in many States. Aspects of fisheries crime, on a case by case basis and depending on the relevant national legislation, can represent TOC committed at sea. Cooperation and capacity building through criminal justice and crime prevention organizations – such as UNODC and INTERPOL – is important to effectively combatting transnational organized fisheries crime.

32. There is a clear need for transnational organized fisheries crime capacity building in Africa, Asia, and Central America. Experts from a number of States from those regions addressed the particular need for technical assistance from UNODC and INTERPOL in relation to building capacities, and the regulatory framework, for combatting transnational organized fisheries crime. Some developing States are seeking – and require - assistance to deal with transnational organized fisheries crime in terms of the full criminal value chain, including document fraud, money laundering, human trafficking and labour exploitation, corruption, tax and customs fraud, and other related crimes. To this end, some African experts specifically noted the opportunities presented by the African Union’s current policy agenda as relates to an African maritime security strategy, and the 2050 Africa Integrated Maritime Strategy (2050 AIM Strategy). In particular, experts emphasized the need to include transnational organized fisheries crime as one component of these strategies.

Jurisdiction and stateless vessels

33. Developing States would find a compilation on the issues associated with jurisdiction in relation to TOC committed at sea very useful. A vital component of combatting TOC committed at sea is, of course, getting jurisdiction right. It is recommended that UNODC facilitate the compilation of a report on the complexity of jurisdiction at sea in relation to TOC committed at sea, in cooperation with other relevant agencies. This report should set out a range of options for overcoming, and examples of successful approaches adopted in relation to, these jurisdictional challenges, with a particular focus on challenges faced by developing States.

34. It is vital that clarity on jurisdiction in relation to unflagged / stateless vessels be achieved. The issue of ‘follow-on’ jurisdiction available to be asserted over unflagged / stateless vessels requires clarity. To this end, it is recommended that UNODC, in cooperation with other relevant agencies, undertake a dedicated project focused upon collating legislation, cases, and State practice in relation to jurisdictional assertions over unflagged / stateless vessels, as soon as possible.