

NATO COE CSW Legal Workshop on the Intersection of Naval Operations, Maritime Law Enforcement, and Human Rights (February-March 2016) Summary

Approximately 25 government officials from 8 countries participated in the NATO COE CSW-sponsored legal workshop on human rights in maritime law enforcement. Held in San Francisco, California, U.S.A. from February 29-March 3, 2016, this event included discussions on international authorities, multinational tribunals, and national-level case law.

Key workshop findings and recommendations:

- (1) Human rights apply at sea.
- (2) Human rights authorities reside in multiple instruments.
- (3) Operational lawyers, commanders, and judges now address human rights in the context of drug trafficking, piracy, maritime migration, fisheries enforcement, and responding to activities that interfere with navigational freedoms.
- (4) Recent judicial decisions, principally in Europe, addressing human rights compliance following high seas interdictions have global resonance.
- (5) Training and awareness of human rights—and humane treatment—obligations is critical.
- (6) Courts are increasingly expanding the ambit of maritime law enforcement issues addressed under a human rights prism.
- (7) There is an urgent need to develop a methodology to balance human rights obligations with maritime law enforcement operations.
- (8) NATO COE CSW is to be commended for organizing the first multilateral legal workshop on the intersection of human rights and maritime law enforcement; further examination of this important issue is warranted.

Human rights, it has been said, is inherently revolutionary, existing in an environment dominated by states' claims to exclusive authority in their domain. Called a

polite fiction, human rights provide a different way of thinking about justice, dignity, and respect. [Michael Goodhart, *Human Rights: Politics and Practice*, 2013.]

Protecting the security interests of a State, preventing illegal activity, and ensuring a legal finish are core objectives of Naval and maritime law enforcement (MLE) operations. High seas interdictions may involve the deployment of maritime assets far from homeport in difficult—and dangerous—environmental and operational conditions. Judicial challenges asserting human rights violations have been raised over the past five years related to detention, lack of precise and foreseeable legislation, delays in bringing suspects before judicial authorities, the use of force, a right to privacy, and transfers to third States. Balancing blue water naval challenges with human rights obligations, including comprehensive training requirements represent crucial steps to positively shape the next phase of harmonizing human rights obligations with maritime law enforcement.

Participants delivered briefs and collaborated to examine current and emerging challenges. Presentations discussed the relevance of the following instruments in maritime law enforcement: the Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR); European Convention on Human Rights (ECHR); and American Convention on Human Rights (Pact of San Jose). United Nations Security Council resolutions were also examined. Significant cases that were discussed included, among others: *Medvedyev and Others v. France*, *Rigopoulos v. Spain*, and *Ali Samatar and Others v. France*.

Mr. Brian Wilson, U.S. Global Maritime Operational Threat Response (MOTR) Coordination Center (GMCC); U.S. Coast Guard/ Department of Homeland Security provided opening remarks. Dr. Jörg Schildknecht, Legal Advisor, COE CSW, provided an overview of the workshop goals and COE CSW initiatives. Dr. Efthymios Papastavridis; Researcher, Academy of Athens; Adjunct Lecturer, Democritus University of Thrace, delivered the keynote address. Mr. Wayne Raabe, Captain Kevin Bruen, U.S. Coast Guard, Lieutenant Commander Dorothy Hernaez, U.S. Coast Guard, Commander Cassie Kitchen, U.S. Coast Guard, and Lieutenant Commander Egbert Stoel, Netherlands Navy also delivered presentations.

Discussions focused primarily on two aspects of jurisprudence that are emblematic of gaps and inconsistencies in the modern application of treaty-based international law.

The first issue centered on the lack of a practical definition of the presentment provisions of prominent international instruments governing human rights at sea. There is no question that nations are obligated to protect and preserve human rights—humanely treat—such as the right to life and human dignity, equality before the law, and the prohibition against arbitrary detention, among others. This latter prohibition, documented in several instruments, generally requires that anyone arrested or detained on a criminal charge shall be brought *promptly* before a judge. The word *promptly*, however, is not expressly defined, and the manner in which it is interpreted by some jurists increasingly poses operational challenges to commanders, at times deployed hundreds and thousands of miles from port, as well as to their leaders ashore.

The second issue identified in the workshop focused on judicial rulings that have invalidated long-standing and traditional diplomatic practices without providing states with the requisite guidance necessary to comport their diplomatic practice to that which falls into conduct permitted by international law. In a recent European Court of Human Rights decision, for instance, jurists ruled that an agreement between two sovereign nations must include facts not necessarily known in advance, essentially ruling that any such agreement must cover every possible eventuality in the subsequent legal process – without providing any standards or guidance.

Not all issues have been addressed. A right to privacy on the high seas, destruction of vessels, and the sufficiency of medical treatment, among other issues, represent potential future examination areas. Moreover, workshop discussions highlighted the difficulties that jurists are experiencing in their relatively new role in balancing the role of courts in reconciling human rights obligations with maritime law enforcement activities. While some jurists believe that efforts to control illicit drug trafficking should not result in abridgements of fundamental human rights, other jurists believe that the unpredictability of navigation and the vastness of the oceans render courts ashore ill-suited to evaluate operational decisions.

As noted above, key findings of the workshop include the need to continue discussing the intersection of human rights with maritime law enforcement; ensuring there is operational-level awareness of current judicial opinions impacting maritime law enforcement; ensuring there is judicial awareness of high seas maritime interdiction challenges; developing scenario-based training; evaluating whether existing human rights instruments should be amended to take into account capabilities and geographic realities; and identifying substantive areas not yet addressed by jurists so that policy guidance could be developed. Blanket application of precedents that govern conduct ashore without evaluating and including the context of operations at sea runs the very real risk that these “context-free” decisions may eventually turn the high seas into a “consequence-free zone,” unintentionally undermining hundreds of years of the development of the law of the sea.

The human rights workshop provided NATO participants with a platform to discuss judicial opinions, operations, international instruments, and national-level policy on the intersection of human rights and MLE; validated the necessity of examining these issues; connected participants with each other and with subject matter experts; and identified issues that warrant further discussion, potentially in subsequent workshops.