

# TRANSNATIONAL GOVERNANCE, SOMALI PIRACY AND THE CONTACT GROUP:

## AN ANALYTICAL PRIMER

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The international *Contact Group on Piracy off the Coast of Somalia* (hereafter: the Contact Group) has been instrumental for organizing the global fight against Somali piracy. It was created following UN Resolution 1851 of December 2008 which encouraged “all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism”.<sup>1</sup> Since its first meeting in January 2009 the Contact Group has become the central site for organizing and planning the fight against Somali piracy. The number of actors participating in it has been growing alongside with the overall expansion of the “organizational field of counter-piracy”.<sup>2</sup> All major organizations active in counter-piracy, including governments, armed forces, international organizations, and industry representatives participate in the Contact Group activities.

In 2013 the Contact Group decided to start a process of reflecting on the nature of the group, which lessons can be learned from its work and whether these lessons might be

translated to other situations that require coordination of multiple actors. This paper contributes to this Lessons Learned Project (LLP). It does not outline concrete lessons, but instead develops an analytical primer for the LLP, that is, sets out a framework for further investigations of the Contact Group. I draw on an initial interpretation of the Contact Group’s documents as well as observation of its working practice and reflect these results in the light on international relations theory. In this (preliminary) interpretation, I review the institutional structure of the group, contrast it with other similar groups, argue for understanding it as a ‘community of inquiry’ and outline the core functions and effects of the group as an institution. The interpretative framework I develop is eclectic in the sense that it combines insights from different approaches to international relations, including the studies of transnational communities and networks, international organization research, or normative theories of global governance.

### THE PROBLEMATIC SITUATION

In a basic sense the Contact Group is an international institution created by states in re-

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<sup>1</sup> UN Doc. S/RES/1851 (2008), p.3

<sup>2</sup> For the concept of an organizational field and the description of the growth of it see Bueger, Christian. 2013. Responses to Contemporary Piracy: Disentangling the Organizational Field, in *Modern Piracy: Legal Challenges and Responses*, edited by Douglas Guilfoyle, Cheltenham: Edward Elgar, 91-114.

sponse to a problematic “situation”.<sup>3</sup> As can be reconstructed from UN Security Council documents, when the group was created in 2009 this situation was characterized by:

- Growing concerns over the increase of the number of piracy incidents, the growth of ransoms paid, and the geographical extension of the space in which piracy occurred.
- An understanding that piracy constitutes a threat and that there is an urgency to act.
- A recognition that the situation is characterized by complexity and uncertainty. It is complex because different issue domains are at stake and the number of actors which it (potentially) concerns is high.<sup>4</sup> It is a situation of uncertainty, since the available information was considered as insufficient and the problem was perceived as lacking clear predecessors and hence it was unclear which policies could be successful.
- An evaluation of piracy as an issue of complex interdependence, that a ‘common good’ is at stake, and that no state can shoulder it on its own.
- The perception that there is need for further international cooperation. That an “international cooperation mechanism to act as a common point of contact between and among states, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia’s coast”<sup>5</sup> is required.
- The recognition that a complex ‘counter-piracy regime’ exists and is relevant (in-

cluding UNCLOS, SOLAS, or the IMO)<sup>6</sup>, but that it is insufficient. The regime needs to be focused and organized. Existing international organizations are not capable in dealing with it in their own right. Hence a fix is needed. This fix should however not transform the overall regime but should be focussed on the short-term and remain geographically limited.

In response to this situation, the Contact Group was established in an inaugural meeting in January 2009. Initially the group was under US leadership and comprises only of a small number of states. Since this first meeting the Contact Group has incrementally changed in response to changing interpretations of the situation – centrally growing in membership, enlarging its participant structure as well as expanding the activities that the deliberations address.

As John Ruggie notes, it is important to keep in mind that “there is nothing inevitable about any particular collective situation.” Situations are negotiated and “inherently unstable. It may change as knowledge of cause/effect relations increases, as the knowledge content of policy formulation is altered, as configurations of interdependence come to encompass new actors, and, of course, as capabilities and objectives change”.<sup>7</sup>

Without doubt the situation to which the Contact Group responds has changed quite substantially, between 2009 and 2014. By 2014, the escalation of piracy had been contained. A number of resources and successful tools which provide means of cooperation and address the problems of complexity and uncertainty has been established. This is not the least outcome of the successful work of the

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<sup>3</sup> Compare Ruggie, John G. 1975. “International Responses to Technology: Concepts and Trends.” *International Organization* 29 (3): 557–583.

<sup>4</sup> The complexity of piracy is discussed in Bueger, Christian. 2013. “Orchestrating the Response: Somali Piracy and Ontological Complexity.” *Global Policy* 4 (1): 86–93.

<sup>5</sup> UN Doc. S/RES/1851 (2008), p.3

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<sup>6</sup> An eloquent overview of this “regime complex” is provided in Struett, Michael J, Mark T Nance, and Diane Armstrong. 2013. “Navigating the Maritime Piracy Regime Complex.” *Global Governance* 19: 93–104.

<sup>7</sup> Ruggie, John G. 1975. “International Responses to Technology: Concepts and Trends.” *International Organization* 29 (3): 568.

Contact Group itself. Yet, the decline of piracy is not only related to the work of the Contact Group, but outcome of a broader set of factors and counter-piracy actions.<sup>8</sup> Indeed, the Contact Group is one central institution within the larger organizational field of counter-piracy. Before we address the question of how the Contact Group is related to the broader organizational field of counter-piracy, let us investigate the basic institutional features of the group.

## BASIC INSTITUTIONAL FEATURES

As the communique of the 3<sup>rd</sup> plenary defined it, the “Contact Group is a group of countries and organizations with a common interest in eliminating the scourge of piracy from the Gulf of Aden and the Somali basin.”<sup>9</sup> The Contact Group carries out its work in three types of formats, (1) a plenary, (2) four, later five issue-specific working groups and (3) various ad-hoc sub-groups or ad-hoc meetings.

Although the Contact Group is an informal mechanism it has different levels of formality. This includes a formal structure and working practice officially sanctioned in its communiqués, as well as organizational routines either imported through the experience of participants from other formats (e.g. the practice of bracketing in negotiating communiqués) or developed from the four years of working practice. As formalized in the communique of the 2<sup>nd</sup> plenary decisions of the Contact Group are “taken by consensus”, while working groups “do not take decisions, but only make recommendations through Chairmen’s sum-

maries for consideration by the CGPCS.”<sup>10</sup> The relationship between plenary and working groups is organized in a way that the plenary “reviews the progress and direction of the working groups”<sup>11</sup>. In practice, this implies that the plenary suggests items and gives working groups “tasks” and the working group chairmen report back with recommendations or other results.

The chairmanship of the plenary and working groups is voluntary and rotates. Thirteen countries have so far served as chairman. Meetings are decided on an ad-hoc basis (with a tri-annual rhythm 2010 to 2011 (spring, summer, autumn), and a bi-annual rhythm from 2013 onwards (spring, autumn) becoming the norm).

With two exceptions<sup>12</sup>, plenary meetings take place at the UN headquarters in New York, while working group meetings have taken place at various capitals at the discretion of the chairmen of the respective working groups.

Participation in the group as member or observer is upon invitation by chairmen who also set meeting agendas and decide who is to speak when.

The group does not have a standing secretariat and secretarial work is organized by the chairmen of the plenary and working groups.

Neither does it have an independent budget. Yet, it maintains a voluntary Trust Fund to finance counter-piracy activities which is managed by an UN secretariat (originally UNODC, now UNDP). In addition, the Contact Group has an official ‘logo’ to signify its work and brand its documents. It maintains a Facebook page and a website. The website is also the main institutional repository and archive and makes available a large share of the

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<sup>8</sup> See among many other Bueger, Christian. 2013. Responses to Contemporary Piracy: Disentangling the Organizational Field, in *Modern Piracy: Legal Challenges and Responses*, edited by Douglas Guilfoyle, Cheltenham: Edward Elgar, 91-114; and Kraska, James. 2011. *Contemporary Maritime Piracy: International Law, Strategy, and Diplomacy at Sea*. Santa Barbara, Cal.: Praeger Publishers.

<sup>9</sup> CGPCS Communique of the 3<sup>rd</sup> Plenary, 29.5.2009, New York, p. 3.

<sup>10</sup> CGPCS Communique of the 2<sup>nd</sup> Plenary, 27.3.2009, Cairo, Egypt, p. 2.

<sup>11</sup> CGPCS Communique of the 4<sup>th</sup> Plenary, 10.9.2009, New York, p. 4.

<sup>12</sup> In 2009 the second plenary was held in Cairo, and in 2013 the 15<sup>th</sup> plenary was held in Djibouti.

meeting documents. It uses a mailing list as its main mean of communication and coordination in-between meetings.

## SITUATING THE CONTACT GROUP

The Contact Group reflects the general tendency of the international community to work in more informal formats which are outside of formal institutions and provide more flexibility.<sup>13</sup> It is useful to briefly contrast the Contact Group with other such formats. Compared to groups of states such as the Group of 8 or the Group of 20<sup>14</sup>, the Contact Group is closely related to the UN. This is reflected in that gains its legitimacy from a UN Security Council Resolution<sup>15</sup>, intended “to report its progress periodically” to the UN Security Council<sup>16</sup>, as well as uses UN facilities for its meetings. In difference to UN Conferences<sup>17</sup> or blue-ribbon panels<sup>18</sup>, the Contact Group meets

regularly, is operational in focus, clearly centred on a defined issue (piracy off the coast of Somalia) and restricted to a geographical space (Somalia and the Western Indian Ocean as defined by the High Risk Area). In contrast to groups that meet within the UN, such as the group of troop contributing countries, the Contact Group is not focussed on UN affairs or concerned with managing UN issues. The Contact Group is not exclusively an expert body such as the majority of UN monitoring groups<sup>19</sup>, but primarily comprised of state representatives and diplomats.

The Contact Group has the closest family resemblance to ‘contact groups’ or ‘groups of friends’ that are directed at country-specific peacemaking efforts.<sup>20</sup> These groups of states however tend to be smaller in size (comprising of 5-10 participating states), tend not to change membership or rotate chairmanship. By contrast the Contact Group is very large in size; membership is more or less undefined or at least very flexible and pragmatic. Who participates and is allowed to speak is (within certain limits) at the discretion of chairs. Participation has been over the years continuously growing. This, centrally, also includes other actors than states and international organizations, such as industry associations or non-governmental organizations. Although these non-state actors participate, the Contact Group is predominantly an inter-governmental format, and can hardly be compared to processes discussed under the header of ‘transnational governance’, such as, for instance, the Kimberly pro-

<sup>13</sup> See the analysis in Prantl, Jochen. 2005. “Informal Groups of States and the UN Security Council.” *International Organization* 59 (3): 559–592. Prantl, Jochen. 2006. *The UN Security Council and Informal Groups of States*, Oxford: Oxford University Press, and Whitfield, Theresa. 2007. *Friends Indeed?: The United Nations, Groups of Friends, and the Resolution of Conflict*. Washington: United States Institute for Peace Press. For the more general debate on the trend towards informal governance see Christiansen, Thomas, and Christine Neuhold. 2013. “Informal Politics in the EU.” *Journal of Common Market Studies*, online first, August 5 2013, doi:10.1111/jcms.12068, Helmke, Gretchen, and Steven Levitsky. 2004. “Informal Institutions and Comparative Politics: A Research Agenda.” *Perspectives on Politics* 2 (4): 725–740.

<sup>14</sup> See Kirton, John. 2011. “The Group of Twenty.” In *Handbook of Transnational Governance*, edited by Thomas Hale and David Held, 55–60. Cambridge: Polity Press.

<sup>15</sup> See UN UN Doc. S/RES/1851 (2008),

<sup>16</sup> CGPCS Communique of the 1<sup>st</sup> Plenary, 14.1.2009, New York, p.1. In practice, however, the group has never formally reported to the UNSC.

<sup>17</sup> See Haas, Peter M. 2002. “UN Conferences and Constructivist Governance of the Environment.” *Global Governance: A Review of Multilateralism and International Organizations* 8 (1): 73–91.

<sup>18</sup> Cooper, Andrew F. 2005. “International Commissions and the Mind of Global Governance.” In *International Commissions and the Power of Ideas*, edited by Ramesh

Thakur, Andrew F Cooper, and John English, 1–26. Tokyo and New York: United Nations University Press.

<sup>19</sup> See Farrall, Jeremy. 2009. Should the United Nations Security Council Leave It to the Experts? The Governance and Accountability of UN Sanctions Monitoring. In *Sanctions, Accountability and Governance in a Globalised World*, ed. Jeremy Farrall and Kim Rubenstein, 191–214. Cambridge: Cambridge University Press.

<sup>20</sup> See Whitfield, Theresa. 2007. *Friends Indeed?: The United Nations, Groups of Friends, and the Resolution of Conflict*. Washington: United States Institute for Peace Press.

cess or the Global Compact where non-state actors have a much stronger role.<sup>21</sup>

Highlighting these differences gives us a first approximation of the character of the Contact Group. If it comes to understanding the Contact Group as an international institution, there are, however, also many parallels and similarities to the above formats. The Contact group is an interesting hybrid that blends elements from other governance mechanisms into each other. Hence, studies that have been conducted on other forms of international cooperation provide important insights for understanding the Contact Group's work. Such studies provide us interpretive tools to understand how the Contact Group governs and what kind of effects the group has on the organizational field of counter-piracy.

## UNDERSTANDING THE FUNCTIONALITY OF THE CONTACT GROUP

Seen from the perspective of international relations theory the Contact Group is a pragmatic, functionalist form of transnational governance, which is primarily driven by inter-governmental relations and directed at problem solving. Its core concern is not the setting of rules, regulation or achieving compliance, but to transform the problematic situation into manageable problems and to identify solutions for these problems. It can be described as a *community of inquiry*.<sup>22</sup> Such an understanding highlights that the work of the group has two core functions: *inquiry* and *community building*.

The notion of inquiry refers to the role of the group of translating the problematic situation

into manageable problems and inventing innovative policy tools. It highlights the experimental character of the groups work. What the group does is conducting *policy experiments*, that is, (1) the group establishes *facts* and compiles information, for instance, through fact finding and needs assessments. (2) it develops *new ideas* and *policy proposals*, in a process of collective deliberation and evaluates the value of these ideas, which also implies rejecting some. (3) On the basis of facts and ideas it designs *practical tools*, such as legal tool kits or coordination databases. (4) It *tests* these tools in practice by disseminating them and devising actors to implement them. (5) It then *reflects* through a process of deliberation on the outcomes of the implementation of the tools. (6) Based on this reflection *re-designs* it redesigns the tools in drawing in new facts (1) or ideas (2). In such an understanding the Contact Group is a recursive process of inquiry, of continuous development of new facts and ideas, practical tools and reflection and redesign. Each experiment creates new questions and challenges.

To provide but one example for such a process: Working Group One conducted (1) a capacity building needs assessment in 2009, leading to (2) proposals for and (3,4) an increase of the number of capacity building efforts. (5) Reflecting on capacity building measures led to the recognition that it is important to avoid overlap, address existing gaps and align projects better to concrete needs. (6) The outcome was the establishment of a new sub-group of WG1 as well as the creation of an electronic coordination platform.

The notion of community-building stresses less tangible effects and emphasizes that the Contact Group creates and maintains a *transnational network of counter-piracy actors*.<sup>23</sup>

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<sup>21</sup> See the governance mechanisms reviewed in Hale, Thomas and David Held, eds. 2011. *Handbook of Transnational Governance*, edited by Cambridge: Polity Press.

<sup>22</sup> The concept of communities of inquiry is derived from John Dewey. The notion as it is understood here has similarities to understandings of 'experimental', 'reflexive' or 'deliberative' governance.

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<sup>23</sup> These functions have been pointed out in the literature on transnational networks and communities. See besides the already cited literature and among many others Adler, Emanuel, and Peter M Haas. 1992. "Epistemic Communities, World Order, and the Creation of a Reflective Research Program." *International Organiza-*

Through this network strong transnational ties are made which have several effects: (1) they contribute to and improve the *flow of information* and the *dissemination of new knowledge* or awareness for new problematic issues, (2) they ensure that the *salience* of piracy remains high, features on state and organization *agendas*, and states and organizations recognize their interest in addressing it, (3) allow to *channel* and bundle (financial) *resources* to promising projects and for the design of new tools, (4) they create relations of *responsibility and accountability* which enables compliance with decisions, (5) improve the quality of inquiry through the *inclusion* of heterogeneous perspectives and ensuring that relevant actors are considered and given a role in counter-piracy, (6) allows *socialization and learning*, notably for newcomers, and hence ensures the continuation of the work across the fluctuation of staff.

Recognizing the dimensions of inquiry and community-building allows us to grasp the core of the Contact Group work. These two core functions can be further dis-aggregated and refined. We can identify the following set of functions and effects:

- **Fact-Finding:** Identifies and establishes facts through its sub-formats. Example: 2009 mission of Working Group 1.
- **New Ideas:** Allows for proposing and testing new ideas of responding to piracy. Example:
- **Tools:** Develops technologies and tools for counter-piracy. Examples: WG2 legal tool kit, capacity coordination platform.
- **Problematization:** Allows for the identification of new problems or developing awareness for new problem dimensions.
- **Gap-Spotting:** Allows for the identification of gaps and omissions in the response.
- **Speed:** Allows to quickly reacting to new developments and trends.
- **Plurality:** Allows including a broad range of perspective in planning and preparing decisions.
- **Agency:** Identifies which actors are relevant in counter-piracy, what is their role, and who should do what. In suggesting relationships between actors or responsibilities the communiques for instance provide such roles. Example: IGAD's role in counter-piracy.
- **Consensus formation:** Provides a deliberative format for arguing which allows finding consensus, such as consensus on the character of the current situation.
- **Narratives:** Develops shared understandings of how the past, present and future of counter-piracy are linked to each other which provides a common vision for participants.
- **Reflexivity:** Provides the format to negotiate how the situation to which the group reacts is changing and how the group can react to changing understanding of this situation. Examples: Situation briefings by naval actors, discussion of future of CGPCS.
- **Direction:** Provides steer and direction in suggesting actors what to do. Example: initiative to harmonize incident data between NATO, EU and CTF.
- **Monitoring:** Allows reviewing and monitoring the results of projects and tools and

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tion 46 (1): 367–390 and Slaughter, Anne-Marie. 2004. *A New World Order*. Princeton: Princeton University Press. In the context of counter-piracy see in Struett, Michael J., Mark T. Nance and Jon D. Carlson, eds. 2012. *Maritime Piracy and the Construction of Global Governance*, London: Routledge, and Guilfoyle, Douglas. 2013. "Prosecuting Pirates: The Contact Group on Piracy Off the Coast of Somalia, Governance and International Law." *Global Policy* 4 (1): 73–79.

the activity of counter-piracy actors. Example: Briefings by implementing agencies.

- **Accountability:** Introduces a sense of accountability and responsibility by calling on actors to report on their progress. Example: Briefings by implementing agencies.
- **Compliance:** Provides a soft mechanism for achieving compliance with the general directions chosen in the Contact Group.
- **Standardization:** Enables to develop common standards of assessment and evaluation, such as the harmonization of counter-piracy reporting.
- **Legitimacy for leadership:** In working in a principle of consensus and wide participation the Contact Group legitimizes the actions of those who are more active or take a lead to be part of a broader global initiative. Example: work of plenary chairmen.
- **Knowledge dissemination:** Allows new information to be disseminated transnationally in a quick manner (either through the meetings, the official mailing list, or the personal contacts established because of the meetings).
- **Salience:** Increases national concern and ensures that piracy and related issues remains on national agenda.
- **Agenda-setting:** Can establish new issues as relevant for states or international organizations.
- **Identity:** Establishes a transnational community of counter-piracy experts and practitioners which share similar experience, make international cooperation easier and can provide continuation across the fluctuation of staff.
- **Learning:** Allows newcomers to the issue of piracy to quickly learn the basics and relevant information.
- **Preparation:** Provides means to prepare and coordinate for work in other institutions (e.g. IMO, or UNSC).
- **Resources:** Through cooperation resources can be bundled and channelled to needy countries and agencies.
- **Donor Market:** Implementing agency can propose new ideas and compete over the necessary resources.

This loose list of the different functions that the Contact Group performs gives us an idea of how rich the work of the group is and that it has manifold effects. Some of these functions are quite obvious – such as the pooling of resources –, others – such as learning and donor market – less so. Without doubt each of these functions and their relations require further elaboration and close examination through case study work.

## PROSPECTIVE CASE STUDIES AND FURTHER QUESTIONS

The goal of this paper was to develop an analytical primer for what the Contact Group is and what it does. From such a perspective the need for several further investigations arises. These can be broadly structured around three areas.

### Structures and Actors

- How does the Contact Group relate to the actors that participate in it, as well as the larger structures of international relations? How does it produce certain actors to be relevant, perform certain functions, legitimate, or leading? How does it structure the organizational field of counter-piracy?

- What relations of accountability, responsibility and legitimacy does the group establish?
- How do actors experience the Contact Group, understand its nature and allow them to influence international counter-piracy policy, but are influenced by it as well? This includes leading nation states, emerging actors (BRICS), the ownership of regional countries, as well as NGO and industry actors.

### Issues and Experiments

- How have issues been brought onto the agenda of the Contact Group? Which ones have not succeeded?
- How has the Contact Group been able to address certain issues through its experiments?
- What understandings can be gained from distinct cases for how the Contact Group experiments?
- In what way has the Contact Group through its experiments developed new rules, and can be considered a rule-making body?
- In what way has the geographical limitation of the group enabled the success of experiments?

### Replicability:

- Can the practice of the Contact Group replicated in other problematic situations? And if so, how?
- What are the similarities and differences to other problematic situations (piracy in other regions, maritime security, transnational organized crime, other international problems) which would allow or hinder replication?

### About the Author

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[www.lessonsfrompiracy.net](http://www.lessonsfrompiracy.net)