8. Conclusion: Challenges and Opportunities

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The central theme of this book is the international response to Somali piracy. In this concluding chapter we will return to the two main questions that were posed in the introduction: how do actors with different nationalities interact when responding to Somali piracy, and what are the prospects for greater international cooperation? In discussing these two questions, this chapter will adopt a practical perspective on a number of issues that are relevant to fighting piracy, or at least to limiting the damage it causes. These issues are ultimately also relevant for the international level, either directly or indirectly. Finally, as this book represents an attempt to study a phenomenon that is still in a very early phase – i.e., international cooperation against maritime piracy – we will end by identifying some of the themes that require further research.[1]

8.1 The International Response

In order to answer the question of how actors with different national backgrounds interact with each other in the international response to Somali piracy, we will first highlight the (governmental) actors on whom this book primarily focuses, as well as the mechanisms for international interaction. From

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[1] Although this concluding chapter is based on the preceding chapters, the views expressed here are those of the chapter's authors and do not necessarily represent those of the other contributors to this book.

the various contributions to this volume it has become clear that
the interests of the main governmental actors are to some degree
aligned, although the degree of cooperation is still limited. The
governments involved can be subdivided into a number of
distinct categories: Somali governmental authorities (such as the
Transitional Federal Government, or TFG, and the regional
governments of Somaliland and Puntland), governments of
countries in the region (such as Djibouti, Yemen, Kenya,
Oman, Egypt, Tanzania, the Maldives, the Seychelles, Eritrea,
Ethiopia), various Western countries (often - but not always -
operating in a joint setting), and a number of Asian countries
plus Russia (countries that tend to operate more individually
than the Western countries). Individual governments are not the
only type of actors involved. Also various international
governmental Organizations are directly involved in
counterpiracy or in addressing the lack of effective state control
in Somalia. These include the European Union, NATO, the
African Union, and the United Nations. In addition, there are
many non-governmental actors. First and foremost, of course,
the companies involved in commercial shipping, fishing, trade,
and maritime insurance.

The mechanisms for international interaction most often
referred to in this book are the Contact Group on Piracy off the
Coast of Somalia (CGPCS), the Shared Awareness and
Deconfliction meetings (SHADE) in Bahrain, and the
Internationally Recommended Transit Corridor (IRTC). The
Contact Group is the main mechanism for interaction at the
political level for most of the actors who are engaged in
addressing piracy. It has four working groups that deal with
operational issues, judicial issues, commercial industry
coordination, and public information. The United Nations
Secretariat is among the participants in the Contact Group.
SHADE and the IRTC are major mechanisms at the operational
level, both of them being aimed at the maritime dimension. The
SHADE meetings bring together the countries that deploy naval
missions to the Gulf of Aden, as well as some Organizations
representing the shipping industry. These are working-level

meetings where information about each actor's activities in the Gulf of Aden is shared. The IRTC, finally, brings together the naval operations of the European Union, the US-led Combined Maritime Forces, and NATO in a single operational framework (a transit corridor that is secured jointly by these actors). The navies of Japan and South Korea, although not integrated in this framework, cooperate closely with it as their escort missions pass through the IRTC.

While the Contact Group, SHADE, and the IRTC take up a central role in the international response to Somali piracy, many other mechanisms are also important, including a broad range of institutions, platforms, or bodies such as the Djibouti Code of Conduct, the Mercury system of communication, the United Nations Security Council, the International Maritime Organization, the World Food Programme, the African Union Mission in Somalia (AMISOM), and the International Maritime Bureau of the International Chamber of Commerce and other international business associations.

As stated, various contributors to this book have pointed to the fact that the interests of the main governmental actors are only partly aligned when it comes to fighting Somali piracy. Strategic competition between major naval powers such as the US and China, or India and China, but also between Organizations that have largely identical memberships, such as NATO and the EU, constitutes an obstacle to effective and efficient cooperation. In addition to this, for the main actors, combating piracy is not the sole motive for deploying warships to the Gulf of Aden. Given the relatively limited threat that Somali piracy poses to the interests of individual nations – increased insurance rates probably being the greatest overall problem at the national and international level – and the lack of options to eradicate Somali piracy in the short term, for the major actors geopolitical considerations overrule the fight against piracy. This has been demonstrated most clearly in the chapter by James R. Holmes on the United States, the world's most powerful naval actor. For the US, the benefits of attempting to eradicate piracy in Somalia do not outweigh the

risks that this would involve for America's geopolitical interests in the Indian Ocean. Also in the considerations of the other main naval powers, geopolitical considerations are likely to carry more weight than the immediate problems that piracy poses to their shipping interests. Nevertheless, in spite of this, the countries involved do have a common interest in protecting international shipping and combating piracy. Maritime piracy, especially when occurring in such a strategically important thoroughfare as the Gulf of Aden, provides a basis on which international maritime security cooperation can be built.

The degree of actual cooperation is still limited. At the strategic level, the Contact Group has considerable potential to coordinate the response to Somali piracy. However, so far, this potential has only been partly realised, as the Contact Group has not really taken the overall lead. Nevertheless, several important steps have been taken, for instance with regard to land-based initiatives to combat the root causes of piracy. Proposals to this end have been discussed by the TFG and the Special Representative of the Secretary-General of the UN for Somalia, and are also addressed within the Contact Group. Moreover, an assessment of regional capability development is being conducted, which is closely linked to the Djibouti Code of Conduct. Another promising development relates to creating a legal toolbox that provides support to states and relevant Organizations in dealing with Somali piracy. The establishment of an International Trust Fund, furthermore, helps to defray the expenses associated with the prosecution and detention of suspected pirates and their imprisonment upon conviction as well as other activities related to the implementation of the Contact Group's objectives regarding combating piracy in all its aspects. Other initiatives related to the Contact Group are to discuss seafarers' protection and welfare issues, and how seafarers should deal with piracy attacks, hostage situations, and the post-hostage period.

At the operational level, there is no fully integrated approach in the maritime sphere - let alone an integrated approach to piracy that combines the maritime, political, and

legal dimensions. The IRTC involves only a part of the naval powers, and although the participating navies jointly coordinate their activities there is no central command under which all warships in the IRTC fall. Various other navies still prefer to escort maritime vessels through the Gulf of Aden rather than joining the IRTC. SHADE and the Contact Group are primarily platforms for the exchange of information and for initiating approaches which are then carried out by the participating governments and non-governmental actors. Other relevant instances of international cooperation include the agreements between the EU and some countries in the region regarding the handing over of piracy suspects. However, the EU member states still make their own decisions on whether or not they negotiate the handing over of piracy suspects in the region, extradite them to another state, prosecute them themselves, or release them because of a lack of interest. NATO, moreover, does not have any power to arrest piracy suspects, which means that states participating in the Standing NATO Maritime Group deployed to the region will have to operate under their own flag if they want to make an arrest.

In spite of the various limitations that play a role, the current mix of international initiatives, with at the centre the Contact Group and the SHADE-IRTC approach, is still a novelty in the history of counterpiracy. It is therefore worthwhile considering what the prospects are for increased coordination at the international level when dealing with maritime piracy.

8.2   Challenges and Opportunities Regarding the Fight against Piracy

Given the geopolitical considerations that influence the international approach to Somali piracy, including the deployment of warships as well as the approach to the political situation within Somalia, there are clear limits to the space in which further cooperation can develop. Also, part of the low-hanging fruit may already have been picked. Take, for example,

the long-standing military allies Europe and the US, for whom it has been relatively easy to work together. But cooperating through the Contact Group and SHADE is more difficult, as they combine a wider group of actors and cannot by themselves execute policies. Also, incorporating further navies into the IRTC or expanding the scope of activities of other mechanisms is likely to involve serious obstacles. These include the disinclination of various countries to transfer control over their military assets to a multinational command structure, and limitations to the degree in which actors are able to share intelligence.[2] Different approaches to human rights are an additional impediment for countries to work together in dealing with suspected pirates.[3] And although the IRTC and the escort missions in the Gulf of Aden have succeeded in increasing security for shipping, this success has induced Somali pirates to redirect their attacks to the Indian Ocean. This is a far greater body of water in which transit corridors or escort systems cannot be implemented, or at least would require numbers of navy ships that are not available. Yet another challenge is finding a common approach to address the political fragmentation of Somalia, which involves overcoming even stronger conflicting interests than those related to a purely maritime approach.

While the Contact Group is looking for ways to strengthen the legal system in the region, in an attempt to avoid impunity, another challenge lies in the difficulty of evidence gathering and keeping suspects in legal detention while on board of navy ships. Each national legal system sets a different standard for the evidence needed for a conviction, and has its own instructions on the powers that can be used against suspects to hold them in pre-trial detention, although ultimate limits in relation to the time-limits of pre-trial detention are set by human rights treaties. These facts might further complicate prosecution. In

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2   For instance, intelligence sharing between the EU and NATO is hindered due to the Cyprus conflict and the Turkey-EU accession question.
3   This issue is relevant, for instance, in EU-China relations: discussion by one of the authors with an EU official, Brussels, May 2010.

this respect it will be interesting to see how the first European trials against Somali piracy suspects will develop in the Netherlands and Germany. To deal effectively with evidence gathering and prosecution, greater cooperation is also required between governments and shipping companies. On a more detailed level, another question to be addressed is how and when the capacities of local coastguard Organizations can be strengthened without ending up with having provided pirates with extra means to navigate the sea and attack ships.

The overall challenge is to achieve a comprehensive approach that involves all actors, covers all dimensions (land, sea, and legal), and allows for the pooling of resources. As stated before, the Contact Group seems to be best equipped to fulfil that task. However, even if it turns out to be possible to develop the right initiatives in the different working groups, and to find the support and the finances to translate the ideas into action, the question remains who should take the lead and assure a coherent and coordinated approach. This would require states to participate in the work of the Contact Group under the direction of a state or an Organization. Considering the geopolitical interests at stake, that is an unlikely scenario. And even with a fully comprehensive international approach, eradicating Somali piracy involves a state-building process and thus requires a great deal of time.

Although the topics discussed above are presented as challenges rather than as opportunities, the challenges themselves can bring forth new opportunities. Even though the space for increased cooperation is limited, it still seems that the degree of cooperation will keep growing. Somali piracy is not likely to disappear soon, and it is therefore fair to assume that a great number of international actors will remain involved in counterpiracy initiatives. Increased coordination will enable a more efficient use of warships and aircraft, and thus serves the interests of all naval powers involved. Also, countries such as China and India – as aspiring major naval powers in the Indian Ocean - have an interest in joining the US and the Europeans in being at the forefront of the international approach. Somali

piracy has turned out to be an important opportunity to make progress in the sphere of international maritime governance – so far a relatively little-developed part of global governance. The shared interests and the mechanisms already in place make it relatively easy to experiment with new approaches to greater efficiency and deeper interaction. If anything, the case of Somali piracy represents an example of international cooperation growing out of a pragmatic, ad hoc approach, largely at the operational level.

The chapter by May-Britt Stumbaum and Per Gullestrup has highlighted another area where the challenges can bring about new opportunities. Greater cooperation among shipping companies when dealing with hijackings and ransom payments might prevent ransom prices going up, and might prepare shipping companies to deal more efficiently with hijackings. A joint platform for organising negotiations, communicating with the family members of hijacked crews and with the press, and looking after crew members once released might be established through the IBM or IMO, or any other overarching body. Insurance companies could play a major role, as insurance fees might be used in part to contribute to such a joint platform. Furthermore, the insurance companies might offer reduced fees once precautionary measures have been taken by shipping companies with regard to limiting the risk of successful piracy attacks. In general, greater cooperation in the business sector can enhance maritime security and the well-being of seafarers.

8.3   Topics for Further Exploration

Although many issues have been raised in this book, it has become clear that there is not yet a clear-cut answer to the question of how to deal with Somali piracy. The main maritime powers are showing an unprecedented effort in trying and find a solution. The issue of cooperation at the governmental level has been the central focus of this book, and requires further research. Some important issues in this regard are (1) the way in

which the response to Somali piracy is related to progress on maritime security governance, (2) how it relates to geopolitical relations between the great powers, and (3) how the costs of the international response relate to the benefits in terms of increased maritime security and political stability in Somalia.

Various related areas also need further study. An important question is where public responsibility ends and private responsibility starts, or vice versa. Another area of research that needs further attention relates to the role of private security companies: what role can they play and how can they be controlled or held legally responsible for any damage? Yet another question relates to the complexity of the situation in Somalia, which does not only suffer from a weak government, militants in the south, autonomous regions in the north, and piracy, but from a series of other highly organised criminal activities, such as arms smuggling, drug smuggling, and human trafficking. Directly related to this is the question of how the international naval presence should deal with these activities – and waste dumping - whenever they encounter them. And clearly, one of the most important areas for further research deals with the questions of how to follow the money trail that is behind the financing of piracy, as well as the money-laundering activities that are exercised after the ransoms have been collected. Hopefully this book will be a first step in trying to find answers, and inspire those who will take up the challenge of studying those questions that still need answers.