

Background information for the conference

-International Legal Aspects of Countering Piracy-

T.M.C. Asser Instituut and the Antonio Cassese Initiative

The Hague, 15 October 2015

1. Introduction

Countering maritime piracy by repressive means evokes important international legal questions: what is the responsibility and still evolving role of states and other actors like Private Military and Security Companies (PMSCs)? Is the use of repressive means by states already exhausted or eroding in the face of the emergence of PMSCs? Which legal frameworks apply when countering piracy and how do they correlate? What is the role of soft law? And which human rights challenges can be identified when arresting, detaining, transferring and prosecuting piracy suspects? These are only a few pertinent questions that will be addressed during an international conference, organised by (the public international law cluster of the) Asser Institute (The Hague) and the Antonio Cassese Initiative (Geneva).

This international conference will also provide an opportunity to celebrate the 50 year anniversary of the T.M.C. Asser Instituut (TMCAI) and this year's establishment of the Antonio Cassese Initiative Foundation in the Netherlands, thereby underscoring the increasing collaboration between these two organisations and between The Hague and Geneva, two of the most important legal cities in the world.

2. The issues in more detail

In light of the ongoing international debate with regard to the topics of countering modern-day piracy and the use of PMSCs, it is important to see where we are standing at the moment, where the discussion is taking us and what we are trying to achieve in the end. Therefore, this conference will provide an overview of the current standing of international law with regard to countering piracy by States, international organizations and private military and security companies. It will analyse the ongoing developments at the international level to identify the state-of-the-art in law and policy pertaining to the specific area of repressing maritime piracy. Questions to be raised relate among others to international and European (human rights) law. Although the European Convention on Human Rights applies to battleships of parties to the Convention, it is interesting to examine in more detail to what extent the Convention would be applicable to other types of law enforcement at the high seas and to actions of PMSCs on private ships as well. And what are the consequences thereof for the use of force in each of these situations?

This conference will also take stock of the area of soft law instruments especially geared to activities of PMSCs. This is a rapidly developing area in which different organisations and international working groups are pursuing activities. What is the current status of soft law regulations on the use of PMSCs and their relationship to international and European (human rights) law? One can think of International Maritime Organisation (IMO) issued circulars,¹ the multi-stakeholder initiative facilitated by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) that resulted in the International Code of Conduct,² the Human Rights at Sea initiative,³ but also of rules privately drafted by legal experts in this area such as the International Model Set of Maritime Rules for the Use of Force (RUF).⁴ Another

¹ See for the most recent IMO circulars: *Revised interim guidance to ship owners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the High Risk Area* (MSC.1/Circ.1405/Rev.2 25 May 2012) and: *Revised interim recommendations for flag States regarding the use of privately contracted armed security personnel on board ships in the High Risk Area* (MSC.1/Circ.1406/Rev.2).

² <http://www.icoca.ch/>.

³ See the HRAS website: <https://www.humanrightsatsea.org/>.

⁴ Also known as the 100 Series Rules. Available at: https://100seriesrules.com/uploads/20130503-100_Series_Rules_for_the_Use_of_Force.pdf.

initiative in the area of soft law has been taken by UNICRI.⁵ To what extent do these instruments find their way in daily practice and what are recent assessments telling us about the use of these instruments?

Other pertinent questions to be tackled relate to the legal frameworks pertaining to the arrest, detention and transfer of piracy suspects to countries willing to accept them. What are the main key issues at stake and what legal and practical problems have to be overcome in order to help ensure an appropriate judicial follow-up to the use of force, as exercised either publicly by States and international organisations or privately by PMSCs? In this regard it may be noted that the list of internationally tried suspects of piracy off the Somali coast is relatively short.⁶

3. Final programme of the conference

09:00-09:30: Registration and coffee/tea

09:30-09:35: Word of welcome: Janne Nijman (T.M.C. Asser Instituut)

09:35-09:45: Opening: Christophe Paulussen (T.M.C. Asser Instituut) & Iris van der Heijden (Cassese Initiative)

09:45-10:15: Key note: Commodore Neil Brown (Royal Navy, United Kingdom): 'Now That We Have Stopped Talking about Somali Piracy - Legal Lessons for Oceans Governance'

10:15-10:30: Coffee/tea break

⁵ See: Report of the Board of Trustees of the United Nations Interregional Crime and Justice Research Institute (p. 11); attached to a Note by the Secretary-General (of the UN). Doc: E/CN.15/2014/18. Available at: http://www.unicri.it/in_focus/files/ECOSOC_english2014.pdf.

⁶ See the database on court decisions related to piracy off the coast of Somalia established on the initiative of UNICRI in partnership with the IMO. Available at: <http://www.unicri.it/topics/piracy/database/>.

10:30-12:15:

Session 1: Piracy and the rise of non-state actors

Moderator: Onur Güven (T.M.C. Asser Instituut)

Speakers:

-Peter Cook (Chief Executive Officer, Security Association for the Maritime Industry): 'Private Maritime Security: A Growth Security?'

-Peter Post (Netherlands Ministry of Foreign Affairs): 'Private Armed Guards: To Be or Not To Be?'

-Gert-Jan van Hegelsom (Legal Affairs Division European External Action Service): 'Atalanta and Non-State Actors'

12:15-13:15:

Lunch

13:15-15:00:

Session 2: Legal frameworks and soft law in countering piracy

Moderator: Kenneth Manusama (Vrije Universiteit Amsterdam)

Speakers:

-Efthymios Papastavridis (Academy of Athens): 'An Overview of the Applicable Legal Regimes'

-Nelleke van Amstel (Geneva Centre for the Democratic Control of Armed Forces): 'The Impact of Multi-Stakeholder Standard-Setting on the Legal Framework'

-Stuart Casey-Maslen (Co-author of the Geneva Academy's Academy Briefing 'Counterpiracy under International Law'): 'Use of Force Issues in Counterpiracy'

15:00-15:15:

Coffee/tea break

15:15-17:00:

Session 3: Human rights considerations in countering piracy and prosecuting pirates

Moderator: Olivier Ribbelink (T.M.C. Asser Instituut)

Speakers:

-Anna Petrig (University of Basel): 'A Human Rights-Based Approach to Law Enforcement at Sea: Arrest, Detention and Transfer of Piracy Suspects'

-Annet Kramer (Netherlands Public Prosecution Service): 'Prosecuting Pirates: A Dutch Perspective'

-Floris Holthuis (Nolet Advocaten): 'Defending a Pirate in the Netherlands: What Human Rights Does He Really Have?'

17:00-17:15: **Closing** by Leendert Erkelens (T.M.C. Asser Instituut)

17:15-18:15: **Drinks**

4. Audience

The target audience will consist of legal experts and academics/researchers, as we will explore the boundaries of the law in this field and see whether the law, in the spirit of Cassese, leaves some room to be pushed further. Moreover, the inclusion of other stakeholders is of great importance as well. Therefore, the idea is to invite all target groups which have a stake in countering piracy:

-Legal experts, both working in the private sector (lawyers) as in the public sector (international organisations and agencies (e.g. UN, EU, NATO, IMO, BIMCO) and ministries, such as Ministry of Defence, Ministry of Foreign Affairs and Ministry of Security and Justice)

-Academics / researchers

-Diplomats

-Politicians

-Maritime organisations

-Ship owners

-Captains (representation)

-Insurance companies

-PMSCs which will/could be involved in protection of vessels against piracy attacks.

5. Date and venue

15 October 2015 at the T.M.C. Asser Instituut, The Hague (the Netherlands).

6. Budget

If you are interested in sponsoring this conference, please contact Christophe Paulussen: c.paulussen@asser.nl (T.M.C. Asser Instituut) or Iris van der Heijden: iris.vanderheijden@cassese-initiative.org (Cassese Initiative).

7. Information about the two organising institutions

T.M.C. Asser Instituut:

Located in the 'international zone' of The Hague – the City of Justice, Peace and Security - , the T.M.C. Asser Instituut - a distinctive, inter-university research Institute specialised in International and European law - is a unique clustering of knowledge and experience in scholarly research, education and training, knowledge management and dissemination, publishing and academic community organising. The Institute's international community of scholars is engaged in research, postgraduate training and dissemination of knowledge in furtherance of the purposes and principles of international law. This inter-university Institute cooperates closely with and supports the Dutch universities' activities in the relevant disciplines and is in turn vastly networked to universities and institution, governments and NGOs on a global level. The academic fields covered by the Institute are:

-Public International Law, with a focus on International Humanitarian Law and International Criminal Law,

-Private International Law (including International Commercial Arbitration),

- Law of the European Union,
- International and European Sports Law.

Partner universities are: Vrije Universiteit Amsterdam, Amsterdam University, Erasmus University Rotterdam, Tilburg University, Maastricht University, Leiden University, Utrecht University, Radboud University Nijmegen, University of Groningen and the University of Twente.

Asser's strength is recognised by a diverse group (International legal institutions, researchers in international universities, publishers, ministries, the Dutch Bar Association (Nederlandse Orde van Advocaten), European Commission, international universities) as a prestigious, high quality, flexible and dynamic entity – a mandated body and proactive centre of expertise in (niches of) international law.

Cassese Initiative:

Justice, peace and humanity were principles that guided the life and work of Antonio Cassese (also known as the first president of the International Criminal Tribunal for the Former Yugoslavia). He was an exceptional thinker, teacher, and humanist, but also a great mentor and friend to many people. To continue his legacy, the Antonio Cassese Initiative for Justice, Peace and Humanity is founded to promote global education, training and research in various disciplines dear to Antonio Cassese, including human rights, peace, international justice, transitional justice and development. The mandate of the Antonio Cassese Initiative is to promote global education, training and research, particularly in third world, developing countries and countries facing political transition, in the disciplines to which Antonio Cassese dedicated his professional life. In order to achieve its mandate, the Antonio Cassese Initiative relies on sharing the exceptional range of outstanding skills and technical expertise available through the global network of experts, friends and admirers of Antonio Cassese. To that end, a range of activities are organised in collaboration with national and international institutions requiring its services, such as lectures, conferences, workshops, training courses for local actors (including judges and professionals). In addition, the Antonio Cassese Initiative will

provide support and advice to experts and institutions operating in the area of justice, peace and humanity. Upon request, the Antonio Cassese Initiative engages in research activities, such as clinical work and empirical studies, on specific issues related to its mandate.

8. Contact information

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