



# Maritime Piracy and the UNTOC

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# Among Causes of Piracy

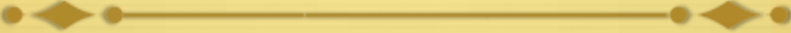


- ✦ Opportunity emphasized most often
  - ✦ Geography
  - ✦ Legal/institutional weaknesses, incl. cultural acceptability
- ✦ Important to strengthen legal system

# Different types of piracy



- ✦ Low-level armed robbery
- ✦ Medium-level armed assault and robbery
- ✦ Major hijacking
  - ✦ Source: IMO, 1993
- ✦ Parasitic
- ✦ Episodic
- ✦ Intrinsic
  - ✦ Source: Anderson, 1995

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- ✦ *position of state managers in the course of piracy,*
  - ✦ *ideology,*
  - ✦ *continuity of piracy*

✦ Source: Hua-Lun Huang, 2010

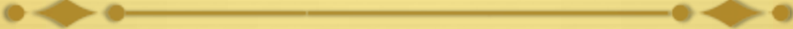
# Applicable Texts



- ✦ The UN Law of the Sea Convention 1982
- ✦ The Geneva High Seas Convention 1958 [still relevant for States not party to UNCLOS]
- ✦ The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988 and its Protocols
- ✦ The International Convention Against the Taking of Hostages 1979
- ✦ **UNTOC 2000**
- ✦ UN Convention against Corruption 2003
- ✦ UN Convention for the Suppression of the Financing of Terrorism 1999
- ✦ UN Security Council Resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008), 1851 (2008), 1897 (2009) 1918 (2010)

# Creative Treatment of Serious Crime Problems

- ✦ Assets and taxes
- ✦ Money laundering
- ✦ Organized crime UNTOC
- ✦ Terrorism finance
- ✦ Corruption (UNCAC)
- ✦ Human rights

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- ✦ UNCLOS does not provide for investigatory or prosecutorial procedures or guidelines for international cooperation in these undertakings,
  - ✦ piracy can be defined as a serious crime under UNTOC, providing int'l cooperation and MLA tools
  - ✦ UNCAC offers additional ones
  - ✦ Piracy: act of terrorism or act financing terrorism





# Four Main Offences



- ✦ Participation in an organized criminal group (Art. 5)
  - ✦ Laundering of proceeds of crime (Art. 6)
  - ✦ Corruption (Art. 8)
  - ✦ Obstruction of justice (Art. 23)
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- ✦ Transnationality and involvement in an organized criminal group need/should not be elements of offences in domestic law (Art. 34. 2).

# These are potentially applicable

- ✦ If piracy is a “serious crime” under national law and
- ✦ Is committed by those participating in an organized criminal group
- ✦ pirates launder the proceeds of their crime
- ✦ pirates bribe or offer/attempt to bribe officials
- ✦ they obstruct justice

# OC group participation



- agreeing to commit a *serious crime* for financial or material benefit
- or
- knowingly taking part in criminal or related activities of an *organized criminal group* to contribute to criminal aim
- different approaches to conspiracy, association etc. possible. States must see that domestic law covers all *serious crimes* committed by organized groups

# Organized criminal group

## Art. 2

- ✦ structured group
- ✦ of three or more persons
- ✦ existing for a period of time
- ✦ acting in concert
- ✦ aim of committing:
  - serious crimes or UNTOC offences
  - to obtain direct or indirect financial or other material benefit (Art. 2. a)

# Structured group (Art. 2 c)



- ✦ Not necessarily formal organization, membership or structure, but
- ✦ more than just “...randomly formed for the immediate commission of an offence”

# Money Laundering (art. 6)



- ✦ Conversion or transfer to conceal criminal origins
- ✦ Concealment of nature, source, location, disposition, movement or ownership
- ✦ Knowing acquisition of proceeds\*
- ✦ Participation, association, conspiracy, attempts, aiding, abetting and facilitating\*

\*to the extent these are compatible with the fundamental legal principles of States Parties

# Corruption (art. 8)



## ✦ Mandatory

- ✦ promise, offer, give, solicit or accept
- ✦ any undue advantage to/by a public official
- ✦ to act or refrain from acting
- ✦ any matter relating to official's public duties
- ✦ participation as an accomplice

## ✦ Optional

- ✦ Bribe foreign or international public servants
- ✦ Other forms of corruption (abuse of power, abuse of function, illicit enrichment, etc.)

# Obstruction of Justice (art. 23)



- ✦ Using force, threats or intimidation or
- ✦ promising, offering or giving undue advantage
  - ✦ to interfere with giving of evidence or testimony
  - ✦ to interfere with exercise of duties of judicial or law-enforcement official
  - ✦ in connection with proceedings on any Convention offence



# In addition, UNTOC covers



- ✦ Transnational offences
- ✦ That constitute serious crimes
- ✦ Committed by organized criminal group

# Transnationally (Art. 3.2)



- ✦ It is committed in more than one State
- ✦ It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State
- ✦ It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- ✦ It is committed in one State, but has substantial effects in another State

# Even wider scope



- ✦ article 16 (extradition): the person who is the subject of the request for extradition is located in the territory of the requested State party
- ✦ article 18 (mutual legal assistance): victims, witnesses, proceeds, instrumentalities or evidence of offences are located in the requested State party

# Serious crime (Art. 2b)



- ✦ Conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty

# Organized Criminal Group (art. 2a)

- ✦ A structured group of three or more persons existing for a period of time
- ✦ Acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention
- ✦ to obtain, directly or indirectly, a financial or other material benefit

# Helpful provisions



- ✦ Seizure and Confiscation of proceeds
- ✦ International cooperation
- ✦ Extradition
- ✦ Mutual legal assistance
- ✦ Special investigative techniques
- ✦ Joint investigations
- ✦ Training and technical assistance

# International cooperation



- ✦ Extradition (Art. 16)
- ✦ Mutual Legal Assistance (Art. 18)
- ✦ Investigative measures and other forms of cooperation (Art. 20, 26, 27)

# Extradition



- ✦ Extradition available for all Convention offences
- ✦ Convention extradition provisions harmonize with existing treaties and arrangements
- ✦ No refusal on the sole ground of fiscal matters
- ✦ Limitations in domestic law and existing treaties apply
- ✦ Parties must either “Extradite or Prosecute” own nationals
- ✦ Before refusing an extradition request, the States involved should consult



# MLA



- ✦ “States Parties shall afford one another **the widest measure of mutual legal assistance...**” (Art. 18. 1)
- ✦ Most requirements are operational, not legislative, but Parties must have legal powers needed to produce and deliver assistance
- ✦ States Parties are required to designate a *central authority* to receive, execute or transmit legal assistance requests
- ✦ No right to refuse MLA on the ground of bank secrecy
- ✦ More direct liaison arrangements permitted for other forms of cooperation

(Art. 18. 13, Art. 19, 27)

# Investigative measures

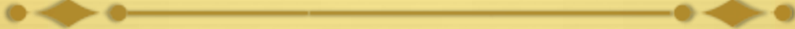


- ✦ agreements on **joint investigations** (Art. 19)
- ✦ domestic and cooperative use of **special investigative techniques** (Art. 20):
  - controlled delivery
  - electronic or other forms of surveillance
  - undercover operation
- measures to encourage those involved in transnational organized crime to cooperate with law enforcement authorities (Art.26)

# Other forms of cooperation (art. 27)

- ✦ Establish and enhance channels of communication
- ✦ cooperate in inquiries concerning the identity, whereabouts and activities of suspects; the movement of proceeds of crime or instrumentalities
- ✦ exchange information on:
  - ✦ specific means and methods used by organized criminal groups
  - ✦ general trends, analytical techniques, definitions, standards and methodologies

# Issues



- ✦ Must cross borders – domestic offences with domestic effects by local group are not transnational
- ✦ Low-level offences may not constitute ‘serious crime’
- ✦ If one or two persons commit the offence, it is not committed by an organized criminal group
- ✦ States must criminalize the act of piracy and contribute to the prosecution of suspected pirates (esp. their own nationals)
- ✦ Wider awareness and preparedness to use the UNTOC (or UNCAC, when appropriate) against maritime piracy

# Challenges in UNTOC implementation

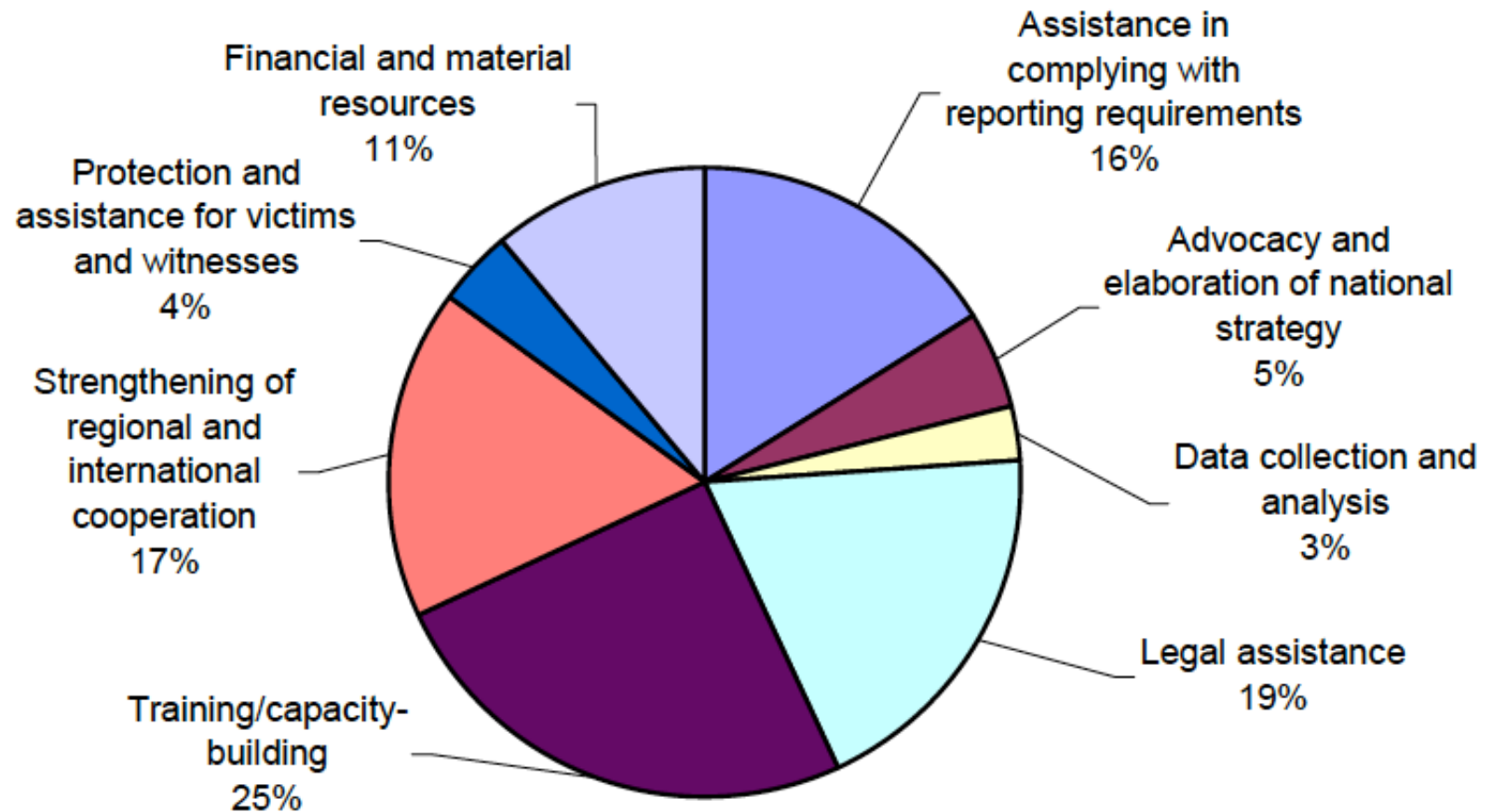
- ✦ Complexity of instrument (multiple agencies/depts)
- ✦ Capacity
- ✦ Political will – not always seen as a top priority
- ✦ Quality of technical assistance received
- ✦ Coordination of various implementation and technical assistance initiatives
- ✦ Regulatory tsunami – too many instruments to be implemented by governments at the same time (terrorism, UNTOC, UNCAC, etc.)

# UNCAC

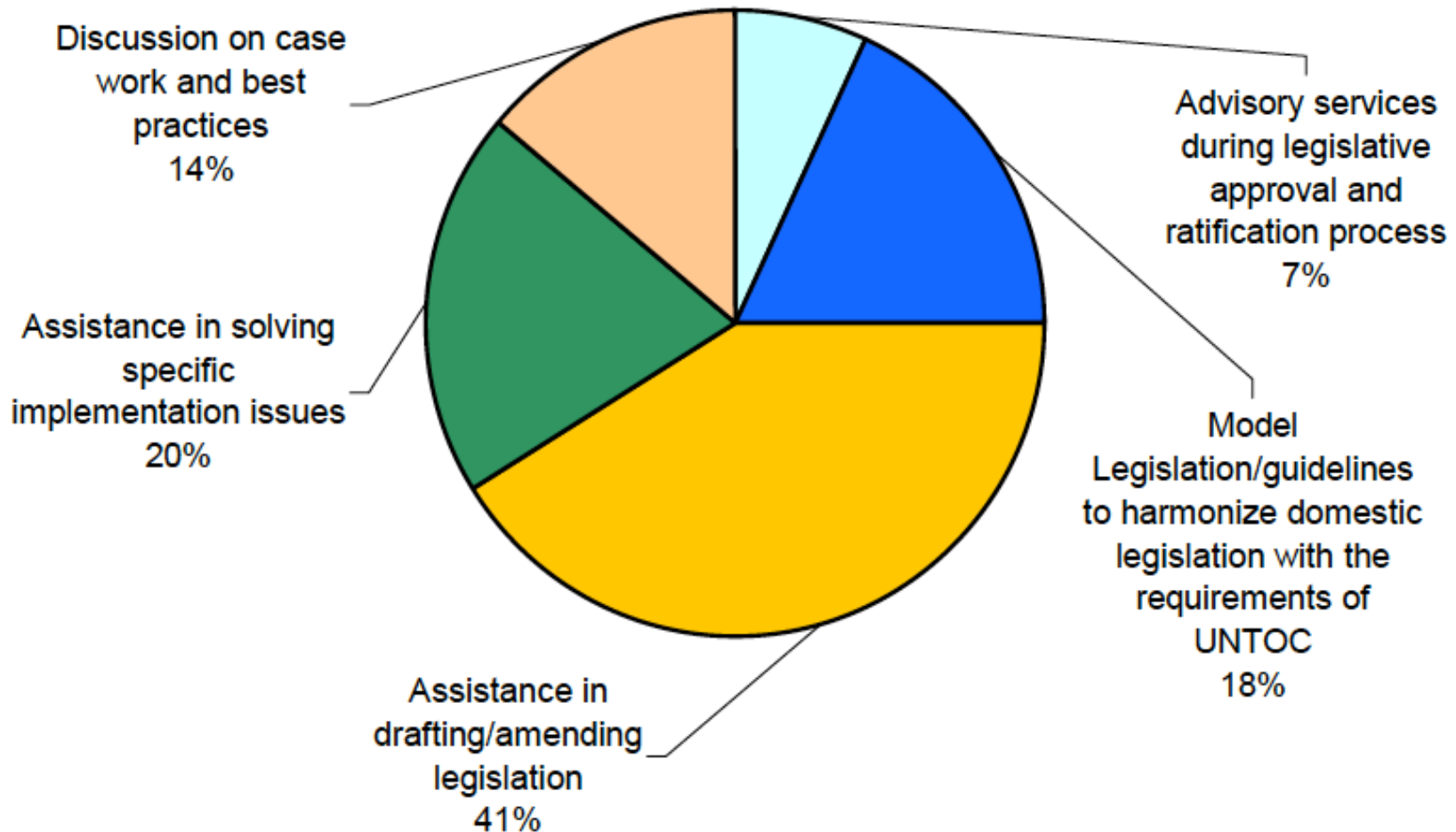


- ✦ Dual criminality
- ✦ MLA
- ✦ Implementation momentum
- ✦ Resources
- ✦ Synergies

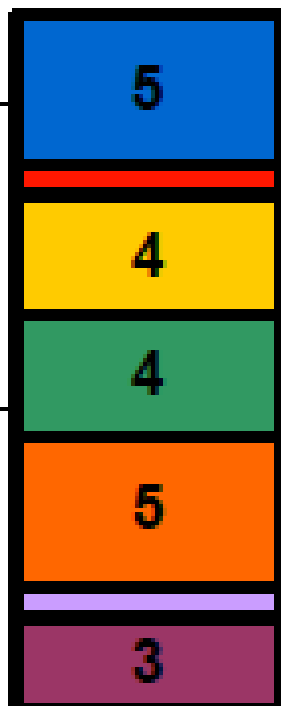
# TA needs identified by states



# Legal Assistance Needs








Asia

- Assistance in complying with reporting requirements
- Advocacy and elaboration of national strategy
- Data collection and analysis
- Legal assistance
- Training/ capacity-building
- Strengthening of regional and international cooperation
- Protection and assistance for victims and witnesses
- Financial and material resources

The background of the slide is a light yellowish-gold color. At the top, there are several faint, overlapping red stamps and a circular emblem. One stamp clearly shows the word "POSTAGE" and another shows "100". The circular emblem in the center-top appears to be a coat of arms or a similar official seal. The main text is centered and written in a large, black, serif font.

# UN International Convention for the Suppression of the Financing of Terrorism

# Art. 2



- ✦ someone commits the offense of terrorist financing if s/he “by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out a) an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex” [nine universal instruments against terrorism] or
- ✦ b) any act “intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act”

# UNSCR 1373 2001



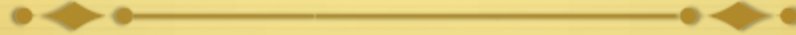
- ✦ 1. *Decides that all States shall:*
- ✦ (a) Prevent and suppress the financing of terrorist acts;
- ✦ (b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
- ✦ (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

# Autonomous obligation



- ✦ (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

# Thank you so much



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