I would like to thank Maria Luisa Chavez, Chief of the United Nations NGO Relations Office of Public Information for organizing this briefing and inviting me. Thanks are also due to my fellow panelists. It’s a pleasure to be here, and I very much look forward to the discussion.

The explosion of piracy off the coast of East Africa, and elsewhere, is a problem of global proportions, threatening lives and property involved in maritime commerce, as well as being indicative of, and contributing to the lack of civil society the areas from which the pirates are operating. As great as it is, the problem is not without precedent, and there may be some hope for a solution. The explosions of piracy that the Caribbean Sea and the Atlantic Ocean witnessed at the Start of the eighteenth and again nineteenth centuries, and the piracy that flourished in the Eastern Mediterranean in the early nineteenth centuries were successfully, and relatively quickly suppressed.

The focus of my part of the briefing will be the legal tools used in the suppression of piracy in conjunction with the exercise of naval power. That is, I’ll be looking at the legal means used to try and convict pirates captured at sea. However, it is well to bear in mind that while piracy is a crime recognized by international and domestic law alike, the solution to piracy cannot be mainly a legal, or even a law enforcement or naval one. The solution needs to be landward. The oceans are far too big, and the range of modern powered vessels to great, for any sort of practical patrol to be more than partially effective. A little historic background will, at this point, be useful.

At the start of the eighteenth century, following the coming of peace among the various powers competing for maritime supremacy in the Atlantic Ocean, communities that had been devoted to nationally sponsored commerce raiding – the Dutch, English and French buccaneers who had been raiding plundering Spanish ports and vessels – turned to piracy. This piracy was suppressed legally, but the main tools were naval patrols and, more importantly, the establishment of colonial governments that would not tolerate piracy.

Similarly, at the start of the nineteenth century, with the wars of independence in Latin America, many seafarers used the lack of and competing claims to sovereignty to engage in piracy. Some plundered commerce in the name of various short lived Latin American republics, some of which exercised little, if any control over the commerce raiding taking place in their name. The same thing occurred in the eastern Mediterranean with the Greek war liberation. Some who had been insurgents,
and other who simply saw an opportunity to make money, used the decline in Ottoman control of Greek
ports to take to piracy. In both cases, Latin American and Greek, while legal and naval means were used
to suppress the piracy, the problem was truly solved with the establishment of stable central authorities
with an incentive to suppress piracy. Similarly, it is hard to see any lasting solution coming to the
problem of piracy off of East Africa without the establishment of a central, stable authority in Somalia.
Nonetheless, it will be worthwhile to look at the legal tools that were used in the suppression of piracy;
for they can inform the tools that may be used today.

In combating piracy, the British did two things that are worth keeping in mind. They established
courts local to the sources of piracy, and they relied on what were essentially civilian forms of process in
trying the pirates. Some comments in both the popular press and legal scholarship have looked the
British suppression of piracy as pointing to the reasons why special processes are needed to deal with
organized violence by stateless actors, whether pirates or terrorists, but the lesson is really just the
opposite.

At the start of the age of transoceanic exploration and trade, in England, piracy had been subject
to trial under a special office, the Admiralty, but had been, since the time of Henry VIII, at the start of
the 16th century, tried as had other crimes at common law, before a jury. By the end of the 17th century
change was necessary. The transport of accused pirates along with the evidence was impractical and
local juries in England’s colonial possessions, where trade in stolen goods was a tax-free source of
income, were suspected of being sympathetic to the pirates. So the English established special courts, to
hear them. The courts were established to sit locally, under the auspices of civilian legal officers – Vice
Admiralty Judges -- and often with naval officers or merchants sitting as well. These courts were not
mere rubber stamps, and the trials looked very much like civilian criminal trials of the period.
Acquittals were not infrequent, and where the proper procedure of required by the anti-piracy acts was
not followed, English civilian courts were willing to order naval authorities to release suspected pirates.

The use of local trial with regular process had several benefits. Local trials allowed a chance to
have those who were coerced to engage in piracy, or only marginally involved in piratical behavior,
exchange their freedom in return for information about local activity. Moreover, the use of what looked
like actual process might be thought to have given local communities the both a stake in the process,
and to prevent the alienation of those communities though appear to be arbitrary punishments.

The use of civilian trials would continue into the nineteenth century, and in the midst of the
global conflict of the Napoleonic wars, the English instituted trial by jury in piracy cases heard in their
vice admiralty courts.
Another aspect of legal tools used to combat piracy were the substantive laws dealing with piracy. Very early in the eighteenth century the British realized that they had to take the profitability out piracy by making trade with pirate illegal. Trading with pirates or receiving stolen goods from them was declared to be an act of piracy. Today, trade with pirates is not a problem. The pirates are not plundering cargos or selling their stolen vessels. They are getting ransom for the release of the crew, vessels and cargos they detain. Where does the ransom money come from? From Vessels owners, cargo owners and their insurers. Large merchant vessels laden with cargo and bunkers of fuel oil are concentrations of capital worth tens, if not hundreds, of millions of dollars with daily expenses of tens of thousands of dollars.

For vessel and cargo owners to pay, say, a million dollars in ransom money to let their property proceed rather than be detained indefinitely, results a relatively small increase in the marginal cost of a commercial enterprise. On the other hand, that same amount of money can fund extensive criminality and the undermining of civil society ashore. One possible solution would be to prevent the payment of ransoms both by insurers and vessel and cargo owners themselves. To be sure, the United States has recently prohibited payments to certain armed groups in Somalia; however, the United States is neither a center of either transoceanic marine transport, and any solution will have to be globally based.