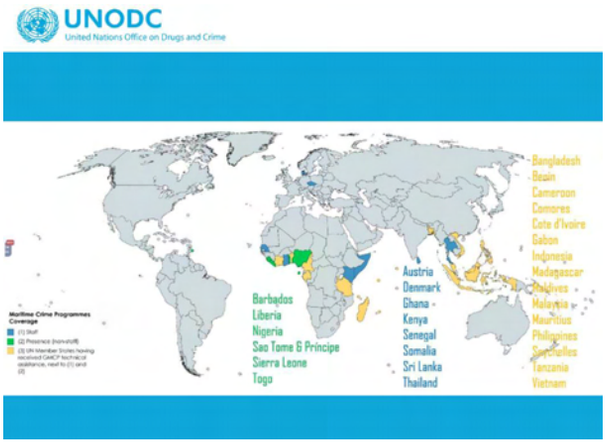
Mr. Alan Cole
Head of the Global Maritime Crime Programme, United Nations Office on Drugs and Crime

Ladies and Gentlemen

On behalf of Mr Yury Fedotov, Executive Director of the United Nations Office on Drugs and Crime, I wish to thank the Government of Sri Lanka and in particular the Sri Lanka Navy for their commitment to moving discussion on maritime security in the Indian Ocean forward, and for inviting UNODC to be part of that discussion. UNODC supports member states to counter all forms of transnational organized crime and terrorism and its work in maritime crime is the responsibility of the programme that I lead: the Global Maritime Crime Programme.

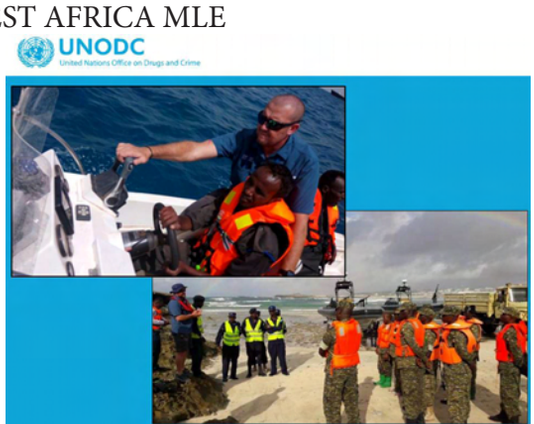
MAP OF GMCP LOCATIONS



The Global Maritime Crime Programme is made up of around 70 personnel based across the globe from the Caribbean, through the Atlantic Ocean, to the Indian and Pacific Oceans. We run programming in more than 20 member states with a mixed team of maritime lawyers, former naval and coastguard officers and law enforcement personnel.

SOUTHERN ROUTE PARTNERSHIP

WEST AFRICA MLE



SWIMMING LESSONS IN MOGADISHU

The Programme was set up in May 2009 as a direct response to Somali piracy but last year our Executive Director directed that is should move further east, in recognition of the increasing use of the seas in the Indian Ocean by criminal groups. At the invitation of the Sri Lankan Government, the Headquarters of the Global Maritime Crime Programme moved to Colombo in May this year. I would like to thank the Sri Lankan Government and the Sri Lanka people for the very warm welcome we have received. Sri Lanka is a nation deeply committed to the peaceful exploitation of the seas for the benefit of all states and few navies can match the Sri Lanka navy's expertise in maritime interdiction operations in peace and war.

I have been asked to speak today on the importance of minimizing gaps between international maritime law and domestic laws. This is a matter of great importance to all states that seek to uphold rule of law in their maritime zones. Two thirds of the world's surface is sea. More significantly, around half the world's surface is High Seas, that is to say, outside any states' territorial seas. That means that 50% of the earth's surface falls beyond the jurisdiction of any member state. The international approach to the high seas has always been that they should be accessible to all, not just coastal and naval states: that there should be freedom of navigation to vessels of any state and only narrow circumstances in which that freedom of navigation can be impeded. This is important for land-locked states too: they rely on maritime trading routes no less than coastal states.

However these ideals necessarily create a much looser enforcement regime than we see on land. The Law of the Sea Convention anticipated this and made some very limited enforcement provisions for piracy and slavery. However, in the 37 years since the Convention was drafted, maritime crime has become far more varied in its form. Some of the issues at which UNODC is now looking: underwater cables, floating armouries to support Privately Contracted Armed Security personnel, trafficking of persons in the fishing industry, narcotics trafficking by semi-submersible vessels; were beyond the contemplation of the drafters of the Convention. The high seas are now exploited criminally both for their resources and as a safe haven. They are the world's largest crime scene and visibility of what is happening out there is patchy.

Member States also seem reluctant to prosecute maritime crimes. In part this is because the jurisdictional and evidential issues are more complex. In some regions we have seen active prosecutions; for example in response to piracy in the Indian Ocean and now migrant smuggling in the Mediterranean. Yet for the same offences in other regions there are no prosecutions. To some extent this is a lack of laws and lack of training issue. But even when maritime crime is prosecuted, it is those who are detained at sea who are prosecuted. Those who remain on land and make the profits are largely untouched. Whilst member states find the complex jurisdictional arrangements a challenge, maritime criminals see them as an opportunity. They take the trouble to identify jurisdictions which are weak at enforcement and prosecution and then move to those weaker jurisdictions.

So it is important that states minimize the gaps between international maritime law and domestic laws and I propose to demonstrate the point by looking at three examples taken from the Indian Ocean where national laws have been aligned more closely with international law to good effect.

The **first example** I would like to use is the experience of counter piracy operations off east Africa.

COUNTER PIRACY OPS

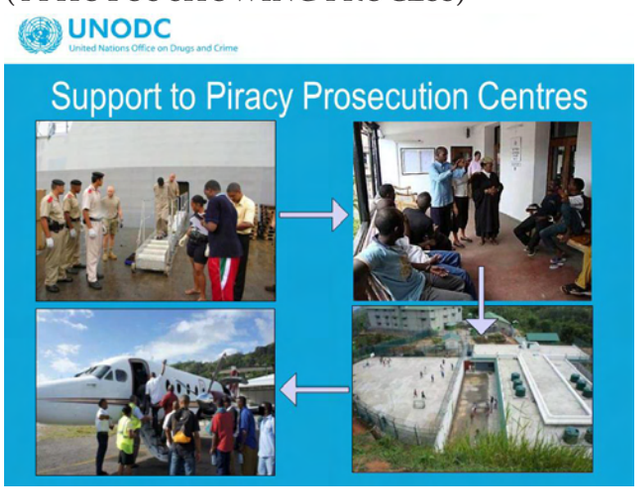
In 2008, pirates took to the seas off Somali for the first time in hundreds of years. The international community reacted quickly, deploying naval vessels to the region to protect merchant shipping and to reduce the risk to seafarers. As the pace of naval operations increased, Somali pirates were intercepted at sea in the course of attacks or shortly afterwards. Initially, it was easiest merely to confiscate their boats, guns and ladders and to let them go. This was known as 'catch and release' and it suited many of the naval states as it was straightforward and allowed their warships to return to their tasks quickly. However the same young Somali men were being caught and released over and over again, so the United Nations Security Council determined that a different approach should be taken. UNODC was instructed to support states in the region that had expressed themselves willing to accept suspected pirates for trial. Kenya, Mauritius, Seychelles and Tanzania stepped forward and UNODC set about establishing piracy prosecution centres in those states. One of the first matters to be addressed was the incorporation of legal provisions related to piracy into their criminal lexicons. UNODS provided advise in the incorporation of the provisions on piracy from the United Nations Convention on the Law of the Sea into domestic law in all four states: none had effective piracy laws in place. In fact across the world, states that found themselves involved in counter-piracy operations for the first time in hundreds of years had to dust off their piracy laws and in many cases revise them.

Piracy laws are generally uncontentious so they were passed through national legislative bodies very speedily and within a few months all four states declared themselves ready to prosecute piracy cases.

HANDOVER OF PIRACY SUSPECTS IN SEYCHELLES

The result has been the systematic prosecution of Somali pirates in courts across East Africa, with a total of 1,350 young Somali men being arrested at sea and prosecuted in the Indian Ocean region and beyond.

SEYCHELLES PIRACY PROSECUTION MODEL (4 PHOTOS SHOWING PROCESS)



The second example I would like to use is the legal work required to respond to the increased flow of heroin in the Western Indian Ocean

HEROIN INTERDICTION AT SEA

As all of us are aware, the high seas of the Indian Ocean are persistently used for the pursuit of criminal activity. In the last few years, trafficking of Afghan heroin has emerged as one of the most significant maritime crime threats in the Western Indian Ocean. In the Western Indian Ocean region, the US led Combined Maritime Force (CMF) has seized over 15,000kgs of heroin at sea in the last five years. UNODC terms this trafficking route, which involves the movement of drugs by sea from the Makran Coast to East Africa and South Asia, the 'Southern Route'. It is estimated that 30-40% of the heroin production from Afghanistan is trafficked via this route, a figure that has increased substantially during the conflict in Syria. Island states in the Indian Ocean are now some of the highest per capita heroin users in the world.

Unlike piracy, the smuggling of drugs by sea is not a crime of universal jurisdiction. That means that specific provisions need to be made by states conducting counter drugs operations if they wish to have a full range of legal powers to arrest and prosecute. This is what UNODC terms a 'legal finish': the use of the criminal justice process to see maritime narcotics operations through to completion. But it requires that states put in place domestic laws to allow their criminal justice system to engage.

Sri Lanka is a good example of a country that has done exactly that. Sri Lanka has passed legislation permitting the prosecution of foreign national detained outside Sri Lanka under Act 01 of 2008 on the Convention of Illicit Trafficking in Narcotics Drugs and Psychotropic Substances. Provisions of the Act (sub-section 3.2 (d)) extend jurisdiction to vessels outside Sri Lanka as long as the vessel is registered to a state party to the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances: known as the Vienna Convention. On the face of it, this legislation would seem to set the standard for the effective incorporation on international law relating to drugs trafficking at sea into national legislation.

SEARCH TRAINING ON DHOWS

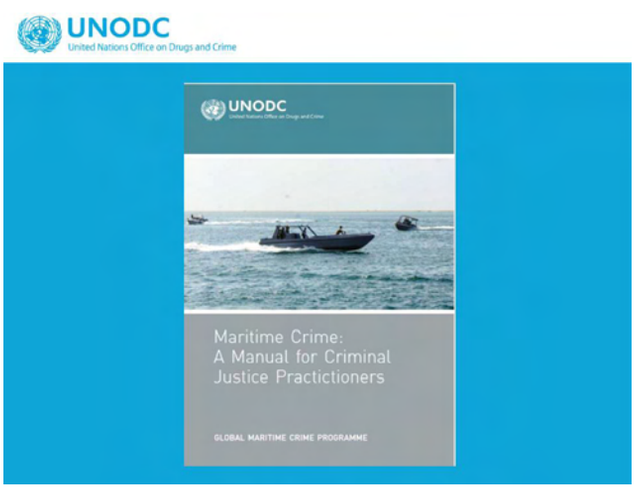
As a footnote, I would say that there has been a small upside to the prosecutions. The courts in both Seychelles and Sri Lanka have ordered that vessels confiscated from suspected or convicted heroin trafficker by naval forces can be used for training purposes. UNODC is delighted to have been able to partner with Seychelles and Sri Lanka to establish the two vessels as training centres for regional states whose maritime forces come across such vessels at sea and want to be able to search them for drugs. For those in the room who have never searched a vessel underway at sea, it is a skilled, hazardous and time-consuming task (often lasting days) which is much more likely to yield successful results if it can first be practiced alongside on a similar type of vessel. This exactly what is now available in Seychelles and Sri Lanka: two dhows that have been used for training my more than a dozen states in the last 12 months.

Finally, as my **third example** of the need to incorporate international maritime law into domestic legal frameworks, I would like to examine the emergent legal issues here in the Indian Ocean which are under examination by UNODC.

EGM

In June 2018, the GMCP hosted an Expert Conference in Colombo to look at a number of emergent legal challenges and to see how states could be helped to put in place laws to tackling them. The meeting was attended by academics from Indian and Pacific Ocean States as well as from Europe, Australia, North and South America and has resulted in the drafting of legal guidance on a range of legal issues.

MLE MANUAL COVER



This will be done through the addition of chapters to UNODC's highly acclaimed manual on Maritime Crime for Criminal Justice Practitioners. The manual is designed to assist coastguard officers, prosecutors and judges understand the legal regime that applies at sea and to ensure as many maritime crime cases as possible result in a 'legal finish'.

One contentious legal issue is that of privately contracted armed security personnel at sea: **PCASP.**

PCASP

The upsurge of piracy in the Gulf of Aden and wider Indian Ocean in 2006 to 2009, eventually led commercial ship owners to contract armed guards to protect their vessels transiting the formally specified "High Risk Area" (HRA) where piracy attacks were most prevalent. Despite international concerns over the use of privately contracted armed security personnel (PCASP) on ships, their use was effective, and to the date of publication in September 2019, no ship with PCASP embarked has been taken by pirates.

However this has given rise to questions about the use of force by Privately Contracted Armed Security Personnel. UNODC is about to publish the second edition of its manual on this subject. As the experts agreed here in Colombo in June this year, Use of Force Policy must comply with the laws and regulations of the various jurisdictions to which a PSC may become subject during the conduct of its tasks. It is highly recommended that the development of UoF Policy should include the advice and input of legal experts who specialize in use of force issues and jurisdictional nuance. A number of principles were established:

- UoF Policy may further restrict the use of force to even narrower limits than applicable law might otherwise allow. For example, the UoF Policy may limit the types of weapons and ammunition that can be used by a PSC. UoF Policy might also limit or otherwise restrict the amount and type of force that a PSC may use to defend others or to protect property.

- UoF Policy cannot interfere with an individual's right to use reasonable and necessary force to defend oneself against a harmful act or imminent threat of harm.

- UoF Policies do not provide blanket legal immunity for clients, PSCs or their personnel. The authorization to use force in a given circumstance means only that the PCSP may use reasonable and necessary force up to and including the amount of force permitted by law, and as reflected in the UoF Policy created for the contracted security task. Thus, for example, a PSC, the Client and or individual PCSP may be held responsible for excessive uses of force should an incident occur and it is found that the force used was not reasonable and / or necessary in the circumstances.
- While the existence of UoF Policy may or may not affect the ultimate outcome in the event of legal action, the absence of an approved UoF Policy, or the employment of a UoF Policy that is poorly prepared, could negatively influence any legal action that might follow in situations where a PSC has used force.

Related to PCASP is the legal status of floating armouries.

FLOATING ARMOURY

The demand for PCASP, however, precipitated a new set of legal and logistical concerns. Even to date, flag states vary as to whether they permit armed guards on their vessels. For the flag states that do allow armed guards, the movement of weapons and personnel onto and off of the vessels is a challenge. Since most port and coastal states have restrictive, bureaucratic and costly procedures for arms, ammunition and security equipment entering their territory, PMSCs quickly sought to find the most cost-effective approach to embarking and disembarking both kit and personnel. By the end of 2012, most PMSCs had turned to floating armouries to solve this problem. Located outside the territorial waters, and beyond the contiguous zone of coastal states, the FAs facilitate the embarkation and disembarkation of PCASP with their OEP around the edge of the HRA. While there are fewer today than during their peak, FAs continue to provide support to PMSCs transiting the HRA.

Based on an extensive survey of FA operators and customers, at the peak of FA operations, roughly 10-12 operators and around 20 vessels supported as many as 2,500-3,000 PCASP embarkations/ disembarkations across the HRA each month. As of September 2018, it is currently estimated that there are currently around 1,500-1,800 embarkations/ disembarkations across the HRA each month

Concern relating to FAs has been raised in numerous fora including the Maritime Safety Committee of the International Maritime Organization, the Contact Group for Piracy of the Coast of Somalia and the United Nations Security Council. These expressions of concern led to the present legal analysis.

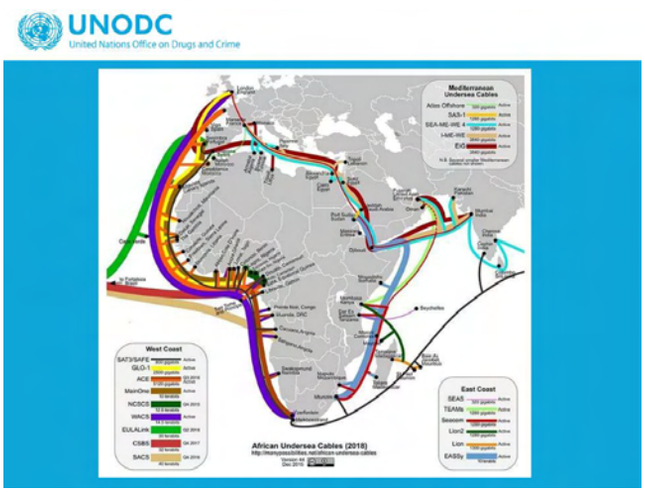
FAs are not directly addressed by any international instruments. A variety of hard and soft international laws, as well as some national systems of regulation do, nevertheless, pertain, to some degree, to the activities of FAs.

In general, there are three aspects of an FA operation to which existing laws apply:

1. The vessel, its armoury, and the services it provides;
2. The services facilitated by the vessel;
3. The individuals involved.

And the legal regime varies according to the maritime zone in which the floating armoury operates with the legal experts generally agreeing that coastal states have full powers over floating armouries in the territorial seas when they have made such provision in their national laws or when innocent passage is compromised, and no control in the EEZ and beyond.

UNDERSEA CABLES



Turning to undersea cables (also known as submarine communications cables), there are around 350-400 such cables under the sea, carrying 99% of internet traffic and connecting most countries. They carry financial, state and personal data and the consequences of their deliberate or accidental disruption can be profound. Unlike vessels, they are not registered under any nationality. So when we speak about the ownership of cables, we talk about ownership by consortia of private companies. These consortia are from more than one countries and these cables benefit a multitude of states. So it is a multi-state, multi-jurisdictional issue.

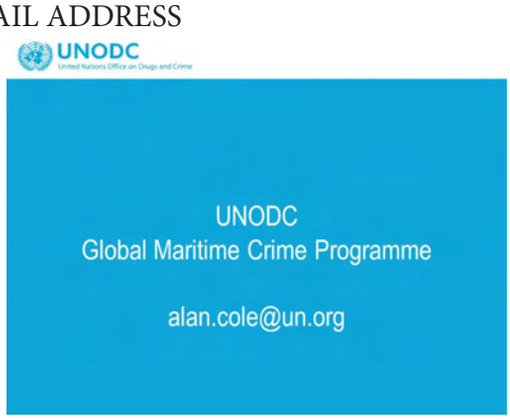
Turning to the law, in the Territorial seas it is generally accepted that states can make laws to protect their cables (UNCLOS Article 21) while in the EEZ UNCLOS deals with protection of cables, in a limited way.

But is this enough? Interference can be national security risk and given that there are regimes for vessels and fixed platforms, perhaps we should have a regime for cables too. The current UNCLOS regime does not provide any enforcement or prescriptive jurisdiction to owners of the cable, whether a state or a private company, or to states that benefit from the cable. Even if jurisdiction was extended to such states, it also does not cover the intentional theft of the cables themselves or the data in them, and it does not provide for any enforcement jurisdiction at all. Data has a value, regardless if it belongs to states or private companies

The Law of the Sea Committee will soon undertake a study on cables, looking at all the legal issues including whether this should be an area of criminal or commercial law. UNODC is working to ensure that states have the necessary advice to tackle the issue in so far as it is a transnational organized crime.

In addition to privately contracted armed security personnel, floating armouries and undersea cables, UNODC is leading the development of legal thinking on the legal regime applicable to vessels used to support terrorism, jurisdiction over stateless vessels, the fast expansion of maritime fuel theft and the phenomenon of kidnap for ransom off Somalia and in the Sula and Celebes Seas. All of these matters, along with the relevance of international human rights law to maritime law enforcement operations, are a new challenge for UN member states and UNODC is fully committed to navigating a way through them.

EMAIL ADDRESS



Conclusion

In conclusion, I hope I have demonstrated that the law is an enabler rather than a constraint when it comes to maritime law enforcement operations. That pursing cases through to a conviction can greatly increase the deterrent effect of expensive naval operations, but it is also important to ensure that countries are looking ahead and anticipating new maritime security and maritime crime threats and ensuring that they have done all they can to give their navies and coastguards the powers to tackle them.