

Global Governance of Maritime Piracy: Closing the Legal Gaps

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<https://www.e-ir.info/2015/05/13/global-governance-of-maritime-piracy-closing-the-legal-gaps/>

CHARLOTTE CARNEHL, MAY 13 2015

While maritime piracy long seemed to be a problem of the past, it is now recognized as a major challenge for international security. When a group of pirates captures a vessel, holds its crew hostage for ransom, or sells its cargo, a significant number of actors is affected, making modern day piracy a global issue:

“It is not uncommon for a ship to be owned by a national of one country, crewed by nationals of a second, registered to a third state, and carrying cargo owned by nationals of a fourth” (Zach et al. 2013: 13).

If one adds the pirates themselves and the navies from a capturing state, the list easily extends to six states that are involved, which makes the practical prosecution of maritime piracy highly challenging. But it is not only states' interests that are affected. Other stakeholders such as private shipping companies, insurance companies, prospective recipients of food aid, or the individual seafarer suffer from piracy attacks. Given this broad number of actors – both public and private – that have an interest in suppressing and governing the negative consequences of piracy, this topic is worth examining from a global governance perspective.

Although there exist a number of international legal regimes and institutional bodies that aim at governing maritime piracy, the framework is very complex and fragmented, leading to various governance gaps and an uncoordinated global response to piracy. Until recently, pirates off the coast of Somalia have been quite successful in exploiting those gaps (Struett & Nance 2012: 8). A significant decrease of piracy attacks in the Horn of Africa after 2011 indicates, however, that the time in which pirates could act unaffectedly and with impunity has come to an end. Taking piracy off the Somali coast as a case study, this essay explores the governance efforts in this area in the period from 2009 until 2014. This essay will show that the International Contact Group on Piracy Off the Coast of Somalia (CGPCS) has been successful in closing the legal gaps that result from the various international regimes and institutional bodies attempting to govern piracy. By establishing a cooperative forum, the Contact Group has been able to increase information among its participants and to create new models of cooperative and soft law, which provide a framework for improved prosecution of Somali pirates.

This essay will be organized as follows. At the beginning, it will provide some background information on the phenomenon of piracy and the increased number of attacks off the Somali coast starting in the mid-2000s. The main body of the paper consists of two central sections. Firstly, it will assess the various international regime complexes and institutional bodies that attempt to govern maritime piracy in order to, subsequently, examine the overlaps and legal gaps among these mechanisms of governance. The second central section is dedicated to the CGPCS Working Group 2 (Legal Aspects of Counter-Piracy). It will give a brief overview of the Contact Group and will, afterwards, explore the mechanisms through which it is closing the legal gaps of the international anti-piracy regimes. The last section looks at the transferability of this model to other affected world regions.

Piracy Off the Coast of Somalia

Piracy has existed nearly as long as people have used the oceans for travelling and transport. In the modern era, the phenomenon has, however, not possessed high importance on the international agenda. Influenced by movies such

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as *Peter Pan & The Pirates or Pirates of the Caribbean*, we tend to have a rather romanticized view of pirates, considering them as nostalgic appearances disconnected to our current world. This image, however, began to change in the mid-2000s. A sharp increase in the number of attacks on ships, especially on those crossing the Gulf of Aden, brought the impact of piracy on commerce, food aid, and seafarer welfare to the world's attention. The One Earth Future Foundation estimated that in 2011 Somali piracy cost between \$6.6 and \$6.9 billion, of which the shipping industry bore more than 80 percent (Bowden & Basnet 2011: 1). Between 2005 and 2012, Somalia-based pirates took a total of 3,923 seafarers hostage.[1] Starting in 2004 (11 counts), piracy attacks in the Gulf of Aden increased yearly; reaching the highest point in 2009 with a number of 158 reported incidents.[2] After 152 attacks in 2011, the numbers fell to 58 (2012) and only 13 in 2013 (Prins 2014). This sharp decrease of attacks can, *inter alia*, be attributed to the multilateral naval missions organized by the US, NATO, and EU that have been dispatched to the Gulf of Aden.

The root causes of maritime piracy in the Horn of Africa are not yet fully understood. *Greed* and *grievance* are two explanatory variables, which are often examined in relation to piracy. While proponents of the *greed* hypothesis believe that piracy is an act of personal enrichment, advocates of the *grievance* hypothesis see piratical actions as a desperate, yet legitimate response to injustices. In this regard, critics consider the presence of illegal fishing vessels and the dumping of toxic materials in Somali waters as damaging livelihoods and prompting "local fishermen to 'police' the coast and extract 'taxes' from foreign vessels" (Zach et al. 2012: 10). The fall of Said Barre's dictatorship in 1991, which led to the complete breakdown of Somali coercive authority and territorial jurisdiction, provided one enabling condition for the emergence of increased piracy attacks. In the absence of any policing or judicial institutions, pirates were able to operate with impunity. Percy and Shortland (2013) see five obstacles standing in the way of the effective control of Somali piracy: lack of alternate employment, local corruption, the nature of the victims of piracy (i.e. outsiders to the community), the practices of some shipping companies and insurers (e.g. poor safety practices), and the fact that enforcement efforts push pirates to innovate, which makes solving the problem even more difficult.

International Regimes to Govern Maritime Piracy

Ideas for how to best regulate piracy are almost as old as piracy itself. Heinze (2012) traces the origins and evolution of the earliest legal principles pertaining to piracy. He points to conventional accounts from the Roman Republic, quoting Cicero who defined pirates as *hostis humani generi*, enemies of all mankind. This perspective saw piracy "not simply as an act committed against individuals, but as an offense against the community or nation as a whole" (Heinze 2012: 49). It is contested whether Cicero really was the originator of understanding pirates as enemies of humanity that can be prosecuted under the law of any nation. What, however, remains from this concept is the universal jurisdiction of piracy: any state has the right to prosecute piracy on the high seas under its domestic laws regardless of the exact location of the crime or the accused person's nationality (Guilfoyle 2013a, Treves 2013).

The first law specifically governing the issue of piracy on the national level was the 1698 English Act on Piracy. When piracy became more and more an issue of transnational commerce and transportation, it moved from the domestic legal domain to the international level. The first document in international law that governed piracy was the 1856 Treaty of Paris. Numerous international agreements followed:

"The 1889 Montevideo Convention accepted the principle that the suppression of piracy was the responsibility of mankind. The Nyon Agreement of 1937 defined the unidentified attacks in the Mediterranean as 'acts of piracy'. However, the most important treaty which codified the international law of piracy was the 1958 Geneva Convention on the High Seas, which contains eight provisions concerning the suppression of piracy on the high seas" (Zou 2009: 324).

Additional international conventions and mechanisms have emerged over the course of the last sixty years. The following section details four broad international regimes or institutional bodies – public and private – that currently seek to govern the phenomenon of maritime piracy, and explores the areas in which they overlap or compete.

United Nations Convention on the Law of the Sea (UNCLOS)

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The 1982 United Nations Convention on the Law of the Sea (UNCLOS) is a broad regime, which upholds the goal of freedom of navigation on the seas while guaranteeing states the rights to regulate their territorial waters (Struett et al. 2013: 96). Under this principle of the freedom of the high seas, ships navigating in international waters are subject to the exclusive jurisdiction of their flag state (Campanelli 2012: 75). UNCLOS incorporates the anti-piracy provisions of the 1958 Geneva Convention in Articles 100 to 107. It urges states to cooperate in the repression of piracy (Article 100), and gives states that seize a pirate ship on the high seas the right to prosecute the pirates in accordance with their respective national law (Article 105). In Article 101, UNCLOS defines piracy as:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Hence, there are four elements that define an act of piracy: It must involve violence, at least two vessels have to be included, it must be committed on the high seas, and it must be committed for private gain. The convention has been ratified by 165 states and the European Union. Fifteen UN member states, among these Israel, Peru, Turkey, and the United States, have not signed UNCLOS.

SUA Convention

The 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) was developed as a reaction to the hijacking of the *Achille Lauro* by politically motivated militants. In 1985, the Palestine Liberation Organization (PLO) hijacked the Italian cruise liner, held its passengers hostage, and killed a Jewish-American passenger. This incident “brought the relationship between piracy and maritime terrorism to light” (Heinze 2012: 53). Under UNCLOS, the hijacking of the *Achille Lauro* does not qualify as piracy, since the attack was not committed for private gain. The SUA Convention was developed to ensure that politically motivated attacks against ships could also be prosecuted and is, thus, widely considered an anti-terrorism convention.

Interestingly, the SUA Convention does not use the word “piracy,” and has a broader definition of illegal acts at sea than UNCLOS.[3] Still, some of the listed criminal offenses are particularly relevant to maritime piracy. Under the SUA Convention, it is an offense when a person:

“unlawfully and intentionally seizes or exercises control over a ship by force or the threat thereof or any other form of intimidation; or performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship” (SUA Convention 1988, Article 3.1.1-2).

The SUA Convention also applies to offenses that are committed in the territorial waters of states. While UNCLOS is based on universal jurisdiction, only signatory states that are affected by the offense are allowed to prosecute under the SUA Convention. This can, for example, be the flag state of an attacked ship or the state in whose territorial waters the attack took place. The SUA Convention has 164 state parties. Among its non-signatories are, however, Somalia, Indonesia, and Malaysia, three states that are significantly affected by maritime piracy.

International Maritime Organization and International Maritime Bureau

The International Maritime Organization (IMO) and the International Maritime Bureau (IMB) constitute two institutional bodies involved in the governance of maritime piracy. Established in 1959, the IMO is a specialized

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agency of the UN with the purpose to set global standards for the safety, security, and environmental performance of international shipping. The IMO currently has 171 member states. The organization facilitates discussions between industry, member states, security forces, and UN agencies that are concerned with piracy. Since 1998, the organization has been working on an anti-piracy program, which aims at fostering the development of regional agreements that implement counter piracy measures. Its activities were essential in developing the 2009 Djibouti Code of Conduct, in which the Arabian Peninsula and East African littoral states agreed to cooperate in the repression of piracy and armed robbery against ships in the West Indian Ocean and the Gulf of Aden.[4]

The IMB, which is a division of the International Chamber of Commerce, has become an increasingly important part of the antipiracy regime. It suggested a definition of piracy as “an act of boarding any vessel with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act” (Zou 2009: 327). While this definition seems to be accepted by the shipping industry, it has not been recognized in international or domestic law. In 1992, the IMB established the Piracy Reporting Centre (PRC) in Kuala Lumpur, Malaysia, which functions as the single point of contact for ship masters anywhere in the world who are under piratical or armed robbery attack. If an attacked vessel contacts the PRC, the information is immediately passed on to local law enforcement agencies and shared with all ships in the region. The PRC’s primary goal is to:

“raise awareness within the shipping industry, including the shipmaster, ship-owner, insurance companies, traders, etc., of the areas of high risk associated with piratical attacks or specific ports and anchorages associated with armed robberies on board ships.”[5]

This information sharing aims at understanding the nature of piracy and reducing its effects on crew and cargo through self-regulation by the shipping industry (Struett et al. 2013: 97).

Inter-Regime Tensions and Legal Gaps

While the above shows that international law has long recognized maritime piracy as a crime and has provided tools for its universal suppression, it yet persists. Struett et al. (2013) argue that the institutional structure of the regime complex itself functions as a major obstacle to effective cooperation, because each regime provides diverging definitions of the targets, pushes different actors to different behaviors, and, thereby, creates conflicting norms to effectively address maritime piracy as an issue of global governance. Other authors agree that the confusion about the appropriate legal response to piracy has impeded anti-piracy cooperation and resulted in a governance gap leading to low prosecution rates (Heinze 2012, Zach et al. 2013). When looking at the various anti-piracy regimes, there are three potential tensions: the definition of the target and the *locus delicti*, the tension between the right and the duty of a state to suppress piracy, and the tension among public and private governance institutions (Struett et al. 2013).

UNCLOS and the SUA Convention differ in their definition of piracy and the location of the crime. In this regard, various scholars have criticized UNCLOS for being insufficient (Heinze 2012, Treves 2013). It clearly limits piracy to international waters and excludes piratical acts in the territorial waters of a state, leaving them to national jurisdiction without creating any obligations on how states have to regulate piracy in their own waters. This provision is especially problematic when the coast state is considered a weak or a failed state unwilling or unable to address piratical activities. Moreover, including the requirement of “private ends” disregards politically motivated crimes, and the “two vessels” requirement excludes the option that crewmembers of the boat revolt and, subsequently, use the cargo for private gain (Sterio 2010: 1470). The SUA Convention, on the other hand, has a much broader definition of unlawful acts at sea and “creates an obligation for states to regulate piracy in their territorial waters” (Struett et al. 2013: 98).

UNCLOS and the SUA Convention also show tension regarding a state’s right versus its duty to counter piracy. UNCLOS urges states to “cooperate in the repression of piracy” (UNCLOS 1982, Article 100), but only details that a state “may” seize, arrest, or prosecute pirates (Article 105) – it does, hence, only formulate a right and not a positive duty that states “must” do so. Problematic in this regard is also that:

“the mere existence of universal jurisdiction [...] does not mean in *national law* a court may prosecute: that court will

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usually need a national law implementing the jurisdiction permitted by international law” (Guilfoyle 2013a: 75).

Yet, only few signatory states have actually incorporated relevant UNCLOS provisions in their respective national laws (Campanelli 2012: 78). In case of the SUA Convention, however, states must establish the various acts, which the convention identifies as crimes (SUA Convention 1988, Article 3) in their domestic legal systems (Articles 5 & 6). The SUA Convention, moreover, places a clear duty on the capturing states to prosecute or turn in the accused (Article 7).

Struett et al. (2013) also observe a tension between public and private governance. Both UNCLOS and the SUA Convention clearly try to regulate states' behavior when interacting with pirates, while the IMO promotes standards for both public and private actors. The IMB, on the other hand, “effectively reconstruct[s] the counterpiracy regime complex into a more neoliberal model in which the role of state actors is minimized” (Struett et al. 2013: 100). The authors argue that the IMB and its Piracy Reporting Centre are increasingly seen as among the primary authorities in the world of counter-piracy. The IMB acknowledges and promotes the increasing role for private security firms on board, supplanting the traditional approach to the state as the sole provider of security. It, thereby, focuses the actors' attention on immediate questions such as how to protect cargo rather than on a long-term political or legal approach to maritime piracy (ibid.).

Closing the Legal Gaps: CGPCS Working Group 2

While the preceding discussion seems to be abstract and theoretical, the past has shown that the existence of various conventions and institutional bodies, which complement each other, but, at the same time, overlap on certain aspects, has generated confusion regarding the powers and jurisdictions of the states (Struett & Nance 2012: 7). Problematic is, for example, that international law defines piracy as an international crime, which is subject to universal jurisdiction, but that the practical trial and conviction of pirates is tied to domestic courts (Zou 2009: 345). The execution of prosecution of Somali pirates was, therefore, quite challenging and not always politically wanted:

“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 [...] nations were loath to bring large numbers of suspects home for trial” (Huggins & Vestergaard Madsen 2014: 19).

Consequently, states were especially disinterested in intervening against criminal ships of a different nationality. This unwillingness to prosecute pirates led to the infamous “catch and release” practice; apprehended pirates were simply returned to the shore and released without charge. They could, hence, act free from prosecution and with impunity. In their empirical study of the universal jurisdiction for piracy between 1998 and 2009, Kontorovich and Art (2010: 436) find that international prosecution occurred in only 1.47 percent.

The Contact Group on Piracy Off the Coast of Somalia

Not only has the confusion about the appropriate (legal) response to maritime piracy resulted in an ineffective prosecution of pirates, the global response to piracy prior to 2009 was also poorly coordinated (Sterio 2010: 1451). Witnessing the deteriorating circumstances for shipping off the coast of Somalia in the mid-2000s, the international community attempted to address the shortcomings in the governance of maritime piracy. The most significant step towards global coordination was the establishment of the Contact Group on Piracy Off the Coast of Somalia (CGPCS), which originated from UN Security Council Resolution 1851 (2008). This resolution acknowledged the need for collective problem solving and 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” (UNSC Resolution 1851 (2008), Art. 4).

While the UN called for the establishment of a cooperative forum, the CGPCS is not formally a UN Contact group,

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which allows it to act independently and to be more flexible in terms of bureaucracy and procedure (Tardy 2014: 7).

The group was formally established on January 14, 2009 with the goal to facilitate the discussion and coordination among actors working on the prevention and suppression of piracy off the coast of Somalia. The international forum has brought together more than 60 states and more than 25 international organizations, ranging from UN bodies such as the United Nations Office on Drugs and Crime, to regional organizations such as the European Union and the Arab League, and private associations such as INTERCARGO or the Seamen's Church Institute.[6] CGPCS' various working groups, moreover, rely on regular advice from industry and academics. Actors in the CGPCS are intentionally described as "participants," not as "members," in order "to sidestep thorny diplomatic issues, such as clashes between traditional rivals over the inclusion of a contested territory" (Zach et al. 2013: 20). The inclusion of new participants is very flexible, states or organizations can simply apply to the chairman of the Contact Group.

The CGPCS has to be understood as a coordinating body, it is not a formal institution. Hence, it does not possess a secretary, bureaucracy, or budget. It works in three types of formats: a plenary, five working groups, and various ad-hoc sub-groups and ad-hoc meetings (Bueger 2014a: 3). The communiqué of the second plenary details that the decisions of the Contact Group are "taken by consensus" and that working groups "do not take decisions, but only make recommendations through Chairmen's summaries for consideration by the CGPCS" (CGPCS 2009: 2). The chairmanship of the plenary and the working groups is voluntary and rotates; the European Union chairs the CGPCS in 2014. The five CGPCS Working Groups work on narrowly defined topics with clearly separated areas:

- *Working Group 1* (Chair: United Kingdom) concentrates on the facilitation of effective naval operational coordination and supports the building of the judicial, penal, and maritime capacity of regional states to increase their capability in tackling piracy and other maritime security challenges.
- *Working Group 2* (Chair: Denmark) is responsible for providing specific, practical, and legally sound guidance to CGPCS members on all legal aspects of counter-piracy. By exchanging this information, WG2 contributes to a common approach to and understanding of legal piracy issues.
- *Working Group 3* (Chair: Republic of Korea) discusses the concerns of the various participants regarding self-defensive actions to prevent vessels from hijacking by pirates. WG3 works closely with industry to complete and distribute "Best Management Practices for Protection against Somalia Based Piracy" (currently in its 4th version).
- *Working Group 4* (Chair: Egypt) focuses on the public diplomacy aspects of combating piracy. Its goal is to raise awareness of its dangers and to point out best practices to eradicate this activity. It uses various means of communications, including the organization of counter-piracy messaging workshops.
- *Working Group 5* (Chair: Italy) is dedicated to advancing international information sharing on how to disrupt the pirate enterprise ashore. It works with local and transnational partners such as INTERPOL to better understand illicit financial flows associated with piracy.[7]

Closing the Legal Gaps

Recognizing the urgent need for legal guidance, the CGPCS set up Working Group 2 as the central forum for discussing the legal aspects connected to piracy off the Somali coast. While the first meeting of the Working Group in 2009 only included 32 states and seven organizations, it now consists of approximately 50 states and 25 organizations, creating a:

"comprehensive international network of relevant legal stakeholders – including legal experts and advisors from the foreign service, defense and justice ministries, prosecutors and investigators as well as legal representatives from international organizations and academia" (Lisberg 2014: 35).

One central achievement of the group lies, thus, in bringing together the various actors, some of them representing the norms of different international regimes that attempt to govern maritime piracy. The meetings enable the participants, which all had "over- or under-inclusive mandates or expertise in only pieces of the problem" (Guilfoyle 2013b: 54), to share information, discuss, and collaborate on a regular basis, creating important synergies between the various organizations.

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Building on the basic legal framework in place, the participants of WG2 acknowledged that their focus had to lie on implementation and the harmonization of the various anti-piracy regimes by providing the CGPCS, states, and organizations with specific, practical, and legally sound guidance. The Working Group, which possesses no regulatory power, does not aim at creating a new substantive law of piracy, but at finding new models of cooperation and leveraging instruments of soft law (*ibid.*). The legal gaps between the various international regimes and institutional bodies attempting to govern maritime piracy have, hence, not been eliminated, but are now governed more successfully through multi-stakeholder collaboration.

While increased international cooperation existed on the military level, it was clear that a merely repressive approach to piracy could not be sufficient (Campanelli 2012: 81). The participants of WG2 were convinced that a meaningful governance of piracy off the coast of Somalia had to find a viable system for prosecution, giving states an incentive to end the “catch and release” tactic and, therewith, closing the impunity gap. Two issues were of primary importance: Finding a regulation for where pirates would be prosecuted and determining where to incarcerate those convicted.

Prosecution and Post Trial Transfer System

Somalia’s capability to prosecute pirates has been very limited due to its lack of internal coercive authority and incarceration capacity. WG2, therefore, engaged in discussions about how to best establish a complementary judicial mechanism to ensure that Somali pirates were held accountable for their crimes. The Working Group examined four broad options for a more efficient prosecution of pirates: (1) the establishment of a new ad hoc international court; (2) the establishment of a “hybrid” national/international court within a national legal system, but with UN support; (3) the establishment of a regional court based on a treaty among affected states; and (4) prosecution before a variety of national courts based on agreements governing the transfer of the suspects (Guilfoyle 2013a). The group soon reached consensus that the focus should lie on supporting already existing mechanisms of prosecution through regional capacity building. By early 2010, WG2 concluded that the most feasible option would be:

“a specialized or dedicated piracy chamber – with or without international elements – established within the existing domestic criminal justice system of one or more States and located in one or more States willing and able to undertake prosecution, including Somalia when this becomes possible” (CGPCS 2010).

WG2 acknowledged that this model of prosecuting suspected pirates in the region could impose a significant political and practical burden on the cooperating states when convicted pirates would serve long sentences in their prisons (Lisberg 2014: 36). In a 2011 report, the UN Special Advisor on Legal Issues related to Piracy Off the Coast of Somalia, Jack Lang, emphasized the importance of finding solutions to imprison convicted pirates in Somalia, enabling them to serve their sentences close to their families (Letter from the Secretary-General to the President of the Security Council 2011). Consequently, affected regional states, the UN Office on Drugs and Crime (UNODC), and WG2 developed the Post Trial Transfer System, which allows moving pirates that were prosecuted in one territorial jurisdiction to another. Post Trial Transfers were established between prosecuting countries lacking the capacity to incarcerate convicted pirates and Somalia, as well as other regional countries willing to incarcerate them. The first transfer agreement was made between the Seychelles and the Somali Transitional Federal Government (TFG) in February 2011. This served as a legal model, which was soon extended to other agreements. The Post Trial Transfer agreements were established in close collaboration with UNODC’s Counter-Piracy Programme, which is devoted to constructing and modernizing prisons and courtrooms in Kenya, Seychelles, Mauritius, and Somalia (Zach et al. 2013: 24).

WG2, therewith, facilitated the establishment of an effective mechanism reaching from apprehension to prosecution and serving sentence. Although it does not lead to a perfect prosecution rate, the system is a first step towards fighting impunity. Lisberg assesses that the WG2’s system has contributed to an increased number of prosecuted pirates and a change in public perception regarding the efficiency of fighting against piracy:

“A total of 1,200 individuals have been convicted of piracy or are awaiting trial in 21 states world-wide – a very clear sign that there is no such thing as impunity for pirates” (Lisberg 2014: 37).

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The WG2 meetings continue to serve as a forum to share information on the latest developments on prosecution, pending piracy court trials, and prison capacities.

Legal Toolbox and Trust Fund

In order to disseminate this collaborative framework, WG2 has developed a legal toolbox for the states and organizations that are aiming to improve their ability to prosecute pirates. The toolbox, which consists of various legal documents, specific guidelines for the collection of evidence, and templates for pre- and post-trial transfer agreements, enables the various actors to obtain the relevant legal information on anti-piracy governance. CGPCS participants can access the documentation through a protected section on the Contact Group's website. It is essential that the collected information is easily available since piracy cases are often "characterized by a degree of urgency due to the strict limits on how long piracy suspects apprehended by military means can be detained on board of a military vessel" (Lisberg 2014: 40). The toolbox has been helpful in ensuring indispensable coordination between the foreign navies and prosecuting countries in the region. While it was, for example, common practice to throw the weapons of suspected pirates overboard, these firearms must be presented as evidence in Kenyan trials. If the capturing navies are uninformed about this practice, the prosecution may be significantly compromised (Guilfoyle 2013a: 74). The best practice guidelines in the legal toolbox guarantee that these principles are part of the new common knowledge and, thus, help to overcome practical impediments to prosecution.

WG2, moreover, developed the legal framework for the establishment of an international trust fund. The purpose of this fund is to:

"help defray the expenses associated with prosecution of suspected pirates, as well as other activities related to implementing the CGPCS's objectives regarding combating piracy in all its aspects." [8]

Governments, intergovernmental organizations, private associations, and the public at large can contribute to the fund. The UN Development Program (UNDP) administers the fund and only UN organizations are eligible to receive financing. Thus far, the fund has approved 27 projects at a total value of \$11.95 million to support prosecution and detention in Kenya, Seychelles, and Somalia. Through the implementation of various projects, the money is mostly used to support national jurisdictions in building legal capacity, including evidence gathering capacities and the mutual legal assistance among the states of the region. [9]

Can This Model Be Transferred to Other World Regions?

The CGPCS is widely considered a highly efficient global governance mechanism (Bueger 2014a, Guilfoyle 2013a, Tardy 2014, Zach et al. 2013). The Contact Group and its various Working Groups were established during a critical momentum in which all relevant actors agreed that it was their duty to collaborate. Its success can be explained through a number of factors: The Contact Group was designed to deal with a specific problem (piracy) in a targeted geographic location (Horn of Africa), it aimed at overcoming well-defined challenges (e.g. low prosecution rate), and a significant number of public and private actors had a converging interest in solving the problem. The Contact Group worked, moreover, with high efficiency by addressing the challenge outside of international organizations and traditional multilateral diplomacy. Bueger (2014b) considers this informal multi-stakeholder collaboration as a new trend in global governance.

While the number of piracy attacks off the Coast of Somalia has significantly decreased since 2011, other world regions, especially the Gulf of Guinea, have become more and more affected by piracy. It is, hence, worth examining whether the model of the CGPCS can be transferred to other world regions. One achievement of the CGPCS, from which other world areas will also benefit, is that it succeeded in making piracy an important issue on the international agenda. The Contact Group illustrated various challenges in governing piracy that have, consequently, been picked up by specific actors. Initiatives such as the UN effort to catalog existing national legislation on piracy repression are important steps to foster universal prosecution of piracy (Struett et al. 2013). The Contact Group's purpose was not the establishment of substantial new international or customary law, which could then be implemented globally. But the CGPCS can work as a role model and other regions should follow its example in bringing together all relevant

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actors, sharing information, and emphasizing the importance of coordination. Other actors can also use the practical tools, such as the legal toolbox or the guidelines about best management practices, developed by the CGPCS.

Conclusion

With a significant increase of attacks in the mid-2000s, piracy off the Somali coast became a relevant issue on the international agenda. While there exist various international regimes and institutional bodies attempting to govern piracy, they do not constitute a cohesive framework. UNCLOS, the SUA Convention, IMO, and IMB offer diverging norms and expose a number of tensions regarding the definition of the target and the location of the crime, the duty of collaboration, and the responsibility for governance. These inter-regime tensions and the lack of cooperation between the affected actors gave Somali pirates the opportunity to operate with impunity.

Affected by the proliferation of piracy and interested in its suppression, both public and private actors established a forum to jointly govern piracy off the coast of Somalia in 2009. The Contact Group on Piracy Off the Coast of Somalia functions as a forum for exchange, information sharing, and collaboration by bringing all relevant actors together and organizing various Working Groups, each with its own, distinct focus. Working Group 2 has been successful in providing sound legal guidance to the CGPCS participants. While it did not create new law to govern maritime piracy, it clarified the existing legal framework and facilitated the establishment of new models of cooperation. The legal gaps in the various anti-piracy regimes were, hence, not eliminated but successfully governed through the collaboration of various public and private stakeholders. By establishing new approaches to prosecution, the Post Trial Transfer Mechanism, as well as the legal toolbox and the trust fund, WG2 helped to create a practical framework that regulates the process from the apprehension of suspected pirates to their prosecution and incarceration. As a result, the number of prosecuted pirates has increased. By focusing on capacity building and cooperation between the regional actors, this process is, moreover, a sustainable solution with strong local ownership of prosecution.

While it is important to emphasize that the Contact Group mostly concentrates on governing the symptom, and not necessarily the root causes of piracy, it has played an important role in decreasing the number of piracy attacks in the Horn of Africa. The CGPCS can be considered a successful example of global governance and a role model, whose practical tools can be transferred to other world regions. The lessons learned from its collaborative, informal, experimental, and multi-stakeholder approach are also valuable for other policy areas.

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[1] Data taken from the ICC International Maritime Bureau's annual reports on piracy and armed robbery against ships (years 2005-2012).

[2] With 20 reported incidents compared to 43 in 2005 and 46 in 2007, the year 2006 constitutes an exception to the increase in piracy off the coast of Somalia. This can be explained by the brief rule of the Supreme Council of Islamic Courts (SCIC), which banned piracy as against Islam. After its ousting, the numbers of piracy incidents continued to grow (Zach et al. 2012: 11).

[3] The SUA Convention does not include the "two ships" and "private ends" requirements of the UNCLOS (Heinze 2012: 54).

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[9] See footnote 8.

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Date written: December 2014