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*Master's thesis*

# At the Helm

The Role of Business in Counter-Piracy Governance

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# Abstract

This thesis contributes to the debate on the role of private business in global governance. It suggests that the shipping and insurance industries' problem-solving approach to the rise in maritime piracy in the early 2000s consolidated its role as a core stakeholder in counter-piracy governance.

The Contact Group on Piracy off the Coast of Somalia (CGPCS) is used as a single case study, as this informal mechanism is recognized as the main governance vehicle in the international community's response to Somali piracy. The CGPCS has had an instrumental role in legitimizing and ensuring widespread compliance with industry-produced guidance and standards. The Best Management Practice (BMP), introducing self-protective measures for a safer transit of pirate-infested waters, has arguably attained the status of soft law. So has the High Risk Area (HRA), which was designed to indicate the geographical space where the BMP should be applied, but which has become a core reference zone for a number of other processes as well.

The thesis examines counter-piracy from two perspectives—first, as a political and regulatory process, then, as a spatial process—and gives an account of the practice of industry in its role as a political actor. It shows how industry practice has altered power balance between the public and private spheres, thus reproducing industry authority. The thesis contributes to the existing literature on the role of business in the organizational field of counter-piracy, emphasizing a power-relations perspective. The exploratory nature of the study opens up for further research.

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# 1. Introduction

## 1.1. Problem statement: The role of business in combating Somali piracy

The rapid increase in maritime piracy in the waters outside Somalia in the early 2000s prompted a series of significant, but uncoordinated, initiatives by various actors in the international community, from states and IGOs, to NGOs and trade associations.

These included international naval operations, prosecution programs, security sector reform and infrastructure projects, awareness campaigns, and self-defensive measures by the shipping industry.

No existing organization or individual state had the authority, capacity, or expertise to coordinate a comprehensive response. The UN system, for instance, did not offer the possibility to work in a format where all relevant stakeholders were included—both diplomats and experts—nor did it allow for the flexible coordination needed to act swiftly. Launched in 2009 and enjoying UN imprimatur, the Contact Group on Piracy off the Coast of Somalia (CGPCS) is recognized as having successfully addressed some of these governance gaps.

The participation of both public and private actors is a noticeable feature of the CGPCS. The role of industry in this state-centric alignment is relatively significant. Through its pragmatic and problem-solving approach in response to the surge in piracy, industry merited a seat at the table. The CGPCS came to serve as a platform for the international community's recognition of the industry-developed Best Management Practices (BMP) document. The BMP is a tool for ship operators and masters to ensure safer transit through pirate-infested waters. The document lists a number of recommended ship protection measures, and introduces a standardized reporting mechanism for ships to ensure the protection of international naval missions.

Extensive compliance with BMP is widely considered to have produced the drop in successful piracy incidents. The last major piracy attack against a commercial vessel

was recorded in 2012.<sup>1</sup> This achievement has strengthened the CGPCS's role in counter-piracy governance.

Finally, industry revisions of the BMP document have specified the geographical application of the recommended self-defensive measures. The specified High Risk Area (HRA) in the western Indian Ocean has come to define the whole problem of Somali piracy in spatial terms, and has thus become a reference zone for a number of other international regulatory and coordination processes, which has sparked diplomatic tension.

## 1.2. Research question and objective

This paper understands the role of business as having had a significant role in shaping the international community's wider efforts to combat maritime piracy off the coast of Somalia. The study highlights business involvement in the development and implementation of rules and standards. From other areas of international affairs, it is known that the changing role of the private sector raises important issues of accountability, legitimacy, and power. The research objective is to identify factors associated with the shipping and insurance industries' authority in counter-piracy governance.

The research question which this paper aims to investigate is:

*“How does practice in contemporary organizational responses to maritime piracy off the coast of Somalia reproduce the authority of the private sector?”*

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<sup>1</sup> Swarttouw, H. & Hopkins, D.L. (2014). The Contact Group on Piracy off the Coast of Somalia: Genesis, rationale and objectives. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 11–17.

## 1.3. Background: A scourge in piracy activity with great economic impact

### 1.3.1. Piracy trends

The early 2000s saw a dramatic surge in maritime piracy attacks<sup>2</sup>, and armed robbery<sup>3</sup> in particular. Small bands of pirates developed a very lucrative practice of hijacking and holding ships for ransom, money that was later used to finance other criminal activities. A significant part of these attacks were recorded off the coast of Somalia, where the Transitional Federal Government (TFG) lacked the capacity to intercept pirates or patrol and secure either the international sea lanes or Somalia's territorial waters. Unlike most other acts of piracy, East African piracy does not occur or is attempted in the territorial waters of coastal states when the ships are at anchor or berthed, but rather farther away, in international waters.<sup>4</sup>

The number of committed or attempted attacks off the coast of Somalia more than doubled from 60 incidents in 2007 to 134 in 2008.<sup>5</sup> UN Security Council resolution 1816 of 2008 stated that piracy is a threat to international peace and security in the region, and expressed a concern for the delivery of humanitarian aid to the conflict-ravaged Somalia. Also, it highlighted the dangers piracy poses to vessels, crews, passengers, and cargo, which compromise the safety of commercial maritime routes and international navigation.<sup>6</sup> The year after, in 2009, a total of 222 incidents occurred in the region, out of 406 reported worldwide.<sup>7</sup>

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<sup>2</sup> "Piracy" is defined in the 1982 UN Convention on the Law of the Sea (UNCLOS), article 101.

<sup>3</sup> "Armed robbery against ships" is defined in the International Maritime Organization's (IMO) Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships (assembly resolution A.1025(26), annex, paragraph 2.2).

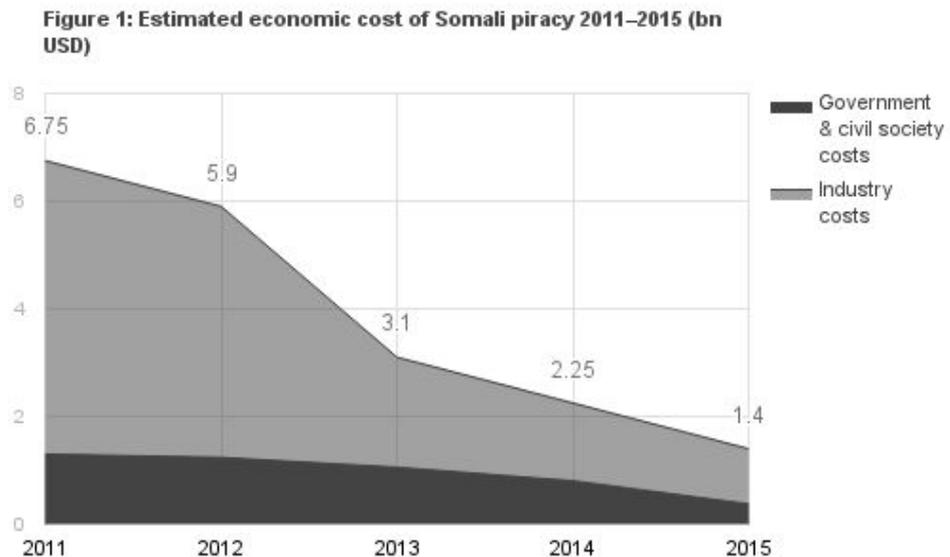
<sup>4</sup> IMO report MSC.4/Circ.133 (*Reports on acts of piracy and armed robbery against ships: Annual report 2008*).

<sup>5</sup> IMO report MSC.4/Circ.133 (*Reports on acts of piracy and armed robbery against ships: Annual report 2008*).

<sup>6</sup> UN Security Council resolution S/RES/1816 (2008).

<sup>7</sup> IMO report MSC.4/Circ.152 (*Reports on acts of piracy and armed robbery against ships: Annual report 2009*).

The growing threat of piracy to national and commercial interests drove various stakeholders to seek ways to actively suppress pirate activity. Holding different views on the problem's scope, causes, and appropriate solution, these actors were unable to mount a coordinated response. The result was a random miscellany of incomplete, overlapping, and contradictory efforts to combat piracy.<sup>8</sup>



### 1.3.2. Economic impact

The global economic impact of Somali piracy is huge. The total costs of worldwide maritime piracy, all factors considered, were estimated to US\$7–12 billion in 2010, when the stakeholder association Oceans Beyond Piracy (OBP) launched its large-scale quantification project. With 44 successful ship hijackings out of 48 worldwide taking place off the coast of Somalia, an overwhelming part of these costs originated from Somali piracy.<sup>9</sup> In 2011, piracy emanating from Somalia was estimated

<sup>8</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>9</sup> Bowden, A. (2011). *The economic cost of Somali piracy 2010*. Broomfield: Oceans Beyond Piracy.

to cost between \$6.6 – \$6.9 billion.<sup>10</sup> Since then, the costs have been reduced significantly year by year and were an estimated \$1.4 billion in 2015 (see Figure 1).<sup>11</sup>

The shipping industry bears the main part of the costs of piracy. In 2011, governments stood for 19.5 percent, of which military operations made up nearly the whole expenditure, while the shipping industry bore 85.5 percent of the total costs of piracy. The costs for the industry refer to security equipment and guards, increased speeds, insurance, labor, re-routing, and finally ransom and recovery in the case of successful pirate attacks.<sup>12</sup>

Private armed security aboard merchant vessels is the largest expenditure for the industry, together with security equipment such as citadels for self-protection against hostage taking. Increased speed while transiting pirate-infested areas is another protective measure, since no ship that was traveling at 18 knots or faster has ever been hijacked. Higher speed constitutes a large cost since more fuel is burned. War risk premiums and hazard pay result in higher insurance and labor costs for the industry. Re-routing to avoid the risk of piracy is associated with costs to compensate for fuel and time consumption.<sup>13</sup>

In 2005, ransoms demanded by pirates averaged between \$100,000 and \$200,000.<sup>14</sup> Six years later, in 2011, pirates received on average \$4.97 million in ransom. That year, pirates collected greater revenue despite the reduced success rates of attacks.<sup>15</sup>

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<sup>10</sup> Bowden, A., & Basnet, S. (2012). *The economic cost of Somali piracy 2011*. Broomfield: Oceans Beyond Piracy.

<sup>11</sup> For 2012 numbers, see Bellish, J. (2013). *The economic cost of Somali piracy 2012*. Broomfield: Oceans Beyond Piracy. For 2013 numbers, see Madsen, J.V., Seyle, C., Brandt, K., Purser, B., Randall, H., & Roy, K. (2014). *The Economic cost of Somali piracy 2013*. Broomfield: Oceans Beyond Piracy. For 2014 numbers, see Walje, M.R., Madsen, J.V., Seyle, C., Brandt, K., Kerins, P., Matthews, M., & Maybee, T. (2015). *The economic cost of Somali piracy 2014*. Broomfield: Oceans Beyond Piracy. For 2015 numbers, see Oceans Beyond Piracy. (2016). *Somali piracy in the western Indian Ocean region*. Retrieved November 10, 2016 from <<http://oceansbeyondpiracy.org/reports/sop2015/east-africa>>.

<sup>12</sup> Bowden, A. (2011). *The economic cost of Somali piracy 2010*. Broomfield: Oceans Beyond Piracy.

<sup>13</sup> Bowden, A., & Basnet, S. (2012). *The economic cost of Somali piracy 2011*. Broomfield: Oceans Beyond Piracy.

<sup>14</sup> Payne, J.C. (2010). *Piracy today: Fighting villainy on the high seas*. Dobbs Ferry: Sheridan House.

<sup>15</sup> Bowden, A. (2011). *The economic cost of Somali piracy 2010*. Broomfield: Oceans Beyond Piracy.

Between 2008 and 2012, an estimated \$300 million was paid in ransom to Somali pirates. This is almost twice the combined amount of humanitarian assistance and development aid to Somalia during that same period, to put the number in perspective.

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<sup>16</sup> Zach, D. A., Seyle, D. C., & Madsen, J. V. (2013). *Burden-sharing Multi-level Governance*. Broomfield: Oceans Beyond Piracy (OBP).

## 2. Literature and theory review

### 2.1. The academic field of piracy studies

In the early 2000s, research on maritime piracy was still a niche project. With counter-piracy policy gathering more attention, the term 'piracy studies' was coined by Johnson and Pladet (2003).<sup>17</sup> Over the next decade, the number of piracy researchers multiplied. Today, there are hundreds of academic books, journal articles, working papers, and policy reports on post-World War II maritime piracy.<sup>18</sup>

A multitude of different problematizations of piracy have created a diverse academic field, representing various disciplinary paradigms. Piracy has been addressed through the perspective of, for instance, security and strategic studies, economic and technical studies, anthropology, criminology, peace research, development studies, as well as sociology and psychology. A large part of the research has, however, been conducted from a legal point of view, essentially translating piracy into a problem of crime requiring an effective law enforcement response. That said, no single discipline enjoys a hegemonic status, and the field of piracy studies is characterized by a high degree of interdisciplinarity.<sup>19</sup>

When piracy grew as a political problem, piracy studies emerged as an academic response to an indeterminate situation. Thanks to the interdisciplinarity of piracy studies, challenges posed by piracy are translated into distinct problems that can be mastered. Research has produced contributions with immediate practical policy relevance. In this sense, there is something of a mutual exchange between academia and practitioners. In summary, piracy studies is an innovative mode of knowledge

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<sup>17</sup> Johnson, D., & Pladet, E. (2003). *An overview of current concerns in piracy studies and new directions for research*. Amsterdam: International Institute for Asian Studies.

<sup>18</sup> Around 500 of these publications are listed in Stockbruegger, J., & Bueger, C. (2015). *Contemporary piracy as an issue of academic inquiry: A bibliography*. Cardiff: Cardiff University. Retrieved November 9, 2016 from <<http://piracy-studies.org/wp-content/uploads/2015/08/Piracy-Bibliography-2015.pdf>>.

<sup>19</sup> Bueger, C. (2014). Piracy studies: Academic responses to the return of an ancient menace. *Cooperation and conflict*, 49(3), 406–416.

generation to address a contemporary problem. As such, it makes valuable epistemological contributions.<sup>20</sup>

The academic field of piracy studies can, according to Bueger (2014), be organised in three pillars based on which areas that, so far, have attracted most scholarly interest. The first pillar studies the practice and organization of pirates. The second studies organizational responses to piracy. Finally, the third pillar refers to studies attempting to theorize and contextualize contemporary piracy in the broader historical, political, legal, and economic development.<sup>21</sup>

A large share of research on contemporary piracy falls under the second pillar, reviewing the international response to maritime piracy and its consequences for global security governance and international relations. This is a complex field in which both public and private actors collaborate and compete. It is studies belonging to this category that are predominantly made with a legal perspective. Guilfoyle<sup>22</sup>, Kraska<sup>23</sup> as well as Geiß and Petrig<sup>24</sup> provide a useful overview of counter-piracy response at both international and national levels. However, as legal scholars, they interpret counter-governance challenges mainly as technical challenges.

## 2.2. The organizational field of counter-piracy

Counter-piracy has arguably grown into becoming an organizational field, comprised of a wide range of governmental and non-governmental actors. In viewing counter-piracy as an organizational field, we can acknowledge the totality of relevant actors which together constitute a recognized area of institutional life, as DiMaggio and Powell

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<sup>20</sup> Bueger, C. (2014). Piracy studies: Academic responses to the return of an ancient menace. *Cooperation and conflict*, 49(3), 406–416.

<sup>21</sup> Bueger, C. (2014). Piracy studies: Academic responses to the return of an ancient menace. *Cooperation and conflict*, 49(3), 406–416.

<sup>22</sup> See, e.g. Guilfoyle, D. (Ed.). (2013). *Modern Piracy: Legal challenges and responses*. Cheltenham: Edward Elgar.

<sup>23</sup> See, e.g., Kraska, J. (2011). *Contemporary maritime piracy: International law, strategy, and diplomacy at sea*. Santa Barbara: Praeger.

<sup>24</sup> See, e.g., Geiß, R., & Petrig, A. (2011). *Piracy and armed robbery at sea: the legal framework for counter-piracy operations in Somalia and the Gulf of Aden*. Oxford: Oxford University Press.

(1983) argue.<sup>25</sup> The glue of this organizational field is the organizations' common perception of piracy as a problem, and their shared willingness to act against it.

More specifically, the perception of counter-piracy as an organizational field has generated research from three main angles. First, it allows for the study of non-state actors in international governance, which is increasingly useful in the domain of international relations. Second, the informal counter-piracy practices of organizations involved have been addressed, in addition to mandate or rule bound activities. Governance practices is one example. Others are epistemic, security, law enforcement, developmental, and humanitarian practices according to a taxonomy proposed by Bueger (2013).<sup>26</sup> Lastly, it highlights the competition for resources and symbolic capital, i.e. the power to set the agenda, between the organizations involved.

Literature on the CGPCS typically focuses on the second of these angles. However, research on the specific governance practices of the CGPCS and other informal deliberative processes is, although increasing, still rather limited. The best overview is provided in publications within the CGPCS Lessons Learned project, notably its core report edited by Tardy (2014)<sup>27</sup> and the aggregate works of Christian Bueger<sup>28</sup>, as well as a report by Zach, Seyle, and Madsen (2013)<sup>29</sup> for the non-profit stakeholder organization Oceans Beyond Piracy.

## 2.3. Counter-piracy governance

Formalist blinders hamper the study of the role of business in global security governance. Leander (2012) argues that the focus on practice (assemblages) and attention to the production of hierarchical orders (symbolic power) can help removing

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<sup>25</sup> DiMaggio, P., & Powell, W.W. (1983). The iron cage revisited: Collective rationality and institutional isomorphism in organizational fields. *American sociological review*, 48(2), 147–160.

<sup>26</sup> Bueger, C. (2013). *Responses to contemporary piracy: Disentangling the organizational field*, in Guilfoyle, D. (Ed.). *Modern piracy: Legal challenges and responses*. Cheltenham: Edward Elgar.

<sup>27</sup> Tardy, T. (Ed.). (2014). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies.

<sup>28</sup> A list of publications is available on <<http://bueger.info/publications/>> (last accessed November 9, 2016).

<sup>29</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

these blinders.<sup>30</sup> The following section will, therefore, highlight previous findings on the development of assemblages and the construction of symbolic power in the field of counter-piracy.

### 2.3.1. The CGPCS: A novel governance arrangement

The organizational field of counter-piracy has extended both along a geographical dimension (piracy going from being a local to an international problem), and a functional one (piracy going from being treated as a regular crime to requiring new governance arrangements). From the functional perspective, there has been a need to address the increase in piracy off the coast of Somalia within various alignments, including new, hybrid assemblages of states, IOs, industry, and academics, working in a problem-centred manner.<sup>31</sup> These alignments are, according to Bueger and Stockbruegger (2012), formed around a shared securitization of piracy as a threat to, among other things, freedom of navigation and international trade.<sup>32</sup>

The CGPCS is a novel form of security alignment to cope with the problem of piracy. As such, it does not follow the traditional description of international relations theory, according to Bueger (2013). Instead, security alignments could possibly be analyzed as 'security communities', but the participation of non-state actors in the CGPCS prevents this.<sup>33</sup> Adler (2008) suggests reading security communities as a community of practice.<sup>34</sup> The community of practice framework developed by Wenger (2000) explains how a sense of joint enterprise, mutual engagement, and a shared repertoire lead to

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<sup>30</sup> Leander, A. (2010). Practices (re)producing orders: Understanding the role of business in global security governance. In Ougaard, M. & Leander, A. (Eds.) *Business and global governance*. Oxford: Routledge.

<sup>31</sup> Bueger, C. (2013). *Responses to contemporary piracy: Disentangling the organizational field*, in Guilfoyle, D. (Ed.). *Modern piracy: Legal challenges and responses*. Cheltenham: Edward Elgar.

<sup>32</sup> Bueger, C., & Stockbruegger, J. (2013). Security communities, alliances, and macrosecuritization: The practices of counter-piracy governance. In Struett, M.J., Carlson, J.D., & Nance, M.T. (Eds.). *Maritime piracy and the construction of global governance*. Oxford: Routledge.

<sup>33</sup> Bueger, C. (2013). Counter-piracy, communities of practice and new security alignments. *Journal of regional security*, 8:1, 49–62.

<sup>34</sup> Adler, E. (2008). The spread of security communities: communities of practice, self-restraint, and NATO's post-Cold War transformation. *European journal of international relations*, 14(2), 195–230.

competence.<sup>35</sup> In this perspective, it is practice that holds the security alignment together.

Multilateralism is defined by Keohane (1990) as “the practice of co-ordinating national policies in groups of three or more state, through ad hoc arrangements or by means of institutions”.<sup>36</sup> In modern examples of multilateralism, however, non-state actors challenge the dominant role of powerful nations. According to Huggins and Madsen (2014), the inclusion of multiple stakeholders, public and private, in the work of the CGPCS has expanded the multilateral model to become a multi-stakeholder model.<sup>37</sup>

Literature on CGPCS repeatedly describes the mechanism as either a new governance or an experimental governance arrangement.<sup>38</sup> Bueger (2011) highlights several features that point to this: the CGPCS is problem-oriented, output-oriented, ad hoc, informal, network-centered, and non-hierarchical.<sup>39</sup> Bueger (2016) also proposes to read CGPCS as a laboratory, and its practices as experimenting. Epistemic practices can then be seen as a by-product of governance practices.<sup>40</sup>

### 2.3.2. Authority relations

The authority of business in governing economic, social, and environmental phenomena is advancing, either through lobbying power or through the adoption of self-regulation, standards, codes of conduct, or other initiatives that shape regulation. Ponte et al. (2011) explain that voluntary international standards have emerged as a result of perceived governmental failures in addressing global problems, for instance

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<sup>35</sup> Wenger, E. (2000). Communities of practice and social learning systems. *Organization*, 7(2), 225–246.

<sup>36</sup> Keohane, R. (1990). Multilateralism: An agenda for research. *International journal*, 45(4), 731–764.

<sup>37</sup> Huggins, J., & Madsen, J.V. (2014). The CGPCS: The evolution of multilateralism to multi-stakeholder collaboration. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 18–27.

<sup>38</sup> See, e.g. Guilfoyle, D. (2013). Prosecuting pirates: The Contact Group on Piracy off the Coast of Somalia, governance and international law. *Global Policy*, 4(1), 73–79 and Bueger, C. (2014). Experimental governance: Can the lessons of the CGPCS be transferred to other policy fields? In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 78–85.

<sup>39</sup> Bueger, C. (2011, October 5). *The new public face of the Contact Group*. Retrieved February 29, 2016 from <<http://piracy-studies.org/the-new-public-face-of-the-contact-group/>>.

<sup>40</sup> Bueger, C. (2016). Experimenting with global governance: Learning lessons in the Contact Group on piracy. In Voss, J.-P., & Freeman, R. (2016). *Knowing governance*. Basingstoke: Palgrave.

because of consensus building prone to deadlock. Voluntary standards are thus trying to overcome the limits of public regulatory capacity.<sup>41</sup> This is leading to a re-articulation of regulatory authority, in which standards are one of the most important factors.<sup>42</sup>

In order to achieve adoption of and compliance with new standards, standard-setters need to constantly achieve, maintain, and manage legitimacy to exert authority, regardless of whether the standard-setting organization or network is linked to governing authorities or not. Because legitimization problems are inherent in intergovernmental governance, non-governmental forms of governance have become more prominent, particularly addressing transnational problems that were never state-regulated to begin with.<sup>43</sup>

However, private authority is based on other forms of legitimacy than public authority. Boström and Tamm Hallström (2010) exemplify this argument with multi-stakeholder initiatives (MSI), in which much effort is devoted to mimicking democratic representation.<sup>44</sup> On the legitimacy of MSI, or non-state market-driven (NSMD) governance, Bernstein and Cashore (2007) identify five characteristics that distinguish it from other forms of private authority. First, NSDM systems do not derive governing authority from the state. Second, they steer themselves toward collective goals and adapt institutional designs accordingly. Third, producers and consumers in the supply chain grant them authority. Fourth, NSMD systems address global problems that firms otherwise would not address. Finally, they demand compliance and create consequences for non-compliance.<sup>45</sup>

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<sup>41</sup> Ponte S., Gibbon, P., & Vestergaard, J. (2011) Governing through standards: An introduction. In Ponte S., Gibbon, P., & Vestergaard, J. *Governing through standards: Origins, drivers and limitations*. Basingstoke: Palgrave, 1–24.

<sup>42</sup> Utting, P. (2008). Rearticulating regulatory approaches: Private-public authority and corporate social responsibility. In Rittberger, V., & Nettesheim, M. (Eds.). *Authority in the global political economy*. Basingstoke: Palgrave Macmillan.

<sup>43</sup> Ponte S., Gibbon, P., & Vestergaard, J. (2011) Governing through standards: An introduction. In Ponte S., Gibbon, P., & Vestergaard, J. *Governing through standards: Origins, drivers and limitations*. Basingstoke: Palgrave, 1–24.

<sup>44</sup> Boström, M., & Tamm Hallström, K. (2010) as cited in Ponte S., Gibbon, P., & Vestergaard, J. (2011) Governing through standards: An introduction. In Ponte S., Gibbon, P., & Vestergaard, J. *Governing through standards: Origins, drivers and limitations*. Basingstoke: Palgrave, 1–24.

<sup>45</sup> Bernstein, S., & Cashore, B. (2007). Can non-state global governance be legitimate? An analytical framework. *Regulation & Governance*, 1(4), 347–371.

Cutler, Haufler, and Porter (1999) offer a particularly useful categorization of the sources of non-state actors' political and rulemaking authority: (1) perceived expertise, (2) historical practice, and finally (3) implicit and explicit delegation by the state.<sup>46</sup> Hall and Biersteker (2002)<sup>47</sup>, Utting (2008)<sup>48</sup>, and Ougaard and Leander (2010)<sup>49</sup> are examples of other authors that have addressed the advancement of private authority in governing economic, social, and environmental issues.

### 2.3.3. Territory and power

Territory can be understood as an instrument to clarify something else, typically political authority, cultural identity, individual autonomy, or rights. In this regard, territories are socially constructed, meaning human action is required to turn area into territory.<sup>50</sup> An established definition of territoriality is offered by Sack (1986), who means it is best understood as “a spatial strategy to affect, influence, or control resources and people, by controlling area”.<sup>51</sup> Expressed differently, territoriality is the linking of a phenomenon or entity to a bounded space, and by that manifesting power in the material world.<sup>52</sup>

The definition of and assumptions behind the notion of territoriality is generally assumed and never explored. Territoriality is commonly associated with the Westphalian principles of state sovereignty, i.e. the inviolability of territory. Sovereignty and autonomy are associated with high degrees of symbolic power, which makes these conspicuous in the political discourse.<sup>53</sup> The modern state is perceived as a territorial

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<sup>46</sup> Cutler, A.C., Haufler, V., & Porter, T. (1999). Private authority and international affairs. In Cutler, A.C., Haufler, V., & Porter, T. (Eds.). *Private authority and international affairs*. Albany: State University of New York Press.

<sup>47</sup> Hall, R.B., & Biersteker, T.J. (2002). The emergence of private authority in the international system. In Hall, R.B., & Biersteker, T.J. (Eds.). *The emergence of private authority in global governance*. Cambridge: Cambridge University Press.

<sup>48</sup> Utting, P. (2008). Rearticulating regulatory approaches: Private-public authority and corporate social responsibility. In Rittberger, V., & Nettesheim, M. (Eds.). *Authority in the global political economy*. Basingstoke: Palgrave Macmillan.

<sup>49</sup> Ougaard, M. & Leander, A. (2010). *Business and global governance*. Oxford: Routledge.

<sup>50</sup> Delaney, D. (2008). *Territory: a short introduction*. Hoboken: John Wiley & Sons.

<sup>51</sup> Sack, R.D. (1986). *Human territoriality: Its theory and history*. Cambridge: Cambridge University Press.

<sup>52</sup> Delaney, D. (2008). *Territory: a short introduction*. Hoboken: John Wiley & Sons.

<sup>53</sup> Delaney, D. (2008). *Territory: a short introduction*. Hoboken: John Wiley & Sons.

entity rather than a functional one. In fact, it is difficult to discuss the idea of sovereignty in non-territorial terms.<sup>54</sup>

Comparative territorial politics explores the characteristics and reasons of territory as a tool to create, maintain, or modify political power, and centralizing, or decentralizing, decision-making. The concept of political territoriality directs attention to the multi-dimensionality of political systems, referring to the dimensions of institutional design (polity), processes and actors (politics), and outputs (policy). Analysing only one or two of these three dimensions to find territorial elements of a system is incomplete, and would likely lead to false conclusions.<sup>55</sup>

Mueller (2012) proposes a conceptual framework of the aspects of political territoriality in these three dimensions. The conceptualization highlights seven core indicators: (1) territorial loyalty, (2) political symbolism, (3) administrative powers, (4) fiscal powers, (5) legislative powers, (6) political actors, and (7) political processes.<sup>56</sup>

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<sup>54</sup> Mueller, S. (2012). Federalism and the concept of political territoriality. *L'Europe en formation*, (1), 95–120.

<sup>55</sup> Mueller, S. (2012). Federalism and the concept of political territoriality. *L'Europe en formation*, (1), 95–120.

<sup>56</sup> Mueller, S. (2012). Federalism and the concept of political territoriality. *L'Europe en formation*, (1), 95–120.

## 3. Methodology

### 3.1. Philosophy of science

The philosophical approach of this thesis is pragmatism. A pragmatic philosophy of science is problem-centered and practice-oriented. At the centre of inquiry is the research problem, formulated as a research question. In addressing this research problem, pragmatism is not committed to any one method. Both observable phenomena and subjective meanings can constitute acceptable knowledge. As an epistemological approach, pragmatism evaluates the value of knowledge from its ability to support or refute claims.

Pragmatism allows this thesis to circumvent discussions on the ontological complexity of contemporary piracy, i.e. the fundamental question of why piracy is considered to be problematic in the first place. Piracy is not one problem, but many, and there are tensions and contradictions between these paradigms. Bueger (2013) argues that counter-piracy is underpinned by five different paradigms: (1) the *security* paradigm, within which piracy is a threat, (2) the *legal* paradigm, within which piracy is a crime, (3) the *economic* paradigm, within which piracy is a business model, (4) the *development* paradigm, within which piracy is a problem of structural root causes, and finally (5) the *humanitarian* paradigm, within which piracy is the source of suffering.<sup>57</sup>

This thesis sets out to examine the role of business in counter-governance. Industry practice is here understood as a factor altering existing authority relations. An economic paradigm highlights the consideration of calculable costs by problematizing piracy as an interplay of two business models. The strategic response is developing a business solution, in this case self-regulation. The economic paradigm articulates factors that are the most relevant in addressing the research question. In reality, however, the five counter-piracy paradigms form hybrids. The sense of urgency of Somali piracy which has produced innovative institutional responses is obviously not propelled solely by cost-saving concerns, which the thesis will show. The pragmatic

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<sup>57</sup> Bueger, C. (2013). Orchestrating the response: Somali piracy and ontological complexity. *Global policy*, 4(1), 86–93.

approach, however, acknowledges the value of multiple ontological relations, although they might not form part of the research.

## 3.2. Research purpose

Research to date sees counter-piracy governance challenges predominantly as questions of coordination, harmonization, and efficiency. The dominating perspective in piracy studies, the legal perspective, has so far addressed this mainly on a technical level. Consequently, the role of private business is not sufficiently explored.

Particularly, a power-relations perspective is missing in order to properly address all aspects of the organizational field. The purpose of this thesis on an overall level is to contribute to the existing body of knowledge by examining the role of business in counter-piracy governance.

The aim is not only to empirically examine the phenomenon of business involvement in counter-piracy standard-setting, but also to add to the development of theory by attempting to expand the application of existing theoretical frameworks to a new area. Contemporary piracy is thus contextualized in the broader political and legal development. The research contribution of this thesis is relevant to the debate on the mutual engagements between business and global governance, and to the understanding of the evolution of policy regimes. It will probably be of particular appeal to those interested in the commercialization of security.

The long-lasting human suffering and turmoil in Somalia, which is understood as the source of the rise of maritime piracy, will not be addressed in this thesis. Hardship posed by piracy to seafarers and their families will not be mentioned primarily because of its humanitarian implications. To the reader, this can come across as particularly cynical, but has been found necessary to achieve a consistent delimitation.

## 3.3. Research design and strategy

The thesis highlights industry involvement in addressing various practical concerns for counter-piracy governance. It examines counter-piracy as two separate but parallel and interrelated processes: a political and regulatory process, and a spatial process.

The research of this thesis is designed as a case study. This has the advantage of enabling phenomena and processes to be studied within a relevant context, without any limitation of sources of evidence or variables for data collection.<sup>58</sup> Using the Contact Group on Piracy off the Coast of Somalia (CGPCS) as a case study has allowed for exploratory research on the authority of the private sector in counter-piracy governance, which is an area that has not yet acquired academic focus. The study also is also explanatory in nature as the phenomenon is sought to be linked to existing theory and knowledge. In order to provide an overview of the problem of maritime piracy and its institutional responses, the study also has descriptive elements.

This thesis uses a mixed-methods approach in that both qualitative and quantitative data is analyzed. More specifically, it represents an example of mixed-model research, because these analytical procedures combine both qualitative and quantitative data.<sup>59</sup> That said, the overwhelming part of data used is of qualitative nature, and the study therefore uses a qualitative priority.<sup>60</sup> To the extent that quantitative data is used, for instance on piracy activity or compliance rates with shipping self-defensive measures, these numbers are converted into narrative that allows a qualitative analysis. Adding a quantitative strand to enhance the overall qualitative study is an example of an embedded research design.<sup>61</sup>

### 3.4. Data collection

The study is based exclusively on secondary sources. Qualitative and quantitative data have been collected concurrently throughout the research process. Secondary sources have the advantage of requiring fewer resources, which has allowed the inclusion of more relevant aspects to address a complex research topic. Literature on theory has mainly been found physically at the library or as online resources provided by the library. Peer-reviewed articles on counter-piracy were accessed through online journal databases, while other analyses were found publicly available on, for example, the

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<sup>58</sup> Saunders, M., Lewis, P., & Thornhill, A. (2009). *Research methods for business students*. 5th ed. Harlow: Pearson Education.

<sup>59</sup> Saunders, M., Lewis, P., & Thornhill, A. (2009). *Research methods for business students*. 5th ed. Harlow: Pearson Education.

<sup>60</sup> Creswell, J.W., & Plano Clark, V.L. (2011). *Designing and conducting mixed methods research*. 2nd ed. Thousand Oaks: SAGE.

<sup>61</sup> Creswell, J.W., & Plano Clark, V.L. (2011). *Designing and conducting mixed methods research*. 2nd ed. Thousand Oaks: SAGE.

“Lessons from piracy” website of the Lessons Learned project.<sup>62</sup> This website also organizes the repository hosting the archive of the CGPCS since 2015, which means all CGPCS communiqués and newsletters were found there. UN system resolutions and other documents were accessed through the databases of the respective organ or agency.

### 3.5. Reliability and validity

Literature on contemporary piracy off the coast of Somalia is limited and, in reality, restricted to a small number of scholars. The literature available has been published parallel to the development of the issue, and might for this reason make erroneous conclusions. Using data originally collected by scholars with another research objective in mind might also lead to false interpretations.

A more likely scenario, though, is that literature is subject to biased views. In practice, authors of available sources have, almost all, been involved in the CGPCS process themselves and are not objective on the merits of this mechanism. To the extent possible, various sources have been employed to triangulate data and enhance the reliability. Ideally, such a triangulation would have included also primary sources.

Triangulation is also important to ensure the validity of the research. It has assisted in identifying the most relevant and compelling factors to be addressed. Yet, a single case study generates limited validity. For the findings of this thesis to be generalizable the robustness of the conclusions would have to be exposed to further research. This is especially important considering the singularity of the CGPCS mechanism and the special legal circumstances.

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<sup>62</sup> See <<http://www.lessonsfrompiracy.net>>.

## 4. Counter-piracy as a political and regulatory process

### 4.1. An innovative approach to an ancient problem

Posing a threat to regional stability, international trade, and energy security, piracy off the coast of Somalia has transnational dimensions widely transcending the capacities of the fragile state. Similar to other contemporary global challenges, the international community has recognized East African piracy as an issue of collective responsibility. While intergovernmental organizations (IGOs) can facilitate international cooperation, they are, however, inherently unable to fill governance gaps at the global level.

IGOs generally suffer from underfunding, procedural inflexibility, and the lack of compliance mechanisms. In addition, mobilizing political will to act is a core challenge. Collective action is a deep-rooted dilemma in the prevailing world order built on Westphalian principles, with absence of a supranational authority. East African maritime piracy is a symptom of the disintegration of central authority in Somalia. It emanates from an inadequately governed territorial space that falls within an internationally recognized jurisdiction. Such domestic governance problems must be solved within the existing normative framework, respecting sovereignty and non-interference.<sup>63</sup>

The political response to Somali piracy highlights the benefits of developing alternative approaches to governance challenges. Burden-sharing multilevel governance involving diverse stakeholders has been key in order to prevent and suppress maritime crime. The Contact Group on Piracy off the Coast of Somalia (CGPCS) was developed as a voluntary mechanism for states to collectively address the issue. It has helped establishing horizontal linkages among national bureaucracies, as well as the

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<sup>63</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

development of counter-piracy institutions in IGOs.<sup>64</sup> The CGPCS has embraced the active participation of private-sector stakeholders, creating a laboratory for innovative governance.

## 4.2. Emergence of the CGPCS

Maritime safety and security gained increasing national and international political attention over the course of the first decade of the new millennium, to some extent as a result of lobbying by the shipping industry. An enhanced appreciation of the complexity of the issue propelled the UN and associated bodies into taking a series of formal steps, including the adoption of resolutions encouraging the development of new initiatives to combat piracy.<sup>65</sup>

The International Maritime Organization (IMO) not only took a leading role in raising awareness of the situation of Somali piracy, but arguably also laid the groundwork for the international community's engagement in collective problem-solving.<sup>66</sup> In 1999, the Maritime Safety Committee (MSC) of the IMO revised some of its recommendations to address the threats to free navigation and trade, and the need for cooperation on anti-piracy efforts. National authorities were encouraged to work together with seafarers and shipowners, while the industry was given guidance on protective measures to reduce vulnerability to piracy attacks.<sup>67</sup>

In light of the surge in East African piracy, several subsequent resolutions by the IMO Assembly<sup>68</sup> and the UN General Assembly<sup>69</sup> called for further capacity-building measures, including judicial, legislative and law enforcement actions, as well as the issuance of guidance to ships. The growing concern over, notably, the World Food Program's (WFP) prospects of delivering much-needed humanitarian relief to Somalia

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<sup>64</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>65</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>66</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>67</sup> See IMO circulars MSC/Circ.622/Rev.1 and MSC/Circ.623/Rev.2. (These circulars have now been superseded.)

<sup>68</sup> viz., IMO Assembly resolutions A.922(22) (2001), A.979(24) (2005), and A.1002(25) (2007).

<sup>69</sup> viz., UN General Assembly resolutions A/RES/59/24 (2005) and A/RES/61/222 (2006).

brought the situation to the attention of the UN Secretary General and the Security Council.

Mobilized by the US and France, the Security Council produced five separate resolutions during 2008<sup>70</sup>, creating the legal framework authorizing military intervention within Somali territorial waters through the invocation of Chapter VII of the UN Charter. These and subsequent related resolutions provide the legal mandate for three ongoing naval operations: EU's operation Atalanta (EU NAVFOR)<sup>71</sup>, NATO's Operation Ocean Shield<sup>72</sup>, and the Combined Maritime Forces' (CMF) Combined Task Force 151 (CTF 151).

In December 2008, the US announced its intent to work with partners to create a contact group on Somali piracy. With the passage of Resolution 1851, the Security Council endorsed this initiative. The contact group would serve as a mechanism for states to coordinate their response to the scourge of piracy. A common point of contact would enable governments to take the lead on efforts to combat piracy, and to reach out to other partners, including the shipping and insurance industries.<sup>73</sup> This combination of public and private maritime security activities into an integrated effort to address the threats of piracy clearly reflects the US National Strategy for Maritime Security, adopted by the George W. Bush administration in 2005.<sup>74</sup>

The US began reaching out to like-minded partners and other states with presumed interest in fighting piracy. Through informal discussions in New York, a coalition of actors with a common interest and a willingness to act soon took form. Strong engagement was exhibited when an initial conference was organized on January 14, 2009. A total of 24 states and five regional and international organizations participated

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<sup>70</sup> viz., UN Security Council resolution S/RES/1816 (2008), S/RES/1838 (2008), S/RES/1844 (2008), S/RES/1846 (2008), and S/RES/1851 (2008).

<sup>71</sup> The current mandate of EU NAVFOR agreed by the EU Council expires on December 12, 2016.

<sup>72</sup> Operation Ocean Shield was initiated in August 2009 following Allied Protector, which was preceded by Allied Provider. NATO will terminate Ocean Shield on December 15, 2016.

<sup>73</sup> UN Security Council meeting record S/PV.6046 (2008).

<sup>74</sup> US Department of State. (2005, September 1). *The national strategy for maritime security*. Retrieved October 28, 2016 from <<http://www.state.gov/t/pm/rls/othr/misc/255321.htm>>.

at the first plenary meeting when the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established.<sup>75</sup>

Important to note is that, before the informal contact group was created, discussions had considered all possibilities, including the deployment of a UN peacekeeping mission, strengthening the IMO, and setting up an international tribunal or a Somali extraterritorial court for the prosecution of pirates.<sup>76</sup>

The CGPCS is the result of the need for new forms of policy response to meet non-traditional threats that are neither state-based nor of a purely military nature. The contact group should, however, not be seen as the policy response itself, but rather as a framework enabling policy development in an informal and innovative way.<sup>77</sup> The CGPCS has supported the military carrying out naval counter-piracy operations, supported the shipping industry in deploying measures for self-defense, supported law enforcement and the judiciary to apprehend and prosecute pirates, and finally supported regional capacity building.<sup>78</sup>

## 4.3. Work, procedures and participation

### 4.3.1. Problem formulation

The first plenary meeting of the CGPCS in January 2009 concluded that piracy off the coast of Somalia is a symptom of a wider lack of security and rule of law in the country. Along with other challenges, including widespread illegal fishing and offshore toxic waste dumping, piracy adversely affects the Somali economy and marine environment and constitutes, by extension, a threat to regional stability. Therefore, the meeting noted, counter-piracy activities are only part of wider international efforts in the overall

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<sup>75</sup> These were Australia, China, Denmark, Djibouti, Egypt, France, Germany, Greece, India, Italy, Japan, Kenya, Republic of Korea, The Netherlands, Oman, Russia, Saudi Arabia, Somalia (Transitional Federal Government, TFG), Spain, Turkey, United Arab Emirates, United Kingdom, United States, and Yemen along with the African Union, the EU, NATO, the UN Secretariat, and the IMO.

<sup>76</sup> Huggins, J., & Madsen, J.V. (2014). The CGPCS: The evolution of multilateralism to multi-stakeholder collaboration. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 18–27.

<sup>77</sup> Tardy, T. (2014). Introduction. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 7–10.

<sup>78</sup> Swarttouw, H. & Hopkins, D.L. (2014). The Contact Group on Piracy off the Coast of Somalia: Genesis, rationale and objectives. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 11–17.

response to the complex and multifaceted challenges in the country. The objective of the CGPCS would be to facilitate discussion and coordination of actions related to piracy alongside other regional and international initiatives.<sup>79</sup>

The meeting identified four main problems for the international community related to piracy off the Horn of Africa: (1) disruption of critical humanitarian aid deliveries to Somalia, (2) increase in shipping insurance premiums to exorbitant levels due to million-dollar ransoms for release of the hostages, ships and cargoes, (3) damages to littoral economies from vessel diversion around the Cape of Good Hope, and (4) higher prospect of an environmental disaster as ships fall prey to hostile intent.<sup>80</sup>

### 4.3.2. Issue areas

Six focus areas were identified as pertinent to the group's work: (1) improving information sharing and operational support to counter-piracy operations, (2) establishing a counter-piracy coordination mechanism, (3) strengthening judicial frameworks for arrest, prosecution and detention of pirates, (4) strengthening commercial shipping self-awareness, (5) pursuing improved diplomatic and public information efforts, and (6) tracking and disrupting financial flows between pirate leaders and their financiers.<sup>81</sup>

The specific and limited focus on ransom-fuelled maritime piracy off the coast of Somalia represents a commonality of purpose which allows political cooperation among actors that not only are very diverse, but also has differing interests and who would, therefore, not normally interact with each other.<sup>82</sup>

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<sup>79</sup> CGPCS. (2009, January 14). [First plenary meeting communiqué]. Retrieved October 28, 2016 from <[http://www.lessonsfrompiracy.net/files/2015/03/Communique\\_1st\\_Plenary.pdf](http://www.lessonsfrompiracy.net/files/2015/03/Communique_1st_Plenary.pdf)>.

<sup>80</sup> CGPCS. (2009, January 14). [First plenary meeting communiqué]. Retrieved October 28, 2016 from <[http://www.lessonsfrompiracy.net/files/2015/03/Communique\\_1st\\_Plenary.pdf](http://www.lessonsfrompiracy.net/files/2015/03/Communique_1st_Plenary.pdf)>.

<sup>81</sup> CGPCS. (2009, January 14). [First plenary meeting communiqué]. Retrieved October 28, 2016 from <[http://www.lessonsfrompiracy.net/files/2015/03/Communique\\_1st\\_Plenary.pdf](http://www.lessonsfrompiracy.net/files/2015/03/Communique_1st_Plenary.pdf)>.

<sup>82</sup> See Missiroli, A., & Popowski, M. (2014). Foreword. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 78–85, and Swartouw, H. & Hopkins, D.L. (2014). The Contact Group on Piracy off the Coast of Somalia: Genesis, rationale and objectives. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 11–17.

Some participants have wished to increase the mandate both functionally and geographically. However, the CGPCS leadership has focused on an achievable goal, knowing it is a temporary and issue-specific forum. Consequently, longer-term issues have been passed onto other mechanisms. Operational coordination of military activities are left with the Shared Awareness and Deconfliction (SHADE) mechanism. The IMO together with the EU and regional organizations coordinate the capacity building activities within the Capacity Building Coordination Group (CBCG). Finally a Trust Fund was established to secure the funding of rule-of-law projects.<sup>83</sup>

### 4.3.3. Working groups

Four, later five, working groups were established and each given the task of addressing a specific issue. Working Group 1 (WG1) was tasked with naval operational coordination and information sharing besides establishing a regional coordination center. WG2 was to address the judicial aspects of piracy with the support of the UN Office on Drugs and Crime (UNODC). WG3 was assigned the role of strengthening the shipping industry's self-awareness and promote self-defensive measures with the assistance of the IMO. Finally, WG4 was to improve diplomatic and public information efforts, raising awareness on the issue.<sup>84</sup>

A fifth working group, WG5, was established in 2011 at the group's ninth plenary session to address the flow of illegal funds financing piracy.<sup>85</sup> Opposition from some states owing to the sensitivity of sharing intelligence had up to then hindered the implementation of a this function.<sup>86</sup>

Following a reform process initiated in 2014, the work of WG4 was discontinued and WG2 was replaced with the so-called Legal Forum. WG1 has been renamed 'Working

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<sup>83</sup> Huggins, J., & Madsen, J.V. (2014). The CGPCS: The evolution of multilateralism to multi-stakeholder collaboration. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 18–27.

<sup>84</sup> CGPCS. (2009, January 14). [First plenary meeting communiqué]. Retrieved October 28, 2016 from <[http://www.lessonsfrompiracy.net/files/2015/03/Communique\\_1st\\_Plenary.pdf](http://www.lessonsfrompiracy.net/files/2015/03/Communique_1st_Plenary.pdf)>.

<sup>85</sup> CGPCS. (2011, July 14). [Ninth plenary meeting communiqué]. Retrieved October 28, 2016 from <[http://www.lessonsfrompiracy.net/files/2015/03/Communique\\_9th\\_Plenary.pdf](http://www.lessonsfrompiracy.net/files/2015/03/Communique_9th_Plenary.pdf)>.

<sup>86</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

Group on Capacity-Building’, WG3 is now called ‘Maritime Counter-Piracy and Mitigation Operations’, and WG5 ‘Disrupting Pirate Networks Ashore’.<sup>87</sup>

The multi-layered approach with functional segregation of issues into working groups ensures that problems are tackled at an appropriate level of specialization, while at the same time ensuring overall coherence.<sup>88</sup>

#### 4.3.4. Procedures

The CGPCS agreed at the second plenary meeting that decisions would be made by consensus. Working groups are be able to bring recommendations through their respective chairs’ summaries to plenary level for consideration and decision.<sup>89</sup> If more formal action is needed, UN member states can then initiate resolutions which they routinely do to adopt multilateral policies and launch operations.<sup>90</sup> The CGPCS is currently chaired by Seychelles. The position of chair of the plenary sessions, as well as the chairs and co-chairs of working groups, are designated on a voluntary rotating basis.

Meetings are held at an *ad hoc* basis depending on the needs. To allow for broad-based participation, the CGPCS has agreed to choose the UN Headquarters in New York as the venue for plenary meetings, unless any state request to host a meeting.<sup>91</sup> This way UN mission staff can cover meetings without capitals having to send representation. The venue of working group meetings is at the discretion of the respective chairperson.

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<sup>87</sup> CGPCS. (2014, July 14). [Sixteenth plenary meeting communiqué]. Retrieved October 28, 2016 from <[http://www.lessonsfrompiracy.net/files/2015/03/Communique\\_16th\\_-Plenary.pdf](http://www.lessonsfrompiracy.net/files/2015/03/Communique_16th_-Plenary.pdf)>.

<sup>88</sup> Bueger, C. (2015). *Learning from (Somali) piracy: Lessons from the Contact Group on Piracy off the Coast of Somalia*. Briefing to NATO Operational Policy Committee, January 29, 2015. Retrieved December 13, 2015 from <<http://bueger.info/wp-content/uploads/2015/01/Bueger-LLP-Briefing-for-NATO.pdf>>.

<sup>89</sup> CGPCS. (2009, March 17). [Second plenary meeting communiqué]. Retrieved October 29, 2016 from <[http://www.lessonsfrompiracy.net/files/2015/03/Communique\\_2nd\\_Plenary.pdf](http://www.lessonsfrompiracy.net/files/2015/03/Communique_2nd_Plenary.pdf)>.

<sup>90</sup> Missiroli, A., & Popowski, M. (2014). Foreword. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 78–85.

<sup>91</sup> CGPCS. (2009, March 17). [Second plenary meeting communiqué]. Retrieved October 29, 2016 from <[http://www.lessonsfrompiracy.net/files/2015/03/Communique\\_2nd\\_Plenary.pdf](http://www.lessonsfrompiracy.net/files/2015/03/Communique_2nd_Plenary.pdf)>.

In the absence of a formal secretariat, the US Department of State's Political-Military Affairs Bureau serves as the de facto secretariat of the CGPCS. It shares this administrative role with the office of the incumbent plenary chairperson along with those of the respective working group chairs.<sup>92</sup>

#### 4.3.5. Participation

Any UN member state can take part in the work of the CGPCS. Initial criteria for participation was the tangible contribution to the counter-piracy effort, or being significantly affected by piracy—in particular regional states.<sup>93</sup> Candidature from several additional countries prompted the abolishment of this rule. The group now recognizes that different countries will choose to contribute in different ways depending on individual circumstances.<sup>94</sup> The abandonment of criteria has enabled the participation of more countries sharing the common interest of eliminating piracy. This has allowed important seafaring countries, such as the Philippines, to join. Participation is requested by simply writing to the chair of the group.<sup>95</sup>

Even if the CGPCS is established outside the UN system and not accountable to either the UN or any other governing body, it submits reports to the UN Security Council and is closely linked to the UN system. UN bodies are solidly embedded in the structure and working procedures of the mechanism. The coordination and cooperation with the UN is acknowledged as a critical factor for the success and effectiveness of the CGPCS.<sup>96</sup> The CGPCS benefits considerably from the UN's institutional resources. The presence of UN agencies such as the IMO and the UNODC in the working groups enhances the group's implementation capacity.<sup>97</sup>

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<sup>92</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>93</sup> CGPCS. (2009, January 14). [First plenary meeting communiqué]. Retrieved October 28, 2016 from <[http://www.lessonsfrompiracy.net/files/2015/03/Communique\\_1st\\_Plenary.pdf](http://www.lessonsfrompiracy.net/files/2015/03/Communique_1st_Plenary.pdf)>.

<sup>94</sup> CGPCS. (2009, May 29). [Third plenary meeting communiqué]. Retrieved October 30, 2016 from <[http://www.lessonsfrompiracy.net/files/2015/03/Communique\\_3rd\\_Plenary.pdf](http://www.lessonsfrompiracy.net/files/2015/03/Communique_3rd_Plenary.pdf)>.

<sup>95</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>96</sup> CGPCS. (2010, November 10). [Seventh plenary meeting communiqué.] Retrieved October 30, 2016 from <[http://www.lessonsfrompiracy.net/files/2015/03/Communique\\_7th\\_Plenary.pdf](http://www.lessonsfrompiracy.net/files/2015/03/Communique_7th_Plenary.pdf)>.

<sup>97</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

The CGPCS attributes importance of the role of non-state actors in countering piracy. The shipping industry has been actively involved at working group level, enabling the CGPCS to produce concrete outcomes. Key participants representing the shipping industry are the International Chamber of Shipping (ICS), the International Association of Independent Tanker Owners (INTERTANKO), the International Association of Dry Cargo Shipowners (INTERCARGO), and the Baltic and International Maritime Council (BIMCO).<sup>98</sup> Industry is recognized as part of the solution, but the process of industry inclusion has been contentious even so. Today, industry represents itself at the plenary sessions, having previously been part of national delegations.<sup>99</sup>

The CGPCS also welcomes contributions also from non-governmental organizations (NGOs).<sup>100</sup> These are predominantly NGOs focused on issues related to seafarers' welfare. The input from NGOs such as the Seamen's Church Institute (SCI) and Maritime Piracy Humanitarian Response Program (MPHRP) has had some tangible impact on the work of the group, reflected in the communiqués which have, for instance, highlighted the situation for hostage victims. At working group level, the attendance of NGOs remains more controlled.<sup>101</sup>

#### 4.3.6. Observations on procedures and participation

The CGPCS's decision-making by consensus does, in practice, mean decision-making by lack of objection. The possibility to "agree to disagree" is common procedure in order to avoid possible deadlocks. This puts power and responsibility in the hands of the chairperson, who is authorized to continue the development of counter-piracy policies even though all participants may not be in a position to formally endorse them.

<sup>102</sup> Also, the intentional lack of formal procedures permits the plenary chairperson to immediately communicate messages to the international community that would

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<sup>98</sup> Swarttouw, H. & Hopkins, D.L. (2014). The Contact Group on Piracy off the Coast of Somalia: Genesis, rationale and objectives. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 11–17.

<sup>99</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>100</sup> CGPCS. (2012, July 25). [Twelfth plenary meeting communiqué.] Retrieved October 30, 2016 from <[http://www.lessonsfrompiracy.net/files/2015/03/Communique\\_12th\\_Plenary.pdf](http://www.lessonsfrompiracy.net/files/2015/03/Communique_12th_Plenary.pdf)>.

<sup>101</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>102</sup> Swarttouw, H. & Hopkins, D.L. (2014). The Contact Group on Piracy off the Coast of Somalia: Genesis, rationale and objectives. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 11–17.

otherwise have to be formally approved.<sup>103</sup> A shift in terminology from ‘membership’ to ‘participation’ has allowed the inclusion of countries with poor or no diplomatic relations despite the veto right over new entrants.<sup>104</sup>

The CGPCS is characterized by its inclusiveness and its procedural flexibility. It brings together a broad range of states, relevant IGOs, NGOs, Somali sub-national entities, and private industry actors, and manages to circumvent procedural constraints posed by diplomatic norms. The CGPCS benefits from a fruitful combination of creativity and efficient problem-solving. It strikes a balance between diplomatic protocol and substantive discussions, ensuring that everyone is being heard while at the same time avoiding scripted statements.<sup>105</sup> The inclusion of NGOs as observers and collaborators makes the CGPCS particularly unusual, since their traditional role in international peace and security is marginalized.

Although literature often describe the open architecture of the CGPCS as unique<sup>106</sup>, it is not unprecedented. Contact groups and other informal diplomatic clubs have previously been established to address a variety of international crises and to develop new and innovative crisis management responses, although they tend to be smaller in size. The International Contact Group on Somalia (ICG) is merely one example.<sup>107</sup>

Despite having extended participation to non-state actors, the CGPCS remains very much state-centric. Not surprisingly, the power of agenda-setting lies with the most resourced states.<sup>108</sup> Effectively, some nations benefit from multiple representation

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<sup>103</sup> Huggins, J., & Madsen, J.V. (2014). The CGPCS: The evolution of multilateralism to multi-stakeholder collaboration. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 18–27.

<sup>104</sup> Swarttouw, H. & Hopkins, D.L. (2014). The Contact Group on Piracy off the Coast of Somalia: Genesis, rationale and objectives. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 11–17.

<sup>105</sup> Bueger, C. (2014). Experimental governance: Can the lessons of the CGPCS be transferred to other policy fields? In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 78–85.

<sup>106</sup> See, e.g., Swarttouw, H. & Hopkins, D.L. (2014). The Contact Group on Piracy off the Coast of Somalia: Genesis, rationale and objectives. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 11–17.

<sup>107</sup> Tardy, T. (2014). Introduction. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 7–10.

<sup>108</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

through membership in IOs and industry associations, which has given rise to charges of the CGPCS having a Western bias. This bias is exacerbated by the fact that a number of nations not directly involved in counter-piracy is represented in the CGPCS, following the removal of active and tangible contributions as an imperative for states' participation.<sup>109</sup> Some countries have preferred to pretend that the CGPCS is a formal UN contact group in order to avoid domestic objection against participation in what is, essentially, a Western-led coalition.<sup>110</sup>

Besides, CGPCS mechanism suffers from opacity. The only documentation of the agreements and considerations of the CGPCS available to a wider public is provided through plenary session communiqués and newsletters.<sup>111</sup>

Because of the predominantly intergovernmental format of the CGPCS, it is not akin to other governance processes where non-state actors have a much stronger role, such as the UN Global Compact or the Kimberley process.<sup>112</sup>

#### 4.4. The role of business in addressing governance gaps

The CGPCS itself does not deliver outcomes but was established to foster closer international cooperation. While a good number of policies developed by the CGPCS were later implemented, the success of the contact group should rather be measured by its ability to close governance gaps in the counter-piracy regime.

The following section will examine these gaps in the areas of knowledge, law, political will, institutions, and compliance with the purpose of identifying the role of business in this process, here limited to trade associations for merchant shipowners and operators as well as the insurance industry. This analysis will expand on the findings of Zach et

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<sup>109</sup> Huggins, J., & Madsen, J.V. (2014). The CGPCS: The evolution of multilateralism to multi-stakeholder collaboration. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 18–27.

<sup>110</sup> Swarttouw, H. & Hopkins, D.L. (2014). The Contact Group on Piracy off the Coast of Somalia: Genesis, rationale and objectives. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 11–17.

<sup>111</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>112</sup> Bueger, C. (2014). *Transnational governance, Somali piracy and the Contact Group: An analytical primer*. Cardiff: Cardiff University.

al. (2013)<sup>113</sup>, for which a modified application of Weiss and Thakur's (2010) analytical framework of global governance gaps was employed.<sup>114</sup>

#### 4.4.1. Knowledge gaps

The first governance challenge is the development of a shared understanding of the characteristics, causes, and consequences of the problem. Industry was, naturally, the first to notice an upsurge in piracy and armed robbery against ships in the region. The hijacking of ships for ransom off Somalia's coast indicated that pirates had turned to a new business model.

The International Chamber of Shipping (ICS), representing around 80 percent of the world's merchant tonnage, faced difficulties in drawing attention of the international community to the concerns of shipping companies and seafarers.<sup>115</sup> Industry and seafarer advocacy groups also encountered public indifference, amplified by the fact that maritime crime attracted low levels of media attention. The lack of media coverage even led to false rumors that pirates adhered to a common code of conduct guaranteeing the humane treatment of hostages.<sup>116</sup>

Governments neither grasped the onward consequences for world trade caused by the likely rerouting of ships due to rapidly increasing insurance premiums.<sup>117</sup> In other words, a discrepancy was observed in the understanding of the scope and impact of the problem, which constituted a barrier to collective action. The inclusion of a variety of stakeholders, among these industry and NGOs, in the work of the CGPCS was essential in establishing a complete picture of the problem.

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<sup>113</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>114</sup> Weiss and Thakur's model includes knowledge, norms, policies, institutions, and compliance, see Weiss, T.G., & Thakur, R. (2010). *Global governance and the UN: An unfinished journey*. Bloomington: Indiana University Press.

<sup>115</sup> ICS secretary-general Peter Hinchliffe as cited in Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>116</sup> Huggins, J., & Madsen, J.V. (2014). The CGPCS: The evolution of multilateralism to multi-stakeholder collaboration. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 18–27.

<sup>117</sup> ICS secretary-general Peter Hinchliffe as cited in Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

Knowledge gaps also impede the informed choice of appropriate measures. This has been a recurrent concern in the CGPCS's counter-piracy work. A mutual lack of trust between industry and governments has been a barrier to productive dialogue. On certain issues, such as the controversial topic of privately contracted armed security personnel (PCASP), industry has indeed provided useful input which has contributed to the adoption of guidelines that correspond to the interests and needs of the the shipping companies.<sup>118</sup>

On other issues, it has been a challenge to generate shared awareness of the parties' concerns. Authorities have been requesting detailed and swift reports on piracy incidents, especially in the light of the growing use of PCASP. Industry, on the other hand, has been concerned about the legal consequences of such disclosure when PCASP are involved. Also, the release of hostages and the return of hijacked ships could possibly be rendered more complicated once a report has been submitted and specific details have been made public. Finally, the payment of ransoms is a highly delicate matter, since some pirates may be linked to terrorist groups, making it an illegal act under anti-terror laws.<sup>119</sup>

#### 4.4.2. Legal gaps

There has for centuries existed normative consensus about piracy. Still, existing international agreements do not provide satisfactory legal guidance to a maritime sector which is increasingly complex, with different nationalities of owners, lessees, crew, cargo, flag states, and ports of call.<sup>120</sup> The CGPCS working group on legal and judicial issues—later the legal forum—has been employed in delineating the framework providing a legal basis for combating piracy, seeking answers in both international and national law. The objective of this work has mainly been the core issue of finding a solution to the challenge of detention, prosecution, and imprisonment of pirates.<sup>121</sup>

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<sup>118</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>119</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>120</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>121</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

The universal jurisdiction clauses of the 1979 International Convention against the Taking of Hostages, the 1982 UN Convention of the Law of the Sea (UNCLOS), and the 1988 Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) mandated criminal jurisdiction over suspected pirates. In practice, existing rule-of-law structures did not compel nations to address the issue, nor did they suppress piracy activity. As the next part on political gaps will describe, there was an unwillingness among states to prosecute pirates.<sup>122</sup> Enabling the creation of a legal framework for counter-policy has been highlighted as one of the CGPCS's main achievements.<sup>123</sup> There are no signs that industry would have contributed in this process to any significant extent.

The CGPCS has, however, also attempted to address the prevalence of PCASP in contemporary shipping. The severity of the piracy situation has turned the initially reluctant shipping industry into accepting the use of PCASP as an exceptional response, and as a supplement to other self-protective measures.<sup>124</sup> Also the international community has gradually come to tacitly acknowledge the use of PCASP.

A number of legal complexities are yet to be resolved with respect to the deployment of PCAPS. Going into port and transiting territorial waters requires the permission of the host state when carrying PCASP. This has led to the emergence of so-called floating armories in international waters, of which the legality is hotly contested.<sup>125</sup> Overall, the question of legal accountability in relation to private armed security is worrying the shipping industry.

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<sup>122</sup> Huggins, J., & Madsen, J.V. (2014). The CGPCS: The evolution of multilateralism to multi-stakeholder collaboration. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 18–27.

<sup>123</sup> Swarttouw, H. & Hopkins, D.L. (2014). The Contact Group on Piracy off the Coast of Somalia: Genesis, rationale and objectives. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 11–17.

<sup>124</sup> International Chamber of Shipping. (2003, July). *Lessons identified from Somali piracy*. Retrieved November 1, 2016 from <<http://www.ics-shipping.org/docs/default-source/Piracy-Docs/lessons-identified-from-somali-piracy.pdf>>.

<sup>125</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

Industry is continually pushing for the international community to adopt standards for the regulation of the use of PCASP.<sup>126</sup> Still, prospects of the CGPCS filling legal technical gaps would appear weak. This is complicated by the fact that private armed security enjoys a particular form of authority derived from a high degree of symbolic power, which reproduces legal impunity.<sup>127</sup>

#### 4.4.3. Political gaps

Naval warships patrolling the coast of Somalia were reported to release pirates apprehended with ample evidence for lack of a host state willing to prosecute them. This was motivated by the inability, but surely also the unwillingness, to bear the cost of trying and imprisoning them, but possibly also to avoid potential asylum claims.<sup>128</sup> Until 2011, more than 90 percent of all pirates captured at sea were released without prosecution. The apparent impunity of pirates explains the persistence of the phenomenon of piracy.<sup>129</sup>

This illustrates the difficulty of instilling political will to mobilize action with effort and determination. A critical issue for the shipping industry was, and remains, getting governments to engage on the issue of piracy.<sup>130</sup> The crimes committed by pirates did not threaten any vital national interest or trigger any collective defense provisions. Consequently, any cooperation between nations to address the threats of piracy had to come as a 'coalition of the willing'.<sup>131</sup>

Despite lacking strong enforcement mechanisms by design, the CGPCS has been relatively successful in fulfilling its policy decisions. An important achievement, largely

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<sup>126</sup> International Chamber of Shipping. (2003, July). *Lessons identified from Somali piracy*. Retrieved November 1, 2016 from <<http://www.ics-shipping.org/docs/default-source/Piracy-Docs/lessons-identified-from-somali-piracy.pdf>>.

<sup>127</sup> Leander, A. (2010). The paradoxical impunity of private military companies: Authority and the limits to legal accountability. *Security dialogue*, 41(5), 467–490.

<sup>128</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>129</sup> UN Security Council letter S/2011/30 (2011).

<sup>130</sup> ICS secretary-general Peter Hinchliffe as cited in Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>131</sup> Huggins, J., & Madsen, J.V. (2014). The CGPCS: The evolution of multilateralism to multi-stakeholder collaboration. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 18–27.

attributable to the efforts of the shipping industry, is the promotion of shipping self-awareness. Today, an estimated 90 percent are compliant with the self-protection guidelines.<sup>132</sup>

#### 4.4.4. Institutional gaps

The CGPCS was established as a mechanism to address the pronounced institutional gaps as regards information sharing, leadership, and coordination among relevant actors at the international level.<sup>133</sup> The international community had no local structures or authorities to confront the issue of Somali piracy. Specific factors and circumstances related to the threat of piracy ruled out such action that would normally be taken by international community in response to a crisis of this magnitude.<sup>134</sup>

The UN system did not address all the aspects of maritime crime in a comprehensive way. In practice, this meant that none of the important UN agencies had the mandate to take a lead role when the high seas and Somali waters experienced an upswing in piracy.<sup>135</sup> Also other international organizations as well as individual states lacked sufficient internal coordination, existing competence, and routines to effectively confront the issue of piracy. This meant that the international community was impeded to assist Somalia and other states in the region with domestic capacity building.<sup>136</sup>

A number of initiatives by military and civilian institutions were launched to assist commercial sea transport through vessel position reporting. The lack of coordination, however, lead to duplicated, overlapping, and contradictory guidance.<sup>137</sup> The industry-developed Best Management Practices (BMP), a piracy countermeasure guidance, has helped resolving this problem and furthering coordination between

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<sup>132</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>133</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>134</sup> Huggins, J., & Madsen, J.V. (2014). The CGPCS: The evolution of multilateralism to multi-stakeholder collaboration. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 18–27.

<sup>135</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>136</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>137</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

institutions, not least between industry and military. The vehicle for the successful implementation has been the CGPCS, which has brought together and increased communication between industry, labor, government, and military, notably through its Working Group 3 (WG3).

The participation of diverse stakeholders has enabled comprehensive discussion in WG3, taking in relevant expertise and professional views of non-state actors. It has also allowed for effective implementation of new policies.<sup>138</sup> Industry participation has also enabled information on the fast-changing pirate tactics to be disseminated swiftly, which has facilitated timely and adequate response.<sup>139</sup>

The model of industry introducing guidance and standards through the CGPCS was replicated in a number of other areas, such as humanitarian assistance to victims of piracy, and principles for the use of private armed security.<sup>140</sup> WG3 addressed labor issues by completing the 'Interim Guidelines on Measures Relating to the Welfare of Seafarers and their Families Affected by Piracy off the Coast of Somalia'. This document is composed of a set of recommendations to stakeholders on a range of topics pertaining to the welfare of seafarers, and was created with the purpose of being a reference framework when addressing piracy threats worldwide.<sup>141</sup> It was submitted to the the Maritime Safety Committee (MSC) of the IMO which expressed its support.<sup>142</sup> WG3 has also produced several documents with guidance to private marine security companies (PMSA) providing PCASP, which have also been submitted to the the MSC.<sup>143</sup>

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<sup>138</sup> Chul, H. (2014). Working with the private sector. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 41–45.

<sup>139</sup> Hinchliffe, P., & Stawpert, J. (2014). The key role of industry in fighting piracy. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 46–47.

<sup>140</sup> Hinchliffe, P., & Stawpert, J. (2014). The key role of industry in fighting piracy. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 46–47.

<sup>141</sup> CGPCS. (2013). *Interim guidelines on measures relating to the welfare of seafarers and their families affected by piracy off the coast of Somalia*. Retrieved November 15, 2016 from <<http://www.dma.dk/SiteCollectionDocuments/Nyheder/2013/WG3%20guidelines%20on%20seafarers%20welfare.pdf>>.

<sup>142</sup> IMO report MSC 93/22 (*Report of the Maritime Safety Committee on its ninety-third session*).

<sup>143</sup> Chul, H. (2014). Working with the private sector. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 41–45.

In many cases, flag states do not have the means to protect vessels flying their flag by dispatching naval ships to patrol the waters, and also lack the capacity to prosecute suspected pirates. The relationship between the major nations and the major open registry flag states has, for this reason, at times been tense.<sup>144</sup> The CGPCS has served as a platform for trust-building between various actors involved in activities to counter piracy. This has not only improved institutionalized relationships between actors, but cultivated interpersonal networks of people as well, contributing to the establishment of a veritable counter-piracy community.

#### 4.4.5. Compliance gaps

An overall challenge of global governance is the fact that no supranational authority or robust compliance mechanisms exist to ensure that collective goals are turned into action. For the problem of maritime piracy, this means that states' obligations under the SUA convention is not necessarily implemented in national legislation. Similarly, while naval enforcement initiatives to combat Somali piracy were launched under a UN charter mandate, their missions, timeframes, and rules of engagement varied.<sup>145</sup>

The CGPCS has addressed some of these issues, including the contribution of military assets, prosecution of pirates, and the implementation of the industry-agreed BMP aboard flagged vessels. However, the authority to make binding decisions rest with the states. Peer pressure is one, rather powerful, tool that the CGPCS, similar to many UN bodies, has adopted to attain compliance with its decisions. Participating states are held accountable through the inclusion of stated commitments in the plenary communiqués.<sup>146</sup>

Because the CGPCS has no legal right to enforce compliance with agreed policies, one could conclude that the mechanism is rather weak. On the other hand, with a 90

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<sup>144</sup> Huggins, J., & Madsen, J.V. (2014). The CGPCS: The evolution of multilateralism to multi-stakeholder collaboration. In Tardy, T. (Ed.). *Fighting piracy off the coast of Somalia: Lessons learned from the Contact Group*. Paris: EU Institute for Security Studies, 18–27.

<sup>145</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

<sup>146</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

percent of transits performed in accordance with the BMP, the work of the CGPCS does indeed lead to concrete action.

But the explanation of the high BMP compliance does not lie entirely in the institutional structure of the CGPCS. While the role of the CGPCS as a vehicle to attain wide BMP endorsement has been successful, it is, rather, the insurance industry's adoption of the BMP as a prerequisite for insurance coverage that has boosted BMP compliance. This has arguably lead to a reinforcement of the legitimacy of the BMP..

## 5. Counter-piracy as a spatial process

### 5.1. The High Risk Area

Following the UN Security Council's passage of resolution 1816 in 2008, which first authorized naval forces to secure Somali territorial waters from piracy, navies introduced a safe zone for shipping where patrolling would be targeted. The Marine Security Patrol Area (MSPA), later taken over by the IMO and renamed the International Recommended Transit Corridor (IRTC), was the result of political agreements between states, international organizations, and the transnational shipping industry. Concerns about supply chain security has contributed to a shift in how the dangers of piracy is perceived, and with that the strategies for managing them. The transit corridor is an example of how the way law governs space is reshaped by geo-economic interests.<sup>147</sup>

With the shipping industry's adoption of Best Management Practices (BMP), another zone of exception was introduced: the High Risk Area (HRA). The HRA has become a spatial reference zone for a range of other international regulatory and coordination processes, and can be described as a political, legal and security experiment.<sup>148</sup> The HRA refers to the area where the risk of piracy attacks is considered high. More precisely, the HRA is defined as an area where pirate activity and/or attacks have taken place, according to the latest revision of the document, BMP4.<sup>149</sup>

The notion of 'piracy' in the wording of the BMP document does not provide a definition in a legal sense, since the UN Convention of the Law of the Seas (UNCLOS) defines piracy as occurring on the high seas or otherwise outside the jurisdiction of any state, and the HRA covers also territorial waters.<sup>150</sup> Instead, the term is defined as to include "all acts of violence against ships, her crew and cargo. This includes armed robbery

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<sup>147</sup> Cowen, D. (2014). *Deadly life of logistics: Mapping violence of global trade*. Minneapolis: University of Minnesota Press.

<sup>148</sup> Bueger, C. (2015). *Zones of exception at sea: Lessons from the debate on the High Risk Area*. Cardiff: Cardiff University.

<sup>149</sup> *Best Management Practices for protection against Somalia based piracy*. (2011). Version 4. Edinburgh: Witherby Seamanship.

<sup>150</sup> 1982 UN Convention on the Law of the Sea (UNCLOS), article 101.

and attempts to board and take control of the ship, wherever this may take place".<sup>151</sup> When transiting this area, the BMP document stipulates that protective measures are applied.<sup>152</sup>

The HRA has explicitly defined geographical bounds. Originally, the HRA was the area bounded by Suez and the Strait of Hormuz to the North, 10°S and 78°E.<sup>153</sup> Following to the ongoing containment of pirate attacks in the Indian Ocean, a group of shipping and oil industry organizations<sup>154</sup> have, however, since December 1st, 2015, agreed to reduce the size of the HRA, while letting its former outer limits define the so-called Voluntary Reporting Area (VRA).<sup>155</sup> The limits of the new HRA are 15°N in the Red Sea, 22°N in the Gulf of Oman, 5°S and 65°E.<sup>156</sup>

A number of important processes are clearly linked to the definition of the HRA.<sup>157</sup> Below, an overview will be given of five of these: 1) the VRA, 2) the military planning of the Shared Awareness and Deconfliction (SHADE) mechanism, 3) the risk areas as defined by the International Bargaining Forum (IBF), (4) the listed area of the Joint War Committee (JWC) of the Lloyds Market Association, and 5) legislations and regulations in regard to armed guards aboard merchant vessels.

The monitoring by naval forces of ships transiting through the Gulf of Aden or off the coast of Somalia requires effective liaison. The reporting of vessel position is an essential feature of BMP. Prior to entering the VRA, vessels are encouraged to register

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<sup>151</sup> *Best Management Practices for Protection against Somalia Based Piracy*. Version 4. (2011). Edinburgh: Witherby Seamanship.

<sup>152</sup> *Bueger, C. (2015). Zones of exception at sea: Lessons from the debate on the High Risk Area*. Cardiff: Cardiff University.

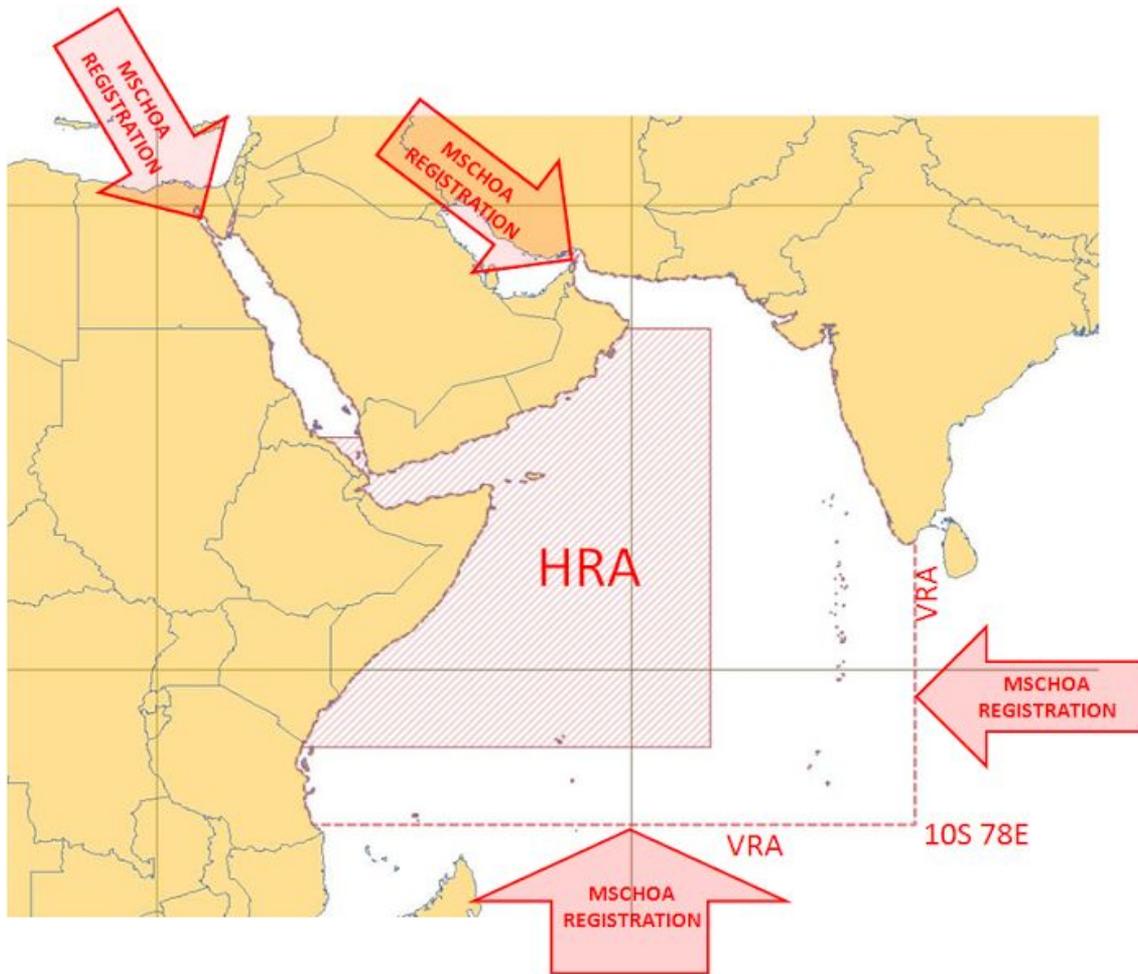
<sup>153</sup> *Best Management Practices for Protection against Somalia Based Piracy*. Version 4. (2011). Edinburgh: Witherby Seamanship.

<sup>154</sup> viz., BIMCO, International Chamber of Shipping (ICS), INTERCARGO, INTERTANKO, and the Oil Companies International Marine Forum (OCIMF).

<sup>155</sup> CGPCS. (2014, October 8). *Vigilance still crucial as piracy High Risk Area in the Indian Ocean reduced*. Press release. Retrieved November 4, 2016 from <<http://www.mschoa.org/docs/default-source/public-documents/press-release.docx>>.

<sup>156</sup> CGPCS. (2015, October 2). [Revisions and supporting guidance regarding the HRA]. Retrieved November 5, 2016 from <<http://www.lessonsfrompiracy.net/files/2015/10/151002-HRA-Revisions-and-Supporting-Guidance-2.pdf>>.

<sup>157</sup> *Bueger, C. (2015). Zones of Exception at Sea: Lessons from the debate on the High Risk Area*. Cardiff: Cardiff University.



with the EU's Maritime Security Centre Horn of Africa (MSCHOA).<sup>158</sup> Later, when transiting the VRA, vessels should submit daily reports to the United Kingdom Marine Trade Operations (UKMTO) office in Dubai, providing their position, course, and speed as well as ETA at their next port. The UKMTO acts as the primary point of contact during an attack.<sup>159</sup>

UKMTO and MSCHOA provide a situational picture to the SHADE mechanism. SHADE is a non-political forum, co-chaired by the three naval missions, which has evolved to become the de facto platform for naval coordination in the region.<sup>160</sup> The geographical

<sup>158</sup> CGPCS. (2014, October 8). *Vigilance still crucial as piracy High Risk Area in the Indian Ocean reduced*. Press release. Retrieved November 4, 2016 from <<http://www.mschoa.org/docs/default-source/public-documents/press-release.docx>>.

<sup>159</sup> *Best Management Practices for protection against Somalia based piracy*. (2011). Version 4. Edinburgh: Witherby Seamanship.

<sup>160</sup> Zach, D.A., Seyle, D.C., & Madsen, J.V. (2013). *Burden-sharing multi-level governance*. Broomfield: Oceans Beyond Piracy.

presentation of the information is based on the HRA and the VRA, making them core reference points also in military coordination, although these areas are not directly tied to the mandates of the forces.<sup>161</sup>

IBF brings together the International Transport Worker's Federation (ITF) and the international shipping industry to agree on standard labor contracts for seafarers. All parties to the IBF have been involved in the development of the BMP concept, or support it. Seafarers are entitled to special benefits, such as hazard pay or the right to refuse sailing, when transiting pirate-infested waters. For this reason, the IBF have introduced the concepts of warlike and high risk areas. The IBF definition of the geographical extent of the so-called Extended Risk Area chiefly corresponds to the HRA, and was last revised in February 2016 to reflect the reduction of the HRA.<sup>162</sup>

JWC lists areas facing war-like risks, setting an international standard for insurance contracts. Shipowners must seek special permission of their underwriters before a vessel can enter a listed area. Insurance coverage is then typically granted against additional premium. While the JWC's listed area for the Indian Ocean is not entirely identical to the HRA, it is fundamentally based on the latter. In response to the reduction of the HRA in December 2015, the JWC decided to also reduce its own listed area for the Indian Ocean.<sup>163</sup>

BMP can be considered as soft law by virtue of UN endorsement, but is also integrated in the national legislation of certain flag states, principally pertaining to the question of private armed guards.<sup>164</sup> This is an example of how voluntary standards and standards set by public authority are two categories are, in fact, often overlapping—particularly

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<sup>161</sup> Bueger, C. (2015). *Zones of exception at sea: Lessons from the debate on the High Risk Area*. Cardiff: Cardiff University.

<sup>162</sup> International Transport Worker's Federation. (2016, February 22). IBF list of warlike and high risk designations, with main applicable benefits. Retrieved November 4, 2016 from <<http://www.itfseafarers.org/files/seealsodocs/33553/IBF%20WARLIKE%20ANDHIGH%20RISK%20AREAS.pdf>>.

<sup>163</sup> Joint War Committee. (2015, December 12). *Hull war, piracy, terrorism and related perils listed areas*. (JWLA/022). Retrieved November 4, 2016 from <<http://www.lmalloyds.com/AsiCommon/Controls/BSA/Downloader.aspx?iDocumentStorageKey=001f4a07-7dde-46fb-9c16-770a419a2d0b&iFileTypeCode=PDF&iFileName=JWLA022>>.

<sup>164</sup> Bueger, C. (2015). *Zones of exception at sea: Lessons from the debate on the High Risk Area*. Cardiff: Cardiff University.

standards for risk mitigation.<sup>165</sup> Again, the HRA is a central reference for the public-private cooperation to combat piracy.

To sum up, the shipping industry has experimented with a new form of political and legal space in the defining the HRA. The pragmatic focus has, consequently, left many political and legal questions unaddressed.<sup>166</sup> Still, existing arrangements have enjoyed great authority. The success in containing piracy arguably increased the legitimacy, allowing for the construction and exercise of such authority.

The rise of the HRA controversy in 2012 supports this argument. When the piracy situation reached a point where it was seemingly under control, the scope of the HRA simply clashed with the interests of India and Egypt, who wanted to see a revision. In other words, the diminishing urgency of the piracy situation contributed to the re-politicization of the HRA.<sup>167</sup> Being the result of a purely geopolitical process with no apparent connection to history or culture, the geographical extension of the HRA was no longer perceived as definite. The HRA is, after all, less dangerous toward its outer limits.

## 5.2. An alternative take on territoriality

The sovereign territorial state has been the benchmark for the spatial organization of the planet for less than 70 years.<sup>168</sup> However, the state is not the only example of territorial institution building, even if it remains the most extreme case in terms of political territoriality.<sup>169</sup> Ruggie (1993) argues that: “It is truly astonishing that the concept of territoriality has been so little studied by students of international politics; its neglect is akin to never looking at the ground one is walking on.”<sup>170</sup>

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<sup>165</sup> See Ponte S., Gibbon, P., & Vestergaard, J. (2011) Governing through standards: An introduction. In Ponte S., Gibbon, P., & Vestergaard, J. *Governing through standards: Origins, drivers and limitations*. Basingstoke: Palgrave, 1–24.

<sup>166</sup> Bueger, C. (2015). *Zones of exception at sea: Lessons from the debate on the High Risk Area*. Cardiff: Cardiff University.

<sup>167</sup> Bueger, C. (2015). *Zones of exception at sea: Lessons from the debate on the High Risk Area*. Cardiff: Cardiff University.

<sup>168</sup> Delaney, D. (2008). *Territory: a short introduction*. Hoboken: John Wiley & Sons.

<sup>169</sup> Mueller, S. (2012). Federalism and the concept of political territoriality. *L'Europe en formation*, (1), 95–120.

<sup>170</sup> Ruggie, J.G. (1993). Territoriality and beyond: problematizing modernity in international relations. *International organization*, 47(1), 139–174.

Applying a critical approach to the concept of territoriality would be of benefit to the discipline of international relations (IR). Territorialization of the world could therefore also be imagined as a layering of world power by degrees. Depending on the theoretical perspective, there could be an endless amount of territories, not least with reference to the neoliberal reconfiguration of urban space.<sup>171</sup>

The *Mare Liberum* doctrine as elaborated by Grotius, whereby the open seas are available for common use and not susceptible of appropriation, suggests that maritime security in the Indian Ocean and the Gulf of Aden cannot be territorialized through the definition of the HRA. This instance of unbundling of territoriality is a functional approach to the management of international relations and the preservation of peace.

<sup>172</sup> Such a functional regime is, however, dependent on the willingness of all participants to keep the issue depoliticized.<sup>173</sup> Constituting a standard for the governance of Somali maritime piracy, the HRA overcomes the limits of state capacity and accentuates the important role of the shipping industry as a political actor shaping regulation.

### 5.3. Territory as a source of private authority

The conceptual framework of Mueller (2012) was developed with the purpose of subsuming several of the assumptions presented in previous research on territorial politics.<sup>174</sup> As such, its main purpose is merely to direct attention to the concept of political territoriality. However, it can possibly help explaining the strategic behavior of political actors aimed at influencing political systems.<sup>175</sup> The following sector will examine territory as a source of authority for merchant shipowners and operator as well as the insurance industry.

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<sup>171</sup> Delaney, D. (2008). *Territory: a short introduction*. Hoboken: John Wiley & Sons.

<sup>172</sup> See also the doctrine of extraterritoriality.

<sup>173</sup> Kratochwil, F. (1986). Of systems, boundaries, and territoriality: An inquiry into the formation of the state system. *World politics*, 39(1), 27–52.

<sup>174</sup> Cf. especially Burgess, M., & Vollaard, H. (2006). Introduction: Analysing Westphalian states in an integrating Europe and a globalising world. In Burgess, M., & Vollaard, H. (Eds.). *State territoriality and European integration: Territoriality and federalism in EU governance*. Oxford: Routledge, 1–14.

<sup>175</sup> Mueller, S. (2012). Federalism and the concept of political territoriality. *L'Europe en formation*, (1), 95–120.

## 5.3.1. Institution building

### 5.3.1.1. Territorial loyalty

Territory often triggers strong emotional attachment, and is in many cases of central importance to people's collective identity. Territory forms the basis for obtaining loyalty from a certain community. This loyalty provides legitimacy to institutions. The fixity in geographical space makes territory powerful in this process.<sup>176</sup>

The territoriality process has four dimensions that reveal the emotional potential of space.<sup>177</sup> First, territories are promoted as natural divisions of the earth's surface. Physical characteristics of a territory and/or its longevity establish a certain legitimacy. Second, the bond between people and territory is conceptualized as biological, and marks the continuity from ancestors to future generations. Thus, through continuous occupation of a land by a people, the people becomes indistinguishable from the soil itself. Third, personal experience of geographical attachment—the feeling of belonging and being at home—also exemplifies the emotional power of territory. Fourth, history, memories, and myths bind people to specific territories. These stories reflect the uniqueness of the society, and inspire a commitment to the continued existence of the territory.

The geographical definition of the HRA enjoys a certain degree of legitimacy thanks to its references to nature. For the original HRA (i.e. the current VRA), the shores of Africa and Asia mark the western and northern limits, whereas the southernmost tip of the Indian subcontinent and the southern reaches of the Somali Basin indicate the eastern and southern limits, respectively. Furthermore, mythologization exalts the relationship between seafarers and the sea. While the high seas belong to all humankind, seafarers are in many aspects bound to the sea in the same way as a people is bound to a land. This would explain the high degree of confidence in the shipping industry that has allowed it to define a HRA which became widely accepted.

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<sup>176</sup> Mueller, S. (2012). Federalism and the concept of political territoriality. *L'Europe en formation*, (1), 95–120.

<sup>177</sup> Penrose, J. (2002). Nations, states and homelands: territory and territoriality in nationalist thought. *Nations and nationalism*, 8(3), 277–297.

### 5.3.1.2. Political symbolism

The international community has relied on the HRA as a common reference facilitating coordination between various counter-piracy mechanisms and processes. Industry-lead revision of the HRA has promoted updates in other bodies' regulations. In other words, power has been delegated upwards. The distribution of power among various levels is what characterizes territorial institution building.<sup>178</sup>

The degree of legitimacy, read as the autonomy or sovereignty, of such an institutional setup is a variable when assessing the political significance of territory. The measurement of legitimacy requires that we look at how political identity is conditioned by territory.<sup>179</sup> This political identity is translated as the set of shared values and principles in which the members of a polity recognize themselves as a political entity, able to make ultimate decisions as one actor.<sup>180</sup>

In counter-piracy governance, the shipping industry has arguably come to establish itself as a political actor. As such, it is not a polity in the sense this framework was designed for. Nevertheless, it does have a political identity, which the HRA is one unmistakable outcome of. This political identity of the industry is clearly linked to geographical space, as it is from its operations on the high seas that it derives its political power.

One recognized purpose of territory is to provide security from outside.<sup>181</sup> The definition of an area with a higher risk of piracy attacks not only facilitated coordination, but was also a way of gaining acceptance for temporary solutions to confront serious security threats. Consequently, the symbolism of territory was key in providing legitimacy for various counter-piracy actors and efforts.

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<sup>178</sup> Mueller, S. (2012). Federalism and the concept of political territoriality. *L'Europe en formation*, (1), 95–120.

<sup>179</sup> Burgess, M., & Vollaard, H. (2006). Introduction: Analysing Westphalian states in an integrating Europe and a globalising world. In Burgess, M., & Vollaard, H. (Eds.). *State territoriality and European integration: Territoriality and federalism in EU governance*. Oxford: Routledge, 1–14.

<sup>180</sup> Cerutti, F. (2008). *Why legitimacy and political identity are connected to each other, especially in the case of the European Union*. Paper presented at the ECPR joint session of workshops, Nicosia, April 2006.

<sup>181</sup> Delaney, D. (2008). *Territory: a short introduction*. Hoboken: John Wiley & Sons.

## 5.3.2. Policy competencies

### 5.3.2.1. Administrative powers

In the vertical distribution of power, different functions are assigned to different territorial layers. Territory, in this respect, is to be understood as a structural device, familiar from literature on federalism. The functions referred to are the various administrative, fiscal, and legislative capacities. Because these are associated with certain rights and responsibilities, we can explore the territorial dimensions of jurisdiction.<sup>182</sup>

As for the administrative capacities, it explains how a territorial unit is empowered through something as straightforward as the provision of employees, facilities, and equipment.<sup>183</sup> An assessment of this would give an indication of the relative importance of a territorial layer. The territorialization of maritime security may have generated a limited redistribution of administrative powers with some of the actors involved in counter-piracy, mainly through adapted working procedures following the introduction of BMP. However, we know that the CGPCS entirely relies on the administrative capacities of its participants.

### 5.3.2.2. Fiscal powers

Fiscal capacities refer to the right to collect revenue by means of financial instruments.<sup>184</sup> Once again, the framework reveals that it was adapted for federal studies, and much like other research on territoriality it has the nation-state at its core. However, by analogy, we can look at the economic effects of the introduction of the HRA.

Although BMP only contain recommendations to seafarers transiting the HRA (and the VRA), in practice such self-defensive measures are mandatory to ensure compliance with conditions in insurance policies, but also with terms of employment. The cost of vessel protection measures amounted to as much as \$1.3 billion in 2014, while total

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<sup>182</sup> Mueller, S. (2012). Federalism and the concept of political territoriality. *L'Europe en formation*, (1), 95–120.

<sup>183</sup> Mueller, S. (2012). Federalism and the concept of political territoriality. *L'Europe en formation*, (1), 95–120.

<sup>184</sup> Mueller, S. (2012). Federalism and the concept of political territoriality. *L'Europe en formation*, (1), 95–120.

insurance and labor costs added up to \$175 million.<sup>185</sup> Consequently, we cannot point to territorialization as a basis for institutionalized fiscal authority and jurisdiction, but nevertheless establish that it is the source of substantial costs.

### 5.3.2.3. Legislative powers

The delegation of legislative capacities is a third way of distributing power vertically.<sup>186</sup> With the BMP, the shipping industry managed to put existing norms, rules, and conventions regarding counter-piracy measures on print, and have these recommendations endorsed by various international bodies. Supplemented with a HRA, the issue of Somali piracy was defined in spatial terms. Thus, the recommended measures for shipping self-protection could be linked to a defined geographic space.

There were, however, never any intentions to give these advice legal status. By references to the BMP and the HRA in both domestic regulations and legislation, the HRA has received a semi-legal status. This means legislators have to be consulted prior to any revision of the HRA.<sup>187</sup>

### 5.3.3. Political actors and processes

The influence of territory on the strategic behavior of political actors can be analyzed from how it facilitates classification, communication, authority enforcement, planning, impersonalization of power, and reification of power. Political territoriality establishes territory as an effective and efficient risk-sharing coordination and accountability structure.<sup>188</sup> Political actors seek different degrees of territorialization depending on existing conflict and the presence of political alliances. A higher degree of territorialization indicate higher level of authority and legitimacy<sup>189</sup>, and is thus a factor influencing the vertical integration of power among political actors.

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<sup>185</sup> Madsen, J.V., Seyle, C., Brandt, K., Purser, B., Randall, H., & Roy, K. (2014). *The Economic cost of Somali piracy 2013*. Broomfield: Oceans Beyond Piracy.

<sup>186</sup> Mueller, S. (2012). Federalism and the concept of political territoriality. *L'Europe en formation*, (1), 95–120.

<sup>187</sup> Bueger, C. (2015). *Zones of exception at sea: Lessons from the debate on the High Risk Area*. Cardiff: Cardiff University.

<sup>188</sup> Burgess, M., & Vollaard, H. (2006). Introduction: Analysing Westphalian states in an integrating Europe and a globalising world. In Burgess, M., & Vollaard, H. (Eds.). *State territoriality and European integration: Territoriality and federalism in EU governance*. Oxford: Routledge, 1–14.

<sup>189</sup> Burgess, M., & Vollaard, H. (2006). Introduction: Analysing Westphalian states in an integrating Europe and a globalising world. In Burgess, M., & Vollaard, H. (Eds.). *State territoriality and European integration: Territoriality and federalism in EU governance*. Oxford: Routledge, 1–14.

If territory constitutes an asset which determines the organizational structure or mobilization strategy of political actors, then this is an example of political territoriality.

<sup>190</sup> Adjusting to or imitating a preexisting structure, voluntarily or not, is also a sign of territoriality.<sup>191</sup> The institutional setup of the CGPCS does not only attempt to mimic democratic representation through, for instance, the setting up of different stakeholder expert groups<sup>192</sup>, it also derives legitimacy from the definition of a clear geographical space. Through the HRA, the shipping industry exerts influence on counter-piracy policy and confirms its status as an important political actor.

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<sup>190</sup> Burgess, M., & Vollaard, H. (2006). Introduction: Analysing Westphalian states in an integrating Europe and a globalising world. In Burgess, M., & Vollaard, H. (Eds.). *State territoriality and European integration: Territoriality and federalism in EU governance*. Oxford: Routledge, 1–14.

<sup>191</sup> Mueller, S. (2012). Federalism and the concept of political territoriality. *L'Europe en formation*, (1), 95–120.

<sup>192</sup> Ponte S., Gibbon, P., & Vestergaard, J. (2011) Governing through standards: An introduction. In Ponte S., Gibbon, P., & Vestergaard, J. *Governing through standards: Origins, drivers and limitations*. Basingstoke: Palgrave, 1–24.

## 6. Conclusion

This thesis has shown how industry's practice as a main stakeholder in countering Somali piracy has allowed it to assume a political role. Industry thereby enjoys higher levels of authority on the expense of state actors, who are the traditional actors in global security governance and international relations.

The perceived expertise of the industry, together with the symbolic power represented by the special relationship between seafarers and the sea, enabled the shipping industry to assume an instrumental role in counter-piracy, granting significant influence over the shaping of political response. From implicitly approving this development, states eventually came to explicitly uphold and endorse standards set by industry. This way, industry has achieved notable political power in the processes of countering Somali piracy.

The biggest merits of the Contact Group on Piracy off the Coast of Somalia (CGPCS) is arguably its ability to fill governance gaps and ensuring compliance with adopted policies, while remaining an informal mechanism. The trust-building aspects of this platform must, however, also be recognized. Industry has actively engaged in trust-building by seeking to cooperate with other stakeholders, in the early stages by drawing attention to the problem of piracy and helping the international community to establish a complete picture of the problem. Without the mutual trust, it would have been impossible for the industry to exercise a political role.

Though the CGPCS, industry has introduced guidance in a number of areas—guidance that has proved to have had great impact, such as the Best Management Practices (BMP) tool for shipping self-protective measures. The BMP and the two geographical areas introduced to facilitate its implementation, i.e. the High Risk Area (HRA) and the Voluntary Reporting Area (VRA), have achieved semi-legal status through IO endorsement and incorporation in domestic legislation and regulation. The shipping industry's right to self-regulation, its ownership of the BMP, and its widely accepted methodology in the geographical definition of the piracy threat are all examples of the legitimacy invested in the shipping industry. More concretely, the regulatory capacity

entrusted to the shipping industry is a prime example of the re-articulation of regulatory authority.

To summarize, industry's output-oriented approach in response to the surge in Somali piracy was greeted with overall encouragement. Over time, industry practice was conferred greater legitimacy. When transferred to the domain of counter-piracy, industry steps into a more political role whereby its authority appears strengthened, altering the authority balances between public and private.

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