

## Conference

### *Addressing the Resurgence of Sea Piracy:*

#### *Legal, Political and Security Aspects*

16<sup>th</sup> June 2009, Rome

### Introductory Speech

**Ambassador Maurizio Moreno**, President, International Institute of Humanitarian Law (IIHL),

It is a pleasure and an honor for me to welcome you all – participants, discussants, speakers, chairpersons alike – to this conference on maritime piracy, jointly organized by the *Istituto Affari Internazionali*, Rome and the *International Institute of Humanitarian Law*, Sanremo. Let me first of all express the sincere gratitude of both these Institutes to Admiral Trevisani, President of the *Centro Alti Studi per la Difesa*, who has kindly accepted to host this event in such a prestigious framework.

Our warmest thanks also go to the Italian Foreign Ministry, represented here by Hon. Vincenzo SCOTTI, Under Secretary of State, who will take the floor in a few minutes, and to the EU Commission and to the NATO Public Diplomacy Division, for their active encouragement and their generous support to this initiative. We look forward with great interest to the contributions of Ambassador BISOGNIERO and Director ARNOULD concerning the two organizations' commitment to countering piracy.

Last but not least, we would like to warmly acknowledge the assistance offered by the Italian Ministry of Defense and the funding provided by **Banchero Costa Insurance Broker S.p.a.**, **Fincantieri** and **Rina**.

Piracy is not a new threat. Pirates have been around as early as oceans have been used as sailing and trade routes.

In recent years, however, piracy at sea has acquired new forms and has reached an unprecedented scale and level of sophistication.

Pirate attacks occur with increasing frequency in different parts of the world. Vulnerable areas not only include the Horn of Africa but also the Indian subcontinent, the Malacca Straits, the Gulf of Guinea, the Caribbean.

The problem of addressing the challenge of modern maritime piracy in its multifaceted aspects (which are at the same time legal, political and security aspects) has been projected once more to the forefront of international attention.

Public opinion has been profoundly shocked by the rapid escalation of more recent aggressions off Somalia and in the Gulf of Aden, a region which is today emerging as the main epicenter of maritime insecurity.

Pirate attacks are having severe repercussions on seafaring and trade. There is the human problem of the safety of the lives of crewmen who are taken hostage, injured and possibly killed. There are the financial implications connected with the increase in shipping costs, freight rates and insurance premiums. The risk of major, environmental incidents should not be underestimated, considering the circumstance where attacks are directed not only against merchant and passenger vessels or cargoes but also against oil tankers. Moreover, the potential convergence between piracy and maritime terrorism can not be *a priori* ruled out, even if no concrete evidence of such a relationship has been produced for the time being.

The response to sea piracy must be examined from two perspectives: the relevant international legal framework and the enhancement of international co-operation, including regional co-operation.

A legal framework exists. It consists of treaties and conventions and well-established customary norms. But the traditional principle of universal jurisdiction, giving ample license for punishing and apprehending pirates, has revealed its limits and is today confronted with a number of political and legal obstacles. The arrest, detention and prosecution of pirates often raise delicate policy, financial and logistical problems. Between theory and practice there is a wide gap that cannot be ignored.

Bringing pirates to the courts is for a number of countries problematic. The proceedings are burdensome. Incidents of minor relevance are, therefore, not always reported.

The problem of maritime violence in the Horn of Africa is exacerbated by the geographical environment and the situation of anarchy, lawlessness and political uncertainty prevailing in a region where robberies and hijackings are seen as being an important source of income. Pirates do not necessarily operate on the high seas. Many of them were originally fishermen, with a wide network of contacts along the coasts.

The deployment of naval patrols to police the waters by NATO, the European Union and individual countries – including Russia, China and India - certainly provides a necessary deterrent but cannot be considered the only form of international response to a problem which is becoming a major concern for regional security and shipping. African countries themselves lack resources and operational capabilities to effectively contribute to anti-piracy efforts. International co-operation has to be further expanded and a closer institutional co-ordination is needed. Regional co-operation is crucial to discourage, capture and punish the authors of illegal acts. We should, therefore, particularly welcome the presence today of highly-qualified representatives of the countries of the region.

The UN Security Council in its Resolution 1851 has correctly underscored that the roots of the problem have to be addressed and that anti-piracy efforts in the Horn of Africa must be placed in the context of a comprehensive approach fostering an inclusive peace and stabilization process in Somalia.

In an effort to counter the shortcomings of international legislation, the UN Security Council has authorized the use of military force also on the Somalia mainland, subject to approval by the national provisional government and in compliance with “applicable international humanitarian law and human rights law”.

The Resolution clearly states that it does not intend to set a precedent. But the specific reference made to “international humanitarian law” has re-opened the debate on the applicability of this body of norms to piracy. I am not a legal expert and I am sure that Professor Natalino Ronzitti, the very distinguished scientific co-ordinator of this conference, and Professor Heintschel von Heinegg, a prominent member of the Board of the International Institute of Humanitarian Law, Sanremo, which I have the privilege to chair, are in a much better position than me to address this sensitive issue.

As a matter of fact, national armed forces and navy patrols, monitoring maritime security are engaged in situations that are not necessarily an armed conflict. Pirates are civilians using civilian boats. They are not ordinary criminals but at the same time they cannot be considered as belligerents or, if captured, prisoners of war.

Nevertheless, I think that we cannot ignore the applicability of the basic principles and norms of the international law of human rights, which are inderogable and applicable in all circumstances. I have in mind in particular provisions such as those enshrined in Article 3 common to the Geneva Conventions of 1949, prohibiting at any time and at any place whatsoever:

- a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture*
  - b) Taking of hostages;*
  - c) Outrages upon personal dignity, in particular humiliating and degrading treatment;*
  - d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*
- .....”

Moreover, the fundamental principles of international humanitarian law and namely the distinction between civilians and combatants, the principle of necessity and proportionality, the prohibition of causing unnecessary suffering, should be duly taken into account when defining the rules of engagement of anti-piracy operations, indiscriminately of the qualification of a specific situation and of the legal status of the offenders.

I will not go further into the substance of legal issues and will refrain from touching the political, security and economic dimension of a phenomenon that risks becoming a major threat to human society.

We have here today scholars, political analysts, naval officers, representatives of ship owners and insurance companies who in our discussions will certainly make an important contribution towards

a better understanding of the problems at stake, and towards the identification of realistic solutions to the new challenges posed by contemporary piracy.