1. INTRODUCTION

In December 2002, two Spanish warships, acting upon information from the US intelligence, tried to intercept a North Korean cargo vessel, named “So San”, in the Indian Ocean on the high seas, 600 miles east of the Horn of Africa. According to Spanish officials, no flag was flying on the vessel. The two Spanish warships were part of an eight-ship flotilla that was charged with searching for operatives of Al-Qaeda and terrorist contraband. The Spanish warships, exercising, as they claimed, the right of reconnaissance, requested the captain of the vessel by radio to ascertain her type of cargo. The captain indicated that the vessel was carrying cement but resisted interception, maintained speed and did not allow anybody to board and see what the ship was indeed carrying and tried to escape. The Spanish ships fired warning shots, a Spanish helicopter intervened and a special units force landed on the deck of the vessel. The search revealed 15 Scud missiles hid-
den beneath sacks of cement. The vessel was turned over to the US Navy and American explosive experts secured the missiles.

Although there was some criticism concerning the fact that the seizing of a non-national vessel on the high seas that has not committed any offence could be considered an act of piracy3, at first sight the discovery of the hidden cargo appeared to justify the interception. There was clear evidence that North Korea was involved in illegal proliferation of weapons of mass destruction, which were probably connected either with Al-Qaeda, Iraq or a private buyer like a militant group4. The worse came when Yemen’s government declared that it had bought the missiles and wanted them to be delivered as originally planned. Furthermore, Yemen had notified the US in advance of the shipment. White House spokesman, Ari Fleischer, accepted that “there was no provision under international law prohibiting Yemen from accepting delivery of missiles from North Korea”5. Under these circumstances President Bush ordered the US Navy to release the North Korean ship.

The whole incident raised a number of political and legal questions. Was it an isolated and unfortunate event? Was it deliberately staged to show to potential buyers of North Korean missiles that US intelligence follows closely every contact with Pyongyang? Did the US wanted to dramatize the whole incident in order to show that there is an imperative need to intercept suspicious ships on the high seas? Or did the US want to make a point for a new right of pre-emptive action against terrorism on the high seas6? Whatever the real aim was, one thing is certain.

The incident touched upon the issues of the freedom of the high seas, maintenance of order on the high seas and prevention of maritime terrorism. Despite the fact that all these issues are addressed by the 1982 Law of the Sea Convention (hereinafter cited as “LOS Convention”), it is obvious that there are attempts to change the system of maintenance of order in areas beyond national sovereignty. These attempts are directly related with the 11 September 2001, terrorist attacks in the US. Many fear that the shipping industry and seaports may be the next terrorist target or that terrorist groups

---

3 Nevertheless, it has been suggested that the “cargo and vessel could be subject to forfeiture under the doctrine of piracy and prize” since “it is not considered polite, in international shipping circles, to sail on the high seas in ghost vessels, without a flag, flaunting a false cargo manifest”; R. Wedgwood, A pirate is a pirate, Wall Street Journal, 16 December 2002.


6 See the relevant leading article “High seizures: Silly stunts are not a serious policy”, The Guardian, 12 December 2002.