



Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia

Terms of Reference

I. Introduction

1. The Contact Group on Piracy off the Coast of Somalia (“the Contact Group”) was established pursuant to Security Council resolution 1851 (2008) of 16 December 2008, which encouraged “..all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact between and among States, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia’s coast”. The Contact Group is open to participation by any State or international organization making a tangible contribution to the counter-piracy effort, or any State significantly affected by piracy off the coast of Somalia.

2. At its meeting in Cairo on 17 March 2009, the Contact Group entrusted Working Group 2 on Legal Issues to set up the “legal framework for a possible International Trust Fund”. Pursuant to that mandate, Working Group 2 set out various recommendations in a “Concept Paper”, on the basis of which the Contact Group, in the Communiqué of its 29 May 2009 meeting in New York, requested Working Group 2 to draw up detailed terms of reference for an international trust fund. Since that date, experience has shown the need to modify the original Terms of Reference.

3. This document constitutes the second update to the original Terms of Reference of an international trust fund, based on the “Concept Paper”, as requested by the Contact Group. The international Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia (hereinafter referred to as the “Trust Fund”) was first established in 2010 by the Secretary-General under the United Nations Financial Regulations and Rules. The Terms of Reference was revised in December 2012 to enable the United Nations Development Programme (UNDP) through its Multi-Partner Trust Fund Office (MPTF Office) to take over the administration of the Trust Fund from the United Nations Office on Drugs and Crime (UNODC).

II. Purposes and Principles

4. The overall purpose of the Trust Fund is to help defray the expenses associated with prosecution of suspected pirates, as well as other activities related to

implementing the Contact Group's objectives regarding combating piracy in all its aspects.

5. Specifically, the Trust Fund shall: expand the current possibilities available to both States and the private sector to make tangible contributions to combat piracy off the coast of Somalia; permit the payment of expenses associated with prosecution and detention of suspected pirates as soon as possible; provide for an expedited distribution mechanism to allow for the payment or reimbursement of short-term prosecution related expenses; and support relevant legal capacity-building activities.

6. Initiatives financed by the Trust Fund shall not interfere with nor replace, but rather complement, other efforts by States or international organizations, including the various United Nations organizations, to effectively combat piracy off the coast of Somalia. Initiatives financed by the Trust Fund will be coordinated, as appropriate, with activities funded through other international or regional organizations, including non-governmental organizations, or by States.

7. Donors are encouraged to contribute with un-earmarked resources. However, windows ("Windows") are designed within the Trust Fund to allow donors to make contributions to specific categories of activities and, to specific expenses. Additional Windows may be added to the Trust Fund by a decision of the Trust Fund Board. The Trust Fund Board (refer to section V below) shall inform the Secretary-General and the Contact Group of the status of funding of various Windows on a regular basis with a view of achieving balanced funding to the various activities within the mandate of the Trust Fund.

III. Modalities

8. Donor contributions to the Trust Fund will be used to finance projects ("the Projects") carried out by recipient UN System Organizations ("the Recipient UN Organizations") and implementation partners ("the Implementing Partners") within the framework of the Trust Fund's Terms of Reference and the Financial Regulations and Rules of the Recipient United Nations Organizations.

9. To ensure efficient, transparent, and accountable fund administration and to support uniform and consolidated reporting, the Trust Fund shall be administered by the UNDP MPTF Office, designated by the Contact Group plenary on the recommendation by the Trust Fund Board, which will administer the Trust Fund in accordance with the Financial Regulations and Rules of UNDP, and the relevant policies and procedures promulgated by the Secretary-General.

10. The Projects financed by the Trust Fund will be implemented by the Recipient UN Organizations in accordance with their own applicable financial regulations, rules, directives and procedures. The Projects could be executed by an Implementing Partner (the "Implementing Partner") other than the Recipient UN Organization, such as national authorities, and other national, regional, or

international organizations, and non-governmental organizations, with whom the Recipient UN Organizations would establish appropriate modalities.

IV. Structure

11. The Trust Fund will be established with Windows corresponding to types of expenses addressing piracy in all its aspects.

12. These **Windows** are:

A. Prosecution and detention-related activities

The natures of activities under this window are practical, operational and require rapid response, as well as of an ordinary project nature. They include:

- i. enabling the payment or reimbursement as rapidly as possible of specific expenses associated with investigating or prosecuting suspected pirates, or imprisoning those convicted,
- ii. enabling other relevant financial support to national jurisdictions, in particular for national legal capacity-building, including supporting evidence gathering capacities, capacities in the field of detention and imprisonment, and mutual legal assistance among and between the States of the region.

B. Other priority activities

- i. enabling other activities related to implementing Contact Group objectives regarding combating piracy in all its aspects, including public communication initiatives.

V. Governance and Operational Arrangements

13. A Trust Fund Board will be established to consider and approve funding proposals for projects to be supported by the Trust Fund. Upon receiving the Board's decisions, the Trust Fund Administrator will disburse the funds, as long as the required supporting documentation has been submitted, and the projects are in accordance with the relevant Financial Regulations and Rules and Staff Regulations and Rules of the respective Recipient United Nations Organizations. The Trust Fund Administrator will be guided by the decisions of the Trust Fund Board. In the event that Trust Fund Administrator cannot implement the transfer of funds, the matter will be referred back to the Board for review. The Trust Fund Administrator will only allocate funds to projects that have been approved by the Trust Fund Board.

14. The Trust Fund Board will comprise the following Board Members (“Board Members”): the Department of Political Affairs, who will chair the Board; a maximum of ten (10) members of the Contact Group, determined by the Contact Group; three Recipient UN Organizations (UNODC, IMO and UNPOS) and the Trust Fund Administrator. The UNDP MPTF Office as the Trust Fund Administrator will serve as an ex-officio member of the Trust Fund Board. The Board Members from the United Nations system will serve in an advisory role on the Board to assist in ensuring coherence in programming and thus shall be non-voting members.

15. The Board Members, determined by the Contact Group and endorsed by the Secretary-General, shall be chosen on the basis of substantial contributions made to counter-piracy efforts, of which three would be from the piracy-affected region.

16. Members of the Trust Fund Board chosen by the Contact Group shall serve terms of two (2) years.

17. The Trust Fund Board will be responsible for:

- Providing strategic direction to the Trust Fund;
- Mobilization of resources for the Trust Fund;
- Approval of project proposals, after technical review undertaken by the Trust Fund Secretariat (see below); making funding decisions on earmarked and unearmarked contributions, guided by the purposes and principles of the Trust Fund, with a view of achieving balanced funding to the various activities within the mandate of the Trust Fund;
- Reviewing periodic progress narrative and financial reports submitted by the Trust Fund Secretariat and Trust Fund Administrator respectively;
- Advising on any issue related to the operation of the Trust Fund.

18. The Trust Fund Board shall aspire to make recommendations by consensus as much as possible. However, final recommendations will be made by a two-thirds majority should consensus not be attainable.

19. The Trust Fund Board Chair and Trust Fund Secretariat will be responsible for:

- Chairing board meetings;
- Providing Secretariat support to Trust Fund Board (organizing/hosting meetings, timely distribution of meeting documents, issuing meeting reports);
- Informing the Contact Group and the Secretary-General of the status of funding of various windows, based on the information received from the Administrative Agent, on a regular basis as well as on the Trust Fund’s progress;
- Launching of regular call for inviting project proposals;
- Undertaking technical review of the project proposals submitted to ensure that they are in line with the purposes and principles of the Trust Fund, and, once reviewed;

- Submitting the project proposals to the Trust Fund Board for review and resource allocation decision;;
- Ensuring that project proposals are reviewed and submitted to the Board in accordance with UN rules and regulations;
- Ensuring that narrative reports received from the Recipient UN Organizations are reviewed and submitted to the Board in accordance with UN rules and regulations;
- Consolidating Annual Narrative Report submitted by Recipient UN Organizations, and submitting the report to the Fund Board and donors by 31 May each year.
- Noting, where possible, complementarity or conflict with other ongoing UN projects, to maximize the use of limited resources.
- Analyzing distribution of Trust Fund funding by donors, Recipient UN Organizations, programmes, projects, and other appropriate factors.
- Liaising with the Trust Fund Board, Recipient UN Organizations, and the Trust Fund Administrator on Trust Fund operations matters, as appropriate.

20. The Trust Fund Administrator will be responsible for:

- Receiving financial contributions from donors;
- Administering funds received, in accordance with its Financial Regulations and Rules and the Trust Fund's Terms of Reference;
- Undertaking a final review of all projects approved to by the Trust Fund Board by ensuring that required supporting documentation has been submitted, disburse funds to Recipient UN Organizations as approved by the Trust Fund Board following the final review described above;
- Informing the Trust Fund Board of the financial status of the Trust Fund;
- Consolidate Annual Financial reports, based on submissions provided to it by Recipient UN Organizations and provide this information to relevant donors and the Trust Fund Board no later than five months (31 May) after the end of the calendar year;
- Provide final reporting to the Trust Fund Board, including notification that the Trust Fund has been operationally completed to be provided no later than seven months (31 July) of the year following the financial closing of the Trust Fund.

21. The Trust Fund Board will consider project proposals which will be reviewed by the Trust Fund Secretariat within a maximum of two weeks of the proposal having been received. The Board will recommend on projects to receive funding, and on the level of funding to the project (i.e. full, in part, or reject).

22. The Trust Fund Administrator will disburse the authorized amounts to a Recipient UN Organization within three-five business days of receiving all the required documentation and decision of the Trust Fund Board.

VI. Expedited Facility

23. In circumstances where an immediate funding to pay or reimburse short-term prosecution related expenses is required, a Fast Track Mechanism will be developed in the form of a project proposal for review by the Trust Fund Board at the earliest opportunity.

VII. Recipient UN Organizations

24. Each Recipient UN Organization shall:

- Assume full programmatic and financial accountability for the funds disbursed to it by the Trust Fund Administrator;
- Carry out its activities reflected in the approved project proposal in accordance with the regulations, rules, directives and procedures applicable to it, using its standard implementation modalities;
- Provide narrative, financial and final reports in a timely fashion, and ensure that projects are evaluated after completion.

25. The role of the Recipient UN Organizations as recipients of the expedited facility will be contained in the Fast Track Mechanism as described in paragraph 23 above.

VIII. Contributions to the Trust Fund

26. Contributions to the Trust Fund may be accepted from governments, intergovernmental or non-governmental organizations, private-sector organizations and the public at large, in accordance with the United Nations Financial Regulations and Rules. Acceptance of funds from the private sector will be guided by criteria stipulated in the UN Secretary-General's guidelines on cooperation between the UN and Business Community (<http://www.un.org/partners/business/otherpages/guide.htm>).

27. Contributions to the Trust Fund may be accepted in United States dollars or any fully convertible currency. Such contributions shall be deposited into the bank account of the Trust Fund Administrator and recorded under the fund created for the purpose by the Trust Fund Administrator.

28. The US dollar value of a contribution-payment, if made in currencies other than United States dollars, will be determined by applying the United Nations operational rate of exchange in effect on the date of receipt of the Contribution. The Trust Fund Administrator will not absorb gains or losses on currency exchanges. Such amounts will increase or decrease the funds available for disbursements to Recipient UN Organizations.

29. Resources from the Trust Fund will be utilized for the purpose of meeting the direct and indirect costs of Projects managed by the Recipient UN

Organizations. Details of such projects, including respective budgets and implementation partners (national entities, NGOs/civil society organizations, intergovernmental organizations) will be set out in the relevant project documents. The Recipient UN Organizations shall be entitled to a maximum of 7 per cent as project support costs.

30. The Trust Fund Administrator will be entitled to allocate an administrative fee of one percent (1%) of the Contribution by the Donor, to cover the Trust Fund Administrator's costs of performing the Trust Fund Administration services. Indirect costs of the Recipient UN Organizations recovered through programme support costs will be 7%. In accordance with the UN General Assembly resolution 62/208 (2007 Triennial Comprehensive Policy Review principle of full cost recovery), all other costs incurred by each Recipient UN Organization in carrying out the activities for which it is responsible under the Trust Fund will be recovered as direct costs.

IX. Reporting, Transparency and Accountability

31. For each Project approved for funding from the Trust Fund, each Recipient UN Organization shall provide the Trust Fund Administrator with the following statements and reports prepared in accordance with the following reporting procedures of the Trust Fund:

- Annual financial statements and reports as of 31 December with respect to the funds disbursed to it from the Trust Fund account, to be provided no later than four months (30 April) after the end of the calendar year.
- Certified final financial statements and final financial reports after the completion of the activities in the approved programmatic document and including the final year of the activities in the approved programmatic document, to be provided no later than six months (30 June) of the year following the financial closing of the Trust Fund.

32. The Trust Fund Administrator will prepare annual consolidated financial reports, based on the reports referred above, and will provide those consolidated reports to the Trust Fund Board and each donor that has contributed to the Trust Fund no later than five months (31 May) after the end of the calendar year.

33. For each Project approved for funding from the Trust Fund, each Recipient UN Organization shall provide the Trust Fund Secretariat with the following reports prepared in accordance with the following reporting procedures of the Trust Fund:

- Brief periodic reports on progress of implementation of ongoing projects;
- Annual narrative progress reports, to be provided no later than three months (31 March) after the end of the calendar year;
- Final narrative reports, after the completion of the activities in the approved programmatic document and including the final year of the activities in the

approved programmatic document, to be provided no later than four months (30 April) of the year following the financial closing of the Trust Fund. The final report will give a summary of results and achievements compared to the goals and objectives of the Trust Fund.

34. The Trust Fund Secretariat will prepare annual consolidated narrative reports, based on the reports referred above, and will provide those consolidated reports to the Trust Fund Board and each Donor that has contributed to the Trust Fund no later than five months (31 May) after the end of the calendar year.

35. The Trust Fund Administrator shall also provide to the Trust Fund Board and the donors an annual certified financial statement on its activities as Trust Fund Administrator ('Report on Sources and Use of Funds') no later than five months (31 May) after the end of the calendar year, as well as a certified financial statement no later than seven months (31 July) of the year following the financial closing of the Trust Fund.

X. Public Disclosure

36. The Trust Fund Administrator will ensure that operations of the Trust Fund are publicly disclosed on the MPTF Office GATEWAY (<http://mptf.undp.org>), the Trust Fund Administrator's website.

XI. Ownership of Equipment, Supplies and Other Property

37. Ownership of equipment, supplies and other property financed from the Trust Fund shall vest in the Recipient UN Organization undertaking the funded activities for the duration of the Project. Matters relating to the transfer of ownership by the Recipient UN Organization shall be determined in accordance with the applicable policies and procedures of the Recipient UN Organization except in the case of Projects where the Implementing Partner is a national authority. In such cases, ownership shall transfer to the national authority upon project completion.

XII. Audit

38. Administrative Agent and Recipient UN Organizations implementing projects funded from the Trust Fund will comply with their own financial regulations and rules, including their own internal and external audit procedures.

XIII. Closure of the Trust Fund

39. The Trust Fund Board will decide when the purposes for which the Trust Fund was established have been realized, or, in the opinion of the Trust Fund Board, the Trust Fund is no longer needed in support of the purposes for which it was established. The Trust Fund Board will notify the Trust Fund Administrator of its decision to close the Trust Fund. The Trust Fund will be terminated when all of

the projects have been satisfactorily completed and agreed by all parties concerned, and after the satisfaction of all incurred commitments and liabilities.

40. Any balances remaining in the Trust Fund Account or in the individual Recipient UN Organizations' separate ledger accounts upon winding up of the Trust Fund shall be used for a purpose mutually agreed upon by the Trust Fund Board and donors or returned to the donors in proportion to their contribution to the Trust Fund as decided upon by the Trust Fund Board and the donor(s).