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REPORT OF THE CONFERENCE
"ADDRESSING THE RESURGENCE OF SEA PIRACY: LEGAL, POLITICAL AND SECURITY ASPECTS"

by Emiliano Alessandri

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The resurgence of sea piracy has made headlines in recent months, becoming the object of intense debate, also among scholars and practitioners.[1] Attention has concentrated particularly on piracy off the Horn of Africa (especially in the Gulf of Aden), where the phenomenon has reached critical levels. Reports speak of over a hundred attacks in 2008 alone and rising figures in 2009. Some 18 merchant ships are currently detained by Somali pirates together with a growing number of hostages. Ransoms paid in 2008 are estimated to be in the range of over a hundred million US dollars.

In view of the growing concern about the phenomenon, the Institute for International Affairs (IAI) of Rome and the International Institute of Humanitarian Law (IIHL) of Sanremo organized a conference on 'Addressing the Resurgence of Sea Piracy: Legal, Political and Security Aspects', under the scientific supervision of Professor Natalino Ronzitti.[2] The conference was held in Rome at the Centro Alti Studi per la Difesa (CASD) on June 16, 2009 and brought together over thirty experts, including: renowned International Law scholars and political analysts; officials from the EU, NATO, and the International Maritime Organization (IMO); government officials from Denmark, Italy, Somalia, and Kenya; as well as representatives of the private sector (shipping industry and insurance companies).[3] The meeting was attended by over 200 people and featured a lively and fruitful debate. The discussion focused in particular on Somali piracy.

What follows is a summary of the main issues and points debated during the conference, especially the definition of the phenomenon of piracy from a legal and political point of view, the position of the various stakeholders involved, and the international response. The last section advances a set of policy recommendations.

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[1] Bjorn Moller, "Piracy, Maritime Terrorism and Naval Strategy", DIIS REPORT, 2009; Bjorn Moller, "Piracy off the Coast of Somalia", DIIS BRIEF, January 2009, www.diis.dk/bmo; Roger Middleton, "Piracy in Somalia", Chatham House, October 2008, www.chatamhouse.org.uk; Nicole Stracke and Marie Bos, "Piracy: Motivation and Tactics. The Case of Somali Piracy", Gulf Research Center, 2009, http://www.grc.ae/index.php?frm_module=contents&frm_action=detail_book&frm_type_id=&pub_type =4&op_lang=en&sec=Contents&book_id=59893; James Kraska, "The Report on the US Naval War College Worskhop on Somali Piracy. Fresh Thinking for an Old Threat", 28 April 2009, International Law Department- US Naval War College, , http://www.nwc.navy.mil/cnws/ild/documents/Countering%20Maritime%20Piracy.pdf
[2] The conference was organized in collaboration with and with the support of the Ministry of Foreign Affairs of Italy, NATO, and the European Commission. Fincantieri, Rina, and Banchero Costa Insurance Broker also supported the organization of the event.
[3] The program of the conference is attached.

Defining the problem: legal and political aspects

Piracy is not a new phenomenon and international law scholars tend to agree that the existing legal framework to combat it is fairly solid, requiring no major correction.[4] It is based on the definition of piracy as a criminal act on the high seas motivated by selfish, as opposed to political or other aims, especially economic gains – 'Piracy consists of any criminal acts of violence, detention, or depredation committed for private ends by the crew or the passengers of a private ship or aircraft that is directed on the high seas against another ship, aircraft, or against persons or property on board such ship or aircraft..'.[5] The distinction between piracy and other forms of illegal activity on the seas, such as smuggling or trafficking, and between pirates and terrorists and/or insurgents, is crucial from a legal point of view and remains key to a correct approach in responding to the problem. At the same time, however, political analysts and officials point out and international law experts are ready to concede that, in moving from theory to practice, several aspects of the existing legal framework look less clear and that the link between piracy and other phenomena of a criminal or political nature have to be more closely investigated.

A first area deserving closer attention is piracy off the coasts of so-called 'failing' or 'failed states', Somalia being a notable example. In fact, there seems to be a positive correlation between the incidence of piracy and the level of inefficiency/instability of the government of the coastal state. Failing states can hardly control activities on their shores and keep a working coastguard on duty. The very concept of 'territorial waters' of a failing state having no real control over its territory or with disputed borders, becomes highly elusive.

This creates a problem in that, according to International Law, theft or kidnapping at sea is an act of 'piracy' only when it takes place on the high seas. When it occurs in the territorial waters of a sovereign state, the same activity falls into the category of 'armed robbery', and cannot be repressed by foreign navies (the coastal state has the right and responsibility to counter it). Recent UN Security Council Resolutions (UNSC Res 1816, 2 June 2008 and 1838, 7 October 2008), have tried to provide a solution precisely to cases, such as the Somali one, in which foreign intervention in territorial waters might be required to combat piracy, given the absence of a coastguard and of stable and effective state authorities capable of enforcing the law and prosecuting the pirates. Action by foreign fleets can now be taken in Somalia's territorial waters, but only 'in cooperation' with the local government, notably the Transitional Federal Government of Somalia (TFG).[6]

Given the poor effectiveness of the TFG, this solution is good as far as it goes. The problem remains whether to develop International Law in this area further by extending

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[4] See, particularly, the 'Geneva Convention on the high seas' of 1958 (articles 14, 15, 16, 17, 18, 19, 20, 21, 22) whose main provisions have been restated in the UN Convention on the Law of the Sea (UNCLOS), 1982, (articles 100l, 101, 102, 103, 104, 105, 106, 107), http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm

[5] UNCLOS, article 101, http://www.un.org/Depts/los/convention_agreements/texts/unclos/part7.htm, accessed on 24/06/09

[6] http://daccessdds.un.org/doc/UNDOC/GEN/N08/655/01/PDF/N0865501.pdf?OpenElement.

the definition of piracy to armed robbery/hijacking/kidnapping in the territorial waters of a failing state. This development is firmly opposed by some of the permanent members of the UN Security Council, especially China. The Chinese government has in fact warned against considering UN SC Res. 1816 and 1838 as a 'precedent'. The principle that China seems to want to defend is the fundamental one of 'non-interference' in the internal affairs of a sovereign state.

Some international law experts point out, moreover, that the UN Security Council should in any case refrain from adopting international law-making provisions. The Security Council's mandate is to prevent or manage international crises. Its prerogative to decide on the lawful use of force does not make it a legislator. If major international actors were to conclude that the legal definition of piracy has to be broadened, then this would have to be incorporated into a new international treaty or convention, exclusively binding the states that would be party to it.

Other areas of International Law worth further clarification and development are those covering the apprehension, detention, prosecution, as well as reintegration into society of pirates.

As concerns the first point, there is a general consensus that operations against pirates cannot be carried out by private actors, 'privateering' having been outlawed over 150 years ago with the 'Declaration of Paris' of 1856. What is allowed, instead, is the employment of security guards onboard ships for the protection of the crew and cargo as a simple measure of self-defense (although international law experts and government officials alike note that the very presence of weapons aboard risks creating a whole set of further practical and legal problems).[7] 'Counter-piracy', in sum, pertains to navies.

Navies are themselves faced with limitations. They can intercept and inspect ships, but they cannot seize them or detain crews unless there is sufficient evidence that they are involved in pirate activities, even if weapons are found onboard. Of the approximately 3000 ships sailing off the coast of Somalia at any one point, two thirds are likely to be carrying weapons, often kept onboard for self-defense against pirates. Intervention on the coasts themselves, including pirates' sanctuaries (such as small ports, gulfs, etc.), is understood to be prohibited unless the UN Security Council explicitly authorizes it (UN Sec Res. 1851 of 2008 might provide a basis for such actions, but has not yet been used).[8] One could also justify interventions on the coasts as taking place under the right of self-defence against non-State actors or invoke the right to protect nationals abroad, but this would require evidence of hostages being kept in such places. In this case, moreover, force could be used to free the hostages only if strictly necessary.

There are also limits on the use of force, which has of course to be proportionate and cannot be used preventively. Experts are still debating as to the norms regulating the use of force against pirates. Some suggest that the doctrine of 'graduated response' laid out by Professor of International Law Daniel P. O'Connell can be also used to deal with piracy as it allows the use of force even prior to an actual attack, provided that

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[7] Just to mention one, some states (such as Egypt) would consider the entry in their territorial waters of private ships carrying weapons as a form of illegal arms import.
[8] http://daccessdds.un.org/doc/UNDOC/GEN/N08/655/01/PDF/N0865501.pdf?OpenElement

humanitarian principles are respected.[9] The doctrine is based on the important distinction between the use of force for self-defence and 'maritime law enforcement'.

The detention of pirates when seized raises several issues as well. One has to do with the time lag between seizure and surrender to authorities. There have been complaints that the detention time, which is often several days, is too long. The Italian government passed a decree in December 2008 by which the arrest of seized pirates was validated via a televised procedure by a judge sitting in Rome.[10]

More broadly, detention raises issues of human rights because pirates are held on boats in conditions that do not necessarily meet the necessary standards for convicts established in the European Convention on Human Rights. The issue is further complicated by the fact that pirates currently operating in the Gulf of Aden are often juveniles. In brief, when taking action against pirates, the basic principles and norms both of Human Rights and International humanitarian law should be applied. Those principles cannot be derogated and should be applied in all circumstances.

Prosecution of pirates is an extremely complicated issue as merchant shipping is a quintessential case of internationalization: the ownership, crew, cargo, and flag of a ship can all involve different nations. According to the law of the sea, the flag State has the power to punish captured pirates according to its law. Often times, however, states lack a viable national criminal legislation incorporating the principles of international law, or are reluctant to embark on a process that can be long and costly (some pirates may even ask for political asylum after being seized).

This raises the issue of whether third countries can be involved in prosecution or whether *ad hoc* international courts should be established. In the case of Somalia, the EU has signed an agreement with Kenyan authorities to turn over seized pirates for prosecution.[11] Similar agreements have been stipulated between the US and Kenya and the UK and Kenya. Agreements with Kenya specify that prosecution cannot involve the use of torture, it has to be based on a fair trial, and has to abide by international human rights standards. Not all countries, however, seem to be oriented to relying on third countries or regional tribun,als and doubts remain as to what law should be applied in each case. Logistical issues are potentially challenging, too. A further issue has to do with reimbursement or aid for the expenses incurred when trying pirates. The EU is supporting the government of Kenya in its judicial efforts (€ 2.4 million). Compensation could also take the form of 'capacity building'.

As for International courts, international law scholars seem to view them broadly as not advisable in this case. They tend to be costly to run and have to based legally not on a UN Security Council Resolution (although there have been such cases in the past) but on an international treaty, which would take time and a lot of political will. So far, the

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[9] D. P. O'Connell, *The Influence of Law on Sea Power* (Annapolis, Naval Institute Press, 1975); *The International Law of the Sea* (New York-Oxford: Clarendon Press, 1982)

[10] The decree was later converted in law by the Italian parliament (Law no.12, 24 February 2009). The article on piracy was further modified by an new Italian government decree on June 15, 2009 in order to implement the agreement later reached by the EU and Kenya on the prosecution of seized pirates (see further on this point) http://www.camera.it/parlam/leggi/decreti/09061d.htm

[11] http://www.mzv.cz/nairobi/en/news_and_events/eu_kenya_agreement_of_transfer_of.html; http://www.consilium.europa.eu/showpage.aspx?id=1519&lang=EN

most ardent proponent of an international court on piracy has been the Russian Federation.[12] The Working Group on Legal Issues of the 'International Contact Group on Piracy' (established on January 14, 2009 under US initiative, including over 30 countries, and currently led by Denmark), is discussing the viability of regional and international tribunals, but has to date reached no agreement.[13]

Pirates, finally, have to be re-integrated into society once they have finished their term in prison. This is another issue that has not been adequately addressed but will have to be dealt with in the near future as some of the pirates seized in the past years could soon be released. Kenyan authorities are particularly concerned about the fate of the many imprisoned pirates that are currently kept in their country.

Moving back to the definitional level, the important distinction that International Law makes between piracy and terrorism must not dismiss the possibility of a link between these two phenomena. Legally as well as conceptually, terrorism is a fundamentally different phenomenon from piracy as it requires the existence of a political or ideological drive. However, terrorist attacks can be waged from the sea (the 2008 terrorist attacks in Mumbai, India, causing almost 200 casualties, for instance, came from the sea), and 'maritime terrorism' has been used by the main international terrorist organization, Al Qaeda, both prior to and after the September 11 attacks.[14] Some international conventions, such as the 1988 Rome 'Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation', cover terrorism but can also be used to fight piracy.[15] The same holds true for the international convention against the taking of hostages.[16]

There is to date no evidence of a link between piracy and terrorism in Somalia. This is confirmed by all major institutions and entities operating in the region. At the same time, however, more and more sources speak of an infiltration of terrorist groups in Somalia, including Al Qaeda.[17] The risk exists, therefore, that pirates can be 'enlisted' as terrorists or simply 'hired' by terrorists in the future. The more sophisticated piracy activities become – as is currently the case in Somalia – the higher the risk that terrorist groups might consider relying on pirates to carry out their attacks. At a different level, revenues from pirate activities can be re-invested in terrorist activities.

If a connection between Somali piracy and terrorism were to be proven, it goes without saying that the approach of existing actors would have to change entirely. This would be true from both a strategic and a legal point of view. US experts point out, for instance, that that paying ransom for hostages would become illegal if pirates were also terrorists.

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[12] http://network.nationalpost.com/np/blogs/posted/archive/2009/05/04/today-in-piracy-russian-president-calls-for-international-pirate-court.aspx

[13] http://www.africom.mil/getArticle.asp?art=2466&lang=0

[14] In October 2000, Al Qaeda assaulted the USS Cole, killing 17 sailors. In 2002, Al Quaeda attacked the French tanker 'Limburg', killing one crewman and also spilling several thousands barrels of oil onto the coast of Yemen.

[15] http://www.imo.org/Conventions/mainframe.asp?topic_id=259&doc_id=686

[16] http://untreaty.un.org/English/Terrorism/Conv5.pdf

[17] http://www.huffingtonpost.com/2009/06/11/some-al-qaeda-fighters-mo_n_214609.html

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Another important link to be investigated is the one between piracy and the political dynamics of the coastal state, especially if the state is failing as in Somalia. Somali pirates were initially fishermen who attacked foreign vessels involved in illegal activities (unauthorized fishing/dumping of toxic material, waste) or simply entering the territorial waters of Somalia without permission.[18] With the deterioration of Somalia's agriculture due to internal strife and disorder, other Somalis have 'recycled' themselves as fishermen – and sometimes pirates – as a way to make a living.

All actors in the region, including the government of Somalia, now recognize that piracy has become a part of organized crime and that pirates are sophisticated criminals and not 'Robin Hoods' of the seas, let alone insurgents fighting against foreign intrusion in Somalia's territorial waters. This does not mean, however, that the phenomenon lacks a political dimension.

Somali pirates, in fact, seem to enjoy some support from the littoral communities which may receive a part of the revenues. Pirates, moreover, most probably have links with some of Somalia's warring factions, being therefore part, directly or indirectly, of the 'struggle for power' in the country. What is certain is that pirate groups enjoy some protection from local war lords, if not directly led by them. This suggests that the phenomenon must also be regarded from a political point of view, addressing its root causes, such as endemic poverty, underdevelopment (over 2 million people are fed by external actors, primarily the World Food Program), as well as civil strife (there have been hundreds of killings in the last months and displaced people number around 120,000).[19]

Experts agree, in fact, that any approach to the problem cannot but be 'comprehensive', that is aimed also at solving the many serious problems that Somalia faces on land. Only restoring a stable and accountable government in Somalia and creating better conditions for the Somali people, especially the young people, will ultimately be able to defeat piracy. The question is, therefore, who can do what for Somalia? This, in turn, requires identifying the stakeholders involved in the piracy question and assessing the potential for cooperation as well as its current limits.

Stakeholders and International response: limits and potential for cooperation

As noted earlier, navies are entitled by the Law of the Sea to combat piracy on the high seas. Following UNSC Res. 1816, 2 June 2008 and 1838, 7 October 2008, they can now also enter Somalia's territorial waters to wage counter-piracy operations. In fact, several national and international fleets are now operating off the Horn of Africa. In addition to Europe and the United States, major powers such as Russia, China, India, Japan and neighboring countries, such as Saudi Arabia, have dispatched forces to the region. The Italian navy has played a particularly active role. Italy dispatched its first counter-piracy mission in Somalia as early as 2005 (operation 'Mare Sicuro' - Safe Sea), and is currently contributing to both NATO and EU missions in the area.

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[18] http://www.time.com/time/world/article/0,8599,1892376,00.html
[19] http://www.unicef.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/4315

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Although indispensable, navies also face several challenges. The Gulf of Aden is an extremely vast waterway with heavy traffic (approx. 205,000 square miles, transit of approx. 20,000 ships per year). Moreover, the area in which pirate activities take place now seems to have widened. Attacks sometimes occur as far as 700 miles off the Somali coasts. To effectively patrol the entire area, large fleets would be needed. Even the largest navies, however, can only afford to send a few warships as modern navies' budgets are generally strained and stretched. The returns on such operations still have to be verified, while the costs associated with the deployment and maintenance of ships for pro-longed counter-piracy missions are very high.

A further problem is that, especially in territorial waters, counter-piracy operations require smaller and faster ships, which the navies deployed in the area currently lack.

Given these constraints and challenges, it is not surprising that other solutions are being explored.

IMO points out that piracy in the Malacca Straits (once the hotspot of sea piracy) has been successfully defeated by coordinating the response of neighboring littoral states. Similar results could be obtained by replicating such efforts. The Djibouti 'Code of Conduct', a voluntary agreement open to 21 regional countries, approaches the phenomenon from the civilian side by aiming to create a common legal framework, common capabilities and shared patrolling, and to foster coordination between coastguards.[20] The goal is, among other things, to create a regional integrated coastguard network in the Gulf of Aden.

More in general, representatives of the shipping industry and the private sector also have their own perspective on the issue. Shipmakers point out that until political and more comprehensive solutions are found, the industry can attempt to limit the problem by relying on its own resources. Yet armed personnel onboard is seen as a dangerous and ultimately counterproductive option. Such presence could, in fact, escalate any confrontation with pirates, thus exponentially increasing the risks for the crew and damage to the ship.

A different solution is arming the ship itself to enhance its self-defense capabilities. New equipment could range from more advanced technologies for surveillance and monitoring to security instruments onboard such as barbed wire, water cannons, etc. A superior solution would be to build new merchant vessels incorporating the evolving definition of ship security. The objective would be to produce a higher number of more technological ships with the same, or comparable, levels of investment. Savings could come from more efficient technologies as well as from accumulated know-how. It is worth pointing out, in fact, that major ship builders are often involved in the construction of both military and civilian ships. This means that they are aware of the limits that modern navies have in waging counter-piracy operations as well as of the technologies that could be transferred from the military to the civilian sectors.

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[20] http://www.imo.org/About/mainframe.asp?topic_id=1773&doc_id=10933

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If the piracy threat persists, the shipping industry would not exclude going so far as to adjust or even replace major sea routes. There is a growing interest in opening a 'North Route', circumnavigating the North American continent. This solution, however, encounters problems related not only to geography but also to the attitude of some of the countries involved (such as Russia and Canada), which could substantially delay or increase the costs of its use. A major shift from the Gulf of Aden/Suez Canal to other sea routes would, moreover, have a serious impact on the overall volume of traffic in the Mediterranean – a development that many countries in the region would oppose.

Insurance companies, for their part, insist on their role as 'protection providers', and as 'institutions' that have to be taken fully into account when working out a response to piracy. Insurance companies point out that they need time to adjust to the new security context and account for the new hazards that come with shipping. Employment of armed personnel onboard is not ruled out, according to the insurer, as a way to make ships safer and keep insurance costs lower. If a ship is successfully seized by pirates, however, insurance companies insist that payment of ransom must be permitted by governments without restrictions. The loss of life and damage to property that could ensue from a legal prohibition to pay ransom, would easily outweigh the costs. This would, of course, impact on insurance rates and premiums, which have already notably increased since piracy has re-emerged.

In sum, the private sector acknowledges the crucial role that navies play in combating piracy, but also emphasizes the critical contribution that private actors can make.

International organizations are another key stakeholder in combating Somali piracy. In October 2008, upon request of UN Secretary General Ban Ki-Moon, NATO was mandated to escort vessels of the World Food Program directed toward Somalia (UNSC Resolutions 1814, 1816 and 1838 of 2008).[21] Operation 'Allied Provider', started in mid-October 2008 and ended in December 2008, when the task was taken over by EU mission 'Atalanta'.[22] Nevertheless, since March 2009, NATO has renewed its engagement off the Horn of Africa by launching a new operation: 'Allied Protector'.[23] The latter currently relies on a five-ship fleet which is part of the standing NATO maritime group 1 (SNMG1). The ongoing operation is composed of national naval contributions from NATO members states on a rotational basis. To date, they have come from the United States, Portugal, Spain, Canada and the Netherlands. In view of the termination of operation 'Allied Protector' on June 28, 2009, NATO defense ministers recently agreed on a new mission: 'Ocean Shield', which is scheduled to become operational at the beginning of July and will last for an as yet undetermined period.[24]

Indeed, NATO's interest in maritime security has grown in recent years. Soon after the terrorist attacks of 9/11, NATO started operation 'Active Endeavour' to combat terrorism in the Mediterranean.[25] Moreover, maritime security is to be included in the

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[21] http://www.afsouth.nato.int/JFCN_Operations/allied_provider/index.htm
[22] http://www.nato.int/cps/en/natolive/topics_48815.htm, access: 06.19.09
[23] http://www.manw.nato.int/page_operation_allied_protector.aspx
[24] http://www.france24.com/en/20090612-somalia-piracy-nato-mission-ocean-shield-gulf-aden
[25] http://www.afsouth.nato.int/JFCN_Operations/ActiveEndeavour/Endeavour.htm

new Strategic Concept that the Alliance is working out to replace the one adopted in Washington in 1999. In this connection, NATO is already drafting an 'Alliance maritime strategy, as well as a 'Maritime Security Operations Concept'.[26]

Despite its growing commitment to maritime security, however, NATO admits that it cannot defeat piracy off the Horn of Africa by itself and recognizes that the military tool alone is not enough. However successful, current operations concentrate on the 'symptoms' rather than the 'causes' of the problem. That is why NATO supports the adoption of a more 'holistic' and 'comprehensive' approach to Somalia, relying on the contributions of other international organizations and institutions.

The EU is one of those actors. Operation Atalanta is the first maritime operation ever started by the EU in the context of the European Security and Defense Policy (ESDP).[27] The mission includes protecting WFP vessels carrying humanitarian resources, and, more generally, escorting and supporting merchant vessels transiting off the Somali costs. The EU NAVFOR acts in direct contact with the other actors operating in the area, starting with NATO and the US-led Combined Task Force (CTF)-151 (the latter is a coalition of countries under US leadership mandated to fight piracy off the Horn of Africa).[28]Operation Atalanta also cooperates with national fleets, including those of Russia, India, Japan, Malaysia and China.

In order to share intelligence and strengthen cooperation, a special three-level website of the 'Maritime Security Center-Horn of Africa' was created.[29] The first level contains general information. The second level is password-protected and can be accessed only by recognized members of the shipping industry. Registered members can then send and receive relevant information and are, in all respects, covered by EU counter-piracy operations (currently over 5,000 entities are registered). The third is the military level, secure but unclassified. This means that the EU, NATO, Russia, China and other actors can freely exchange intelligence and information so as to coordinate their efforts more effectively.

As noted earlier, the EU has tried to solve the complications that could arise in prosecution by signing an agreement with Kenya. Around 60 pirates have already been transferred to Kenya for trial.

The presence of both a NATO and an EU mission has raised, even in the context of counter-piracy, the broader transatlantic issue of 'duplication'. Both NATO and EU officials recognize the potential for cooperation between the two institutions. Both institutions, however, insist on the 'added value' they bring to solving the problem of Somali piracy. NATO points out that it has all the military and logistic capabilities needed for a sustained and long-lasting effort. As a military alliance, moreover, NATO can count on high-quality, high-level intelligence. If governments came to the conclusion that only an embargo can do the job, then NATO would be comparatively

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[26] http://www.iai.it/pdf/Bisogniero_RM090616.pdf
[27] http://www.consilium.europa.eu/showPage.aspx?id=1518&lang=EN
[28] http://www.navy.mil/search/display.asp?story_id=41687
[29] http://www.mschoa.eu/

better placed to enforce it successfully. As the embodiment of the transatlantic relationship, finally, NATO brings with it the guarantee of the US commitment.

The EU points out that Operation Atalanta is a notable example of efficiency at at least four levels. The first level is internal organization. The chain of command, it has been noted, linear and rapid. Operational Headquarters are based in Northwood, UK. The operation currently has more ships deployed than NATO and CTF-151 combined.

The second level is legal. Thanks to the afore-mentioned agreement with Kenya, the EU has worked out an efficient system for bringing seized pirates to trial without delays. The third level is international cooperation. The EU actively cooperates with Russia, China, Iran on the issue of piracy to a degree that NATO, a military alliance with a complex if not problematic relationship with some of these countries, can hardly match. A fourth level has to do with EU assets, which extend far beyond military capabilities. The EU can in fact rely on several other instruments to contribute to the stabilization of Somalia, including foreign aid, trade agreements, investment in education, etc. The EU, in sum, is purportedly equipped to pursue a more 'comprehensive' approach to Somali piracy by also tackling the root causes of the problem on land.[30]

The concept of a 'comprehensive approach', however, is accepted by virtually all institutions and organizations operating in the area, including NATO. What remains elusive to date is the actual implementation of such an approach. So far, the only mission that the international community has been able to deploy in the country after the tragic experience of UNISOM in the 1990s is the African Union mission in Somalia, AMISOM.[31] There are still several problems, however.

The first fundamental problem is that AMISOM is still conceived and organized as a peace-keeping mission when, in fact, Somalia is a country scourged by endemic and violent civil strife. A second problem is AMISOM's relations with Somali authorities. Currently, AMISOM has relations with the only internationally recognized government, the TFG, but they are weak and will have to be renewed now that a new government has been formed. A related issue is, of course, the lack of relations with governing entities that are not recognized but which have, in fact, greater control than the TFG over their respective areas (Puntland, Somaliland, Islamic courts). A third problem, finally is more practical. The mission is still heavily under-resourced, currently numbering 4,300 peacekeepers out of the 8,000 initially envisaged by the UN.

In light of these and other deficiencies, the debate is open on whether further organizations and institutions can step in. The UN would be of course the natural candidate for this effort, and the organization has not ruled out such a possibility, although it has limited itself to authorizing the extension of the AMISOM mandate for now. Political will seems to be lacking, at the moment at least, among the permanent members of the Security Council. Many feel that the G-8 could play a more active role

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[30] On EU engagement in Somalia, see http://www.consilium.europa.eu/uedocs/cmsUpload/090427_FACTSHEET_EU_%20ENGAGEMENT_%20SOMALIA.pdf

[31] http://www.africa-union.org/root/AU/AUC/Departments/PSC/AMISOM/amisom.htm

in funding development and supporting capacity building: the Italian presidency of the G-8 has included Africa among its priorities.

Policy Recommendations

In light of the issues highlighted in the previous sections, some policy recommendations can be advanced to make the response to piracy more efficient and effective.

- The legal definition of piracy could be expanded to include the territorial waters of failing states. In the case of Somalia, however, UNSC Resolutions satisfactorily address the issue. A new UNSC Resolution should be adopted, more explicitly allowing for counter-piracy operations on land, and clearly detailing the types of operations to be carried out. Actions would be lawful only in the presence of ascertainable evidence of pirate activities, but their scope would be broader than the liberation of hostages.
- Maritime law enforcement against pirates should conform to the basic principles of international humanitarian law and human rights. As a minimum, the principles enshrined in article 3 common to the Geneva Conventions of 1949 should be abided by.
- The new UNSC Resolution should also task navies currently operating in the Gulf of Aden with detecting, reporting, and impeding illegal activities by foreign ships sailing the territorial waters of Somalia, with particular reference to illegal fishing and toxic material/waste dumping.
- The dossier on piracy of the UN special envoy to Somalia should be broadened to involve wide-ranging cooperation with the TFG in the fight against organized crime, with a special focus on money laundering.
- While exploring the feasibility of a new UN peace-keeping mission to Somalia, the UN should recommend that its members provide greater financial support for WFP humanitarian operations, as well as more resources (including military equipment) to AMISOM, with the objective of reaching a presence of 8,000 better equipped peacekeepers in Somalia by the end of the year.
- Steps should be taken to establish close coordination between the International Contact Group on Piracy and the International Contact Group on Somalia. The main goal should be to adopt, together with the UN special envoy and the TFG, targeted development policies aimed at undermining the support that pirates might receive from littoral communities.
- International organizations engaged in counter-piracy, and especially NATO and the EU, should consider investing in capacity building, assisting the Somali government in rebuilding an effective coast guard. Efforts should be made to induce Puntland and Somaliland not to hinder the activities of the newly established coast guard. When lacking bases on the coast (in areas outside the control of the TFG), the coast guard could rely on mobile bases offered by foreign ships.
- Until its efficiency and accountability is proven, the new Somali coast guard should work in close coordination with the navies operating under UN authorization in the territorial waters of Somalia. Command of the coast guard

could be given *pro tempore* to the commander of EU NAVFOR, Operation Atalanta or of NATO Operation Ocean Shield.

- The International Contact Group on Piracy should convene an international conference with the participation of major stakeholders in counter-piracy in the Horn of Africa, including IMO and representatives of the private sector. The conference should be tasked with producing a report containing specific recommendations on how to improve coordination and establish synergies between governmental, inter-governmental, and non-governmental entities.

- In light of the scope of EU involvement, the High Representative should designate a new EU special representative for Somalia to coordinate different activities in the field and foster political dialogue and cooperation with the Somali authorities.

- The EU-Kenya agreement on the prosecution of pirates should be taken as a model of efficient and effective cooperation and similar agreements should be established between Kenya and non-EU countries, following the example of the US. Kenya should be adequately compensated for its contribution, including in the field of judicial capacity. Kenya should also be invited to join the International Contact Group on Somalia. Its role in the International Contact Group on Piracy should be upgraded.

- Seized pirates completing their term in prison should return to Somalia under re-integration programs specifically established by the UN special envoy in cooperation with the TFG.

- IMO's efforts to create a regional network of coast guards should be encouraged. In this respect, it is important to re-affirm the principles and provisions of the Djibouti Code of Conduct and work for its further extension.

Istituto Affari Internazionali

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ANNEX

CONFERENCE ON

ADDRESSING THE RESURGENCE OF SEA PIRACY: LEGAL, POLITICAL AND SECURITY ASPECTS

In collaboration with and with the support of

COMMISSIONE EUROPEA

working language: English

Rome
Tuesday, 16 June 2009

CASD Centro Alti Studi Difesa
Piazza della Rovere, 83

AGENDA

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9.15 – 9.30	**REGISTRATION**
9.30 – 10.30	**WELCOME ADDRESSES**

Marcantonio Trevisani, President, Centro Alti Studi per la Difesa (CASD), Rome

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

INTRODUCTORY SPEECHES

Vincenzo Scotti, Under Secretary of State, Italian Ministry of Foreign Affairs, Rome

Claudio Bisogniero, NATO Deputy Secretary General, Brussels

10.30 – 10.45	Coffee Break
10.45 – 13.15	**SESSION 1:** **COMBATING PIRACY: LEGAL ASPECTS AND VIABLE MEASURES**
Chair	**Ettore Greco**, Director, Istituto Affari Internazionali (IAI), Rome
Speakers	**Natalino Ronzitti**, Professor of International Law, LUISS University, and Scientific Advisor, Istituto Affari Internazionali (IAI), Rome *Legal aspects of piracy on the high seas and in territorial waters*

James Henry Bergeron, Political Advisor, Striking Force NATO, Naples
Dispatching navies to combat piracy: Political and operational dynamics

PierCipriano Rollo, Senior Vice President, Studies and Business Strategies,
Fincantieri, Trieste
Self-defence against pirates by private shipping: is armed personnel on board advisable?

Giacomo Madìa, Chairman, Banchero Costa Insurance Broker spa, Genoa
Insurance as safeguard to shipping trading in critical areas

Discussants	**Jakob Nymann-Jensen**, Head of the Anti-Piracy Unit, Danish Ministry of Foreign Affairs, Copenhagen

Wolff Heintschel von Heinegg, Professor of International Law, Europa-Universität Viadrina, Frankfurt (Oder)

Salvatore Ruzittu, Head of the General Planning Department, Italian Navy General Staff, Rome (*The role of the Italian Navy*)

Salah El-Din Amer, Professor of Public International Law, Cairo University

DISCUSSION

13.15 – 14.45	Lunch
14.45 – 17.15	**SESSION 2** **COORDINATING RESPONSES TO ADDRESS THE RESURGENCE OF PIRACY**
Chair	**Wolff Heintschel von Heinegg**, Professor of International Law, Europa-Universität Viadrina, Frankfurt (Oder)

Speakers   **Claude-France Arnould**, Director for Defence Issues, European Union Council, Brussels
Political framework of the European Union's Atalanta operation

Mohamed Abdi Mohamed "Gandhi", Minister of Defence of Somalia
The Somali situation and the piracy in the Gulf of Aden and in the Indian Ocean

Alexia Mikhos, Senior Policy Officer, Crisis Management Policy Section, Operations Division, NATO Headquarters, Brussels
Legal aspects of anti-piracy (measures/operations) in the NATO context

David Lintern, EU OHQ operation ATALANTA, Northwood
Operational aspects of the Atalanta Mission

Beatrice Karago, State Counsel, Ministry of Foreign Affairs of Kenya

Discussants   **Nicoletta Pirozzi,** Researcher, Istituto Affari Internazionali (IAI), Rome

Chris Trelawny, Head, Maritime Security Section, Maritime Safety Division, International Maritime Organization (IMO), London

DISCUSSION

17.15 – 17.30   CONCLUSION

Stefano Silvestri, President, Istituto Affari Internazionali (IAI), Rome