

## DIMENSIONS OF LEGITIMACY: EVALUATING THE CONTACT GROUP

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William Smith

*The Chinese University of Hong Kong*

### SUMMARY

*This analytical paper explores the Contact Group on Piracy off the Coast of Somalia from the perspective of its claims to legitimacy. Legitimacy is associated with those properties of an organization that render it an authoritative source of rules, decisions, or recommendations. The paper explores the following three questions: (1) Is the concept of legitimacy relevant to the Contact Group? (2) Which properties should we look at to measure its legitimacy? (3) Are any reforms necessary to enhance its claims to legitimacy? The paper concludes that the Contact Group has significant achievements as a governance body, but identifies several shortcomings that should be addressed to enhance its legitimacy claims.*

Legitimacy is a complex concept in international relations. It is commonly associated with *those properties of an organization or*

*body that render it an authoritative source of rules, decisions, or recommendations.* In other words, the legitimacy of an agency or body gives us a weighty reason to take it seriously as a source of guidance for our actions. Legitimacy has long been recognized as an important aspect of authority within domestic contexts, but its relevance to international agencies has been the subject of rather more contention. The legitimacy of a body such as the Contact Group on Piracy off the Coast of Somalia (hereafter ‘The Contact Group’) is thus difficult to ascertain. Is the concept of legitimacy relevant to appraising a body such as the Contact Group, particularly given that it lacks the formal power to impose binding regulations on its members? If the concept is relevant, which properties or features should we look at to ascertain whether the Contact Group is legitimate? And if it turns out that there are genuine concerns about the Contact Group, how can it amend its practices to enhance its claims to legitimacy? The following reflec-

tions address each of these questions in turn.<sup>1</sup>

## THE RELEVANCE OF LEGITIMACY

The legitimacy of global governance has emerged as a key issue in the study of international relations. Global governance is used here as a catch-all term to describe the various organizations, agencies and networks that have been established to enable stakeholders, including state *and* non-state actors, to identify, deliberate and resolve cross-border problems that cannot be addressed through the domestic policy of governments alone. There has been a proliferation of such arrangements in recent years in response to a growing awareness of the ‘governance gap’ that exists at regional and global levels.<sup>2</sup> The challenge of reflecting on the legitimacy of global governance is that, as Daniel Bodansky suggests, the legitimacy of these ar-

rangements has historically been given much less attention than the legitimacy of domestic governance. In this section, I briefly reflect on the reasons for this discrepancy as a means of providing some necessary context for appreciating the relevance of legitimacy to the Contact Group.

There are, according to Bodansky, two reasons for the discrepancy. The first is that, as he notes, ‘until recently international institutions have generally been so weak – they have exercised so little authority – that the issue of their legitimacy has barely arisen.’<sup>3</sup> The idea is that legitimacy becomes a contentious topic only insofar as an agent or body has the power to bind others, as is the case for organs such as the modern state. This point can be illustrated through considering the case of The Contact Group. Along with similar informal policy networks in the global realm, the Contact Group does not have the power to enforce compliance with its recommendations. It, instead, relies on soft mechanisms, such as consensual decision-making and mobilizing praise and blame as a form of peer pressure.<sup>4</sup> This lack of enforcement power may create the impression that the legitimacy of such an organ should not be a matter of much concern. The second reason is that, insofar as it *has* arisen as an issue of concern, the legitimacy of global governance arrangements has historically been associated with fairly straight-

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<sup>1</sup> A brief explanatory note on legitimacy may be in order before the discussion gets underway. Those familiar with the scholarly literature may be aware that a contrast is often drawn between *sociological* legitimacy, which refers to the belief of relevant agents that an institution is legitimate, and *normative* legitimacy, which refers to the soundness of the reasons that are or can be given to support an institution’s legitimacy (Buchanan and Keohane 2005: 405). This brief discussion paper will mostly discuss legitimacy in the normative sense, but it should be stressed that normative arguments have great significance for gauging the sociological legitimacy of institutions. This is because the belief of relevant agents that an institution is legitimate is often, though not always, a reflection of the soundness of the arguments that can be given to support its legitimacy. The normative legitimacy of the Contact Group is thus a matter of practical and not merely theoretical significance, because the soundness of the arguments that can be given in favour of its legitimacy will surely impact on the willingness of stakeholders to *treat* it as legitimate.

<sup>2</sup> Slaughter, Anne-Marie (2004) *A New World Order* Princeton: Princeton University Press, pp.8-11

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<sup>3</sup> Bodansky, Daniel (1999) ‘The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?’ *American Journal of International Law*, 93, p. 596

<sup>4</sup> Zach, Danielle A., D. Conor Seyle, and Jens Vestergaard Madsen (2013) *Burden-sharing Multi-level Governance: A Study of the Contact Group on Piracy off the Coast of Somalia* Broomfield: Oceans Beyond Piracy, p. 33

forward principles.<sup>5</sup> These are (a) the consent of member states and/or (b) their establishment through a legal mandate from an authorised body. These principles can, again, be applied to the Contact Group. The legitimacy of the Group can be associated with the voluntary decision on the part of its members to participate, which might be taken as implicit or explicit consent to submit to its authority. The legitimacy of the group can also be associated with its relation to the United Nations (UN). The Group was established as a response to a Security Council Resolution and it has subsequently made use of UN facilities, worked closely with related UN agencies, and regularly reported to the UN Security Council.<sup>6</sup> The fact that the Contact Group enjoys the consent of its members and a close working relationship with a major international legal authority might suggest that further reflection on its legitimacy is unnecessary. In short, global legitimacy, unlike domestic legitimacy, might seem to be a relatively *unimportant* and *uncontroversial* topic.

This perception has, though, been thoroughly debunked in recent times, which accounts for the emergence of legitimacy as a prime concern in international relations. The argument that legitimacy is unimportant due to the impotency of global governance networks has been challenged on the grounds that the kind of ‘soft power’ associated with these networks is still a form of power

and—as such—must be justified to those over whom it is exercised. So, for instance, the capacity of a body such as the Contact Group to influence and shape institutional responses to a shared policy problem can still be significant, even in the absence of formal compliance mechanisms. The legitimacy of such a body—the claim it has to influence and shape the way in which various stakeholders approach a shared problem—is thus a matter that has considerable salience. In addition, it has been argued that the legitimacy of global governance networks is an important topic precisely *because* of their lack of formal compliance mechanisms. In the absence of these mechanisms, bodies such as the Contact Group rely heavily on their capacity to mobilize support among stakeholders to achieve desired goals. This support is likely to be conditional on the willingness of stakeholders to treat it as a legitimate body, which has some kind of justified claim to influence their actions. As Allen Buchanan and Robert Keohane note, in the absence of a compelling claim to legitimacy, ‘public support for global governance institutions may be undermined and their effectiveness in providing valuable goods may be impaired.’<sup>7</sup> There has, then, been growing awareness that the legitimacy of bodies such as the Contact Group is a topic worthy of investigation, despite the fact that such bodies lack the kind of ‘hard’ power associated with domestic governments.

The argument that consent and authorisation exhaust the basis for legitimacy in the global

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<sup>5</sup> Bodansky, *The Legitimacy of International Governance*, p.597

<sup>6</sup> Bueger, Christian (2014) ‘Transnational Governance, Somali Piracy and the Contact Group: An Analytical Primer’ Working paper of the Lessons Learned Project of the Contact Group on Piracy off the Coast of Somalia, No. 1, Cardiff: Cardiff University, p.3

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<sup>7</sup> Buchanan, Allen and Robert O. Keohane (2006) ‘The Legitimacy of Global Governance Institutions’ *Ethics & International Affairs*, 20, p. 407.

realm has also been subject to severe criticism in recent years. First, the principle of consent as a basis of legitimacy has been found wanting on the grounds that power inequalities between members make it difficult to determine whether consent is freely given.<sup>8</sup> The principle of consent might also be challenged on the grounds that it is traditionally associated with the consent of *states*, which excludes other types of non-state actors that might have a legitimate interest in the decisions of global governance bodies. Thus, for a body such as the Contact Group, it might be necessary to ascertain whether all appropriate stakeholders—state and non-state—have been included, or at least given the opportunity to participate, on a more-or-less equal footing. Second, the principle of proper authorisation is – perhaps surprisingly – not always treated as a sufficient or even a necessary condition of legitimacy in the global realm. There has been greater willingness among stakeholders to take seriously claims to legitimacy that are advanced by various kinds of governance networks that lack any formal authorization or state participation. An organization like the Forest Stewardship Council, for instance, lacks any legal mandate for its activities, but is widely regarded as legitimate by a range of stakeholders.<sup>9</sup> The problem of a governance-gap in global contexts means that stakeholders, perhaps more so than in the domestic sphere, have reason to endow agencies with legitimacy even in the absence of formal legal authorization. This may, in

fact, be good news for the Contact Group. Although it emerged as a response to a UN Security Council resolution, it was not formally established by such a resolution and thus lacks a clear mandate for its activities.<sup>10</sup> In any case, the debate about consent and authorisation suggest that the legitimacy of global governance networks might be associated with supplementary, or perhaps even alternative, properties. The recognition of this insight accounts for a growing willingness among policy-makers and scholars to look again at the concept of legitimacy in the global realm to clarify what these properties are.

## THE DIMENSIONS OF LEGITIMACY

The traditional standards of legitimacy in the global realm need to be supplemented with additional criteria. Or at least, this is the consensus view in the recent scholarship on global governance. This literature has proposed a wide range of properties and characteristics that might be relevant to appraising the legitimacy of emergent policy networks in the global realm, such as inclusivity, transparency, accountability, representativeness, responsiveness, functionality, efficiency, connectivity, human rights, popular support and charismatic leadership. There is, as yet, no agreement over general standards that can be applied to gauge the legitimacy of global governance bodies, though some are beginning to appreciate the case for a *plural* approach according to which different standards might be appropriate to evaluate

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<sup>8</sup> Buchanan and Keohane *The Legitimacy of Global Governance Institutions*, p. 414

<sup>9</sup>Black, Julia (2008) 'Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes' *Regulation & Governance*, 2, p. 145

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<sup>10</sup> Zach et al. *Burden-sharing Multi-level Governance*, p. 36

different types of bodies.<sup>11</sup> The following reflections identify three dimensions of legitimacy that appear to be intuitively salient for an entity such as the Contact Group.

The first dimension is that the legitimacy of a global governance scheme is enhanced to the extent that it guarantees effective *stakeholder participation*. The effective participation of stakeholders performs several important functions in enhancing legitimacy. It speaks to concerns about fairness and voice, insofar as schemes are often subject to salient criticism if they do not seek to include all those that have a stake in their operations. It also enhances the efficiency of a scheme, because stakeholder inclusion contributes to processes of social learning through the sharing of relevant information and the weighing of competing arguments. Cohen and Sabel defend a broad notion of inclusion through suggesting that ‘direct participation helps because participants can be assumed to possess relevant information about the local contours of the problem and can relatively easily detect both deception by others and unintended consequences of past decisions.’<sup>12</sup> This type of participation can also provide at least some protection against the danger that governance schemes are hijacked by powerful interests, a strategy that can only succeed if the arrangements guarantee more-or-less equal opportunities for agenda setting. As Sabel and Zeitlin note, the institutional design of governance schemes should aim for ‘a multi-polar dis-

tribution of power [such] that no single actor can impose her own preferred solution without taking into account the views of others.’<sup>13</sup> And the availability of opportunities to participate is important because of the communicative significance of a decision *not* to participate by stakeholders. The decision not to participate might be interpreted as an act of self-interest by a group that stands to lose from the scheme *or* as an act of protest by a group that contests the legitimacy of the scheme. Either way, the non-participation of stakeholders can communicate important information to institutional designers about stakeholder perceptions of emergent governance schemes.<sup>14</sup>

The second dimension is the *comparative efficiency* of a governance scheme, understood as the extent to which it performs better in terms of identifying and addressing problems than alternative arrangements. This principle is informed by the idea that the basic rationale for global governance bodies is instrumental, in the sense that they exist to address problems that cannot be adequately resolved at the domestic level. It is therefore appropriate that their efficiency in addressing such problems is included as an important dimension of legitimacy. It may be tempting to defend a governance organization as legitimate if it appears to succeed in pursuing *some* of its stated goals to *some* degree. The problem with this is that, in light of the global governance gap, this

<sup>11</sup> Brassett, James, Ben Richardson and William Smith (2012) ‘Private Experiments in Global Governance: Primary Commodity Roundtables and the Politics of Deliberation’ *International Theory*, 4, pp. 367-99

<sup>12</sup> Cohen, Joshua and Charles Sabel (1997) ‘Directly Deliberative Polyarchy’ *European Law Journal*, 3, p. 326

<sup>13</sup> Sabel, Charles and Jonathan Zeitlen (2011) ‘Experimentalism in Global Governance’, paper presented at the International Studies Association Conference, Montreal, 2011, p.1

<sup>14</sup> Fung, Archon (2003) ‘Recipes for Public Spheres: Eight Institutional Design Choices and their Consequences’ *The Journal of Political Philosophy*, 11, p.349



paves the way for defending *any* global network simply on the grounds that it is better than nothing. A more exacting standard incorporates a comparative element, which requires us to examine the relative merits of various institutional schemes. As Buchanan and Keohane note, ‘if an institution steadfastly remains instrumentally suboptimal when it could take steps to become significantly more efficient or effective, this could impugn its legitimacy.’<sup>15</sup> It may be the case, for instance, that an institutional reform becomes necessary to shore up the legitimacy claims of an underperforming agency. If the under-performance of an agency becomes so serious, it may be necessary to replace it or reallocate its mandate to an alternative body. Buchanan and Keohane cite the example of the UN Human Rights Commission, which suffered sufficient criticism to warrant the creation of the Human Rights Council as a replacement body. A failing governance body could, then, face calls for its replacement if a feasible alternative exists with minimal transition costs.

The third dimension is *deliberative reflection*, which is associated with the capacity of a governance scheme to reflect upon its goals and performance through an ongoing dialogic process. The basic idea is that governance schemes should put in place mechanisms that enable it to refine its purpose, learn from its mistakes, and improve its performance. This dialogue should not merely take the form of an internal review of current practices among participants, but also requires the agency to reach beyond its current membership to non-participating con-

stituencies. The significance of going *outside* the current participant base is that it is all too easy for members of a scheme to take established procedures as settled and performance levels as satisfactory. The perspective of non-participants, by contrast, is valuable because it may be easier for them to identify procedural flaws, misguided priorities, or avoidable shortfalls in governance performance. The downside is that outsiders may lack proper appreciation of the constraints that insiders are operating within, which is why the reflective process must be deliberative. In other words, insiders must engage seriously with the concerns of external critics while also responding to objections that may be insufficiently informed. The deliberative process can involve interaction between a governance agency and Non-Governmental Organizations (NGOs) that share an interest in a particular problem or policy agenda.<sup>16</sup> It might also involve a system of ‘peer-review’ between different elements of an overarching governance structure. Sabel and Zeitlin discuss the example of energy policy within the European Union (EU). The Florence Electricity Forum is obliged to report to the EU Commission, which has the power under EU anti-trust legislation to impose penalties as a response to intransigent or obstructionist strategies by participants to the Forum.<sup>17</sup> The requirement to engage in this kind of exercise can be a means of enhancing accountability, in the sense that external actors gain the power to appraise the governance network. It can also enhance transparency, because the network

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<sup>15</sup> Buchanan and Keohane, *The Legitimacy of Global Governance Institutions*, p. 422

<sup>16</sup> Buchanan and Keohane, ‘The Legitimacy of Global Governance Institutions’, pp. 432-3

<sup>17</sup> Sabel and Zeitlin *Experimentalism in Global Governance*, pp. 306-8

has to divulge information about its practices for deliberative reflection to occur. This dimension reminds us that the legitimacy of a governance body, as Buchanan and Keohane note, 'is not simply a function of the institution's characteristics; it also depends upon the broader institutional environment in which the particular institution exists.'<sup>18</sup>

The principles of stakeholder participation, comparative efficiency, and deliberative reflection appear to mark out important properties that global governance bodies should embody to some degree. Two comments are in order before appraising the Contact Group in light of these principles. First, it would be inappropriate to claim that these principles identify necessary or sufficient conditions of legitimacy. In part this reflects the obvious point that the standards enumerated here cannot exhaust all possible dimensions of legitimacy.<sup>19</sup> It also reflects the fact that there may be some circumstances where a global network fails to embody one or more of the principles to an adequate degree, but would still be considered legitimate all things considered. This might be the case if, for instance, the governance regime was not

the one that would offer the most comparative benefit, but would perform better than rivals in terms of stakeholder participation. This reflects that fact that the standard of legitimacy discussed here, in common with others, contains a plurality of contrasting values that might not be realisable simultaneously. The evaluations that are made about the legitimacy of specific schemes should thus be sensitive to inevitable trade-offs and constraints of circumstance. Second, and following on from this point, legitimacy is a property of agencies that can be possessed to a greater or lesser degree. The more an institution or network embodies the three principles, the more weight its claim to legitimacy has. This may be frustrating to those who hanker after a clear standard that will give us categorical evaluations about whether a body or agent is legitimate. However, although such an evaluation might be desirable, it is not always reasonable to expect such clear cut determinations of legitimacy. This is particularly true in contexts of pervasive uncertainty about methods and goals of emergent regulatory schemes in global contexts. There is, as a matter of fact, considerable disagreement among stakeholders about the legitimacy of several global governance bodies, which reflects the difficulty of assessing schemes that are novel, fragile, and continually evolving.<sup>20</sup>

## THE CONTACT GROUP: SCOPE FOR IMPROVEMENT?

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<sup>18</sup> Buchanan and Keohane, *The Legitimacy of Global Governance Institutions*, p. 432

<sup>19</sup> As noted at the outset of this section, the relevant scholarly literature has identified a wide range of variables that may be associated with legitimacy. These include some properties that are not captured by the three dimensions discussed here, such as legality or charismatic leadership. It is not my intent here to exhaust all potential dimensions of legitimacy. The point, instead, is to note that the properties that are relevant to appraising the legitimacy of a given organization will likely emerge in and through ongoing reflection on the aims, design and performance of that organization. This means that, as noted in the text, any proposed standard of legitimacy in the global realm should have a provisional quality, which leaves space for the possibility that additional or alternative variables might emerge as salient in relation to specific governance agencies (Buchanan and Keohane 2005).

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<sup>20</sup> Buchanan and Keohane, *The Legitimacy of Global Governance Institutions*, p. 424

The dimensions of legitimacy discussed above set the stage for a consideration of the Contact Group. The Contact Group, as noted above, has design and operational features that render it part of a family of global governance networks that have proliferated in recent years. Christian Bueger describes it as ‘a pragmatic, functionalist form of transnational governance, which is primarily driven by inter-governmental relations and directed at problem solving.’<sup>21</sup> The Contact Group can be distinguished from several other global governance networks because it has been established to address a policy problem that has a very clearly defined thematic and geographical scope. This, in many ways, simplifies the problem of gauging its legitimacy, because such a clearly defined scope should reduce the challenges of identifying relevant stakeholders and comparative benefits. This does not, though, completely solve the challenge of evaluating such a flexible, ad hoc, and innovative governance scheme.

The first dimension of legitimacy to consider is stakeholder participation. As defence and security has traditionally been dominated by states and state-based organizations, it is surprising that the Contact Group has, from the start, included non-state actors within its activities. NGOs and industry actors have been involved as observers, collaborators and, increasingly, active participants within the deliberations of the Contact Group. The core benefit of this kind of broad stakeholder participation is that it introduces valuable knowledge and unique perspectives into institutional deliberation. The participation of NGOs, for instance, has

led to greater awareness about the plight of seafarers held as hostages, while industry stakeholders have promoted knowledge and understanding about issues such as the benefits and burdens of the use of private security personnel on ships. This is positive from the point of view of enhanced legitimacy, though commentators have noted that increasing industry and civil society participation has been an incremental and at times contentious process.<sup>22</sup> There is no doubt that states continue to be the dominant players, with the Contact Group exhibiting certain failings familiar to all global governance networks. In addition to asymmetrical influence between state and non-state actors, there are also marked inequalities among state actors. The Group is inclusive of a wide range of states, but there are significant differences in terms of (a) capacity to set agendas and influence outcomes and (b) resources to subsidize participation at plenary and working group meetings. As in many other global governance networks, a core group of Western powers are particularly influential within the Contact Group. This can be beneficial in terms of driving through initiatives and reaching consensus, but the problem is that ‘concentrated agenda and decision-making power among the few may create disincentives on the part of those who are excluded but whose cooperation is necessary to sustainably counter piracy.’<sup>23</sup> If broad-based inclusion of stakeholders is good news for legitimacy, then evidence of significant asymmetries among stakeholders casts the Group in a rather less flattering light.

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<sup>21</sup> Bueger, *Transnational Governance, Somali Piracy and the Contact Group*, p. 1

<sup>22</sup> Zach et al. *Burden-sharing Multi-level Governance*, pp. 35-6

<sup>23</sup> Zach et al. *Burden-sharing Multi-level Governance*, p. 39



The second dimension of legitimacy is comparative benefit. The Contact Group can point to an impressive range of achievements in defending its efficiency as a governance network, including pooling of information, promoting awareness, enhancing trust and collaboration among stakeholders, establishing linkages with related international organizations, spreading costs of collective action through funding and negotiation, clarifying legal issues, and generating political will to prosecute pirates. There has, perhaps most importantly, been a pervasive trend for piracy attacks to decline under the watch of the Contact Group, though there is some difficulty in identifying the causes for that decline.<sup>24</sup> The comparative benefit of the scheme cannot, though, be ascertained merely through reference to such achievements, but also turns on whether alternative arrangements might offer even greater efficiency. Of particular interest is comparing the kind of informal and fluid practices favoured by the Group with a more formalized institutional structure. Disadvantages of flexible and informal practises are that (a) terms of reference may not be clear and (b) stakeholders more comfortable with formalized institutional procedures may be alienated.<sup>25</sup> In the case of the Contact Group, though, these concerns appear to be outweighed by the efficiency gains that flexibility brings, including adaptability, creativity, inclusivity, and avoidance of the various pitfalls of more bureaucratized structures.<sup>26</sup> A rather different concern is whether some of the resources going into the Contact Group

might be better directed towards long-term capacity-building within relevant states. Douglas Guilfoyle notes that ‘a broader question may emerge as to whether such flexible, task oriented approaches risk diverting resources from more strategic (and perhaps more effectual) endeavours such as rule-of-law capacity building in Somalia.’<sup>27</sup> This may raise concerns about the comparative efficiency of the scheme if it emerges that efforts have been directed towards short-term containment measures at the expense of long-term preventative measures.

The third dimension is deliberative reflection. This is perhaps the most complex dimension of legitimacy, relating to the manner in which governance networks reflect upon their activities through dialogue with external actors. There are certain respects in which the Contact Group exemplifies this property, through reaching out to non-state actors and international organizations. The relation to the UN is particularly interesting, given that the Contact Group has no formal mandate from this organization. The Contact Group, as already noted, works closely with the UN and reports on its activities, even though it is under no formal obligation to do so. This has clear practical benefits in terms of collaborative governance and implementation capacity, but it can also function as an informal mechanism of external accountability. The Contact Group has also engaged with organizations responsible for similar or related policy areas, such as the International Maritime Organization (IMO). This, again, has certain practical benefits in terms

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<sup>24</sup> Zach et al. *Burden-sharing Multi-level Governance*, p. 27

<sup>25</sup> Zach et al. *Burden-sharing Multi-level Governance*, p. 31

<sup>26</sup> Zach et al. *Burden-sharing Multi-level Governance*, p. 37-8

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<sup>27</sup> Guilfoyle, Douglas (2013) ‘Prosecuting Pirates: The Contact Group on Piracy Off the Coast of Somalia, Governance and International Law’ *Global Policy* 4, p.77

of alleviating concerns about overlapping competences between governance agencies, but it can also be seen as a means of opening up informal channels of peer-review insofar as the Group takes up opportunities to reflect on its policies and practices in light of constructive feedback. The shortcomings of the Contact Group are, once again, illustrative of general concerns about global governance mechanisms, such as the perennial worry that such networks are somewhat ‘non-transparent and technocratic.’<sup>28</sup> There is also a sense in which the initial focus of the Contact Group on a pressing problem in need of immediate solutions militated against the kind of social-learning associated with deliberative reflection. The problem is that, as Zach et al note, ‘the CGPCS has the opportunity to speak to a wider international audience interested in learning lessons gleaned from its operations, but has until now lacked formal structures for review and the development of lessons learned.’<sup>29</sup> This can be seen as detrimental in terms of lost opportunities to both pass on to others the insights gleaned by the Contact Group and to engage in formal and informal evaluation of the Contact Group as a governance mechanism.

These brief comments illustrate the complexity of gauging legitimacy in the global realm. On the one hand, the Contact Group can support its claims to legitimacy through a range of genuine achievements: its inclusivity, its efficiency, and its willingness to engage constructively with external actors. On the other hand, the Contact Group has to make certain trade-offs that diminish its le-

gitimacy to some degree: such as purchasing effective decision-making power at the expense of uneven stakeholder opportunities to influence deliberation. This illustrates the earlier observation that legitimacy is best seen not as an all-or-nothing affair, but as a dimension of authority that opens up opportunities to reflect upon institutional weaknesses and identify potential areas for improvement. To this end, there are several issues that the Contact Group can reflect upon to enhance its legitimacy claims in relation to the three dimensions discussed here:

- **Stakeholder participation:** The Contact Group has achieved broad-based stakeholder inclusion, but can more be done to level the playing-field in terms of influence and resources? For instance, a report into the Contact Group observes that ‘resource-challenged countries’ often cannot afford to send delegates to plenary and working group meetings.<sup>30</sup> It might be possible for the Contact Group to revise its practices to offer support for such delegates, for instance through using the Trust Fund not merely to support project implementation but also to enhance participation and inclusivity. It might, alternatively, be possible to explore potentially less costly means of reaching out to resource-challenged countries, such as sending out representatives on fact-finding or consultation missions.
- **Comparative benefit:** The Contact Group does particularly well in terms of this dimension of legitimacy, which is reflected

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<sup>28</sup> Guilfoyle, *Prosecuting Pirates*, p. 77

<sup>29</sup> Zach et al. *Burden-sharing Multi-level Governance*, p. 40

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<sup>30</sup> Zach et al. *Burden-sharing Multi-level Governance*, p. 39

in the wide-spread acceptance it has won in the eyes of many stakeholders and related agencies. At the same time, can the Contact Group do more to allay the fears of some critics that its focus on containment has redirected attention and resources away from the equally, and perhaps more, important task of prevention? This would entail acting upon the recommendations of the permanent representative of India to the UN, particularly his observation that ‘the CGPCS can put the responsibility back inside Somalia by helping to build the rule of law and livelihood opportunities ashore.’<sup>31</sup>

- **Deliberative reflection:** The Contact Group has an impressive range of achievements, but can it do more to engage with external critics with a view to refining its methods and improving its performance? It may be difficult and unwise to enact the kind of formal peer-review mechanisms that are used in some other schemes, as this might constrain the procedural flexibility that has been identified as a benefit by some observers and participants. It may, though, be possible to work more closely with certain civil society groups, policy-makers, or academics, through inviting greater scrutiny and reflection on Contact Group activities. The ‘Lessons Learned Project’, which this brief report is a part of, might function as a means of initiating beneficial reflection on the current aims and methods of the Contact Group, with a view to identifying future aims and path-

ways now that the immediate goal of reducing piracy incidents off the coast of Somalia appears to have been achieved.<sup>32</sup>

In conclusion: the Contact Group has a relatively strong claim to be treated as legitimate, particularly in comparison with other global governance bodies that do much less well in terms of stakeholder inclusivity, coordinated problem-solving and achieving shared goals. This perhaps reflects the policy focus and political context of the Contact Group as much as its specific design and operational procedures. As Zach et al note, ‘this particular model can be effective when the issue focus can be defined narrowly, when stakeholders have a self-interest in solving the problem and can be identified and encouraged to participate, and when there are no countervailing political pressures or issues linkages that would encourage any powerful stakeholders to act as spoilers.’<sup>33</sup> However, as is clear from the preceding discussion, there is scope for further improvement. And addressing current shortcomings may prove to be necessary if the Contact Group is to maintain the levels of stakeholder acceptance and policy relevance that it has already secured.

### About the Author

William Smith is assistant professor in the Department of Government and Public Administration at The Chinese University of Hong Kong. His research is in the field of contemporary political theory, with a particular focus on issues related to deliberative

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<sup>31</sup> Permanent Representative of India to the UN quoted in Zach et al 2013: 40

<sup>32</sup> Bueger, *Transnational Governance, Somali Piracy and the Contact Group*, p. 1

<sup>33</sup> Zach et al. *Burden-sharing Multi-level Governance*, p. 41

democracy, civil disobedience and international political thought. He is author of *Civil Disobedience and Deliberative Democracy* (London: Routledge, 2013) and has published in a wide range of international journals, including *Ethics and International Affairs*, *The Journal of Political Philosophy*, *Political Studies*, *Politics and Society*, and *Review of International Studies*. He can be contacted at: [wjcsmith@cuhk.edu.hk](mailto:wjcsmith@cuhk.edu.hk)

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