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Fighting piracy off the coast of Somalia

Lessons learned from the Contact Group

EDITED BY
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Reports

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FOREWORD

One of the priorities of the 2014 EU Chairmanship of the Contact Group on Piracy off the Coast of Somalia (CGPCS) has been to adequately document the lessons learned from the Contact Group. This includes both the unfiltered accounts of people affected by piracy or involved in the fight against piracy and the more academic, analytical work whose aim is to generate conclusions, observations and recommendations. To achieve the objective of documenting the CGPCS lessons learned, a CGPCS Lessons Learned Consortium was established in 2013 consisting of the EU Institute for Security Studies (EUISS), Cardiff University and Oceans Beyond Piracy. These three organisations have initiated and developed several work strands to ensure that the lessons learned from the Contact Group are not only preserved for future students, scholars and practitioners, but also placed in a broader societal and intellectual framework, allowing for further analysis and study.

This report is one of the core products of the CGPCS Lessons Learned Project. The EUISS has brought together a number of authors who have been involved in the CGPCS from the outset to document the genesis and evolution of the Contact Group since its inception in 2009. These contributions offer an overview of the work of the Contact Group and illustrate the road the CGPCS stakeholders have travelled together as well as the manner in which the international counter-piracy strategy has evolved.

The lessons learned from the Contact Group on Piracy deserve to be documented and studied as it is a unique and inclusive construct that represents a new international governance model for truly comprehensive approaches to complex problems. Most importantly, it has been successful: the CGPCS has been instrumental in achieving concrete and positive results in bringing down the number of pirate attacks. Its composition is quite exceptional in international relations as it brings together all relevant stakeholders, public and private, governmental and non-governmental, that are affected by Somali-based piracy. As there is no natural bureaucratic 'home' for collaboration among such a diverse constellation of actors, the international community – in which the European Union has become an increasingly important actor – created one.

The choice of such an unusually open architecture is quite deliberate. The Contact Group works *with* the UN but is not *of* the UN. Participation in the Contact Group is voluntary, based on national or sectoral interest; there is no formal structure, no rigid protocol, no standing infrastructure and institutional overheads. The Group has no budget, no secretariat and no rules. It is a transient, issue-focused, political-level voluntary coordination body, and it maintains a very specific, limited focus on maritime piracy off Somalia, which allows political cooperation among very diverse actors – many of whom would not normally or formally interact with each other in the absence of such a compelling mutual interest.

The Contact Group is an inclusive forum for debate without binding conclusions. Meetings take many forms, including regular Working Group sessions on technical issues such as international naval cooperation and coordination, legal aspects of counter piracy, cooperation with the maritime industry, public diplomacy and coordinated information flow to enable prosecution of pirate organisers and financiers.

The Contact Group's *communiqués*, while non-binding, are useful bases for harmonising the participants' respective efforts. Working in this way requires a willingness to devote resources to informal collaboration, because the costs of participation in Contact Group meetings are borne voluntarily by participants. When more formal action is appropriate, UN member states can and routinely do initiate Resolutions that form the basis for national and multilateral policies and operations. A number of UN Security Council Resolutions have taken positive note of the Contact Group's ongoing work and its overall contribution to the suppression of piracy emanating from Somalia.

Over time, the Contact Group has thus earned political legitimacy without having any real structural formality. It works because it is based on mutual interest and trust. Relationships matter, and working together with continuity creates understanding and synergy.

The 2014 Chairmanship of the CGPCS marks the first time that the European Union chairs the Contact Group. The character and nature of the EU itself is a testimony to the importance of multilateralism. The combined effect of the 28 member states of the European Union is far greater than the sum of individual member states' efforts could have been, just as the combined impact of the 80-odd participants in the Contact Group is much greater than what their individual efforts could possibly have produced in this fight.

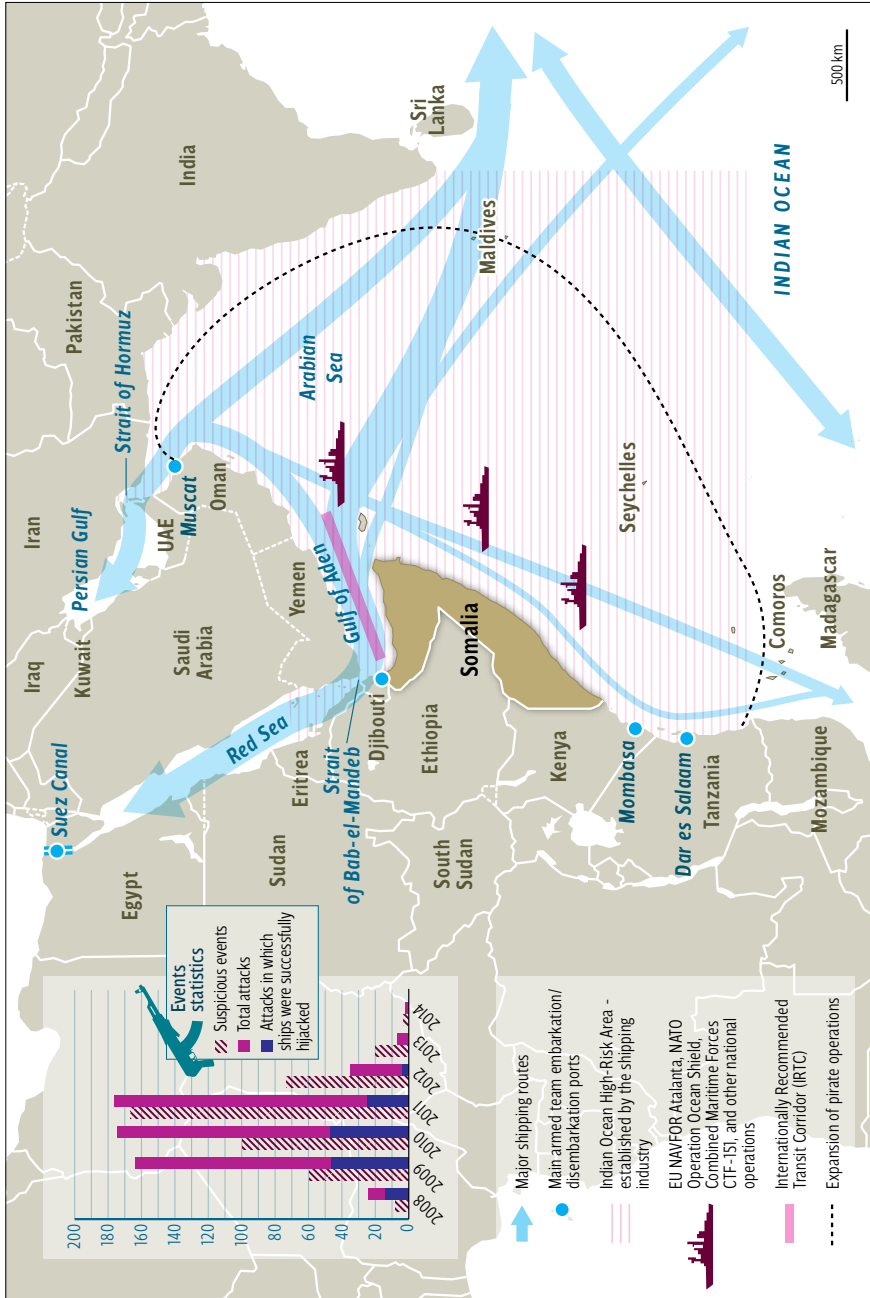
While this publication should be read in full complementarity with the website www.lessonsfrompiracy.net, which serves as a general repository for accounts by stakeholders on the CGPCS and counter-piracy efforts, we hope that this report does justice to the work and achievements of the Contact Group, and that it will trigger further interest in and research on the virtues of this more informal and flexible form of multilateralism.

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EU Chair CGPCS

October 2014

Piracy off the coast of Somalia



INTRODUCTION

Thierry Tardy

The Contact Group on Piracy off the Coast of Somalia (CGPCS) represents an innovative approach to crisis management. The CGPCS was set up in January 2009 to ‘foster closer international cooperation to address the scourge of piracy off the coast of Somalia’. It was created following the adoption of UN Security Council Resolution 1851 (2008); however it was intentionally established outside the formal UN framework to maintain a high degree of flexibility both in terms of membership and activities. The Contact Group is in principle open to any country or organisation that contributes to anti-piracy efforts or is directly affected by piracy; it brings together over 80 participants including states, but also international organisations such as the European Union or the International Maritime Organisation as well as shipping industry and seafarers’ representatives and non-governmental organisations (NGOs). Furthermore, it has none of the attributes of formal multilateral settings (secretariat, decision-making procedures, legal framework, budget, etc.). It is rather an open, inclusive and malleable forum that sets its agenda and takes decisions in a consensual manner, although states have to an extent remained in the driving seat.

The Contact Group has a rotating chair, currently held by the European Union which took over from the United States in 2014. Five Working Groups were established to support the work of the Contact Group, respectively mandated to deal with: coordination of maritime operations and capacity-building in the region (Working Group 1-WG1); legal piracy-related issues (WG2); relations with the shipping industry (WG3); public diplomacy (WG4); and disruption of financial networks (WG5). WG4 was dismantled in 2013 (see Chapter VI) and in 2014 the Working Groups were transformed or renamed as follows: WG1 was renamed ‘Capacity-Building Group’; WG2 was transformed into a ‘Legal Forum of the CGPCS’; WG3 was renamed ‘Maritime Counter-Piracy and Mitigation Operations’; WG5 was renamed ‘Disrupting Pirate Networks Ashore’. Each WG is chaired by one or two state(s) or co-chaired by a state and an organisation, as is the case for the ‘Capacity-Building Group’ which is co-chaired by the UK and the Indian Ocean Commission. It is mainly in these Working Groups that the work of the CGPCS is conducted.

While the Contact Group is singular in its structure and methods, it is not unprecedented. Contact groups have been established in various contexts since the end of the Cold War, from the Yugoslav wars in the 1990s to the more recent Syrian and Ukrainian crises, and there is also an International Contact Group on Somalia. Other restricted diplomatic clubs were created to tackle the challenges posed by the Iranian and North Korean nuclear programmes, and ‘Groups of Friends’ (on Haiti or Burma/Myanmar) have also allowed for a different mode of crisis management.

Although the Contact Group on Piracy differs on several accounts from other types of informal multilateral bodies, these various groups reflect the post-Cold War evolution of multilateralism towards informal governance mechanisms (see Chapter X), sometimes dubbed ‘minilateralism’. Usually composed of a limited number of parties, these light multilateral frameworks respond to specific needs while being free of the political and administrative constraints inherent to formal institutions. The underlying idea is to ensure a more effective response with maximal impact.

In the case of the Contact Group on Piracy, increased flexibility is a result of its working methods more than of the number of parties, which is particularly high (about eighty) for a Contact Group. Effectiveness is also a function of the multi-stakeholders (states and non-state entities) and decentralised nature of the Group.

The setting up of the Contact Group reveals the limits of existing security institutions in tackling non-traditional threats which are neither state-based nor of a strictly military nature and that therefore require new forms of policy response. The Contact Group is not *per se* the policy response but rather an informal framework that enables policy development. In doing so it has proven to be quite innovative, notably through the work of its various working groups and the policy recommendations that they produced, for example in the legal and financial domains (see Chapters IV and VII).

The conditions of the creation of the Contact Group explain to a large extent its *ad hoc* nature (see Chapters I and II). The combination of weak local governance structures, the existence of customary law and treaties as legal bases for the international response, the de-territorialised nature of the threat, the multiplicity of actors potentially concerned, and the fact that, although worrying in trade terms, piracy in this area did not threaten any direct vital interest of the big powers, called for an informal and multi-level governance structure.

Furthermore, the apparent success of anti-piracy activities in the Gulf of Aden over the last two years has reinforced the idea that the Contact Group was being effective and that this was largely due to its informal makeup.

Learning lessons

Academics have started to turn their attention to the ‘informalisation’ of world politics, notably through the development of the concept of ‘minilateralism’, yet the Contact Group on Piracy as a case study has so far remained largely under-researched.

The distinctive character of the CGPCS combined with its relative success make its analysis pertinent both from a policy and academic perspective. Are there any lessons that can be drawn from this experiment and that could then inform policy-making regarding anti-piracy elsewhere but also in other areas? Or do the distinctive charac-

ter of the Group and above all the conditions that permitted its creation prevent us from drawing general conclusions that would be applicable elsewhere?

Notwithstanding these challenges, the innovative character of the Contact Group calls for a review of its merits and comparative advantages, five years after its creation and at a time when the success of anti-piracy policies has started to shift attention to longer-term and more comprehensive measures. In 2013, the CGPCS Plenary called for a compilation of the institutional memory of the CGPCS with a specific focus on lessons learned.

It is in this context that the EU Institute for Security Studies (EUISS) has been mandated by the European External Action Service (EEAS) to document lessons learned and make them available to a broad audience. This effort is part of a broader Lessons Learned Project that brings together three institutions,¹ each of which focuses on different piracy-related topics and produces various deliverables.

Through this report, the EUISS aims to provide a comprehensive analysis of the objectives, methods, critical success factors and results of the CGPCS; to capture the corporate knowledge and experience resident in the governments and organisations that have contributed to the Contact Group; and to reflect on the possible applicability of the mechanisms underpinning the (relative) success of the Contact Group to other policy domains.²

The report's structure follows that of the Working Groups and adds thematic chapters. It starts with two introductory pieces on the genesis of the Contact Group (Chapter I) and on the concept of informal multilateralism (Chapter II). Chapter I examines the origin of the CGPCS from the perspective of actors who played a key role in its establishment: the two authors emphasise the distinctive character of the instrument both in terms of context and working methods, and conclude that the Contact Group has delivered on its mandate and is a successful experiment. Similarly, Chapter II proposes a more analytical account of the specific context of the creation of the Contact Group and its evolution in terms of mandate, participation and structure. It also features a 'Box' on the SHADE Mechanism. The five following chapters offer an analysis of the work of the Working Groups. They are authored by key Working Groups' stakeholders who provide a first-hand analysis of the achievements and occasional limitations of their respective groups. Chapters respectively deal with operational coordination and capacity-building (Chapter III), legal issues (Chapter IV) featuring a 'box' on the WG2 Toolbox, the relationship with the private sector (Chapter V) with a 'box' on the role of industry and another on humanitarian aspects related to the victims of piracy, raising awareness (Chapter VI), and disrupting financial networks (Chapter VII). These texts confirm the informal and improvised nature of the work, which may translate into ambitious objectives and tangible results yet is also dependent upon the degree of commitment of the WG's participants – and its chair – as well as upon the level of importance of the issues at stake.

1 The European Union Institute for Security Studies (EUISS), Oceans Beyond Piracy (OBP) and the Counter-Piracy Governance Project at Cardiff University.

2 The various chapters in this report are written from the personal standpoint of each author and do not necessarily represent the views of the CGPCS as a whole nor those of its respective participants.

The last three chapters shed light on cross-cutting and local perspectives. Chapter VIII looks at the role of the Contact Group in relation to the broader UN activities and offers a comparative analysis of the two forms of multilateralism. The author welcomes the degree of complementarity between the two types of crisis management responses but also assesses as unlikely that such cooperation would produce concrete results in every crisis. Chapter IX gives a Somali perspective on the activities of the Contact Group and the way it is perceived in Somalia. The picture is mixed: there seems to be a wide recognition of the positive role of the Contact Group and anti-piracy policy more generally; in the meantime, local perceptions are also shaped by the magnitude of what remains to be done to bring sustainable peace to the Somali people, a broad and long-term goal with regard to which the role of the Contact Group remains peripheral. Finally, Chapter X looks at the virtues of ‘informalisation’ as an attempt to find innovative solutions to contemporary global problems, and explores the applicability of lessons learned from the experience of the Contact Group to other policy areas. Interestingly enough, the author posits that, in the end, the most important lesson is the experimental governance of the CGPCS, which not only allowed it to be innovative and take political risks, but also created space for permanent reflection on what worked and what did not.

The report’s general argument is that the Contact Group has demonstrated its added value as an informal coordinator and ‘impulse-giver’ for anti-piracy activities. In a way the CGPCS embodies what used to be called ‘effective multilateralism’ while it gives shape to the multi-level dimension of the comprehensive approach. Its creation met specific needs and was made possible thanks to a congruence of views among the main stakeholders. Overall it managed to remain relatively depoliticised and this is appreciated as being a comparative advantage. This is all the more remarkable given that in the meantime the relevance and effectiveness of formal multilateral institutions in tackling the so-called newly-emerged threats is regularly called into question. The Contact Group itself is not without shortcomings, in relation to its resources, the sustainability of its activities, the preponderance within it of a core group of Western countries and the resulting relatively weak regional ownership (see Chapter IX), and the consequent difficulty in developing a collective strategic vision.³

The extent to which what it has done can be replicated is also uncertain given the specific circumstances that allowed for its creation and development (see Chapters I and X). Some of this report’s authors also question the long-term sustainability of the Contact Group as political attention shifts to a broader security-development agenda and moves onshore. Measuring the impact of the Contact Group on countering piracy is methodologically difficult. Nonetheless, what this report shows is that the Contact Group has brought about a concerted policy that none of the actors involved could have achieved on their own.

³ See Danielle Zach, Conor Seyle and Jens Vestergaard Madsen, ‘Burden-sharing Multi-level Governance: A Study of the CGPCS’, A One Earth Future and Oceans Beyond Piracy Report, 2013, pp. 38-40.

I. THE CONTACT GROUP ON PIRACY OFF THE COAST OF SOMALIA: GENESIS, RATIONALE AND OBJECTIVES

Henk Swarttouw and Donna L. Hopkins

The Contact Group on Piracy off the Coast of Somalia (CGPCS) grew from a limited diplomatic initiative launched in January 2009 to deal with the piracy crisis into an expansive, elastic, multi-faceted mechanism that, by 2014, had stimulated effective and coordinated action by stakeholders from virtually every sector of global society affected by the problem of piracy.

The open architecture of the Contact Group, which over time welcomed a wide range of inter-governmental and non-governmental organisations (NGOs) as well as representatives of private industry and civil society, made it a highly unusual – perhaps unique – format via which to address a regional security challenge. Its success in tackling this complex problem makes the Contact Group a useful case study worth examining to determine what lessons might be drawn from its malleable structure and nimble organisational architecture, and whether similar principles of inclusiveness and informality might be applied to other international security areas.

Pirates have posed a threat to sailors ever since people first took to the sea to travel, trade, migrate and conquer. Only in the last century had we begun to consider piracy a thing of the past. However, pirates again became front-page news in 2007, riveting the attention of ship owners, naval officers and government officials around the world. Operating from the lawless shores of Somalia, small bands of pirates had developed a very profitable variant of this ancient practice: hijacking and holding ships and crews for ransom, well beyond the reach of any company or nation who might be able to rescue the victims. In 2008 alone, pirates took more than 40 ships and 700 merchant seamen hostage and ransomed them for many millions of dollars, funds which were then used to finance other criminal activities in and beyond Somalia. Neither the Transitional Federal Government (TFG) of Somalia nor any agency of the United Nations had the ability to respond effectively to this threat. As a consequence, several nations deployed warships to the Gulf of Aden to escort humanitarian aid shipments and protect merchant fleets passing through the vital shipping lanes along the eastern coast of Africa.

The establishment of the Contact Group

By late 2008, it became clear that some kind of international mechanism would be required to harmonise the many disparate efforts, both operational and political,

that were beginning to emerge to combat the lawlessness that was threatening not only shipping but the fabric of traditional Somali society. The UN Security Council passed Resolution 1851 on 18 December 2008, which encouraged ‘all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact between and among states, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia’s coast’.

At the same time, the idea for the Contact Group had already been mooted in the US State Department in response to then-Secretary of State Condoleezza Rice asking her staff how the US might work with the international community to address the piracy problem off the Horn of Africa. Subsequently, senior US officials consulted with their counterparts in French, German and UK ministries about the establishment of a limited-focus contact group. Consultation with the UN, including the Secretariat (Department of Peacekeeping Operations – DPKO, Department of Political Affairs – DPA) and, in particular, the International Maritime Organization (IMO), led all concerned to conclude that the UN did not really have the staff capacity or the range of specific competencies required to deal with this multi-dimensional problem. The Contact Group, by agreement with the first 17 ‘members’ consulted, was organised approximately along the lines of the 2008 National Security Council’s ‘Countering Piracy Action Plan – Horn of Africa’, an unclassified document released by the US Administration in December 2008.

The first meeting of the Contact Group was initiated and prepared by the US and took place on 19 January 2009. It was designed to deliver an action-oriented forum to coalesce national and international action along agreed lines of operation. The organisers had originally intended to hold this meeting at a commercial venue, but ended up using the UN headquarters’ facilities in New York instead for reasons of cost. The second plenary was held in Cairo and the fifteenth in Djibouti, but by mutual agreement of participants, plenary meetings in principle take place at the UN headquarters in New York for reasons of economy and due to the availability of UN Mission staff to cover meetings when capitals cannot send representation.

An inclusive body outside the UN system

Unlike the UN Contact Group on Somalia, the CGPCS is not a UN Contact Group. Nevertheless several countries have preferred to pretend that it is, because of (domestic) political disinclination to be seen to be following the lead of what would otherwise look very much like a Western-led coalition; a good example of constructive ambiguity. Although the first *communiqué* of the Contact Group notes that it was established ‘pursuant to UNSCR 1851’, the CGPCS was deliberately established *outside* the UN system to ensure that it was as inclusive, apolitical, issue-driven, result-focused, efficient and flexible as possible. Starting with 23 countries and five

key international organisations (UN, IMO, INTERPOL, the European Union and NATO), the CGPCS expanded over time to include over 60 countries and 20 international organisations, welcoming private industry, NGOs and other international actors that contribute to the goal of countering Somali piracy. At some CGPCS meetings delegations participated from sub-national Somali entities such as Puntland, Somaliland and Galmudug. The same goes for representatives of private security sector organisations. Such an unconventional mix of participants on an *ad hoc* and pragmatic basis would hardly have been possible had the Contact Group been created as a UN entity.

From the outset admission of new members was by consensus (or rather by absence of objection). Effectively this gave any member a veto over new entrants. This practice was soon tested with the application of Cyprus. The issue was resolved through the change in terminology to ‘participation’ instead of ‘membership’. In the early stages some of the leading countries preferred to limit participation to governments who could actually deliver resources to the fight against piracy; others were sceptical about the participation of non-governmental entities.

Soon however the CGPCS switched to open-endedness, to allow maximum participation by any state or body that had a stake in the issue or could somehow contribute to its solution, although there was an understanding that countries under UN sanctions would not be welcome.

Also, as work got underway it became clear that countries without any material interest in the issue would not participate – as indeed they did not. This put some natural limit on the size of the group (60-70 countries, over 20 organisations).

The countries participating can basically be divided into three distinct categories: (1) countries contributing to the naval forces deployed in the region; (2) countries with large commercial shipping interests; and (3) coastal states in the affected region. As to the participation of non-state actors, be they the different Somali sub-national entities or private sector organisations, the CGPCS has applied considerable flexibility and open-mindedness, although it was always clear that there was a difference in status between countries and other participants.

The Contact Group’s objectives and organisation

The purpose and intent of the CGPCS was ‘to foster closer international cooperation to address the scourge of piracy off the coast of Somalia’, which means that the Contact Group itself does not deliver outcomes, but encourages, supports and facilitates action by national governments, international and regional organisations, such as the European Union, African Union, Indian Ocean Commission, and NATO, and offices and agencies of the United Nations, including the DPA, the Office of the

Legal Advisor, the UN Office of Drugs and Crime (UNODC), and the IMO. NGOs representing sectors of the shipping industry, such as the International Chamber of Shipping, Intertanko, InterCargo and the Baltic and International Maritime Council, have been key participants in implementing the Contact Group's policies. Private organisations such as the Oceans Beyond Piracy project of the One Earth Foundation have also provided valuable support to the cause of countering piracy through their expert reports and analyses.

The CGPCS has acted as a lynchpin in a loosely structured counter-piracy coalition of governments, international organisations, military alliances and the private sector, and organised itself along the following lines of action:

- Support to the military carrying out counter-piracy operations;
- Support to the shipping industry deploying self-defence measures;
- Support to law enforcement and to the judiciary to investigate piracy networks and prosecute pirates, especially in the region;
- Support to capacity building programmes in the region.

Once more, the keyword here is 'support'. The CGPCS does not deliver outcomes itself, but strives to enable other actors to do so.

The Contact Group meets in plenary on a flexible basis, normally 2-3 times per year. Plenary meetings last no longer than one day (two sessions of three hours each). Chairmanship of the Contact Group rotates among participating nations on a voluntary basis. Given the time constraints, meetings take place in a business-like fashion; there are no lengthy statements, resolutions or negotiations about agreed texts. Decision-making is by consensus, or arguably rather by the lack of objection. In the absence of rules of procedure, the CGPCS works by virtue of a shared conviction held by all participants that the essential priority is to get the job done.

In the same spirit the CGPCS makes liberal use of the possibility 'to agree to disagree', so as to avoid the deadlocks which often impede or delay work in international organisations. This enables the Contact Group to continue the development of counter-piracy policies in spite of the fact that one or more participating delegations are not (yet) in a position to sign up to them. The fact that there are no formally negotiated texts facilitates this work method. It does however put substantial power and responsibility in the hands of the rotating Chair, which it has to handle with prudence.

At the outset there was some scepticism among (mainly non-Western) countries that were not wholly comfortable with this type of less formalised international cooperation. They eventually joined the Group, but argued for a more formal structure and

stronger integration in the UN system. However, after having seen the CGPCS at work, they eventually gained confidence in its working method and dropped their scepticism.

Furthermore, the CGPCS delivers results with no administrative burden: it has no secretariat and no budget. Administration and costs of plenary meetings are borne by the chairing country or institution. Operating costs of the working groups are equally borne by their respective chairs.

Whereas the plenary meetings provide a forum for consultation on the strategic direction for the Contact Group and lay out the work to be done, the actual work is being done in a number of working groups who in their turn report back to the plenary. The working groups have chairs who serve for several years, thus assuring continuity and sufficient access to specialist resources.

The structure of CGPCS working groups has changed over time to reflect progress made and challenges to be met. Originally composed of four working groups, a fifth was added in 2011, and these five were reorganised and compressed back into four groups with different purposes in 2014. This structural flexibility is both a function of the informal nature of the Contact Group and a desirable attribute, attesting to the collegiality and adaptability of its participants.

The five Working Groups are:

- WG1, chaired by the UK, with a mandate to oversee effective naval operational co-ordination and support the building of the judicial, penal and maritime capacities in the region;
- WG2, chaired by Denmark, deals with legal issues. It aims to provide specific, practical and legally-sound guidance to the CGPCS, states and organisations on all legal aspects of counter-piracy;
- WG3 works with the shipping industry. Initially chaired by the US and then by the Republic of Korea, it has been instrumental in developing the 'Best Management Practices for Protection against Somalia Based Piracy' (BMP);
- WG4, chaired by Egypt, focused mainly on public diplomacy and was the least active of the working groups. It was discontinued in 2013;
- WG5, chaired by Italy, coordinates international efforts to identify and disrupt the financial networks of pirate leaders and their financiers.

In 2014 WG1 has been renamed the Working Group on Capacity Building and accordingly will in future concentrate on capacity building. WG2 has been transformed into the 'Legal Forum of the CGPCS', preserving the legal network as a virtual legal forum of legal experts. WG3 has been renamed 'Maritime Counter-Piracy and Miti-

gation Operations'. It will bring, among others, industry, navies and seafarers' organisations together. WG5 has been renamed 'Disrupting Pirate Networks Ashore' and will focus on financial flows tracking and arresting piracy kingpins. Law enforcement expertise will be concentrated in a dedicated, autonomous Task Force.

Two important outgrowths of the Contact Group are the Shared Awareness and Deconfliction (SHADE) mechanism (see Box on SHADE in Chapter II), and the Trust Fund to Support the Initiatives of States to Counter Piracy off the Coast of Somalia.

SHADE provides an apolitical forum for the exchange of operational and tactical information among military commanders engaged in counter-piracy operations. Meeting on a regular basis in Bahrain, SHADE enables information sharing and the exchange of views between stakeholders from force-providing nations, regional countries, international organisations and industry groups.

The Trust Fund, administered by the United Nations and governed by a Board of Directors from CGPCS donor states, helps to defray the expenses associated with prosecution of suspected pirates, as well as other activities related to implementing the Contact Group's objectives regarding combating piracy in all its aspects. The Trust Fund has disbursed millions of dollars to facilitate piracy prosecutions and build the capacity of governments in Eastern Africa to counter piracy and maritime crime.

Assessing the Contact Group's achievements

Having been substantively involved with the Contact Group since its inception, the authors of this chapter may not be the most objective judges of its merits. However, it is hard to argue with results. At the time of writing, no commercial ship has been captured since 10 May 2012; pirates are holding no merchant ship for ransom; and fewer than 50 hostages remain in captivity, all of whom were taken by pirates on or before 26 March 2012. The Contact Group was arguably the primary political enabler of at least three critical counter-piracy policies adopted: (i) the remarkable voluntary operational coordination among naval counter-piracy forces operating in the region, (ii) the measures taken by the shipping industry, including privately contracted armed security teams embarked on commercial ships transiting the Gulf of Aden and (iii) the creation of a legal framework for counter piracy. It was by no means a foregone conclusion in 2009 that either the maritime industry or many national governments would accept or permit the embarkation of private armed security teams on merchant vessels, nor was it inevitable that a politically very diverse collection of national navies and international naval missions should find the ways and means to act in operational concert or that pirates would be brought to trial in the region. The Contact Group provided a forum for political debate and discussions that ultimately enabled these critical efforts to succeed.

The Contact Group's clarity and singularity of purpose – stopping the kidnapping for ransom of merchant seamen on a scale not seen since the eighteenth century – presented remarkable opportunities for collaboration among parties not necessarily accustomed to working together, and the urgency of the problem made such collaboration imperative. The commonality of purpose allowed governments with differing interests to work together.

By design, the Contact Group has no formal institutional existence. It has no charter, staff or budget. No terms of reference dictate its schedule or agenda, nor is it accountable to any other governing body. *Communiqués* or statements issued by chairpersons of associated meetings carry only the weight that participants wish to attribute to them in deliberations by official policy and regulatory bodies. Because of the lack of formal structure, participants were able to easily adapt working practices over time to take advantage of and drive further progress on various lines of counter-piracy efforts. The trust and respect that developed among counter-piracy colleagues shaped the consensus-building that characterised Contact Group deliberations and *communiqués*.

In spite of the lack of any official imprimatur or standing, the Contact Group has worked effectively over a five-year span to address an entire set of challenges that will pay security dividends in many ways and many places beyond the Indian Ocean. This fact alone should earn an honourable mention for the Contact Group in any study of multilateral policy-making mechanisms.

Finally, we must acknowledge that, while the immediate threat of piracy emanating from Somalia has subsided, the conditions that permitted its rise in the first place have not fundamentally changed. Somalia now has a viable government in Mogadishu, one with the potential to restore order, unity, and the rule of law to this long-troubled country. But Somalia still needs functioning institutions that can deliver or attract the development of infrastructure and economic opportunity necessary to return stability and security to Somalia's coastline and its people. As long as instability and insecurity persist, maritime trade in this region will remain at risk, and a multilateral response may again be required to respond to the challenge. We should reflect on what we have learned from the Contact Group, and hope that our collective success in combating Somali piracy will allow us to permanently turn our attention to other business.

It is possible that the confluence of geographic, political, social, and economic circumstances that gave rise to Somali piracy is unique, and that the Contact Group model would be neither useful nor effective against other security challenges of similar complexity or gravity. Whether or not that is the case, this Contact Group is worth studying to determine what elements of its operation might be usefully applied in other multilateral operations or to other present or future challenges confronting the world community.

II. THE CGPCS: THE EVOLUTION OF MULTILATERALISM TO MULTI-STAKEHOLDER COLLABORATION

Jon Huggins and Jens Vestergaard Madsen

The year 2005 marked a significant turning point for Somali piracy. A phenomenon that had started as a spate of isolated incidents was now maturing into an organised business model, posing a significant threat to the busy shipping lanes near Somalia. In 2008, the UN Secretary-General and Security Council requested international assistance to escort vulnerable World Food Program (WFP) vessels. However, in spite of the resulting naval presence and high-tech surveillance, the Somali pirates seemed to have found a niche in which they could thrive. Despite early hopes for a quick resolution to the problem, it soon became clear that navies would not be able to defeat Somali piracy alone. The international community needed to look for new structures to counter the resilient pirate groups that threatened international trade, but had not yet crossed the threshold that would trigger formal multilateral responses.

The unprecedented set of challenges compelled the international community to tailor a more flexible response. The informal multilateral structure that was formed at the invitation of the UN Security Council in its Resolution 1851 from 2008 eventually morphed to embrace multiple stakeholders and now exists as the Contact Group on Piracy off the Coast of Somalia (CGPCS) as well as several unique stakeholder cooperation mechanisms supported by the CGPCS and its associated Trust Fund.

This chapter first addresses the unique challenges faced by the international community in organising a concerted response to piracy and examines why traditional mechanisms were not suited for this purpose. It then looks at how specific challenges led to an eventual shift to a new, multi-stakeholder model that was necessary to effectively tackle the issue. It finally assesses whether this unique model met expectations and where it appeared to fall short.

Challenges to organising an international response

Due to specific factors and circumstances related to the threat of piracy, traditional motivations that would normally compel action by the international community did not apply to this crisis.

First, the crimes and criminals originated from a largely ungoverned space – which meant that the international community had no local structures or authorities to sup-

port or pressure. This ruled out the use of bilateral assistance or short-term capacity building.

Second, the crimes were perpetrated primarily on the high seas – and nations assumed that customary law and existing treaties would be sufficient to warrant an equitable response from regional and maritime nations. This led to a direct test of the adequacy of existing treaties such as the universal jurisdiction clauses of the UN Convention on the Law of the Sea, or the stronger language contained within the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (‘SUA Convention’) that mandated prosecution by states with a nexus to the crime. For a variety of reasons (primarily the high cost of trials and incarceration, and the unwelcome spectre of asylum-seekers among the ranks of the convicted), many Western nations were loath to bring large numbers of suspects home for trial. Instead, many captured suspects were simply released without charge. This meant that the existing rule-of-law structures were neither adequate to compel nations to address the issue, nor to deter pirates from going to sea.

Third, while the crimes directly threatened maritime commerce in the Indian Ocean, they did not, as yet, threaten any vital national interests or trigger any mutual defence treaties or arrangements. Since the crimes were committed by private individuals, it also meant that there was no nation that others could act against. Therefore, nations could not be compelled to participate based on existing agreements or treaties and any cooperation between nations would have to come in some form of a ‘coalition of the willing’.

Fourth, there was a challenge related to the fact that some of the world’s major flag states are not associated with the navy forces that were trying to protect their vessels. The flag states in many cases did not have the means or naval capabilities to protect vessels flying their flag and also lacked the ability to prosecute suspected pirates. This created, at times, a strained relationship between the major naval nations and the major open registry flag states. Thus there were barriers to overcome in order to achieve mutual cooperation.

Fifth, public indifference was exacerbated by the fact that there was little media coverage of attacks on seafarers and little effort made to quantify the problem of maritime piracy. The lack of media attention led to false rumours that a ‘piracy code of conduct’ prevented mistreatment of hostages. These rumours were later debunked, but only as a result of persistent reporting by advocacy groups and NGOs who brought this important issue to the attention of the public. Consequently, it became important to include these valuable stakeholders in the informal process as well.

The evolution of counter-piracy multilateralism

There were many reasons why traditional cooperative mechanisms were not suitable to address the challenge of Somali piracy. However, early discussions considered all possibilities before an informal framework was adopted.

A traditional UN peacekeeping mission to fight piracy was never seriously considered, primarily due to the fact that peacekeeping was seen as an unsuitable approach to tackling a criminal activity. There was also a self-acknowledged lack of UN expertise in maritime operations and nations feared the creation of an expensive and non-responsive capability that would have to be UN-funded. There were, however, suggestions that a UN mission might be organised to provide armed security teams onboard merchant vessels. This initiative was still being considered as late as early 2012.¹ Likewise, the International Maritime Organization (IMO) was seen as an important player in formalising new collective guidance and cooperative regimes. However, it was not considered to be in a position to effectively address the crisis, both because of its limited enforcement authority and because of its main representation – from Transportation Ministries and maritime authorities – which have limited influence in crisis response situations.

There were also early attempts to consider a more formal rule-of-law response, through an international tribunal or other form of extra-territorial court. However, most nations rejected this notion as both unwieldy and costly. There was also a very large number of potential defendants to be tried (by some estimates up to 3,000 Somalis were at one time involved in piracy),² and the belief that the level of crime was much more akin to robbery and banditry than war crimes. Hence the criminals did not merit the luxury of being tried in such expensive courts. Furthermore, there were political and practical challenges associated with setting up a Somali extra-territorial court in another regional country.

In this context, it was clear that a new and less formal structure would be better suited to promote multilateral cooperation. At the suggestion of a UN mandate to combat piracy,³ the then US Secretary of State Condoleezza Rice announced the intent of the United States to work with partners to create a Contact Group on Somali Piracy.⁴ Most nations on the Security Council envisioned that the new structure would follow the model of other informal multilateral organisations including the Contact Group on the Balkans, and the International Contact Group on Somalia which had some aspects of formalised structure or process. However, the organisers of the group (led by the United States, the United Kingdom and a small group of other maritime nations)

1 Marcus Hand, 'Asian shipowners push for UN anti-piracy force', *Seatrade Global*, 7 March 2012, available at: <http://www.seatrade-global.com/news/asia/asf-pushes-for-un-anti-piracy-force.html>.

2 See: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfaff/1318/131806.htm#note10>.

3 UN Security Council Resolution 1851, 16 December 2008. See: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/655/01/PDF/N0865501.pdf?OpenElement>.

4 Secretary of State Condoleezza Rice, 'Combating the Scourge of Piracy', New York, 18 December 2008.

decided on a system without a formal process of membership, without a formal strategy, without a Secretariat, and without a formal decision-making process.

From multilateralism to multi-stakeholder collaboration

Multilateralism is a broad term which can be defined as ‘the practice of co-ordinating national policies in groups of three or more states, through *ad hoc* arrangements or by means of institutions.’⁵ As this definition implies, multilateralism was originally a formal affair primarily engaged in by nations, especially powerful ones.⁶ Since the end of World War II, however, there has been a shift towards new types of more informal multilateralism, increasingly challenging or complementing the traditional ‘elite’ system.⁷ The inclusion of particularly non-state groups can be described as multi-stakeholder collaboration. A summary and examples of these three types of cooperation can be found in Table 1.

Even though the invitation to the ‘group’ was clearly meant to be inclusive of a variety of stakeholders, the first thoughts of the organising ‘core group’ of nations were to focus on traditional aspects of multilateralism – which meant that leadership in the core group as well as chairmanships of the Working Groups were offered exclusively to nations. Even by this time, however, it was clear that the primary burden of counter-piracy operations at sea was being carried by international organisations such as the European Union and NATO and the maritime industry which was spending billions to protect their vessels.

Given the importance of working with multiple stakeholders, the cooperation forum aimed to bring together the major naval and regional nations, international organisations, the shipping industry, flag states, and civil society. This issue would eventually be addressed by the inclusion of other organisations and industry representatives which expanded the multilateral model to become a multi-stakeholder model. Tom Kelly, the US Acting Assistant Secretary at the Bureau of Political-Military Affairs, recently addressed this when speaking about the CGPCS: ‘we teamed up with governments, NGOs, industry, and civil society to deal a blow to pirates off the coast of Somalia.’⁸ The result, in Kelly’s words, was ‘one of the most important multilateral success stories of this young century’.⁹

5 Robert Keohane, ‘Multilateralism: An Agenda for Research’, *International Journal*, vol. 45, no. 4, Autumn 1990, pp. 731-64.

6 Nick Bisley, ‘Great Powers and the International System: Between Unilateralism and Multilateralism’, Paper prepared for the 2007 International Studies Association Convention 2007, available at: http://research.allacademic.com/one/isa/isa07/index.php?cmd=Download+Document&key=unpublished_manuscript&file_index=1&pop_up=true&no_click_key=true&attachment_style=attachment&PHPSESSID=i5s4f250er60b5cia3ttb6aje3.

7 Richard Haass, ‘The Case for Messy Multilateralism’, *Financial Times*, 5 January 2010, available at: <http://www.ft.com/cms/s/0/18d8f8b6-fa2f-11de-beed-00144feab49a.html#axzz2xaA4mAbk>.

8 Tom Kelly, US Acting Assistant Secretary at the Bureau of Political-Military Affairs, Remarks at the US Naval War College, Rhode Island, 25 March 2014.

9 Ibid.

Table 1: Observed characteristics of cooperative mechanisms

| | Formal multilateralism | Informal multilateralism | Multi-stakeholder collaboration |
|--------------------|---|--|--|
| Initiating Mandate | Formal: Explicit mandate received from official body | Delegated: Official body entrusts responsibility to voluntary informal group of stakeholders to convene and coordinate activities <i>or</i> Self-initiated: Informal agreement by stakeholders to convene and coordinate activities | Delegated: Official body entrusts responsibility to voluntary informal group of stakeholders to convene and coordinate activities <i>or</i> Self-initiated: Informal agreement by stakeholders to convene and coordinate activities |
| Participants | Nations – Formal, high-level representation | Nations and International Organisations (IOs) Working level representation | Made up of all legitimate stakeholders (governments, IOs and civil society) Working level representation |
| Structure | Formal strategy and control mechanisms | Voluntary participation | Voluntary participation |
| Decision Processes | Formal – based on treaties, mandate and/or Terms of Reference (ToR) (usually consensus-based) | Based on agreed ToR – or majority concurrence | Based on agreed ToR – or majority concurrence/lack of objection |
| Scope of Mandate | Explicitly defined time constraints and/or end-state criteria | Informal, but constrained to specific issue and geographic area | Informal, but constrained to specific issue and geographic area |

Although more inclusive of smaller or weaker countries and non-state actors, informal cooperation mechanisms may also be seen as lacking transparency by these stakeholders. As one expert has put it, ‘While there is some evidence that lighter and informal forms of multilateral cooperation (such as the G-groups) can enhance the

efficiency of global problem-solving and help the key stakeholders recognise their deep interdependency and act accordingly, these can also turn out to be rather toxic for some key features of multilateralism. They can highlight the interests of the most powerful and undermine the trust of the weaker states in the binding nature of common norms and rules.¹⁰

Assessment of multi-stakeholder collaboration

Initiating mandate

The UN Security Council passed Resolution 1851 in December 2008, encouraging all states and regional organisations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact between and among states, regional and international organisations on all aspects of combating piracy and armed robbery at sea off Somalia's coast.¹¹ There was no defined end-state for the group, and very few parameters guiding coordination and interaction were dictated. This allowed for maximum flexibility when considering the structure and processes for the group.

Participants

Under more formal multilateral cooperation mechanisms, membership is often restricted to nations and subject to strict procedures. However, unlike many other multilateral bodies formed at the invitation of the UN, the CGPCS focused on the issue of crime and law enforcement rather than political challenges and defence-related issues. The goal of protecting sea lanes and trade was also in the interest of almost all nations and organisations. This removed barriers that might have deterred nations that otherwise would not have worked with Western coalitions. Accordingly, nations normally reluctant to participate in formal coalitions, such as Russia and China, willingly participated in the Contact Group and the related mechanisms such as SHADE. The deliberate decision to emphasise 'participants', and not 'members' further reinforced the informal nature of the CGPCS and allowed the Chairs to invite stakeholders from relevant groups at their discretion. Finally, because of the intentional lack of formal procedures, the chair of the plenary sessions was able to quickly communicate messages to the international community and the region, which would not have been possible in a traditional system where statements would have to be formally approved.

Another feature of the group was the emphasis on 'working level' representation that allowed for a focus on technical issues that could be pragmatically addressed

10 Juha Jokela, 'The G-20: A Pathway to Effective Multilateralism?', *Chaillot Paper* no. 125, European Union Institute for Security Studies, Paris, April 2011.

11 UN Security Council Resolution 1851, op. cit. in note 3.

without rising to the level of political rivalry. This also facilitated participation from stakeholders such as industry and NGOs – whose attendance might have otherwise created protocol challenges. Equally important, the group was developed around foreign affairs institutions that were able to bring a sense of urgency to the issues and ensure a more flexible, and results-driven approach. With the incorporation of multiple stakeholders in addition to nations, there was a concern that some nations benefited from multiple representation in the group through membership in international organisations and industry associations. This led to charges of the group having a Western bias which influenced the selection of agendas and issues.

Gaining regional representation and leadership has turned out to be a challenging issue. One of the first Working Group Chairs appointed was Egypt, which was placed in charge of counter-piracy messaging and public advocacy. Other efforts were made to include regionally-based multilateral mechanisms such as the Indian Ocean Commission and the Intergovernmental Authority on Development. These efforts were hampered by the geographic distance, differences in priorities and cultural and communication mismatches. The CGPCS also tried to incorporate informal multilateral organisations such as the IMO-sponsored Djibouti Code of Conduct, a non-binding document signed by 20 regional nations to guide the development of regional counter-piracy operational and legal capacity.

Finally there was the issue of managing Somali representation, which was challenging due to the fractured nature of the Somali state. Early meetings included representatives of Somaliland, Puntland, Galmudug and the Transitional Federal Government (TFG) from Mogadishu. Later meetings focused on engaging the Federal Government of Somalia, whose president was elected in September 2012. The Kampala Process, a technical-level mechanism, was set up under Working Group 1 to facilitate discussions between the Somali regions and the TFG (and later Somali Federal Government (SFG)).

Structure

In the case of the CGPCS, the lack of formal structure or terms of reference, and the fact that there was no agreed strategy and no procedures, facilitated progress for the group. As mentioned above, there were different types of organisations involved, and the lack of a set structure obviated the need to establish a formal hierarchy or *modus operandi* for participants. The lack of procedural structure also prevented stalling and issue-hijacking by special interest groups who might be keen to exploit formal procedures. On the other hand, the existence of an unofficial ‘core group’ that would set the agenda for plenary meetings at least initially resulted in reduced transparency, especially for regional countries. Finally, by foregoing an agreed strategy as a precondition of moving forward, the CGPCS was able to immediately begin addressing and solving the most pressing issues. Essentially, the CGPCS leadership chose pragmatism over process and politics.

Without a formal method of determining participants, an informal measure was adopted to limit participation in the group to those who were making a ‘tangible contribution to the counter-piracy effort’. Effectively, however, this precondition has only been enforced on non-Nations and has resulted in a plenary session that is filled with national representatives from permanent UN missions in New York not directly involved in counter-piracy. This has arguably hindered the effectiveness of the plenary session of the CGPCS. Early iterations of the CGPCS were also based on a rotating, four-month chairmanship which allowed a larger group of countries to chair the plenary meetings and share the burden of organising, yet at the same time limited the CGPCS’s ability to address longer-term goals.

The largely ineffective regional representation and influence described above created a split in the way in which the work of the group was organised and coordinated. The successful suppression of piracy at sea was primarily organised by Western institutions – such as the operational navy response and self-defence measures taken by industry. However, the leadership and coordination of activities ashore was primarily left to regional actors who were consequently less successful. Some of this was due to political disagreements among the Somali representatives often spilling into the piracy debate. Other factors included the lack of coordination between the CGPCS and regional organisations and endemic under-resourcing. This has limited the effective coordination actions of the CGPCS to activities at sea, with progress on the ground being much slower.

Scope of mandate

The CGPCS leadership kept a strict focus on the fact that it was a temporary forum that was centered on a narrow and achievable goal. Despite efforts by some participants to increase the mandate both functionally and geographically, the retention of a narrow focus kept the group streamlined and concentrated on priority issues.

One way that the CGPCS was able to remain so focused was that longer-term or periphery and support issues were hived off to other issue-specific mechanisms. Examples of this were the operational coordination of navies, which was turned over to SHADE. Other examples are the Capacity Building Coordination Group (CBCG) chaired by the IMO, EU and regional organisations. Finally, the Contact Group Trust Fund was established to provide limited funding to high-priority projects primarily associated with building rule-of-law capacity. These ancillary organisations allow for very specialised expertise to address issues with a longer-term focus, and outside the more political arena of the Plenary Group.

Since the basis of the mandate was very informal, it lacked an end-goal other than the priority to address and reduce piracy off the coast of Somalia. This led to many decisions being driven by a crisis-response mindset and a failure to look to long-term solutions early in the process. Consequently, the success of the CGPCS has mostly been

limited to suppression measures at sea, and was further focused at alleviating the immediate symptoms of piracy. However, most observers would agree that the original causes and enablers of Somali piracy remain firmly rooted in the unrest and lack of opportunity and governance in Somalia. Yet, because of the lacking sense of urgency to address issues ashore, there has been little progress towards laying the foundation for a longer-term solution through a coordinated approach. Evidence of this concern is further demonstrated by the fact that less than one percent of the money spent on countering piracy has been invested in longer-term solutions.¹²

Conclusion

While there are clearly some drawbacks, as outlined above, the overall impact of the informal multi-stakeholder collaboration exhibited by the CGPCS must be seen as positive. There is valid criticism that the informal, and voluntary, nature of the cooperation could not ensure optimal burden sharing and regional leadership, yet the circumstances surrounding the crisis-response aspects of the Somali piracy crisis could have only been addressed by a multi-stakeholder approach.

Furthermore, because of the increasing propensity of violence and stateless crime to occur in the global commons or on the fringes of governed spaces there is the real possibility that this model of multi-stakeholder cooperation can and should be replicated to address other issue-specific challenges. What numerous meetings of the CGPCS and associated working groups have also revealed is that the benefits of informality far outweigh the shortcomings.

However, an assessment of the overall success of the CGPCS should also be tempered by the realisation that while it has been very effective in addressing an immediate crisis, very little has been done to ensure that the threat of piracy will not surface again once the group has disbanded. This drawback can be mitigated in future iterations by ensuring that at some level the group begins looking at longer-term solutions from the point of initiation.

It is clear, based on current mandates and discussions, that the CGPCS has a limited life-span. Hopefully, it has provided a useful model to guide future issue-specific multi-stakeholder collaboration.

12 Oceans Beyond Piracy (OBP), 'The Economic Cost of Somali Piracy', 2012.

Box 1: The Shared Awareness and De-confliction (SHADE) Mechanism

The Shared Awareness and De-confliction (SHADE) mechanism was established in 2008 as an informal venue for navies and other stakeholders conducting counter-piracy operations to share information about their plans and activities. SHADE is co-chaired on a rotating basis by the Combined Maritime Forces (CMF), the European Union Naval Force (EU NAVFOR) and North Atlantic Treaty Organization (NATO) with meetings being held at the CMF Headquarters in Bahrain. Beginning as a small group of officers, the body has grown to include military and civilian representatives from 27 countries, 14 intergovernmental organisations, and shipping industry representatives. As the name implies, SHADE specifically avoided the label of a coordination mechanism, but sought to include as many countries as possible by removing barriers and concerns about sharing command and control activities.

While they are separate entities, SHADE and the CGPCS mutually support each other in a number of ways: the SHADE Chairs provide operational updates to the plenary meetings of the Contact Group and the Contact Group has provided the political support for the development of SHADE. Often labelled one of the major achievements of the CGPCS, SHADE can be seen as an unprecedented multi-stakeholder cooperation mechanism that has brought together naval representatives from countries that traditionally would not be sharing information around the same table. SHADE also includes non-state actors from the maritime industry to build trust and facilitate sharing of information and best practices to suppress and deter pirate attacks. The value of SHADE can be seen in the growing attendance at the meetings and the increasing success in counter-piracy operations. The voluntary, non-binding and inclusive nature of SHADE has proven very effective for counter-piracy and could arguably be replicated to address other non-traditional and low-risk global challenges.

III. OPERATIONAL COORDINATION OF NAVAL OPERATIONS AND CAPACITY-BUILDING

*Marcus Houben**

The initial response of the international community to the rise of piracy off the coast of Somalia was to try to contain it by establishing a robust and credible military presence at sea, protecting vulnerable shipping, preventing piracy attacks and generally deterring pirates from attacking. This response was combined with international efforts to end the impunity of pirates by strengthening the judicial chain in Somalia and in the region and to build and strengthen the capacity of Somalia and regional states to fight piracy themselves.

Institutional capacity-building efforts related to counter-piracy have been complemented by a broader involvement of governments, international organisations, civil society, and private sector initiatives. The function of the Contact Group is to facilitate the coordination of activities undertaken by the international community. More specifically, the mandate of Working Group 1 was the coordination of naval operations in the Indian Ocean and the international capacity-building efforts. From the start of the CGPCS, WG1 found itself at the very heart of the fight against piracy. This chapter offers an account of the purpose, the achievements and the challenges of WG1.

The coordination of naval operations

To fight piracy off the coast of Somalia, the European Union established Operation EU NAVFOR Atalanta in December 2008. In January 2009 the US announced the formation of Combined Task Force 151 (CTF-151), a force of the Combined Maritime Forces (CMF) with a specific piracy mission-based mandate. NATO's Operation Ocean Shield was established in August 2009. The presence of three parallel naval operations meant that a mechanism to facilitate operational coordination was required. Early in 2009, representatives of CMF and EU NAVFOR began to meet in what they called 'Shared Awareness and De-confliction' (SHADE) meetings. The specific purpose of the quarterly SHADE meetings was to facilitate operational, i.e. naval, coordination. As such SHADE became an operational extension of WG1. As the CMF already had their headquarters in Bahrain, it was decided that the SHADE meetings should be held there. After several years of operation and on the basis of its operational performance, SHADE is considered by its members as a major success. Three elements have contributed to that success.

* The author wishes to thank Jon Huggins, Linas Linkevičius, Pantelis Vassiliou and Jens Vestergaard Madsen for their constructive comments on an earlier version of this paper.

First, the originators of SHADE showed considerable wisdom by avoiding the terms ‘cooperation’ or ‘coordination’ and hence any reference, however implicit, to the truism that everyone wants to coordinate but no one wants to be coordinated. SHADE meetings are conducted at the operational level, ‘keeping politics out’. SHADE has managed to keep organisation and ‘red tape’ to a minimum. The Chair is occupied by the respective Chiefs of Staff of the three operations, on a rotating basis. There are hardly any formal rules or terms of reference for the meetings, which have no formal conclusions and where no decision is taken. As the main focus is on sharing information in order to facilitate situational awareness and avoid conflicting operational tasking, it is fair to conclude that SHADE delivered on its name.

Second, SHADE has an open architecture. It is open to all participants (or stakeholders) involved in naval operations in the wider Indian Ocean, including countries that participated in operations with aircrews and Maritime Reconnaissance and Patrol Aircraft and representatives of the merchant shipping community. This has led to a progressive inclusion of independent deployers and the strengthening of operational coordination and has contributed to a unity of effort. Crucial in this regard is the establishment of a dedicated communications network, the web-based Mercury Net, which facilitates the exchange of piracy-related unclassified information among the forces deployed in the Indian Ocean.

Third, by maintaining a strict focus on operations, SHADE participants have been able to deliver tangible operational results, making the most efficient use of scarce military resources. Key achievements are the establishment of the International Recommended Transit Corridor (IRTC) in the Gulf of Aden that facilitated the secure transit of civilian shipping through pirate-infested waters, and the coordination of naval escorts of vulnerable civilian shipping in the IRTC and the Gulf of Aden for, *inter alia*, the protection of shipments from the World Food Programme (WFP) to Somalia. Furthermore, assigning individual warships time slots and geographic zones to patrol and establishing a system of group transits led to a considerable reduction in hindrances to maritime trade.

The simultaneous presence of three naval operations together with independent deployers has made the Gulf of Aden an important arena for international cooperation. As successful cooperation at sea often has a positive spin-off on other policy areas, presence in the Gulf of Aden became a strategic interest for many participating nations. It remains to be seen whether the SHADE mechanism can be transferred to other policy domains or used for other operational challenges, but the fact remains that SHADE has been a remarkable, if not unique, operational success. One avenue worth exploring is to promote the participation of navies from the Western Indian Ocean region and transform SHADE into a mechanism that would facilitate operational coordination with and among (Western) Indian Ocean navies in the Indian Ocean.

Judicial and maritime capacity-building

Capacity-building in the context of WG1 generally refers to two domains: judicial capacity-building and maritime capacity-building. *Judicial capacity-building* refers to activities that aim to strengthen the judicial and law-enforcement chain in Somalia and the Western Indian Ocean region, for example by renovating courthouses and prisons to meet human rights standards, training prosecutors and prison staff, assistance with the drafting of laws, etc. *Maritime capacity-building* designates the strengthening of maritime law-enforcement agencies, for example by training maritime and port police, coastguards and navies. There has also been some capacity-building in the fisheries sector but these activities remain outside the scope of this paper.

Judicial capacity-building

The organisation that has led the work and strategy in the field of judicial capacity-building has been the UN Office on Drugs and Crime (UNODC). It launched an Indian Ocean-wide counter-piracy programme in May 2009 in response to concerns that Somali pirates transferred to regional states for trial would not face a human rights-compliant trial process, given the complications of the piracy cases. UNODC has increasingly been confronted with new maritime crime challenges in the Indian Ocean. Building on the expertise gained through the counter-piracy programme and other programmes with a maritime aspect – including container control, counter-drugs programming, terrorism prevention, programmes to counter trafficking in human beings and smuggling of migrants – UNODC developed the Maritime Crime Programme, which supports regional states in building, enhancing and joining up their capabilities and capacities in countering maritime crime. Among the many observations and lessons learned of this successful UNODC programme, two are of particular relevance to the CGPCS and WG1.¹ First is the ability of the programme managers ‘to identify critical needs and then deliver what is required within an acceptable timeframe’, and second is the fact that multi-year comprehensive planning is an absolute requirement to ensure sustainability. According to the Independent Evaluation Unit of UNODC, ‘Development assistance projects need multi-year, comprehensive strategy planning to deliver sustainability. Delivering assistance on a piecemeal basis could do more harm than good’. UNODC has undoubtedly set a standard with its Counter Piracy Programme/Maritime Crime Programme, which has been a cornerstone and reference for WG1.

Maritime capacity-building

After the establishment of the Contact Group, piracy remained on the increase – both in terms of successful attacks and the number of ships and crews taken hostage. The

¹ See ‘In-depth evaluation of the Counter Piracy Programme: Combating maritime piracy in the Horn of Africa and the Indian Ocean. Increasing regional capacities to deter, detain and prosecute pirates’, Independent Evaluation Unit, UNODC, June 2013, available at http://www.unodc.org/documents/evaluation/indepth-evaluations/2013/CPP_Evaluation_Report_-_Final_incl_Management_Response_27NOV2013.pdf.

annual cost of piracy to the world economy shot up to USD 7-12 billion according to reports from Oceans Beyond Piracy.² Consequently there was a growing sense of crisis. Although several military operations were deployed, it was clear that a sustainable solution to Somali piracy had to be found ashore and that capacity-building was critical to developing the capabilities needed to transfer counter-piracy efforts from the international community to regional states. To kick-start work on maritime capacity-building, the then Chairman of WG1, Christopher Holtby (UK), led the work on a 'needs assessment and prioritisation' mission at the end of 2009. The information gained from that mission was entered into a so-called 'Needs Assessment Matrix', a spreadsheet detailing each country's maritime capacity-building needs and the current status of their existing maritime and judicial capacities. The report on the needs assessment was subsequently endorsed at the fifth CGPCS plenary session in January 2010 as a basis for further work on addressing regional needs for the development of counter-piracy capability. However the Plenary noted that any such work should be carried out without prejudice to the implementation of the Djibouti Code of Conduct, led by the International Maritime Organisation (IMO), and the development of legal structures, led by UNODC. In 2010 the EU had yet to establish its own capacity-building programme. As the IMO and UNODC were already on the ground with capacity-building missions and programmes, they became crucial points of reference for the EU to ensure complementarity, synergies and avoid duplication.

The coordination of capacity-building

The coordination of the various capacity-building programmes, projects, and missions of the UN mission to Somalia (first UNPOS, succeeded by UNSOM), the UN Development Programme (UNDP), UNODC, IMO, NATO, the EU, the Somali authorities (both at the federal level and within the Somali regions), regional organisations such as the Indian Ocean Commission, and international donors, proved to be a challenging task. At its 13th plenary session in December 2012, the CGPCS endorsed the creation of a Capacity-Building Coordination Group (CBCG) that would report to and support WG1 in facilitating the coordination of regional capacity development and the identification of future priorities for international action. The CBCG would consist of partners from various UN agencies including the IMO, the EU, NATO, the African Union, the Inter-Governmental Authority on Development (IGAD) and representatives from the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA) and the Indian Ocean Commission. To support the work of the CBCG, a new web-based Capacity-Building Coordination Platform was created. This platform not only provided an online tool for the next generation Needs Assessment Matrix of 2009, it also enabled CGPCS participants to share real-time information on regional capability and capacity-building activities. The Working Group supports CGPCS participants and implementing

2 Oceans Beyond Piracy (OBP), 'The Economic Cost of Somali Piracy', 2011, available at <http://oceansbeyondpiracy.org/publications/economic-cost-somali-piracy-2011>.

agencies in promoting maximum transparency and awareness of current and future capacity-building activity, in order to minimise duplication between programmes and ensure the greatest possible impact in Somalia and the wider region.

Although the CBCG was largely modelled on elements that contributed to the success of the SHADE mechanism, it did not enjoy the same amount of success as its military equivalent. Unlike SHADE, which was based on creating a unity of purpose, the CBCG attempted to actively coordinate capacity-building efforts, a task which was difficult due to the existence of other ongoing or planned programmes and the unwillingness of most participants to 'be coordinated'. Furthermore, the CBCG brought together different groups with different mandates and expertise, such as donors (often representatives from Ministries of Foreign Affairs with national foreign policy goals and mandates), implementing organisations (technical experts with organisational mandates and goals), and beneficiaries from regional organisations or nations. Second, it proved difficult to establish a baseline of needs, which made the CBCG seem reactive rather than proactive and meant that the meetings focused overly on technical aspects of the web-based platform. Also, it proved quite challenging to persuade regional nations to upload/submit their needs to the platform. Finally, some reluctance was encountered on the part of both donors and international organisations to share current or planned activities with other participants. The functional principle underpinning the CBCG mechanism – matching national needs and capacity-building programmes through a coordinated and structured approach – was valid but the organisational and regional realities proved to be too diverse to mould them into a single, coherent approach.

Achievements and challenges

The assessment of WG1's achievements is fairly positive. The UK Chair has succeeded in keeping the consensus on the WG's main objectives strong and cohesive. The final judgement on the value of WG1 will largely depend on its ability to create lasting and inclusive structures or patterns of cooperation which not only actively involve Somali and other authorities and states from the region, but which are also sustainable and transferrable to the region. In addition, there is an increasing need to involve the private sector in capacity-building efforts. Initial indications are that an effective interface for that purpose is emerging in the Middle East where countries such as the United Arab Emirates have taken a leadership role in this specific domain. Through their annual conferences on regional capacity-building and the focus on public-private partnerships, they have not only mobilised private sector parties but have also raised awareness of the opportunities afforded by this important element of capacity-building.

Another area where significant gains have been achieved in the cooperation between navies and the shipping industry is in the field of information-sharing. The Maritime

Security Centre – Horn of Africa (MSCHOA), which is an integral part of Operation Atalanta and provides 24-hour manned monitoring of vessels transiting through the Gulf of Aden, owes its establishment to the trust between the public and private sector. Replicating MSCHOA for or in other areas in the world is possible, but building the regional capacity to respond to incidents and building the necessary trust between industry and regional structures to share relevant information would require considerable investment by the private sector. WG1 initiated the Technical Sub-Group (convened by Oceans beyond Piracy) in 2013 to consider this challenge in more detail and develop options for implementation.

In terms of challenges, four issues stand out: (i) Somali representation and participation; (ii) regional participation and ownership in the WG; (iii) inter-institutional coordination; and (iv) sustaining the gains.

Somali representation and participation

First, the period in which WG1 has been operational has witnessed the move from the Transitional Federal Government of Somalia (TFG) to the Somali Federal Government (SFG). Very fragile state structures, uncertain and difficult federal relations inside Somalia (the relations between Mogadishu and the regions of Puntland, Galmudug and notably Somaliland), and the fact that the SFG had to build up its maritime security team adversely affected the continuity of the representation and participation of Somali interlocutors in the WG. The WG Chair, however, made great efforts to secure the presence of the Somali interlocutors in the WG meetings. Over time, WG1 and the CGPCS in general also became vehicles for capacity-building, as they became platforms for sustained cooperation with the Somali authorities. Eventually, the Somali representatives from the Somali Federal Government and the Somali regions, due to their continued commitment, gained the respect and admiration of the WG members. The Kampala Process is in this regard a good example of technical cooperation between the Federal State and the Somali regions on maritime (security) matters. The Kampala Process facilitated the agreement on the Somali Maritime Resource and Security Strategy which now serves as the overarching strategy to guide capacity-building efforts on the ground, with individual plans tailored to the needs of the individual Somali regions.

Regional participation and ownership

Second, a necessary pre-condition for WG1 to function was adequate regional representation. This, however, fluctuated strongly. Meetings of WG1 were initially held in London at the IMO headquarters. One of the measures taken to send a signal to the region and facilitate regional participation was then to hold WG1 meetings in East Africa (Addis Ababa, Djibouti and Nairobi). This slightly improved regional participation but did not represent a marked increase. A number of reasons can explain the limited regional participation in WG1: the cost of travel, personnel capacity con-

straints, national unrest (Yemen) or ‘piracy fatigue’. Limited institutional capacity may have played a role explaining the irregular pattern of participation by regional organisations (IGAD, East African Community, Common Market for Eastern and Southern Africa). This to some extent is an opportunity lost, as participating in the CGPCS in itself constitutes an important form of capacity-building.

Inter-institutional coordination

Third, the coordination between UNODC, NATO, IMO, INTERPOL and the EU in the field of capacity-building required a great deal of time and effort. In retrospect perhaps too much time and energy, which would have been better spent on ‘pulling in the same direction’ to mobilise resources from the region. The perennial tension is between on the one hand *ad hoc* and situational coordination on the ground and on the other hand institutionalised (that is, standing) inter-institutional coordination among organisations that are likely to work together on a large number of issues across the globe. There is however no definitive or universal answer to this challenge.

Sustaining the gains

Finally, the international community and the private sector have invested significant time, blood and funds in the fight against piracy. The Contact Group has produced important and tangible results. A crucial challenge is to ensure that the gains achieved are sustained. This can only be the case if the gains are transferred to the region and to regional structures and organisations. The second and equally crucial challenge is the involvement of the private sector. This presents unique challenges. One the one hand private sector investment and risk-taking are crucial to create economic opportunities and a dynamic economic climate; yet on the other hand one can legitimately ask to what degree the private sector can or should be involved in the coordination and planning of capacity-building. In other words, can capacity-building be left to the market?

Conclusion

This chapter has reviewed the purpose, achievements and challenges of WG1. The operational coordination has been successful, especially the SHADE mechanism. Capacity-building and the coordination of capacity-building proved to be challenging. The success of the CGPCS is largely attributable to the emergence of inclusive and sustained patterns of cooperation. A litmus test for the legacy of WG1 and by extension the CGPCS will be the extent to which these patterns of cooperation can be transferred to regional structures and organisations, supported by the private sector, allowing the region to take ownership and sustaining the cooperation.

IV. THE LEGAL ASPECTS OF COUNTER-PIRACY

Jonas Bering Liisberg

Realising that there was an urgent need for legal guidance in the efforts of the international community to combat piracy off the coast of Somalia, the Contact Group on Piracy off the Coast of Somalia (CGPCS) established a special Working Group (WG2) on legal issues in 2009.

Similar relevant fora for states and organisations to discuss legal issues related to piracy do not appear to exist. It is therefore appropriate to start this Lessons Learned study by looking at the achievements and working methods of the legal working group under the CGPCS.

Pursuant to UN Security Council Resolution 1851 (2008), the CGPCS was established in January 2009 to facilitate the discussion and coordination of actions among states and organisations. Working Group 2 (WG2) on legal issues was subsequently established, and chaired by Denmark until May 2014.¹ WG2 has held 15 meetings (13 regular meetings and two special meetings) in which it has provided specific, practical and legally sound guidance to the CGPCS, states and organisations on all legal aspects of counter-piracy. WG2 has served as a forum for participants' exchange of information on ongoing judicial activities and has contributed to a common approach to the legal issues related to piracy.

Apart from establishing a forum for discussion among relevant legal experts, the main achievement of the WG2 was probably the development of a unique legal and practical framework for prosecuting pirates in the region, also known as the Post Trial Transfer system. The framework allows arresting states to transfer apprehended suspected pirates to a state in the region for prosecution and if convicted to have the pirates transferred to Somalia to serve their prison sentence. This process allows for a more sustainable solution with strong local ownership of prosecution as compared to a regional or international tribunal.

In support of this legal framework, the Working Group has developed a legal toolbox for states and organisations aiming to improve their ability to prosecute pirates (see box at the end of this chapter). In doing so WG2 has contributed to the resolution of issues of relevance, including checklists on prosecution of suspected pirates, overview of impediments to prosecution, mechanisms for prosecution, applicable international law, transfer of convicted pirates for prosecution, evidence collection, private armed guards and the use of force and human rights considerations.

1 WG2 was then transformed into a virtual forum of legal experts chaired by Portugal and Mauritius.

While some legal challenges and questions of relevance to counter-piracy still remain, and new legal aspects will continue to arise, the most essential challenges have been dealt with under the auspices of WG2. The number of unresolved legal issues is therefore declining and today fairly few remain. This coincides with the decline in piracy activity off the coast of Somalia.

WG2 debates and main achievements

WG2 has been demand-driven, focused and result-oriented and has defined a structure calibrated to support the identified needs. This means that every subject introduced and discussed in the Working Group has been deemed to be of relevance to the legal aspects of counter-piracy or has come up as part of the practical challenges experienced by states as part of their counter-piracy efforts. The various issues have been identified by WG2 participants or suggested by other CGPCS working groups or other stakeholders.

One of the main issues for the Working Group has been the different options for prosecution of suspected pirates. The public perception in the early days of the surge of piracy along the coast of Somalia was that pirates were caught and immediately released due to the lack of a prosecution system. It was thus important to ensure that a viable system for prosecution was in place. The 2011 report by the UN Special Adviser on Legal Issues related to Piracy off the Coast of Somalia² highlighted that Somalia was not able to prosecute pirates at the moment and that the establishment of a complementary judicial mechanism could be necessary, for instance by establishing a Somali chamber outside Somalia. The possible establishment of a regional or international special tribunal for piracy outside Somalia was the subject of discussion in the Working Group, and a number of different options in this regard were tabled.

The Working Group opted at the time to continue to build on the commitment of the regional states to prosecute suspected pirates until the capacity to undertake trials in Somalia would be available. This option, however, could impose a heavy political and practical burden on the regional states with convicted pirates serving long sentences in their prisons. At the same time, serving out their sentences in a prison where they would be close to relatives was considered more appropriate and also in line with the recommendation in the abovementioned UN Special Advisor report to focus on Somali solutions. Therefore, the relevant regional states together with the UN Office on Drugs and Crime (UNODC) and Working Group 2 developed the model of 'Post Trial Transfer', according to which pirates who have been convicted in a regional state can be transferred to serve their sentence in Somalia.

² Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia ('Jack Lang report'), S/2011/30, 25 January 2011.

The Post Trial Transfer model is a unique system of cooperation. The model has meant that pirates convicted in regional states, including the Seychelles, have been transferred to prisons in Somalia to serve their sentence. Some of the prosecuting states for their part have made agreements with a number of countries participating in the international maritime law enforcement campaign, such as EU NAVFOR or NATO Operation Ocean Shield, to receive suspected pirates for prosecution. This chain from apprehension to prosecution to serving the sentence has proven to be highly effective and sustainable – and has contributed to the change in public perception on the efficiency of the fight against piracy, as more suspected pirates have been prosecuted. A total of 1,200 individuals have been convicted of piracy or are awaiting trial in 21 states worldwide – a very clear sign that there is no such thing as impunity for pirates.

The Working Group has continuously discussed the implementation of the Post Trial Transfer model to ensure that the complex legal framework was in place, but also that actual transfers were carried out. A substantial number of convicted pirates have since been transferred to Somalia as part of the implementation of the Post Trial Transfer model which requires thorough legal frameworks between the involved parties as well as the necessary prison capacity in Somalia.

Having opted for the Post Trial Transfer system, the Working Group has exchanged information regarding various challenges to prosecution both with regard to hard core legal issues as well as more practical issues of legal capacity and requirements by receiving states, for instance as regards collection of evidence, etc.

Information sharing on the latest developments on prosecution, including on relevant judicial capacity-building activities in the region, has been a recurring item of all WG2 meetings. This has included information sharing among the member states on pending piracy court trials, prison capacity, incidents and possible bilateral agreements. Information sharing has turned out to be most valuable to identify outstanding legal issues and to raise awareness of legal aspects and policy options. Furthermore, the framework of the Working Group has been a suitable forum for handing over useful information on recent developments, both among states and among organisations, non-governmental as well as governmental, involved in counter-piracy.

In this process much emphasis has been put on ensuring that prosecution is carried out with respect for international law requirements and other applicable law. The Working Group has addressed important human rights considerations, such as the issue of how to handle juvenile pirates, as well as human rights considerations in the apprehension and detention of suspected pirates. The Working Group found it very important to include human rights considerations because while striving to combat the threat of piracy, compliance with the values and rules that we are fighting to protect must not be forgotten. Even though many states are parties to the UN Convention on the Law of the Sea (UNCLOS) and Safety of Maritime Navigation (SUA) Convention, every state is subject to different sets of rules, derived from national

legislation or regional or international conventions. The Working Group has had to take this into consideration, in particular in discussions concerning human rights.

In the view of many observers the use of privately contracted armed security personnel (PCASP) has contributed to the decline in the number of piracy attacks. However, the rules for the use of force by private entities varied from country to country, and there was a request particularly from the private sector to ensure uniform rules across the different jurisdictions. The topic was discussed at a special meeting in London on 24 April 2012. The meeting brought clarity on the applicable international rules as it was concluded that the rules on the use of force and the definition and regulation of actions in self-defence were mainly regulated by national law (flag state or coastal state). The discussion therefore emphasised the need for counter-piracy actors to make themselves familiar with the applicable law at their location. The issue underlined the status of the Working Group as a discussion forum, which could assist in clarifying the legal issues and share this information with relevant parties, and not a forum where new rules are created. Work has been undertaken in other, more global fora, such as the IMO, to develop appropriate standards and best practices relating to PCASP.

WG2 has been active in assisting Somalia in ensuring that the necessary legal framework is in place and progress has been made in this regard, not least by the continued efforts by the former WG2 Chair and the UNODC to bring the relevant legal Somali actors to the table in numerous visits to Somalia, and at meetings and consultations held in the margin of international counter-piracy meetings, including meetings of WG2 with representation by members of the Somali Law Reform Group (comprising the central government, Puntland, Somaliland and Galmudug). This again took place with active participation and facilitation on the part of the UNODC.

WG2 meetings and Chair

WG2 has acted on the basis of a continued mandate from the Contact Group and held a total of 15 meetings. From the outset three meetings were held per year, turning into two per year, combined with various bilateral contacts and consultations. Two of the 15 meetings were Special Meetings on PCASP and piracy investigators and prosecutors respectively, based on a mandate from the Working Group to pay special attention to those topics. Most WG2 meetings have been held in Copenhagen, with Vienna (UNODC), London (IMO), the Seychelles and Djibouti also being chosen as venues. The Seychelles and Djibouti were selected particularly with a view to demonstrating the importance and appreciation of efforts in the region.

An annotated agenda outlining the meeting substance was distributed by the WG2 Chair prior to each meeting. WG2 has developed a more or less generic agenda combined with new topics. The CGPCS is not a decision-making forum, and each WG2 meeting has been concluded by Chair's conclusions produced on the sole respon-

sibility of the Chair of the Working Group. These conclusions constitute a short summary of the outcome of the WG2 discussions, and have formed the basis for the report of the WG2 Chair to the subsequent plenary meeting. The Chair's conclusions have also entailed a list of remaining issues for the Working Group to look further into, and have therefore been a valuable working tool. For that reason the Chair's conclusions are also part of the WG2 toolbox placed on the secure Working Group 2 section of the CGPCS website.³ Presentations at meetings have been delivered by WG2 participants combined with briefings by invited experts or representatives from industry or international organisations.

WG2 has enabled interaction between states and regional and international organisations on legal aspects of piracy. It has served as a unique forum for participants' exchange of information and intense discussion on ongoing judicial activities and developments and contributed to a common approach to – and enhanced cooperation on – international legal piracy issues. Invitations to the first WG2 meeting in March 2009 were sent out to states affected by Somali piracy. 32 states and seven organisations participated in this first meeting in Vienna. Over the following five-year period the creation of a comprehensive international network of relevant legal stakeholders – including legal experts and advisors from the foreign service, defence and justice ministries, prosecutors and investigators as well as legal representatives from international organisations and academia – representing approximately 50 states and 25 organisations – has been a major achievement of WG2. In that respect the active participation of regional key players, such as Somalia – including legal experts from the Somali Law Reform Group (Kampala Process participants) – Kenya and the Seychelles, but also Mauritius and Tanzania, has been highly relevant and most valuable. Indeed it has been a priority of the WG2 Chair to secure meeting attendance from regional stakeholders with legal professions, and considerable time and resources have been spent on this account.

The position of Chair of WG2 was from the outset held by the Under-Secretary for Legal Affairs in the Ministry of Foreign Affairs of Denmark, Ambassador Thomas Winkler. Mr. Winkler left this position in 2013, after which his successor in Copenhagen, the author of this article, chaired one meeting. Apart from chairing the Working Group meetings, the WG2 Chair has promoted the legal piracy agenda internationally. The Chair has been closely involved in the negotiations of the legal regime behind the 'Post Trial Transfer' concept together with the UNODC and has conducted numerous field trips to Somalia and countries in the region in this respect. The Chairman has cooperated closely with the UNODC, both the Vienna-based headquarters and the Nairobi-based office. The UNODC has acted as secretariat for the WG2 Chairmanship, and has played a vital part in implementing the Post Trial Transfer System, not least the enhancement of the prison capacity in Somalia. A crucial factor in the success of the WG2 has been the outstanding commitment by key individuals in the process.

3 www.theCGPCS.org.

Box 2: The WG2 toolbox

WG2 has developed a comprehensive legal toolbox for states and organisations engaged in improving their ability to prosecute pirates. By gathering various legal documents, guidelines, templates, and compilations of relevant international law available to WG2 participants as discussed at WG2 meetings, the Working Group has paved the way for obtaining easy access to the relevant anti-piracy legal information. Piracy cases are often characterised by a degree of urgency due to strict time limits on how long piracy suspects apprehended by military means can be detained on board a military vessel. Easily obtainable information is therefore essential. The various legal documents are gathered in a ‘WG2 toolbox’, available on a dedicated website.

This is accessible on the secure WG2 subsection of the CGPCS website (the website is administered by The Republic of Korea) at www.thecgpcs.org.

V. WORKING WITH THE PRIVATE SECTOR

Huh Chul

The Working Group 3 (WG3) of the CGPCS was established at the first CGPCS Plenary in January 2009. It is mandated to work with the shipping industry in order to strengthen commercial shipping self-awareness and other capabilities. WG3 has made joint efforts with the International Maritime Organisation (IMO), the maritime industry and NGOs to enhance the security of shipping and to promote the post-hostage care of crew members who have been involved in piracy incidents. WG3 was initially co-chaired by the US Coast Guard (USCG) and Maritime Administration (MARAD). Since 2012, the Republic of Korea has served as Chair of WG3.

Best management practices

One of the main achievements of WG3 has been the development of ‘Best Management Practices for Protection against Somalia-Based Piracy’ (BMP), which provide practical guidelines to crews, masters and shipowners on how to protect themselves against hijacking by pirates. The elaboration of these guidelines has been the result of close cooperation among WG3 members. The fourth version of the document (BMP-4) was adopted in August 2011.

In the first WG3 meeting in February 2009, the document entitled ‘Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia’, supported by eleven shipping industry organisations, was introduced by the representative from the International Chamber of Shipping (ICS) on behalf of the shipping industry. The primary objective of the document was to ensure the safety of crews and the security of ships and cargo operating in the Gulf of Aden. WG3 welcomed the initiative and forwarded the text to Working Group 1 (in charge of coordination and capacity-building) and the Plenary for consideration. WG3 has continued to monitor findings in coordination with WG1 regarding the effectiveness of BMP. WG3 also submitted the document to the 86th IMO Maritime Safety Committee (MSC), which endorsed it and agreed to promulgate it to all interested parties. In the fourth CGPCS Plenary on 10 September 2009, the Contact Group noted the updates on BMP, and in the sixth CGPCS Plenary on 10 June 2010, Version 3 of the Industry Best Management Practices was completed and distributed. In addition, WG3 supported the industry’s plan to ensure the availability of BMP-4, which was published in August 2011, and encouraged its dissemination through all available delivery methods. WG3 also submitted the ‘Flag State Framework for Implementation of Avoidance, Evasion, and Defensive Best Practices to Prevent and Suppress Acts of Piracy against Ships (IMO MSC 90/20/14)’ to the 90th Maritime

Security Committee of the IMO. This framework is based on the premise that flag states should promulgate guidance on the implementation of best practices and other effective counter-piracy guidance to their ships.

During the third Plenary held in New York on 29 May 2009, representatives from the Bahamas, Liberia, Marshall Islands, and Panama signed the 'New York Declaration', which is a commitment to Best Management Practices to 'avoid, deter or delay acts of piracy'. In September 2009, six more states, including the United States, the United Kingdom and the Republic of Korea became signatories to the New York Declaration. The Contact Group welcomed this Declaration and encouraged other nations to adopt and implement the guidance.

WG3 has consistently stressed that full implementation of the BMP has proved to be the most effective way to prevent ships from being hijacked. While welcoming the agreed BMP compliance by the majority of the shipping industry, WG3 has expressed concern with the continued non-compliance by some, and urged increased action by flag states and shipping companies to continue to minimise risk. In order to narrow the gap of non-compliance with the BMP by merchant vessels, WG3 elaborated a report analysing piracy incidents attributable to Somali pirates and occurring between 2008 and the first half of 2012. The document focused on the time of year, location, waters, flag states, vessel types, and gross tonnage of ships involved in piracy incidents. The role of WG3 in the development of BMP and its insistence on compliance are part of broader efforts to counter pirate activities, to a certain degree successfully. However, the importance of BMP compliance should continue to be emphasised.

Welfare of seafarers

WG3 has increasingly paid attention to the improvement of the welfare of seafarers affected by Somali pirates and their families.¹ In the seventh Plenary in November 2010, WG3 reported that industry groups had collaborated and developed guidance covering the training preparation and care of seafarers, and planning actions recommended to be taken for the event of being hijacked by pirates. This document, entitled 'Guidance to Company Security Officers (CSOs) – Preparation of a Company and Crew for the Contingency of Hijack by Pirates', was published and submitted to the 88th Maritime Security Committee of IMO (IMO MSC 88/18/2) for consideration. The guidance focuses on the actions of the companies in fulfilling their responsibilities to the crew, and highlights the need to prepare crisis management plans to handle hijacking and its effects on the crew.

Similarly, the 11th Plenary in March 2012 encouraged the formulation of guidelines for seafarers' welfare, especially for kidnapped seafarers and their families, as shown

¹ See also box on this topic at end of this chapter on pages 48-49.

in the work of the Maritime Piracy-Humanitarian Response Program (MPHRP) and the Seamen's Church Institute (SCI). The MPHRP provided guidance to shipping companies and manning agents on how to implement practices that would reduce the stress of both the crew and their families through its 'Good Practice Guide' (GPG). The SCI also conducted its own study of the impact of piracy and produced its own set of guidelines to help seafarers cope with pirate attacks, which emphasised the need for anticipatory training and understanding of piracy tactics. The 12th Plenary in July 2012 welcomed efforts by WG3 to consider possible ways to provide better assistance for seafarers and their families who have been victims of pirate attacks, armed robberies at sea or kidnapping in cooperation with states, industry, and international organisations and NGOs, including MPHRP, the International Transport Workers' Federation (ITF), and the SCI, among others.

In the sixth WG3 meeting, held in September 2012 in London, the Republic of Korea, as WG3 Chair, presented a report on applicable clauses and implications from existing international conventions, agreements, and guidelines to protect the rights of piracy victims. The report raised the issue of seafarers' welfare and aimed to improve the legal basis for seafarers, especially in the fields of education and training, provision of information, repatriation, compensation, and post-release care. Building upon the Chair's report, the MPHRP, on behalf of the industry, provided a matrix of the roles of primary stakeholders in cases of piracy incidents affecting seafarers and their families.

In the seventh WG3 meeting, held in February 2013 in Seoul, the WG3 Chair introduced a draft working paper, which included elements of a comprehensive interim guideline for the welfare of seafarers affected by Somali pirates and their families. The draft recommendations in the comprehensive interim guidelines emphasised the measures already in place while suggesting new and complementary ones, particularly for seafarers victimised by pirates. The discussions on the draft took place at an *ad hoc* meeting on 25 March 2013 among WG3 Chair and stakeholders from the private sectors, at an inter-sessional meeting in New York in April 2013, and at the eighth WG3 meeting in London in September 2013. During the Counter Piracy Week in Djibouti in November 2013, WG3 completed the 'Interim Guidelines on Measures Relating to the Welfare of Seafarers and their Families Affected by Piracy off the Coast of Somalia', which are composed of recommendations throughout the following categories: shipowners' insurance cover in respect of crew; employment terms and agreements; education and training; support to families in the event of a hijack; post-release repatriation; post-hijack medical support; compensation for losses; financial support; and future employment. The 15th Plenary endorsed those guidelines and WG3 submitted the guidelines to the 93th IMO Maritime Security Committee to be used as a reference framework in dealing with piracy problems in other parts of the world.

Counter-piracy and private security companies

WG3 has also addressed the use of privately contracted armed security personnel (PCASP) onboard of merchant vessels. WG3 has worked with the IMO and the ILO to build an international regime on the use of PCASP and private maritime security companies (PMSC). In particular, Inter-sessional Correspondence Group 1 (ICG2), chaired by the United Kingdom, elaborated the Guidance on Privately Contracted Armed Security personnel. At the 5th WG3 meeting in February 2012, the UK presented the guidance for PMSCs providing PCASP onboard ships in the High Risk Area of the Western Indian Ocean and the Gulf of Aden. The purpose of this document was to provide a framework as an interim guidance to PMSCs for the suppression of piracy and armed robbery in the identified High Risk Area. WG3 submitted the 'Draft Interim Guidance to private maritime security companies (PMSC) providing privately contracted armed security personnel (PCASP) aboard vessels transiting the High Risk Area off the east coast of Somalia (IMO MSC 90/20/6)' to the Maritime Security Committee of the IMO. WG3 also supported discussion on ISO PAS 28007, which is a guideline for PMSCs providing PCASP on board ships, at the 92nd Maritime Safety Committee of the IMO for its adoption.

Strengths and weaknesses of WG3

One of the main strengths of WG3 has come from the diversity of its members. The participation of various key stakeholders, such as governments, NGOs, maritime industries and navies, has enabled comprehensive discussions among relevant participants as well as an effective implementation of the results from the discussion. Non-state actors are observers of the CGPCS but provide relevant expertise and professional views. Industries present their technical counter-measures (e.g. BMP) to the governments participating in the CGPCS, and the governments in turn may encourage or call for their flagged vessels to implement those measures. While some NGOs offer a balanced view by representing the voice of seafarers, other provide expert analysis on piracy off the coast of Somalia.

The inter-sessional meetings have provided the opportunity for in-depth discussion on WG3-related issues. The Plenary appreciated the efforts of two Inter-sessional Correspondence Groups of WG3, led by the United Kingdom and the United States, respectively, to submit the 'Draft Interim Guidance to private maritime security companies (PMSC) providing privately contracted armed security personnel (PCASP) aboard vessels transiting the High Risk Area off the east coast of Somalia' and the 'Flag State Framework for Implementation of Avoidance, Evasion, and Defensive Best Practices to Prevent and Suppress Acts of Piracy against Ships' to the 90th Session of the IMO Maritime Security Committee.

The task of WG3 is important and meaningful in that it works with the private sector. However, this strength can sometimes turn into a source of tension. The conflict of interests between particular nations and the industry can impact on the effectiveness of the Working Group in dealing with controversial issues and reaching an agreement. This is understandable as the interests of the private sector are not always congruent with some countries' national interests and it should perhaps be regarded as a shortcoming that the CGPCS needs to tackle.

Conclusion

Since its establishment, Working Group 3 has made efforts to reduce, either directly or indirectly, the number of attacks by Somali pirates, by dealing with shipping self-awareness and other capabilities to support seafarers who are employed in operations on the high-risk waters off the Horn of Africa. In particular, WG3 regularly reviews the progress of the gathering and dissemination of lessons learned and the implementation of best management practices onboard vessels operating off the coast of Somalia. WG3 has also addressed labour issues in order to improve the welfare of seafarers affected by Somali pirates, and developed the 'Interim Guidelines on Measures Relating to the Welfare of Seafarers and their Families Affected by Piracy off the Coast of Somalia'. Such guidelines will hopefully contribute to promoting the welfare of seafarers and their families affected by Somali piracy and be used as a reference framework in dealing with piracy problems in other parts of the world.

Box 3: The key role of industry in fighting piracy

Peter Hinchliffe and John Stawpert

The Contact Group on Piracy off the Coast of Somalia (CGPCS) has become the most notable meeting forum for counter-piracy discussion and for the development of diplomatic, political and military counter-piracy strategy and its supporting actions. It took some years before the right mix of governments and stakeholders had assembled to really make a difference. However, once that process gathered momentum, it demonstrated the effectiveness of like-minded cooperation and single-minded determination of states cooperating with the right stakeholders, in particular representatives of the shipping industry.

Industry involvement in the CGPCS has been key to a number of the successes in the fight against piracy. In particular the Contact Group served as a platform for the recognition of the Best Management Practices (BMP), developed 'by industry for industry' as practical guidance on the deterrence and avoidance of Somali Pirate Action Groups. The BMP was subsequently submitted to the International Maritime Organisation (IMO) and circulated officially by the organisation. This model of industry introducing guidance through the Contact Group was adopted in a number of other areas such as standards for armed guards and humanitarian aid for victims of piracy. Therefore, while the Contact Group is not a legislating body, it has facilitated the development of essential guidance at a faster rate than is normally possible under conventional legislative mechanisms. This is essential when responding to fast-changing pirate tactics and delivery would not have been possible without the presence of industry in the group.

The CGPCS also helped to facilitate cooperation between industry and the military. While it is not the only forum in which industry and the military liaise, it has served an important messaging role in stressing the nature of the developing threat and in ensuring that states' representatives are well apprised of the situation in the high-risk area. Another important forum for this liaison is the quarterly Shared Awareness and De-confliction (SHADE) meetings in which there has been unprecedented cooperation and progress on coordinated counter-piracy initiatives.

Future challenges

The CGPCS has delivered a powerful message that armed threats to ships and seafarers, without whom there would be no world trade, are unacceptable, and it has been key to the successes currently being witnessed in the fight against piracy in the region. However, the Contact Group is faced with unequivocal decisions about its future and that of counter-piracy in the context of international diplomatic, political and military activity. With 18 seafarers and 28 fishing vessel crew still in the hands of Somali pirates as of May 2014 there can be no illusion that piracy has been defeated or that its impacts have faded into history. Sightings of pirate skiffs and probing attacks with firearms remain a weekly if not a daily event in some parts of the Indian Ocean, and the capacity for piracy remains. It has been checked to some degree but certainly not yet controlled.

There is no easy way to solve the crisis, and the solution lies upon the four distinct, but complementary, pillars of counter-piracy, namely BMP, armed guards where necessary, military deployment and capacity building ashore. Removing or weakening any one of those pillars would compromise the good work to date and open the door for a resurgence in hijack attempts, with serious consequences for the seafarers and families involved.

The Contact Group must therefore determine how best to utilise both the lessons learned thus far, and its collective will, to ensure that piracy is significantly weakened in the region. Capacity building ashore will be key, but it will also be necessary to have a mechanism in place to ensure that the progress of those endeavours can be measured, since it is ultimately ashore that the piracy problem can be effectively tackled.

Equally, industry-military cooperation through Working Group 3 will continue to be vital, both in coordinating the CGPCS with the activity of the SHADE process, and in identifying domain awareness and operational challenges into the future.

Box 4: Seafarers affected by Somali piracy – humanitarian aspects

Peter M. Swift

The establishment of the Contact Group on Piracy off the Coast of Somalia (CGPCS) broadly coincided with a massive increase in the number of ships hijacked and seafarers taken hostage in the area.

Initially most of the attention in the plenary and working groups was on the quantification and monitoring of the number of ships, rather than seafarers, held and the means to deter piracy and protect ships more effectively, while little attention was paid to the plight and suffering of the seafarers. Gradually, however, humanitarian issues were introduced – principally by the WG3 chair and the NGOs directly involved in providing care and support – and these concerns were progressively taken up by some of the other states and NGOs.

Through these processes recognition was given to the value of encouraging (voluntary) piracy-awareness training for seafarers including basic coping mechanisms, greater preparedness on the part of companies to handle any crisis, ranging from an attack to a lengthy hijacking, and the principal elements of post-incident care and support. The need to also take care of seafarers' families was highlighted and widely recognised.

The CGPCS provided a valuable, almost unique, forum for discussions between states and industry on how seafarers and their relatives are affected by Somali piracy and assisted the development and dissemination of the Maritime Piracy Humanitarian Response Programme (MPHRP) good practice guidance for companies, seafarers and welfare providers.

The publication by WG3 of the 'Interim Guidelines on Measures Relating to the Welfare of Seafarers and their Families Affected by Piracy off the Coast of Somalia' sets out a comprehensive set of recommendations for states, industry and NGOs and provides a valuable reference framework for the welfare of seafarers affected by piracy elsewhere in the world. It is however regrettable that to date neither the International Maritime Organisation (IMO) nor the International Labour Organisation (ILO) have opted to turn this guidance into a circular which would undoubtedly give more emphasis to, and help disseminate, the recommendations and guidance therein.

The suffering of affected seafarers, and in turn their families, does not necessarily end on their return home. Some face continued indebtedness, medical and other health problems, family tensions and problems with returning to gainful employment as a result to the traumas they experienced. While these issues were noted sympathetically by many states and NGOs, only a few have embarked on tangible programmes to assist these seafarers. It is therefore debatable whether the CGPCS as a whole and/or individual states could do/could have done more to provide post-incident assistance (financial and other assistance such as medical support, retraining programmes) to these seafarers.

VI. RAISING PUBLIC AWARENESS

David M. Meron

From its inception, the Contact Group on Piracy off the Coast of Somalia's founding nations and organisations correctly recognised the important role strategic communications should play in efforts to combat piracy emanating from Somalia. It created Working Group 4 (WG4) with the intention of establishing something akin to a public diplomacy unit. WG4 was designed to serve the CGPCS in two ways. First, it would keep the international community informed as to its activities and events related to pirate attacks. Second, by initiating targeted anti-piracy messaging campaigns, it would seek to influence Somalis living both in their home country and in diaspora communities to reject the pirates' narrative and support the international community's efforts to eradicate piracy originating from Somalia.

This chapter outlines WG4's original parameters, as determined at the early CGPCS plenary sessions, and describes the evolution of those parameters. It then illustrates how, despite the challenges presented by initial goals that may have been too broad and operationally unsuited for the *ad hoc* structure of the CGPCS, as well as a lack of consistent leadership, it emerged to become the first of the five working groups to complete its mandate.

WG4's mandate and achievements

The first and second CGPCS plenary session *communiqués* defined Working Group 4's roles and responsibilities in carrying out anti-piracy strategic communications and messaging. These were as follows:

- improve diplomatic and public information efforts regarding all aspects of piracy and disseminate the CGPCS message to the identified target audiences;
- staff a Press and Media Officer within the CGPCS Secretariat;
- compile a 'Yearly Progress' survey with a view to identifying priorities of CGPCS participants in the area of communication and information dissemination;
- play an active role in fundraising in support of the CGPCS Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia;
- deliver counter-piracy communications across Somalia;
- coordinate UN Political Office on Somalia meetings in Nairobi.

The United Kingdom, Denmark and the United States chaired Working Groups 1, 2, and 3, respectively. They, and later Italy as chair of Working Group 5, dedicated the lion's share of their efforts to the issues facing their respective working groups. Egypt offered to chair Working Group 4 and appointed ambassador-rank diplomats from the Ministry of Foreign Affairs' legal office to fill the position. The country was in the best position to undertake an anti-piracy public diplomacy task, considering its proximity and closer cultural/linguistic/religious ties to Somalia. As a state bordering the Red Sea, it also had a keen interest in legal affairs surrounding acts of piracy in the region. Consequently, the first WG4 chair (from January 2009 to February 2012), as well as the other three who followed (from February 2012 through November 2013), came with experience in public diplomacy and legal matters and focused their attention on both areas.

While WG4 did develop a CGPCS communication strategy, it soon became clear that the CGPCS neither had the mandate nor did WG4 have all the tools to carry out an anti-piracy messaging campaign targeting Somalis in Somalia and in the Somali diaspora community. At the fifth plenary session held in January 2010, the CGPCS 'confirmed the central role of the United Nations in coordinating implementation of the CGPCS communication and media strategy.'¹ In effect, the CGPCS recognised that the UN Political Office for Somalia (UNPOS) and Office on Drugs and Crime (UNODC) were the appropriate organs to relay anti-piracy messaging to Somalis.

In order to more effectively publicise the activities of the CGPCS, as well as provide access to archived documents and other communications pieces, the Republic of Korea (RoK) offered to fund the start-up of a CGPCS website in January 2011. The website and accompanying Facebook page, whose maintenance would be jointly funded by the RoK, the United Kingdom and the United States, were launched in September of that same year.

Meanwhile, WG4 assumed duties it (and the CGPCS) was seemingly ill-prepared to carry out. At the eighth Plenary held in March 2011, the Chair proposed 'to participate in activities and the coordination of UNPOS meetings in Nairobi' and 'together with the Chairmen of Working Groups 1, 2, and 3, and representatives of interested states, visit the region to promote the CGPCS and its trust fund in coordination with relevant UN authorities.'² Beyond developing a CGPCS communication strategy for the UN, however, WG4 had completed few of the tasks it set out to accomplish.

Concerned that WG4 had lost its focus, CGPCS participant nations and organisations active in WG4 set out to reassess the group's roles and responsibilities – in effect, push the 'reset button'. To that end, in February 2012, the US State Department, in collaboration with the non-governmental organisation Oceans Beyond Piracy (OBP) and the UK Foreign and Commonwealth Office, with the support of the WG4 chair,

1 CGPCS 5th plenary final *communiqué*, January 2010.

2 CGPCS 8th plenary final *communiqué*, March 2011.

organised a two-day counter-piracy messaging workshop in London that brought together 60 CGPCS participant nations, organisations, and the shipping industry. Participants focused on updating WG4's roles and responsibilities and sought to address CGPCS counter-piracy messaging needs.

The London workshop participants agreed that:

- The CGPCS should be the primary source of international community counter-piracy messaging;
- WG4 should coordinate that messaging among the CGPCS participants and the other four CGPCS Working Groups; and
- WG4 should develop a set of counter-piracy messages to the international community that would also serve as CGPCS talking points.

Workshop participants also produced a matrix laying out 26 distinct messaging programmes undertaken by CGPCS participants as well as a draft of Effective Counter-Piracy Messaging to Somalis.

The US State Department and OBP facilitated two additional workshops, one in Copenhagen in October 2012 in partnership with the Danish Ministry of Foreign Affairs, and the other in Addis Ababa in March 2013. Leaders from Somali diaspora communities, including youth leaders, actively participated in both workshops and added their perspectives, enabling CGPCS to gain their buy-in on 'Effective Counter-Piracy Messaging to Somalis', which was adopted at the CGPCS 12th Plenary. Participants also finalised a document initiated in London, 'Messaging to the International Community: A Set of Talking Points for Contact Group on Piracy off the Coast of Somalia Participants', which now serves as the set of CGPCS talking points.

Importantly, Addis Ababa workshop participants – including the Somali Deputy Minister for Information, Telecommunications, and Transport, and advisors to the Somali Prime Minister – determined that the Federal Government of Somalia (FGS) should create a strategic counter-piracy messaging framework and direct counter-piracy messaging to Somalis. To that end, WG4 would assume a supporting role to Somali authorities in this effort and strive to align CGPCS messages with those of the FGS, where appropriate.

Addis Ababa participants also updated the original set of WG4 roles and responsibilities assigned by the CGPCS. The changes adapted WG4 roles and responsibilities to take into account the Addis Ababa workshop conclusion that 'WG4 retains responsibility for messaging coordination and harmonization among CGPCS participants. WG4 will work with Somali officials to help develop and support their counter-piracy messaging programs [...] WG4 strongly supports the development of a Somali-led

and Somali-owned unified counter-piracy messaging framework and welcomes a strategic dialogue and partnership to further this agenda.³

A January 2013 CGPCS stakeholders meeting in The Hague further defined the WG4 'reset'. Participants agreed that there was a pressing need for more – and more effective – communication and public diplomacy work relating to piracy: 'As the CGPCS has matured, it became clear that two very different kinds of effort are needed: (1) a corporate public affairs function to better communicate the work ongoing in the international community to combat piracy and return control of Somali littoral territory to legitimate Somali authorities and institutions; and (2) a strategic counter-piracy messaging campaign, operated with the support of Somali authorities, to make Somalia and its diaspora communities inhospitable to pirates and related organized criminal activities.'⁴

WG4's completion of tasks as redefined in London and the transition of its residual functions to the CGPCS Chair and the FGS represented positive progress. In this regard, the disestablishment of WG4 would respond directly to the recommendations presented in the US CGPCS Chairmanship's document 'CGPCS 2013 and Beyond', by which 'In [the] context of progress achieved and work yet to be done, it is time to discuss how the Contact Group might evolve to take into account the changed and still changing circumstances on the waterways of the region and ashore in Somalia.'⁵

With this in mind, at the fifteenth CGPCS Plenary held in Djibouti in November 2013 and following concurrence by the WG4 Chair and participants, the Plenary accepted the WG4 Chair's motion to disestablish the working group. Its revised mandate fulfilled, WG4 became the first of the five CGPCS working groups to declare 'mission accomplished'.

Conclusion

Working Group 4 faced unique challenges that prevented it from accomplishing the relatively rapid achievements attained by Working Groups 1, 2, 3 and 5. Its chairpersons shouldered the burden of covering both the public diplomacy and legal portfolios, and did not have access to sufficient resources to carry out WG4's ambitious original CGPCS mandate. Replacing three chairpersons in under two years, each residing in a country other than where the day-to-day work took place, also posed a distinct challenge to coherent strategic planning. Further complicating WG4's task and its ability to effectively communicate the CGPCS message, the CGPCS never formed a secretariat that would 'hire' a press/media officer.

3 WG4 Addis Ababa workshop conclusions, March 2013.

4 Report from January 2013 CGPCS stakeholders meeting in The Hague.

5 Ibid.

The RoK's establishment of a CGPCS website and Facebook page seemed an effective solution to fill the gap. In practice, however, geography and language/cultural barriers rendered the website primarily a repository for CGPCS documents and the Facebook page an underused and ineffective media tool. The United Arab Emirates' offer to finance an Arabic-language version of the CGPCS website fell flat when it became apparent the RoK had neither the human resources nor the technical ability to manage a second website.

WG4 was also late in recognising that non-state actors – in particular, non-governmental organisations and the shipping industry – should play an active role in formulating and disseminating the CGPCS messages. The contributions of OBP and organisations such as the Maritime Piracy Humanitarian Response Programme (MPHRP) and the Baltic and International Maritime Council at the February 2012 London workshop and their successive participation helped WG4 to turn the page and at last become a more effective forum. Ultimately, and to its credit, WG4 did complete its mission. Its path would have been less tortuous, however, had it been able to avoid the pitfalls noted above.

VII. FIGHTING PIRACY ALONG THE MONEY TRAIL

Giuseppe Maresca

Over the last decade, piracy has blighted Somalia, damaging its development prospects, disrupting shipping lanes along its coastal area and causing great stress and suffering to the crew members of the vessels hijacked. When Somalia becomes a unified nation with a strong central government that exerts full control over its territory, the problem posed by piracy is likely to be considerably rolled back, albeit over time. As the gradual process of rebuilding the Somali state has been resumed, the international community has also moved quickly towards setting up effective protection measures that have reduced successful pirate attacks to zero. These measures cannot be sustained forever, however, and the security that they provide may therefore not necessarily last over time: the international community is fully aware that a decrease in existing protection levels would result in a new surge of pirate attacks. This fact was recognised by the Contact Group which, in its plenary meeting of 14 July 2011, established Working Group 5 (WG5), mandated to ‘focus on and coordinate efforts to disrupt the piracy enterprise ashore’.

Since then, the discussion has moved towards more direct measures in fighting piracy onshore, which is where much of the solution lies. In particular, in recognition of the fact that the payment of ransoms for freeing the vessels and the crews captured is an important source of revenue and thus a major motivation for the pirates, there is a new focus on following the money trail.

This chapter explores three mutually reinforcing lines of action concerning the piracy money trail that have been the subject of extensive discussions in WG5 and which represent a strategic change in attitude towards piracy.

Piracy as a lucrative business: bringing the international response onshore

Piracy off the Somali coast is not a new phenomenon: in fact it is rooted in the history of the region. More recently, in national sentiment piracy has been related to issues such as water pollution and competition from foreign fishery fleets. It is not easy, though, to establish how critical these factors have been in fuelling piracy: when confronted with the depletion of their fishing stocks, did local fishermen react by resorting to piracy or is this mainly an *ex-post facto* ideological justification for criminal actions? If the lack of coastal controls has facilitated opportunistic behaviour by foreign actors, it is also true that pirate organisations have thrived unchallenged by weak central authorities, unable to exercise full control over Somali territory, including the vast length of the coast.

There is evidence that piracy has been supported by local communities who have benefited from pirates' onshore spending and restocking in their small towns, often providing jobs and economic opportunities. Piracy also appears to have helped counteract the problem of overfishing in Somali waters by foreign vessels.

Although all of these issues are fully relevant, they are not the pivotal factors driving piracy. The core motivation is that piracy is a lucrative business. It is estimated that since 2005, between US\$339 million and US\$413 million has been paid in ransom to Somali pirates in order to secure the release of hijacked vessels and their crew.¹ The prospect of acquiring huge amounts of ransom money has been a key driver fuelling piracy off the Somali coast.

While certainly important for pirates, this amount of money has proved to be a manageable cost for the shipping companies and their insurers. Furthermore, despite the menace represented by piracy in Somali waters, alternative routes to European ports remain uneconomic. Indirect costs of piracy have been much higher for countries of the region that have experienced a decrease in revenue resulting from fewer ships using the Suez canal, impeding trade with neighbouring countries, negatively impacting on tourism and fishing, and making international remittances more difficult. External actors have also been affected – for example, the European Union Naval Force (EU NAVFOR) has a yearly budget of over €8 million (that in reality only covers common costs) earmarked for patrolling the 3.2 million square miles of ocean in the area. The organisation Oceans Beyond Piracy (OBP) suggested that the indirect costs of piracy were much higher than direct costs and reckoned to be between US\$5.7 and US\$6.1 billion in 2012,² as they also include insurance, naval support, legal proceedings, re-routing of slower ships, and individual protective steps taken by shipowners. The World Bank has estimated that piracy costs the global economy about US\$18 billion a year in increased trade costs.³

In the last three years, the situation has visibly improved: the total amount of ransoms paid has dropped dramatically from a range between US\$151-156 million in 2011 to US\$36-41 million in 2012 to US\$13 million in 2013,⁴ and the number of successful pirate attacks has followed the same downward course, with the last successful attack reported in May 2012. In 2013 only seventeen attempted (and failed) attacks were reported.⁵ This is mainly due to the effective defensive measures adopted, which include wider implementation of Best Management Practices (BMPs) by vessels and crews with compliance reaching 75-80 percent, the employment of navy escorts and

1 World Bank-UNODC-INTERPOL, 'Pirate trails: tracking the illicit financial flows from piracy off the Somali coasts', Washington, D.C., 2013.

2 Oceans Beyond Piracy, 'The Economic Cost of Somali Piracy 2012', 2013.

3 World Bank-UNODC-INTERPOL, op. cit. in note 1, p. 1.

4 Ibid., p. 41.

5 Report of the Secretary-General on the situation with respect to piracy and armed robbery at sea off the coast of Somalia, S/2013/623, 21 October 2013.

the use of armed guards on commercial vessels, which have all made it very difficult for pirates to attack vessels successfully.

Still, piracy is far from having been stamped out. While remarkably successful in countering pirate attacks, the defensive measures do not address the root causes of Somali piracy. With the change in the cost/benefit ratio of piracy, pirate leaders may have turned their attention to other lucrative activities such as the khat trade, but they would most likely go back to sea should circumstances become favourable again. At the same time international actors need to justify the high costs of sustaining defence measures while pirate activity is waning. It is now widely recognised that action aimed at fighting piracy onshore needs to be strengthened so that piracy is eradicated at source, before protection measures at sea are reduced, which could possibly lead to a resurgence of piracy.

For the international community, paying ransoms (however that is presented) has become the established short-term solution to secure release of captured vessels and their crews. Ransoms serve both humanitarian concerns regarding the welfare of crews held hostage, and business interests related to keeping the trade channel through the Suez Canal and the Mediterranean Sea open. With very few exceptions, no vessel has been released, or crew members liberated, without a ransom being paid. However, payment of ransoms perpetuates the problem of piracy in several ways:

- While permitting the release of the hijacked vessels, the payment of large sums of money generates the incentives and justification for future vessel attacks, thus fuelling piracy further;
- Crew members are usually liberated immediately after the payment of the ransom but during negotiations they are subjected to long periods of captivity and exposed to unacceptable physical and psychological suffering;
- The international community is committed to promoting the reconstruction of Somalia; but the piracy economy negatively distorts the perception of young Somalis about their future and the country's business priorities;
- Ransom money can generate illegal financial flows, for example, when invested in contraband trade or used to finance terrorist groups.

Three lines of action

The payment of a ransom allows for the resolution of individual hijacking cases but it is not a sustainable long-term solution. Dedicated measures are needed to fight and dismantle piracy onshore. This issue has been widely debated by the international community, in several fora, and was at the core of the CGPCS decision to create WG5. Since the preparatory meetings that set up the programme reflected

in the mandate received by the CGPCS,⁶ Working Group members have focused on three possible lines of action centered around the money trail: (i) identify, prosecute and convict pirate leaders, organisers, financiers and negotiators; (ii) reduce the amount of ransoms paid; and (iii) track and recover ransom money more aggressively.

Identify, prosecute and convict pirate leaders, organisers, financiers and negotiators

Sharing and cross-checking the information collected has permitted the identification of most pirate leaders, a small number of people with strong influence in the country. The availability of timely and complete information has proved to be of crucial importance in this process.

One main source of information is shipowners who engage in direct contact with pirates during ransom negotiations. While in principle open to collaboration with the local authorities, ship-owners have potentially conflicting interests. Partially protected by their insurers, they bear direct responsibility for the safety of their crew members and the release of their vessels and cargoes. Their willingness to collaborate is constrained by fear that a direct involvement of the authorities could delay the solution of the crisis, endanger the safety of the crews, expose companies to sanctions, and reveal commercially sensitive information. To encourage the proactive collaboration of the shipowners, the international community should adopt a uniform, consistent and transparent approach on issues like information ownership, timing and scope of information sharing, and commercial data protection.⁷

The second source of information is evidence collected in the vessel, immediately after it is released by pirates. Issues such as which country is responsible for investigation and collecting evidence, whether more countries are willing to investigate the same piracy case, coordination with the port authorities, and on a more technical level how to preserve and collect evidence, have been widely discussed by WG5. Specific dedicated programmes have been promoted to encourage and facilitate the involvement of the countries of the region. For example, the EVEXI (Evidence Exploitation Initiative) project was launched to establish and promulgate procedures for building the capacity of six East African countries (Kenya, Madagascar, Maldives, Oman, Seychelles and Tanzania) in maritime piracy intelligence gathering and forensic evidence collection.

Investigative information and evidence should be centrally stored and made available to competent authorities of interested countries. The Global Maritime Piracy Database, set up by the INTERPOL National Central Bureau in the United States,

⁶ London (21 February 2011), Washington (1 March 2011), Rome (8 June 2011), Seoul (29 June 2011).

⁷ With the active participation of the representatives of the shipping industry, the WG5 drafted the 'Ten Key Principles in Information Sharing for Identifying and Prosecuting Pirates', endorsed by the CGPCS in its 14th Plenary on 1 May 2013.

includes more than 4,000 records of personal details of pirates and financiers, pirates' telephone numbers and phone records, hijacking incidents, vessels, currency and bank accounts used in ransom payments.

Among the initiatives to share intelligence and information, the Regional Anti-Piracy Prosecution & Intelligence Coordination Centre (RAPPICC) – now the Regional Fusion Law Enforcement Centre for Safety and Security at Sea (REFLECS3) – in the Seychelles has brought together experts of different countries to tackle the kingpins and financiers of piracy.

The UN Convention on Transnational Organised Crime (also known as the Palermo Convention) provides a number of innovative instruments to facilitate and speed up judicial cooperation and the use of evidence in courts. The Joint Investigative Teams (JITs) allow participants to access evidence collected through the JIT work. A German-Dutch JIT has been active since 2011, and a Kenya-Seychelles-Tanzania JIT was launched in 2013.

Recognising the importance of targeting pirate leaders, WG5 discussed different possible approaches. One option is to make an official list of pirate leaders and subject them to international sanctions, including asset freezing and travel bans. Such an approach would carry a strong message that the international community does not tolerate such activity and is ready to react sharply, publicly naming and isolating the pirates. In terms of effectiveness, however, the value of such a list approach may be questioned despite 'its name and shame' utility. Three important considerations have to be borne in mind here. Firstly, a travel ban could be counterproductive since the best chance to capture these pirate leaders is precisely when they are travelling. Secondly, in Somalia the practical possibilities for freezing assets and arresting chief pirates are very slim. Finally, a list approach would leave unresolved the issue of convicting and imprisoning the pirate leaders. This latter issue is of particular relevance because the reconstruction of the Somali nation must rest on a sound legal basis. A list compiled by governments without the back-up of a formal legal process to address offenders would run counter to this approach.

WG5 came to the conclusion that a strategy aimed at prosecuting and convicting head pirates should be based on a methodical and robust collection of evidence, both during ransom negotiations and in the post-release phase, examining the vessels and interviewing the members of the crew. Furthermore, in order to successfully leverage the collected evidence in courts, strategic dialogue with the shipping industry as well as information sharing among national authorities and with relevant international organisations must be ensured. In order to make this strategy operational, WG5 worked on the creation of a special team of international prosecutors to elaborate a prosecutorial strategy and promote international judicial coordination. The Law Enforcement Task Force (LETF), coordinated by the US Department of Justice, was set up in early 2014. It will operate independently with the

aim of enhancing international law enforcement cooperation to prosecute piracy leaders and financiers.⁸

Reduce the amount of ransoms paid

In order to reduce ransom payments and, ultimately, break the pirate business model, a more coordinated approach to ransom negotiations is necessary. Key to this is a strategic partnership between governments and industry through information sharing and close private-public cooperation. In light of the sensitiveness of this debate, the UK authorities convened an *ad hoc* group, the International Task Force on Piracy Ransom (ITFPR), composed of several interested governments, the private sector (shipowners, consultants, insurances, law firms) and academics.

The Task Force considered different options, ranging from setting a cap on the amount of ransom money that can be paid and regulating ransom negotiations to setting up dedicated ‘crisis management teams’ drawn from both the public and private sectors that provide consistent advice during negotiations.

A more direct and drastic approach would involve new rules under the UN sanctions regime (UN Security Council Resolution 1844, 20 November 2008) that would make it illegal under international law to pay ransoms to listed pirates. The banking system – its role being essential in collecting the cash for ransoms – would not risk its reputation and paying a ransom would become practically impossible. It therefore follows that once ransom money – the primary motivation for piracy – is no longer flowing, piracy itself will inevitably decline.

Contradictory views exist regarding the ban on ransom payments. The shipping industry is opposed to it due to concerns that shipowners would be left exposed to huge risks without a clear way out. Somali authorities, on the other hand, are more positive, viewing the ban on ransom payments as a feasible way to eliminate incentives to continued hijackings.

The more immediate problem is to solve the hostage crisis. Although the number of hostages is much lower than in the past – less than 60 in summer 2014 – their liberation remains a pressing concern for the actors involved. At the same time, almost two years in which no new hijackings have taken place have released pressure on the ‘ransom issue’, reducing the willingness to take decisions on such a difficult question.

The conclusions of the *ad hoc* group were presented to the 13th CGPCS plenary meeting of 11th December 2012.

⁸ *Communiqué* of the 16th plenary meeting of the CGPCS, New York, 14 May 2014.

Track and recover ransom money more aggressively

The Somali economy is based on the use of cash and ‘unorthodox’ but flexible and efficient payment systems like *hawala* and transfers via cellular phones. A sizeable share of ransom money, which ends up in the hands of a small number of organisers and financiers, is not used for immediate consumption and is instead invested back into the piracy business, other activities, and in savings. Part of this money leaves Somalia via offshore financial centres. Admittedly, it is not an easy task to follow the money trail. Various efforts are being made, for example by the World Bank (see ‘The Pirate Trails’ Report, 2013⁹) and the UNODC (money/value service providers), to gain a better understanding of how the financial system works in the region and to strengthen the investigative capacity to track and recover ransom money.

A key element is building local capacity to oversee the financial system – in particular the money or value service providers – and protecting it from criminal abuse, as well as controlling cross border cash smuggling and monitoring the khat trade and real estate investments. Developing regional cooperation is necessary due to the transnational nature of the issues and in order to ensure information exchange and transparency, especially when dealing with offshore money-laundering centres.

The CGPCS took the view that a stronger and more consistent engagement with the Financial Intelligence Units (FIUs)¹⁰ was necessary in order to take advantage of their analytical capacity and robust network for sharing financial information and data. FIUs could provide important contributions to piracy investigations and efforts to recover ransom money paid to pirates, and the CGPCS urged the strengthening of regional FIUs and financial systems in the region to allow them to help identify the channels used to move ransoms to their criminal beneficiaries.¹¹ The FIUs should be given early access to information on ransoms, including serial numbers of the notes delivered to pirates. Furthermore, capacity-building for the financial sector both in Somalia and in the region should focus on the creation and strengthening of local FIUs. This is a longer-term investment that will last beyond piracy.

Conclusion

The three lines of action presented in this chapter have been discussed at length and at different stages by the WG5 and the CGPCS. The term ‘lines of action’ signifies that none of the three is based on or requires a rigid, univocal solution. On the contrary, their strength and chance of finding practical implementation lie precisely in

9 World Bank, op. cit. in note 1.

10 The FATF forty recommendations require that each jurisdiction establishes a FIU to receive and process suspicious transaction reports.

11 CGPCS 14th plenary meeting, New York, 1 May 2013.

their flexibility: they represent a menu of choice for the international community to be adapted to the specific circumstances.

The one element the three lines share is the need for international coordination. Such coordination is a *sine qua non* condition, which means adapting national legislations, procedures and organisations so as to create a common basis for dialogue and action in sectors like judicial cooperation, sharing financial information, and financial standards. Coordination is a costly process and is not facilitated by the remarkable (but temporary) success in controlling pirate attacks which is reducing pressure to invest in this field. This is also true for the countries of the region, specifically for their readiness to cooperate with external actors and invest in priority capacity-building areas like the financial sector.

Finally, investing in cooperation, information-sharing capacity and financial infrastructure produces long-lasting benefits that go far beyond the piracy issue and contribute to the wider task of rebuilding the Somali nation.

VIII. THE CONTACT GROUP AND THE UN: TWO COMPLEMENTARY FORMS OF MULTILATERALISM

*Amit Singhal**

The number of reported incidents of piracy off the coast of Somalia has declined sharply and is now at its lowest level since 2006.¹ Despite the challenges to governance and rule of law with which Somalia is still confronted, the international community has achieved considerable success in its fight against Somali piracy due to close cooperation between and among states, regions, organisations, the maritime industry, the private sector and civil society. This has led to the development and implementation of practical solutions on naval and operational coordination, legal and judicial issues, self-protection measures for the shipping industry, public diplomacy and the disruption of an illicit pirate enterprise ashore. But how was this cooperation between various entities representing diverse interests achieved?

The current lull in pirate activity presents an opportunity to analyse the international community's coordination efforts – through the Contact Group on Piracy off the Coast of Somalia (CGPCS) and the United Nations – to repress piracy and discuss whether similar coordination structures and efforts could be successful in addressing future challenges. This chapter is organised in four sections. The first section presents a brief overview of the roles and mandates of the two multilateral fora – the United Nations, including its inter-governmental bodies, secretariat and agencies, and the Contact Group on Piracy off the Coast of Somalia – in the specific context of their responsibility for coordinating the international community's counter-piracy response. The second section consists of an empirical examination of the interplay and coordination between the two fora. The third section deals with the question of compatibility between the two forms of multilateralism and looks at complementarities. Finally, the concluding section will suggest that this form of multilateral cooperation could serve as a model to address similar challenges to global peace and security, specifically those emanating from a clearly defined geographical area.

* The views expressed in this paper are those of the authors and do not necessarily reflect the views of the UN Secretariat.

1 Secretary-General's report to the Security Council (S/2013/623), 21 October 2013.

Two multilateral fora – the United Nations and the Contact Group

United Nations

The dramatic surge in piracy off the coast of Somalia in the twenty-first century presented complex coordination, legal and operational challenges and knowledge gaps, which could not have been addressed by any single organisation or combination of states. It was against this background that on 2 June 2008, the Security Council determined for the first time that the incidents of piracy and armed robbery against vessels constituted a threat to international peace and security in the region and adopted Resolution 1816, authorising states to enter the territorial waters of Somalia and use all necessary means to repress acts of piracy and armed robbery.

Resolution 1816, as well as subsequent Resolution 1838 adopted by the Security Council on 7 October 2008, took note of the roles and responsibilities of states, regional organisations, government (the Transitional Federal Government of Somalia), UN entities and organs (the International Maritime Organisation, Security Council, UN Secretariat, and World Food Programme), and the shipping industry and urged them to coordinate their actions.

It was by now obvious that choreographing the activities of a whole gamut of actors to address piracy and build their counter-piracy capacity was an uphill task that would require a multilateral approach capable of unleashing a broad, coordinated, and comprehensive international effort. In recognition of this imperative, on 2 December 2008, the Security Council adopted Resolution 1846 requesting ‘a possible coordination and leadership’ role for the United Nations to rally members states and regional organisations to combat piracy and armed robbery at sea off the coast of Somalia. Through Resolution 1846, the Security Council also called upon states to cooperate with the shipping and insurance industries as well as the International Maritime Organisation (IMO) to thwart piracy. Later resolutions assigned specific roles and responsibilities to the United Nations Office on Drugs and Crime (UNODC), the United Nations Development Programme (UNDP), and the United Nations Interregional Crime and Justice Research Institute (UNICRI).

Moreover, the United Nations – through IMO, its specialised agency devoted to maritime matters – is responsible for the safety and security of shipping through the creation of a regulatory framework for the shipping industry. Through its mission in Somalia, its country team, and UNODC, it continues to promote land-based responses to piracy off the Somali coast. The UN Secretariat provides technical expertise, facilitates dialogue among member states, and ensures a coordinated approach on the ground by leveraging the comparative advantages of the different entities and avoiding the duplication of activities.

Contact Group

Pursuant to Security Council Resolution 1846, Secretary-General Ban Ki-moon noted in his March 2009 report that the magnitude and complexity of the various military operations conducted off the coast of Somalia and in the Gulf of Aden in the fight against piracy and armed robbery at sea, evidently required a lead role and coordination arrangements that went beyond the operational capacity and resources of the United Nations Secretariat. He therefore recommended that ‘the role of the United Nations Secretariat at this stage should not go beyond the fulfillment of existing mandates and the provision of a focal point for information sharing, collating the information required from the Member States to meet reporting obligations to the Security Council and the General Assembly, and liaising with Member States and regional organizations involved in the anti-piracy operations.’² In this regard, he welcomed the active role being played by IMO and relevant UN bodies and encouraged member states and regional organisations to make full use of these forums.³

The international community also recognised the need for broadening the collaborative efforts that could bring in the concerns and expertise of political, maritime, legal and judicial officials, provide a coordination platform, and reach out to diverse partners, including those in shipping and insurance industries. This was admitted by then US Secretary of State Condoleezza Rice, when, speaking in the Security Council on 16 December 2008 at the time of the adoption of Resolution 1851, she criticised the counter-piracy response of the international community as ‘less than the sum of its parts’.⁴

Resolution 1851 encouraged ‘all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact between and among States, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia’s coast.’ Significantly, Resolution 1851 authorised states and regional organisations to ‘undertake all necessary measures that are appropriate *in Somalia* for the purpose of suppressing acts of piracy and armed robbery at sea.’

In line with paragraph 4 of Resolution 1851, the Contact Group on Piracy off the Coast of Somalia was established on 14 January 2009. Since its inception the Contact Group has met 16 times in plenary sessions alone, while numerous strategy and Working Groups meetings were also convened. From 23 member states and five inter-governmental organisations in January 2009, the Contact Group comprises over 80 participants in 2014. Through its five (now four) working groups dealing with op-

2 Secretary-General’s report to the Security Council (S/2009/146), 16 March 2009.

3 Ibid.

4 Remarks by Condoleezza Rice at the 6046th meeting of the UN Security Council, 16 December 2008, S/PV.6046, p. 9.

erational, coordination, legal, shipping, information sharing, public diplomacy and illicit financial flows linked to piracy, the Contact Group continues to mobilise international expertise to devise innovative responses to addressing piracy.

Interplay and coordination between the two fora

One of the reasons the scourge of piracy and armed robbery at sea off the coast of Somalia has been brought under control was the very effective and mutually complementary coordination that was established between the United Nations and the Contact Group.

The UN Secretariat, through its assistance to the Security Council and the General Assembly, its legal and capacity-building support through its departments, missions, programmes and specialised agencies, and its provision of advice and information to states and regional organisations, continues to play an important role in the repression of piracy and armed robbery.

On the other hand, the Contact Group is a temporary, result-oriented, political-level coordination body, which, as stated by its Chair, maintains ‘a very specific, limited focus on maritime piracy off Somalia, which allows political cooperation among very diverse actors, many of whom would not normally or formally interact with each other absent such a compelling mutual interest.’⁵ There is no formal structure or secretariat, no terms of reference, and no permanent Chair. Participation in the Contact Group is voluntary, based on national or sector interest. It has ‘no budget, no secretariat, and frankly, no rules.’⁶ Thus the Contact Group was able to evolve into an anti-piracy community focused on East Africa.⁷

The UN Secretariat and IMO have assisted the Contact Group since its inception, both as contributing members and in the provision of substantive support. UNODC supports Working Group 2 in various ways to further its work, including preparing an analysis of the legal and practical challenges to prosecuting suspected pirates and gathering information on relevant national legal systems, including those of coastal states. The UN Office of Legal Affairs has also actively supported states in Working Group 2 by providing background papers and statements, in particular on the international legal regime applicable to piracy, international tribunals and the applicability of international human rights obligations to the detention of suspected pirates at sea and their transfer to regional states. IMO typically hosts the meetings of Working Groups 1 and 3. By virtue of their presence inside Somalia, the UN Assistance Mission in Somalia (UNSOM) together with UNODC and UNDP liaises very closely with the Federal Government as well as the regional administration on

5 Donna Hopkins, Remarks to the European Union Political and Security Committee, 27 September 2013.

6 Ibid.

7 Danielle A. Zach, D. Conor Seyle, and Jens Vestergaard Madsen, ‘Burden-sharing multi-level governance: A study of the Contact Group on Piracy off the Coast of Somalia’, One Earth Future and Oceans Beyond Piracy, 2013.

a range of counter-piracy coordination and capacity-building priorities as identified by the Contact Group.

In fact, Security Council Resolution 1976 (2011) requested the UN Secretary-General to strengthen the United Nations Political Office for Somalia (UNPOS)⁸ as the UN focal point for counter-piracy and requested UNODC, UNDP, and UNPOS to establish a system of governance, rule of law and police control in lawless areas of Somalia where land-based activities related to piracy were taking place. Security Council Resolution 2102 (2013) which authorised the establishment of UNSOM, decided that the new mission will support the Federal Government of Somalia, and AMISOM, by providing strategic policy advice on peacebuilding and state-building, including on maritime security.

Furthermore, the Trust Fund to Support the Initiatives of States Countering Piracy off the Coast of Somalia was established in 2010 by the UN Secretary General at the request of the Contact Group. The objective of the Trust Fund is to 'help defray the expenses associated with prosecution of suspected pirates, as well as other activities related to implementing the Contact Group's objectives regarding combating piracy in all its aspects.'⁹ The UN Department of Political Affairs chairs the Board of the Trust Fund and serves as the Secretariat of the Board, while the UNDP Multi-Partner Trust Fund Office acts as the Administrative Agent of the Trust Fund.

Coordination between the United Nations and the Contact Group remains a central pillar of the international community response to counter Somali piracy effectively. Rather than duplicating each other's activities, the Contact Group took the lead, *inter alia*, in identifying gaps in the international legal regime governing piracy incidents and the Security Council adopted resolutions that formed the basis for national and multilateral activities and operations.

For example, the Contact Group, in its seventh Plenary held on 17 November 2010, believed that a model for post-sentencing transfer would result in an increased ability and political will among states to prosecute suspected pirates. The need for a necessary legal basis for a post-trial transfer system was further reinforced by successive Contact Group plenary meetings. Subsequently, the Security Council, in its resolution 2015 (2011), called upon UNODC, UNDP and other international partners to further their efforts to support the development of domestic legislation, agreements and mechanisms that would allow the effective prosecution of individuals suspected of piracy and the transfer and imprisonment of convicted pirates. UNODC launched the Piracy Prisoner Transfer Programme on 1 January 2012 to facilitate the transfer on a voluntary basis of piracy prisoners convicted in other states to Somalia to serve out their sentences. Disrupting illicit financial flows linked to piracy, criminal-

8 UNPOS, which completed its mandate in June 2013, was replaced by UNSOM.

9 'Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia – Terms of Reference', Approved by the 13th Plenary of the CGPCS on 11 December 2012, pp.1-2.

ising piracy under states' domestic law, development and adoption of self-protection measures by the shipping industry, and creating a financing mechanism (the Trust Fund) were some of the areas where the Contact Group, the UN Security Council and the UN Secretariat and agencies worked seamlessly together.

In the 12th Plenary of the Contact Group held in July 2012, the United Nations stressed the need to immediately address the problem faced by hostages held by pirates mostly on land, whose ships have been ransomed or sunk and who are unable to find their way home after their release by the pirates. In November 2012, the Board of the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia approved, on an exceptional basis, the Hostage Support Programme to provide medical care, accommodation, food, clothes and welfare items to isolated groups of hostages during the release phase and to support them in returning home swiftly. Likewise, the Somali Maritime Resource and Security Strategy – which was developed by the Somali government and regional administrations with assistance from IMO, UNODC, and UNPOS and supported by a grant of the Trust Fund – was endorsed by the Contact Group in its 14th Plenary in May 2013.

Compatibility and complementarities

According to Chapter II of the UN Charter, membership of the United Nations is only open to states, thus precluding private industry, including shipping, insurance, and legal sectors, as well as seafarers' associations – who are directly affected by piracy – from a direct say in the decision-making process. Moreover, the United Nations may consult and collaborate with navies, national law enforcement and intelligence agencies only through the representatives of its member states, which is a time-consuming process. Due to the very exhaustive nature of the consultative process involving 193 member states through a well laid-down construct and written rules of engagement and deliberation mechanism, the UN system by default takes a long time to develop consensus, reach decisions, and come up with innovative responses to a fast-evolving threat and humanitarian crisis such as piracy.

In contrast to the United Nations, the Contact Group has consciously opted for maintaining flexibility and a loose network of like-minded states and regional organisations, humanitarian and industry associations. Despite having more than 80 members, some key members of the Contact Group play a more important role than others – whether as Chairs of the Contact Group or its Working Groups, as key donors or as counter-piracy experts – in mobilising resources and setting up a result-oriented agenda. Due to the collective leadership of these key members, the Contact Group has succeeded in providing a sense of purpose and direction to the efforts to clamp down on Somali piracy, which have led to a better-coordinated and effective international response against piracy. However, the same fluid structure may turn out to make it less effective should the Contact Group's key members decide to disengage

from the process or divert their attention to other emerging or ongoing global crises. This may suddenly deprive the Contact Group of its driving force. Nevertheless, the UN system as a truly global body will continue to support Somali and regional efforts to combat piracy.

Another challenge the Contact Group faces is the coordination of counter-piracy initiatives including capacity building in Somalia, since it has to depend on players already present inside the country, and partly due to mutually competing interests of some of its key members and organisations to garner greater attention from Somali authorities and secure access to the country's natural resources. In fact, after meeting in thirteen plenary sessions, the Contact Group decided in May 2013 to integrate its work with the efforts of formal institutional actors focused on capacity building in Somalia and the region. Here, the Contact Group found in the United Nations and its various agencies, including IMO, FAO, UNDP, UNODC, and UN-SOM – which were already supporting various political, development and humanitarian programmes in Somalia and in the region – a valuable partner. The Contact Group provided strategic inputs and resources while the United Nations became one of its important operational and implementation arms, especially in the field of law enforcement, evidence collection, and judicial aspects of piracy, and also in seeking to address the root causes of piracy in Somalia itself. The Contact Group and the United Nations together have ensured better information sharing and trust building on counter-piracy efforts, while linking the counter-piracy approach with maritime capacity building and state-building goals in Somalia.

In fact, Security Council Resolution 1897 (2009) acknowledged the *de facto* coordination role being played by the Contact Group on Piracy off the Coast of Somalia, and stressed the importance of coordination with the Contact Group in the areas of maritime capacity building and prosecutions specifically. The Contact Group, over time, found creative and practical solutions to the complex cross-cutting problems underlying piracy without having to resort to any formal structural procedures. The Contact Group is not focused on UN affairs or concerned with managing UN issues.¹⁰ While most of the plenary meetings of the Contact Group took place at the United Nations, and both entities coordinate closely and complement each other, the Contact Group works closely with the United Nations but it is not part of the United Nations. It derives its political recognition from Security Council resolutions on Somali piracy which took positive note of the work of the Contact Group to deter piracy and armed robbery at sea off the coast of Somalia. Due to the fact that it has supported the work of the United Nations by coming up with innovative measures, especially by proposing to the Security Council some pragmatic and workable initiatives which could receive the backing of key members, there has been no instance of any noticeable tension between the two fora.

10 Christian Bueger, 'Transnational Governance, Somali Piracy and the Contact Group: An analytical primer', Working Paper of the Lessons Learned Project of the CGPCS, Cardiff University, 2014.

Conclusion

The United Nations has for the past two decades been working closely with various Contact Groups, Core Groups, Groups of Friends, and other informal mechanisms of like-minded states to address challenges to international peace and security. All such mechanisms were created to develop difficult-to-reach consensus and devise practical solutions in a context-specific situation and move the process forward in a closely defined geographical area or region.

In the case of Somali piracy, there was no political or ideological support or sympathy for pirates and the international community was united in its resolve to eradicate this scourge. The need for an informal coordination mechanism was felt *inter alia* due to the magnitude of the crisis and the need to find creative solutions to specific challenges: practical difficulties in intercepting pirates in high seas extending over a very vast area patrolled by few naval vessels from diverse countries and groupings such as the European Union, NATO, Combined Maritime Forces, East African states, China, India, Japan, Republic of Korea and Russia; legal ambiguity and hurdles in prosecuting pirates – arrested on high seas – under national jurisdiction; very high costs of trials; and involvement of commercial shipping industry and interests. The cooperation between the Contact Group and the United Nations largely succeeded because both fora were able to complement each other and step in, according to the specific context, to balance the interests of affected parties and various stakeholders and build mutual trust.

However, it is unlikely that this model of close cooperation between an informal coordination mechanism like the Contact Group and an international organisation such as the United Nations would deliver concrete results in every crisis. Many crises continue to adversely affect the international community for years despite informal collaborative mechanisms to find solutions, in particular due to political disagreements among relevant states with means and resources to contribute positively to responding to challenges. For such a collaborative architecture to succeed, the crisis has to be limited to a closely defined geographical area and there should be broad political support among diverse actors with regard to navigating the way ahead.

IX. A SOMALI PERSPECTIVE ON THE CONTACT GROUP

*Mohamed Husein Gaas**

Since its inception in 2006, the International Contact Group (ICG) on Somalia has witnessed the magnitude of crises taking place in Somalia, be they security, political, humanitarian, or development-related. In response, building the capacity of the Somali authorities has been identified as a key stepping stone to address the challenges faced by the country. Piracy is a case in point. Incidents of piracy have steadily declined over the past few years and the Somali authorities have praised the Contact Group on Piracy off the Coast of Somalia (CGPCS) for being instrumental in facilitating and coordinating counter-piracy activities. However, much remains to be done by the CGPCS and the Somali authorities. To start, the root cause of piracy still exists and some leading figures involved in piracy have not been arrested. Besides, issues such as developing the economy and the infrastructure of coastal areas, strengthening law enforcement, dealing with illegal fishing and toxic waste dumping, further engagement with media outreach, enhancing judicial capacity building and creating alternative livelihoods and employment opportunities, will also have to be addressed to ensure that when the naval operations draw to a close, the situation is secure enough to prevent the resurgence of piracy in the area.

This chapter provides a Somali perspective on the CGPCS's achievements and limitations.¹ It looks at how the CGPCS has been perceived by Somali authorities and the public, and draws some lessons from the CGPCS' existence over the last eight years.

Somali perspectives and perceptions of CGPCS work

Somali authorities and people aware of the CGPCS and its work have by and large expressed gratitude and have welcomed the Group's efforts in confronting piracy. The general feeling is that these efforts have helped fight the spread of prostitution, drugs, alcohol, violence and challenges to governance authority wrought by pirates in certain coastal areas.² Furthermore, as pirates have frequently hijacked dhows carrying goods owned by Somali businessmen, weakened the local fishing industries and driven up inflation, many Somalis feel that the work of the Contact Group in

* The author would like to thank Dr Thierry Tardy, Dr Stig Jarle Hansen, and Idil Osman for discussions and comments on draft versions of this paper; he also thanks all those interviewed who shared their perspectives and insights on the CGPCS.

1 The paper draws on information collected in interviews by the author with Somali authorities and individuals.

2 Pirates have often appointed their own sheikhs and elders to counter the disapproval by legitimate sheikhs and elders who condemn piracy as a deviation from Sharia and Somali culture.

fighting piracy is helping Somalia on the path to a peaceful and more prosperous era for themselves and their children.

The involvement of Somali authorities in the CGPCS began after the Contact Group Working Group 1 invited Puntland to participate in its work. The reason behind this invitation was that Puntland was seen as the relevant authority given the concentration of piracy off its own coasts. Initially talks were dubbed ‘Mutual understanding’ talks between Somalia and the international community, and focused on exchanging views on piracy. Eventually, the Transitional Federal Government (TFG), Somaliland, and Galmudug were invited as well to the CGPCS meetings. As the relationship developed, different Somali authorities devised local anti-piracy initiatives. For example Puntland, Somaliland, and Galmudug enacted Piracy Laws and undertook various anti-piracy activities including raising awareness of the dangers of piracy, arresting pirates, and accepting the transfer of convicted prisoners back to Somalia. These regional authorities also signed up to maritime resource development endeavours, including attempts to develop local ports and infrastructure in coastal areas. The Somali Federal Government (SFG) is also developing federal piracy law and programmes. All authorities in Somalia are represented in both regional and international anti-piracy bodies and efforts spearheaded by the CGPCS.

The way the division of labour on piracy is organised within the Somali administration is not always clear. Within the Somali government, the Anti-Piracy Standing Committee reports to the Prime Minister’s office. In Somaliland, the Anti-Piracy Directorate is located in the Minister of Foreign Affairs, while in Puntland the Counter-Piracy Directorate is under the Ministry of Maritime Transports, Ports and Counter-Piracy. Also, in the context of the Kampala Process, the focal point of the SFG’s anti-piracy initiatives is placed under the command of the director general of the Fisheries and Environment Directorate, which is part of the Ministry of National Resources.

Perceptions of EU and NATO activities

Realising the importance of engaging local authorities along with coastal communities, NATO ships have been conducting a trust-building exercise by initiating direct talks with coastal community elders and Imams. This was initiated in 2010 and has been much appreciated by coastal communities as it has helped develop mutual understanding and cooperation. In the later phases this further evolved into naval ships providing free medical check-ups and assistants to certain coastal areas, a development which has also been met with gratitude. Similarly, EU ships have tried to outreach to the authorities in Puntland and Galmudug. The contacts between the EU naval operation, locals, and authorities have led to an increased understanding of the parties’ respective concerns and roles. Such initiatives are important and if sustained they are likely to strengthen the anti-piracy role of local Imams and elders, in particular their efforts to lure young men engaged in piracy away from piracy activities and deny pirates a base in their coastal villages.

External actors, like Norway for example, have played a leading role in funding fishery and other livelihood projects and have also contributed to local capacity building in various ways, including building prison facilities. The EU has also initiated training for port security personnel in Djibouti, which has been well-received as a contribution both to the security of ports but also to the rule of law.

The CGPCS' shortcomings and limitations

Does the CGPCS benefit the Somali people?

In the meantime, there is also a sense of distrust and confusion about efforts perceived by Somalis as being framed mainly to benefit regional and international stakeholders. For example, Somali authorities frequently point to the necessity to focus on building the Somali coastguard and security institutions rather than those of the Seychelles, Tanzania, Kenya, Yemen, and Djibouti. They concur that the problem of piracy originates from Somalia and therefore solutions can only be found in investing in Somali governance structures and in addressing the underlying factors of piracy. The persecution of Somali pirates in countries known for their weak judicial system is not necessarily seen as being humiliating *per se* but as undermining Somali authorities' legitimacy in the eyes of Somalis.

Somali perceptions are also shaped by the way their own country is portrayed abroad. For instance, the Somali media often relays controversial reports in which pirates are presented as performing the role of coastguards, or on local fishermen struggling to protect their fishing grounds from foreign trawlers. Other reports by the media show international ships unable to distinguish pirates from fishermen and targeting Somalis on boats, regardless of whether they are pirates or fishermen.

The issue of illegal waste dumping in Somali waters has been extensively debated in the media as well as among Somalis for the last twenty years.³ Past and present Somali authorities, such as the TFG, the federal government and Somaliland, Puntland, and Glamudug States of Somalia have repeatedly drawn attention to the issue of toxic waste dumping.⁴ The Food and Agriculture Organisation (FAO) 2009 Somalia Fishery and Aquaculture Country profile referred to foreign companies having dumped toxic waste off the Somali coast.⁵ In 2008, the UN envoy to Somalia stated that 'I am convinced there is dumping of solid waste, chemicals and probably nuclear (waste) –

3 See, for example, 'Radioactive and hazardous waste in Somalia shall be exposed', *Somali Monitor*, 14 April 2009, available at www.axisoflogic.com/artman/publish/Article_55452.shtml.

4 Nur Mohamed Mohamoud, Deputy Director of the National Security Agency of Somalia, speech at the Kuala Lumpur International Conference on Piracy and Maritime Security, 18-19 May 2009.

5 FAO, 'Fishery and Aquaculture Country Profile: Somalia', 2009, available at www.fao.org/fishery/countrysector/FL-CP_SO/en+FAO+illegal+fishing+in+somalia&cd=1&hl=en&ct=clnk.

there is no government (control) and there are few people with high moral ground'.⁶ Moreover, local diseases or accidents are often blamed on waste dumping, allowing distributors of expired food and medicine to detract attention from their activities.⁷ Rumours of waste dumping are a source of legitimacy for pirates who argue that they are defending their waters against exploitation and the dumping of toxic waste.⁸

As a result, providing food for their families is a daily struggle for Somali fishermen, many of whom are not skilled to do any other work. The mothers of young men involved in piracy complain about how their sons end being lured back into other criminal activities after quitting piracy for a lack of alternative sources of income.⁹ There is therefore a feeling that the CGPCS must also put some emphasis on job creation and the provision of alternative sources of income as well as on mechanisms that would allow the local fishing communities to obtain their livelihoods from the sea without being adversely affected by anti-piracy efforts.

Finally, Somalis complain about the mismatch between the many conferences organised by the CGPCS to benefit Somalia and the actual benefit that accrues to them. The local media rumours of the CGPCS pursuing its own interests beyond its immediate agenda of fighting piracy feed the perception of a conspiracy against Somalia. In this regard, it is pointed out that little has been done in terms of capacity building or development programmes, and the situation has been exacerbated by rumours that projects pledged or even funded have never materialised (e.g. the IGAD inland project).

There is clearly a need for better communication to the Somali public regarding the work of the Contact Group and how it is benefiting the Somali people.

Authorities stress that they have not been given any funding directly, but almost always through institutions such as IGAD, Oceans beyond Piracy, FAO, UNODC and others. While the high level of corruption and the lack of local capacity may explain the recourse to third parties, there appears to be a general feeling that working more directly with the Somali authorities has not been sufficiently explored.

The work done by the CGPCS in terms of outreach towards the local media also appears to be insufficient given the magnitude of the needs. Problems resulting from the local media's inflammatory reports about piracy – or, on the contrary, reports seeking to legitimise piracy – are not just hampering the CGPCS' anti-piracy efforts, but may

6 AFP, 'UN envoy decries illegal fishing, waste dumping off Somalia', 25 July 2008, available at www.hiiraan.com/news4/2008/July/7409/un_envoy_decries_illegal_fishing_waste_dumping_off_somalia.aspx#sthash.WHBcMfwl.dpbs

7 See, for example, 'Radioactive and hazardous waste in Somalia shall be exposed', *Somali Monitor*, 14 April 2009, available at http://www.axisoflogic.com/artman/publish/Article_55452.shtml.

8 Martin Murphy, 'Contemporary Piracy and Maritime Terrorism: The Threat to International Security', *Adelphi Paper* no. 388, 2007.

9 Fieldwork interviews with several mothers in Puntland in Somalia.

also impact negatively on international action aimed at stabilising and reconstructing Somalia. Media-framed perceptions of coastal communities with regard to piracy have engendered two contrasting societal views: those on the one hand who romanticise and depict pirates as defending Somalia and those on the other hand who see pirates as criminals. To deconstruct this some work on how the Somali media covers international anti-piracy operations, in this case the CGPCS's efforts, as well as local political conflicts, would need to be conducted. The findings would give pointers towards what possible media engagement and capacity-building strategy are needed to address problems resulting from biased media reporting.

What visibility for the CGPCS?

The ongoing conflict in Somalia has inevitably led to a fragmented political landscape, with fractures between the Somali government and regional administrations. As a result, regional entities and the central governance structures have yet to show signs of mutual cooperation in public policy. This makes the implementation of long-term anti-piracy policy elusive. Capacity building in the law enforcement domain is imperative but Somali politicians as well as the regional states and the SFG all quibble over how they can score political points against their perceived opponents and are less preoccupied with the many daunting tasks of putting the country back on its feet. The CGPCS has to operate within this political context which makes devising and implementing sustained solutions to piracy on land a difficult task.

The situation is further complicated by the presence of Al-Shabab in the coastal areas, although the militia group has now been expelled from many cities and towns. Al-Shabab remains active in the rural areas and receives support from part of the local population, allowing it to continue to pursue its activities. This makes it all the more difficult to establish a clear line of operation for the CGPCS's humanitarian and developmental work, especially on coastal areas and on the creation of alternative fishing-based livelihood and employment opportunities in such areas.

The current government remains weak and undermined by internal conflicts, poor leadership, and corruption charges. Several parliamentarians have been killed over the last few months. The impact of the government's policies on the national situation is therefore limited. Most recently, more than half of the Somali members of the Parliament signed a motion calling for the resignation of the president. The crisis seems to have been resolved after much political manoeuvring, yet it gives an indication of what to expect in the near future and similar clashes are most probably on the horizon. The SFG is struggling to gain widespread support from the local population. The fact that the Transitional Federal Government was succeeded by the 'permanent' SFG, coupled with the fact that the president and prime minister were virtual newcomers, initially brought much hope and promise to the people. Yet the frequency of political changes within the government and the insecurity resulting from Al-Shabab's repeated attacks on the presidential palace make the establishment

of effective working relations with the CGPCS close to impossible. The CGPCS has to operate in a country that has suffered protracted political and security crises for the last 24 years. Over the last eight years or so it has become aware of the necessity to eradicate piracy on land and not only at sea. Somali authorities have praised the CGPCS's commitment and success in fighting piracy, and also the Contact Group's approach to tackling the root causes of piracy. This has put the Somali authorities and the CGPCS on the same page and favoured the emergence of a stronger international message. Somalis also anticipated that the international anti-piracy commitment would result in greater assistance from the CGPCS in restoring stability. However, most authorities would add that not enough has been done with regard to strengthening law enforcement capacity. Many government officials who work within the law enforcement sector are paid irregularly and lack relevant skills and capacities, particularly when it comes to inter-agency cooperation. The Somali authorities are aware that the CGPCS is trying to attract international donations to tackle the capacity building issue yet they feel this is moving too slowly and is handled with little involvement of local authorities. There is a need to tackle the capacity needs of the Somali coastguard and the lack of a credible police force and judiciary system with more urgency. It is not only anti-piracy policy that will benefit from this but also the fight against Al-Shabab and, more broadly, the restoration of security in Somalia in general. In the medium term, strengthening capacity will also ensure that when the international ship patrols leave the region, the Somalis are in a position to secure their seas against piracy.

Somali authorities as well as the public feel that the issues of illegal fishing and nuclear and chemical waste dumping are not being sufficiently addressed and that almost all resources and efforts have been devoted to anti-piracy efforts at sea. This negative sentiment has partly delegitimised the anti-piracy efforts of the Contact Group.¹⁰ Job creation, training and education as well as awareness campaigns about the harm piracy can cause are all much needed to deter Somalia's youth from being attracted to piracy or related crimes. The Somali authorities are ill-equipped for such long-term prevention policies and therefore need the CGPCS to galvanise the international community and vested stakeholders. In this respect, the soft approach to onshore prevention has been criticised by many Somalis as being weak and inadequate.¹¹

Related to piracy is the ongoing confusion regarding the delimitation of the Somali exclusive economic zone and the waters that are deemed international territories, as well as uncertainty over what existing international laws regulate the use of these waters. There is a common belief among the Somali public that the CGPCS is turning a blind eye to the illegal fishing activities that are occurring in the Indian Ocean. What would be helpful to the Somali authorities is if the CGPCS expressed its position on

10 Informal conversation with Somali intellectuals, current and former policy makers as well as members of the civil society in Somalia and Kenya, January/February 2014.

11 Interview with an elder, a former pirate, and an international NGO staff member in Somalia and Kenya, June 2012 and January/February 2014.

the illegal fishing and nuclear and chemical waste dumping on Somali shores as well as explaining the efforts it is making to resolve this problem.¹² Additionally, relevant Somali authorities need to be educated with regard to where the Somali territories end and international waters begin and which activities may legally be carried out in international waters according to existing Somali and international maritime laws.

Remaining aware of these conditions while acknowledging the limited remit of the CGPCS will help the CGPCS to operationalise its mandate but it needs to be transparent and honest in its communications with the people of Somalia, and this concern should be at the forefront of its implementation strategies. Somali authorities on the other hand feel that the CGPCS needs to engage more actively with reconciliation efforts within Somali governmental structures both at the central and regional levels and help with strengthening working relations between them.

Conclusion

Undoubtedly, the CGPCS can be regarded as a success story as it has brought piracy attacks in the region to an end. The experience of the Contact Group illustrates how an informal multilateral structure can achieve positive outcomes in an environment characterised by weak security and political institutions and violent conflict. In such an environment, the experience of the CGPCS shows that local engagement and capacity building of the media, civil society and institutions are important not only to avoid mistrust and suspicion but also to prevent the resurgence of piracy and to restore stability in the country.

Six years after the establishment of the CGPCS the root cause of piracy has still not been eradicated. To eliminate piracy a comprehensive approach that brings together efforts in the field of security, development and good governance is necessary. In the short run, attention should focus on humanitarian aid, creating alternative livelihood opportunities, strengthening and engaging with local institutions and civil society as well as training coastguards of both the SFG and regional states. The long-term strategy should focus on solving the issue of the Exclusive Economic Zone (EEZ), establishing fully capable national judicial and security institutions as well as naval forces, and developing the maritime resources of the country. To do this the coordination of local and international activities is crucial, and this is an area where the CGPCS has a big role to play.

12 Conversation with a former politician and a journalist in Nairobi, January 2014.

X. EXPERIMENTAL GOVERNANCE: CAN THE LESSONS OF THE CGPCS BE TRANSFERRED TO OTHER POLICY FIELDS?

Christian Bueger

Informalisation and innovation in global governance

To understand what the Contact Group on Piracy off the Coast of Somalia (CGPCS) is and what can be learned from it, the project needs to be contextualised. Contact groups and informal governance mechanisms have increasingly become a tool of the international community to address international problems. Observers speak of the ‘informalisation’ of world politics and stress that international politics is increasingly conducted elsewhere than in formal international organisations.¹ Informal organisations are characterised by their lack of explicit rules or standardised procedures and work without standing secretariats. If informalisation was originally a trend in economic governance, contact groups are growing in numbers especially in areas such as conflict mediation, peacekeeping and post-conflict reconstruction.

In this context, the CGPCS is not unique. It reflects a general trend in global governance to address challenges outside of international organisations or traditional multilateral diplomacy. Informalisation should be understood as an attempt to find innovative solutions to contemporary global problems. Fears that informalisation would imply a return to anarchy, lead to the decline of international institutions or indicate that international actors aim at avoiding accountability and transparency are largely unjustified. Contact groups reflect a quest on the part of the international community for organisational innovation. As the contributions to this report document, the CGPCS was an attempt to develop innovative solutions to a problematic situation, that is, the escalation of Somali piracy starting in 2009. What can we learn from this experiment? Can the CGPCS and its working practice become a role model for how responses to other global problems are organised and for how future contact groups are designed?

To address these questions, this chapter starts with a brief reflection on how we can learn from governance experiments. This leads to the argument that the core approach of the CGPCS can be described as ‘experimental governance’. The CGPCS can be seen as a ‘laboratory’ in which several innovative governance ideas have been

¹ See Jochen Prantl, *The UN Security Council and Informal Groups of States* (Oxford: Oxford University Press, 2006), and Theresa Whitfield, *Friends Indeed? The United Nations, Groups of Friends, and the Resolution of Conflict* (Washington, DC: United States Institute of Peace Press, 2007).

tried and tested. A range of these experiments are discussed. Since an experiment is always tied to the conditions under which it has been conducted, the particular context in which the CGPCS operates must be taken into account. As many participants have argued, the conditions under which the CGPCS operates are relatively unique. Yet, not all of these are necessary conditions. Nor should we assume that similar constellations will necessarily exist in the near future. Hence, it is to be hoped that the experiments of the CGPCS may provide major insights for other policy fields of global governance. The chapter concludes with an assessment of the areas in which a replication of CGPCS experiments promises to be particularly fruitful.

Experimenting and the CGPCS as a laboratory

The idea that governance has something to do with experimenting is by no means new. American philosopher John Dewey, for instance, understood government and the modern state as a collective experiment of how to organise societies and solve problems relating to the public good. For Dewey good governance and experimenting were equivocal. What are policy experiments, and what is implied in such a process? Following Dewey and others, policy experiments involve several steps. Firstly, they involve establishing facts and compiling information. Fact-finding missions and needs assessments, such as those conducted in Working Group 1 of the CGPCS, or the SHADE briefing, are examples of how the CGPCS establishes facts with regard to the piracy situation. These, secondly, form the basis for developing new ideas and policy proposals. Indeed, a large part of the work of the CGPCS Plenary and the working groups was to evaluate ideas and proposals in a process of collective deliberation. This also implies rejecting some of the proposals. The third step is to design practical tools on the basis of the facts and ideas. Examples, further discussed below, include the tool kits developed by the legal Working Group (WG2), or the capacity coordination database developed in Working Group 1. Fourthly, those tools are put into practice by disseminating them and identifying implementing actors. The next step is then, fifthly, a process of reflection and evaluation on the outcomes of the implementation of the tools. Sixthly, this process forms the basis for redesigning the tools in drawing on new facts (step 1) or ideas (step 2). To provide but one example for such a process: Working Group 1 conducted a capacity-building needs assessment in 2009, leading to proposals for and an increase in the number of capacity-building efforts. Reflecting on capacity-building measures led to the recognition that it is important to avoid overlap, address existing gaps and better align projects with concrete needs. The outcome was the establishment of a new sub-group of WG1, the Capacity Building Coordination Group, as well as the creation of an electronic coordination platform. Crucial for such an experimental approach is reflexivity, the willingness to invent and try out, but also to reverse procedures in the light of the success or failure of experiments. In short, it is pertinent to understand the CGPCS as a form of experimental governance.

Experimenting in the CGPCS

The CGPCS did not start out as a laboratory. The original idea for having a contact group on piracy arose out of experiences with earlier contact groups and their potential to coordinate policy and operations among a group of committed governments. To organise the fight against piracy the groups of states committed to providing resources required a meeting format that existing organisations could not provide. If the CGPCS was not a laboratory from the outset, in an incremental process it became more and more experimental in its approach. This was mainly because of the creativity of a range of individuals and organisations that acted as policy entrepreneurs, and took leadership roles in developing the group. Yet, a commitment to try out new methods was present from the very early stages in the formation of the Group.

From its start the CGPCS differed from other contact groups. Its composition was notably different: the initial core group was not only comprised of the most powerful or influential states or Somalia's neighbouring countries. While the permanent members of the UN Security Council were part of it, with the US and the UK taking leading roles, countries such as Denmark or South Korea equally played an instrumental role in the Group. At the inaugural meeting in January 2009 the number of states participating was already large, and the number of actors participating quickly rose to about 80. This unique composition reflected not only the general distribution of power and influence in international affairs, but also the character of international shipping: ship-owning and ship-operating countries as well as flag states were significantly represented. Hence from its beginning the Group was an unusual collection of actors.

The CGPCS adopted its own terms of reference at its inaugural meeting and at the second Plenary. Many of the agreed organising principles mirror those of other contact groups: to avoid formalised procedural rules and leave procedural issues at the discretion of the chairperson of the Plenary and working groups; to make decisions by consensus under the absence of objections rather than in voting procedures; to ensure informality by making the *communiqués* of the group non-legally binding; to work with secretarial support provided by the chairperson and member organisations rather than creating a standing secretariat, or to decide meeting schedules on an *ad hoc* basis. Yet, the CGPCS also opted for innovative approaches, for instance in relation to the participant criteria, and the separation in plenary and working groups.

Firstly, the CGPCS does not have formal members. It leaves the question of who to invite at the discretion of the chair, and the second *communiqué* only formally stipulated that participants have to be committed to the fight against piracy. The CGPCS hence has 'participants', sometimes also referred to as 'stakeholders'. This decision was initially taken to depoliticise and keep political tensions between countries, out of the Group. Later on it provided the basis to formally invite organisations and political groupings, which are not formally states or which do not represent private interests.

Secondly, the CGPCS opted for an organisational structure composed of two different meeting formats, the plenary and the working groups. Given the complexity of the piracy problem and the number of actors involved, this structure presented the advantage of discussing in separate formats technical questions such as military coordination, legal provisions, or capacity-building. The working groups also provided a creative space for the discussion of unusual proposals, which would not immediately fit the agenda of leading states. Moreover, through the high frequency of working group meetings several issue-specific transnational networks of experts were formed. This strengthened not only international understanding through information sharing and increased the salience of the issue in different states and organisations. It also provided the backbone for identifying implementable solutions. The usual implementation gap that arises through misunderstandings between policymakers and generalists on the one side, and experts and specialists on the other, could hence be minimised. The organisation in a plenary and working groups, combined with ideas such as the rotating chairmanship – implying burden sharing and broad leadership – and regularly-held meetings were clearly innovative features and have contributed to the success of the Group.

Thirdly, the CGPCS worked within a clearly and narrowly defined mandate. Its mission was to fix the Somali piracy problem. All other issues as well as the broader situation in Somalia and the region or more general questions of ocean governance were successfully kept off the agenda. This required to some degree policing the agenda, and continuously pointing to the thematic boundaries of the CGPCS. The effect of this boundary work was a depoliticised and largely technocratic environment from which other political controversies and disagreements – such as over the status of Somaliland, or the general geopolitical situation in the area – were excluded.

Finally, traditional diplomatic working practices structured the work of the CGPCS, but they were applied in a very informal manner. Diplomatic principles, such as ensuring that everyone is being heard, or that *communiqués* are read out, underpinned the way in which meetings were conducted in the Group. However, the prevalence of diplomatic protocol over substantive discussions was successfully avoided. In the Contact Group participants can applaud a statement, and speak openly instead of reading scripted statements. This has been vital to create an experimental and creative atmosphere.

The CGPCS has quickly become the centre or nodal point for the field of counter-piracy. Discussions in other fora, such as the International Maritime Organisation's Maritime Safety Committee, the UN Security Council, or the NATO and EU headquarters have been structured around what has been decided and discussed within the CGPCS. Over time the experimental approach of the CGPCS became more and more prominent. Designing and revising the legal tool kit and continuously addressing new legal questions; introducing a new working group to trace the transnational networks of piracy and include forensic and criminological expertise; forming the

Capacity Building Coordination Group and its related electronic platform to better share information and coordinate capacity building among implementing agencies, and indeed also the Lessons Learned Project of which this report is one output, are powerful indicators of how the CGPCS continuously came up with new ideas, and tried out whether they worked or had to be revised and improved. The growing experimentalism was also supported by the confidence to formally invite representatives other than states. Shipping associations, industry associations, humanitarian organisations and even academics were formally invited to feed their ideas and proposals into the process. The successful 2014 reform process is one further illustration of how the work of the CGPCS is characterised by an ongoing attempt to clarify what is needed and how things can be done differently.

The experiments of the CGPCS were in several regards successful. While the decline of piracy from 2011 has several causal explanations, the work of the CGPCS was certainly one of them. The Group improved coordination and information sharing, created and maintained transnational networks of counter-piracy actors, and kept the salience of the piracy problem high within states and organisations. The CGPCS moreover proved to be successful in fostering consensus. CGPCS decisions have been vital for decision-making bodies around the world, in other international organisations, but also in formulating state policies and laws. If not all the experiments were successful or their outcomes remain open – such as the effects of the Capacity Building Coordination Group or the 2014 reform process – overall the CGPCS has been a story of successful experimentation and one of continuous adaptation to the evolving situation in Somalia and the Gulf of Aden.

Conditions for the work of the CGPCS

The experiments of the CGPCS have been conducted under certain conditions that must be understood in order to grasp whether the experiments are productive innovations for other policy fields.

Conditions 1 & 2: A sufficient definition of the issue in legal, territorial and political terms

The CGPCS focused on a single clearly defined issue: piracy off the coast of Somalia. While complex in its own right, piracy was isolated from other issues, such as the general situation in Somalia, or the problem of transnational terrorism in the region. The legal definition of piracy in UNCLOS' article 101 provided the core reference point, and UNCLOS also served as the main legal framework. Hence, the definition of the issue was not considered problematic. A basic legal framework for action was in place and the focus could turn to implementation and harmonisation. Part of this definition was also a clear geographical limitation. While the operational terrain was broadened, the High Risk Area (HRA)² provided a clearly demarcated

² The HRA is the space defined by the insurance industry and naval actors in which shipping is at high risk of facing piracy attacks.

space that defined the spatial parameters of the issue. There was also a shared understanding of why piracy is problematic and requires political action. Piracy posed a threat to the domestic and political situation in Somalia, regional stability and international transport. It was recognised as an economic, humanitarian as well as development problem. There was agreement that the roots of the problem are in state failure in Somalia, but that piracy had to be contained primarily from the sea in the short run, leaving larger capacity-building projects to the longer term. It was clear that counter-piracy did not imply military operations *per se* but a mix of policing and judiciary activities. To argue that the issue was clearly defined in legal, spatial as well as political terms does not imply that contestations over parts of the definition were entirely absent. However, there was a sufficient level of agreement and definitional controversies could be delegated to specialised fora – for example the legal controversy was transferred to WG2, and the spatial controversy over the precise geographical extent of the HRA to WG 3. At no point did fundamental disagreements over the nature of the problem and what could be done about it occur in the CGPCS.

Condition 3: Emerging and novel issue

Modern piracy, while having existed for some time, presented new features to the international community. If piracy was previously largely dealt with by the shipping industry, it had now become an issue for political actors. Moreover, the ‘kidnap and ransom’ piracy of Somalia differed from earlier forms of piracy. Because of this novelty as well as of the complexity of the issue, no existing institution could make a legitimate claim to have authority or exclusivity over it. These specific aspects and circumstances created a space which could be filled by a new type of informal organisation.

Condition 4: Main activities take place in international or ungoverned space

Discussions within the CGPCS largely dealt with the oceans, that is, an international law-governed space, or with Somalia, which was at that time a largely ungoverned space. This absence of clear-cut territorial jurisdiction, the lack of a clearly formulated Somali national interest and the weak capabilities of regional actors, created a situation of flexibility in which it was easier to invent new procedures and solutions. It also helped the CGPCS to build legitimacy for international action, as counter-piracy could not have been carried out by local and regional actors.

Condition 5: Prior cooperation experience

International navies have a long tradition of cooperation and inter-operability. As counter-piracy was initially mainly about naval action, such a culture of cooperation facilitated the setting up of the CGPCS as well as coordination within the Group.

Condition 6: No great power rivalry

As several participants of the CGPCS have pointed out, ‘everyone hates pirates’. Given the globalised nature of shipping and the importance of global trade for economic

development many countries were affected. This in turn implied that no great powers' conflict hindered the work of the CGPCS. This certainly concerns the permanent members of the UN Security Council, since a stalemate in the Council could have blocked the work of the CGPCS.

Condition 7: Leadership and resources

Like all multilateral initiatives, informal groups require strong leadership as well as substantial resources. One of the core conditions of the CGPCS success was that states were willing to take leading roles, chair the plenary and working groups, host meetings, and devote resources to secretarial and management work. Without these efforts none of the experiments could have been successfully carried out.

Can the lessons of the CGPCS be replicated in other policy fields?

The situation in which the CGPCS has operated is characterised by a range of conditions that are relatively rare. Many participants or observers of the CGPCS have therefore pointed out that the experience of the CGPCS cannot easily be transposed to other situations that require a coordinated international response. Such a perspective overlooks the fact that the conditions are not naturally or externally given, but are to a large extent shaped by international actors. Secondly, not all of these conditions are necessary to replicate the success of the CGPCS. Some, such as leadership and resources, are necessary, while others tend to be facilitating conditions. Thirdly, given the fluidity of crisis situations, the fact that all of these conditions are not matched in a given crisis does not necessarily imply that such a constellation will not be found in the near future.

There are a number of policy fields in which the experiments of the CGPCS are of obvious value. This is the case with regard to modern piracy in other regions, where the substantial lessons of the CGPCS will be extremely useful. There is much to learn from the CGPCS in tackling piracy in regions such as the Gulf of Guinea and these should be taken up by the G8++ Friends of the Gulf of Guinea group, the informal contact group dealing with this area. Following the example of the CGPCS, this group should develop information sharing, bring together the right range of legal, naval, policing, and forensic expertise, use the legal tool kits and best management practices and adapt them to the area, putting emphasis on the coordination of capacity building, awareness campaigns and alternative livelihood projects, ensuring inclusivity, and last but not least adopting the experimental approach pioneered by the CGPCS. While the situation in the Gulf of Guinea differs, notably concerning condition four, and partially concerning condition six, these are immediate substantial lessons for counter-piracy governance in the area.

This being said, the lessons of the CGPCS go well beyond piracy or maritime crime. The experience of the CGPCS provides insights for situations in which at least some

of the conditions outlined are met, and in which governance arrangements encounter similar problems to the CGPCS: how to manage complexity, how to cope with the plurality of actors, how to manufacture broad and reliable consensus, how to avoid implementation gaps, and how to ensure regional and national ownership.

One example is provided by the governance of peacebuilding. Technically a formal body like the UN Peacebuilding Commission (PBC) struggles with issues similar to those dealt with by the CGPCS. Founded to address the coordination problem in peacebuilding, the PBC could benefit from the experimentalist approach of the CGPCS: it could attempt to use similar information-sharing techniques, strive for creating an experimental atmosphere by reducing diplomatic protocol, by separating labour in plenary discussions and technical working groups, by including the industry, as well as recognise the importance of transnational networks of experts and specialists to facilitate coordination.

Another area where the experience of the CGPCS is of interest is international contact groups in more general terms. International contact groups are set up on a frequent basis to deal with emerging crisis situations. In the design of these bodies core ideas of the CGPCS should be taken up. Experiments, such as working in an informal environment that includes a large number of states, but also non-governmental organisations and the industry, developing (legal) tool kits, placing strong emphasis on information sharing, separating experts and generalists in different forums, ensuring the maintenance of transnational networks of experts or using databases for the coordination of local projects, are all worth replicating in other contact groups.

The most important lesson, however, is the mode of governance – experimental governance – of the CGPCS. The CGPCS adopted a unique experimental approach that in the end is the secret of its success as it allowed it to try out, invent, be creative, take political risks, do things differently. But it also allowed for permanent reflection on what worked and what did not. The success of this experimental governance approach is the most powerful message of the CGPCS. This lesson can be transferred widely. It is of relevance to all fields of transnational governance, from climate change to economic regulation. However, experimental governance implies that there is no standard recipe for how to deal with global problems. Future experiments are required.

ANNEXES

ABBREVIATIONS

| | |
|-----------|---|
| AMISOM | African Union Mission in Somalia |
| AU | African Union |
| BMP | Best Management Practices |
| CBCG | Capacity-Building Coordination Group |
| CGPCS | Contact Group on Piracy off the Coast of Somalia |
| CMF | Combined Maritime Forces |
| DPA | Department of Political Affairs (UN) |
| DPKO | Department of Peacekeeping Operations (UN) |
| EEZ | Exclusive Economic Zone |
| EU NAVFOR | European Union Naval Force |
| EVEXI | Evidence Exploitation Initiative |
| FAO | Food and Agriculture Organisation |
| FATF | Financial Action Task Force |
| FGS | Federal Government of Somalia |
| FIUs | Financial Intelligence Units |
| HRA | High Risk Area |
| ICG | International Contact Group |
| IGAD | Inter-Governmental Authority on Development |
| IMO | International Maritime Organisation |
| IOC | Indian Ocean Commission |
| IRTC | International Recommended Transit Corridor |
| ITFPR | International Task Force on Piracy Ransom |
| JIT | Joint Investigative Team |
| LETf | Law Enforcement Task Force |
| MPHRP | Maritime Piracy Humanitarian Response Programme |
| MSCHOA | Maritime Security Centre – Horn of Africa |
| NATO | North Atlantic Treaty Organisation |
| NGO | Non-governmental organisation |
| OBP | Oceans Beyond Piracy |
| PBC | Peacebuilding Commission |
| PCASP | Privately contracted armed security personnel |
| PMSC | Private Maritime Security Companies |
| PPP | Public-Private Partnerships |
| PPTP | Piracy Prisoner Transfer Programme |
| RAPPICC | Regional Anti-Piracy Prosecution & Intelligence Coordination Centre |

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| REFLECS3 | Regional Fusion Law Enforcement Centre for Safety and Security at Sea |
| RoK | Republic of Korea |
| SFG | Somali Federal Government |
| SUA | Suppression of Unlawful Acts (Against the Safety of Maritime Navigation) |
| SHADE | Shared Awareness and De-confliction |
| TFG | Transitional Federal Government |
| UNPOS | UN Political Office for Somalia |
| UN | United Nations |
| UNCLOS | UN Convention on the Law of the Sea |
| UNDP | United Nations Development Programme |
| UNICRI | United Nations Interregional Crime and Justice Research Institute |
| UNODC | UN Office on Drugs and Crime |
| UNPOS | United Nations Political Office in Somalia |
| UNSOM | UN Assistance Mission in Somalia |
| USD | United States Dollars |
| WFP | World Food Programme |
| WG | Working Group |

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