



ASEM SEMINAR ON PIRACY AT SEA

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BELGIAN LEGAL FRAMEWOK ON PIRACY

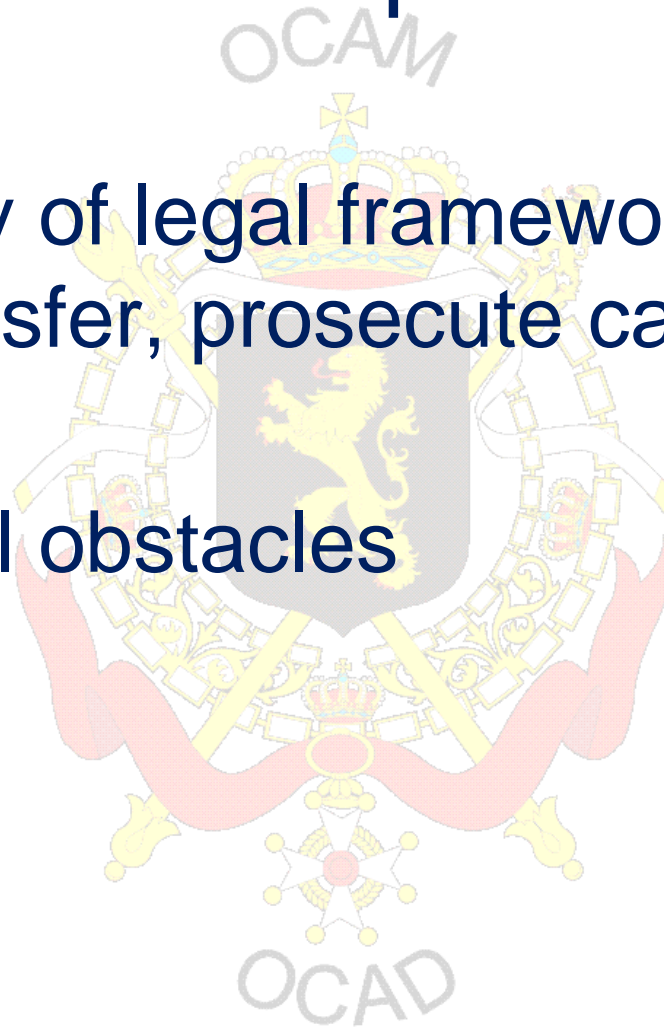
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Obstacles to prosecution

- Inadequacy of legal framework to arrest, detain, transfer, prosecute captured pirates
- Operational obstacles





Legal obstacles

- Lack/ of national legislation
- Difficulties to implement national/international legal framework
- ECHR compliance
 - Jurisprudence (Rigopoulos, Medvedyev,..)
 - death penalty, torture

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Operational obstacles

- Intervention vs preserving evidence
- Transfer to Europe
 - Risk of failure and liberation
 - Expensive
 - Time consuming
 - Risk to jeopardize negotiations

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The Pompei

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Belgian Piracy Acts of 30 Dec 2009

- New offenses :
 - Participation in the activities of a group of pirates
 - Act of piracy
- Monopoly of prosecution by the federal prosecutor
- Extended extraterritorial jurisdiction
- Provisional arrest warrant
- Powers of the commander



Group of pirates (art.2)

- Association of
- More than 2 persons
- Established in time
- Concerting
- To commit piracy offences cf art.3
// Terrorist group





Piracy offences (art.3)

Consist of any of the acts foreseen in art 3 :

- (a) any **illegal acts of violence, threat or detention**, or any act of **depredation**, committed for private ends by the crew or the passengers of a private ship and directed:
 - (i) on the high seas, against another ship or against persons or property on board such ship;
 - (ii) against a ship, persons or property in a place outside the jurisdiction of any State;
- (b) any **act of voluntary participation** in the operation of a ship with knowledge of facts making it a pirate ship;
- (c) **any attempt, preparatory act or any act of inciting or of facilitating** an act described in subparagraph (a) or (b).



Piracy offences (art.3)

- // 101 UNCLOS
- Not limited to high sea (allow jurisdiction on situation not covered by any other jurisdiction)
- Not applicable on aircrafts
- Criminalize assault but also attempt on the same level (even if assault is stopped by pirates because of external circumstances)
- Individualisation of penalties :
 - Member (10-15y) - Leader (15-20y)
 - aggravated circumstances : torture (15-20y), death (20-30y or life sentence), incapacity (15-20y), risk to environment or navigation security (15-20y)



Monopoly of the Federal Prosecutor (art.3)

- Brussels based (// ministries, crisis center, pol fed, CUTA,...)
- Knowledge of international co-operation
- Knowledge of military environment (competent for offences committed abroad by Belgian navies)
- Aim :
 - develop expertise over piracy phenomenon
 - Centralization :
 - 1 focal point to investigate and prosecute piracy offences (links between cases, eg MO, ..)
 - facilitation of international co-operation



Extraterritorial jurisdiction (art. 3 proc law)

Competence of the Fed Proc to prosecute acts of piracy committed abroad when:

- committed against Belgian ship
 - or suspects captured by Belgian navies
- = 2 criteria of passive personal jurisdiction:
- + Belgian « state flag » jurisdiction for crimes committed on Belgian ship



Extraterritorial jurisdiction

- The Federal Prosecutor decides if he prosecutes the case in Belgium depending on:
 - The international obligations of Belgium ;
 - The criteria of good administration of Justice.
- He can therefore decide to bring the case :
 - To the jurisdiction of the flag State of the ship hijacked;
 - To the jurisdiction of the State of which the author is a national or can be found;
 - To the jurisdiction of a third State if conditions of transfer are in compliance with international law



Arrest – Detention (art.2 proc law)

- Arrest by BEL navies if reasonable suspicion of piracy/suspect caught in the act
- Validity : 24h upon confirmation by Federal Prosecutor
- <24h : need of provisional arrest warrant by investigating judge valid 1 month.
- <24h upon arrival in Belgium : confirmation of arrest warrant by investigating judge

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Transfer

- If no criminal proceedings take place in Belgium, then the suspect must be transferred as soon as possible to a State which will prosecute the case (must presents guarantees of independance, impartiality, equity)

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Conclusions

Belgian Act on piracy of 30 Dec 2009 :

- a good compromise between international legal obligations and pragmatic conception of judicial proceedings
- A good tool to investigate piracy offences per se as well as financing.

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