Regional Analysis

Western Indian Ocean

Final Version as of 01 March 2013

Report Documentation Page

Form Approved
OMB No. 0704-0188

1. REPORT DATE	2. REPORT TYPE	3. DATES COVERED
08 JUL 2013	**N/A**	

4. TITLE AND SUBTITLE	5a. CONTRACT NUMBER
Multinational Experiment 7: Outcome 1: Maritime Security Region: Regional Analysis Western Indian Ocean HOA-GOA	5b. GRANT NUMBER
	5c. PROGRAM ELEMENT NUMBER
6. AUTHOR(S)	5d. PROJECT NUMBER
	5e. TASK NUMBER
	5f. WORK UNIT NUMBER
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) **JOINT STAFF-MN//ACT Integration 116 Lakeview Parkway Suffolk, VA 23435**	8. PERFORMING ORGANIZATION REPORT NUMBER
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)	10. SPONSOR/MONITOR'S ACRONYM(S)
	11. SPONSOR/MONITOR'S REPORT NUMBER(S)

12. DISTRIBUTION/AVAILABILITY STATEMENT
Approved for public release, distribution unlimited.

13. SUPPLEMENTARY NOTES
The original document contains color images.

14. ABSTRACT
This report discusses the need and potential for the establishment of a maritime security regime (MSR) in the Western Indian Ocean. Such an MSR should be tasked with in the region. For the last several years the threat to maritime security and freedom of navigation has first and foremost been piracy originating from Somali territory but active in large parts of the Western Indian Ocean. However, a decade ago the threat came from militant Islamic terrorist groups, as it materialised in the attack on a French tanker in October 2002. Nearly three decades ago threats in the region consisted of attacks on shipping in the Persian Gulf carried out by the parties in the Iran-Iraq war and allegedly Libyan mining of the Red Sea. At the time of writing, in 2012, tensions between the West and Iran has resulted in Iranian threats to block the Strait of Hormuz by military means.

15. SUBJECT TERMS

16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON
a. REPORT	b. ABSTRACT	c. THIS PAGE			
unclassified	**unclassified**	**unclassified**	**UU**	**36**	

Contents

The Western Indian Ocean as a Maritime Security Region

This report discusses the need and potential for the establishment of a maritime security regime (MSR) in the Western Indian Ocean. Such an MSR should be tasked with in the region. For the last several years the threat to maritime security and freedom of navigation has first and foremost been piracy originating from Somali territory but active in large parts of the Western Indian Ocean. However, a decade ago the threat came from militant Islamic terrorist groups, as it materialised in the attack on a French tanker in October 2002. Nearly three decades ago threats in the region consisted of attacks on shipping in the Persian Gulf carried out by the parties in the Iran-Iraq war and allegedly Libyan mining of the Red Sea. At the time of writing, in 2012, tensions between the West and Iran has resulted in Iranian threats to block the Strait of Hormuz by military means.

The Indian Ocean has become an important area of operations for all the world's major navies. Presently the traditional upholders of the freedom of the seas, the Western navies, are suffering heavy budgetary cuts due to the finance/debt crisis. Dramatic cuts in the number of available naval ships have already been implemented and more are likely to follow. Simultaneously the navies of the so-called emerging powers and most states in the industrialised parts of Asia are growing stronger. Economic growth and corresponding rise in energy consumption has increased Asian stakes in the Sea Lines of Communication in the Western Indian Ocean.

In a geopolitical perspective there has been an observable increase in political and military tensions between several established and emerging powers during the last five years. Even as most of these states, let us call them Great Powers, to some extent cooperate in the anti-piracy operations in the Western Indian Ocean, they are wary of each other's intentions and capabilities. The building of an MSR in the Western Indian Ocean could provide an opportunity for constructive exchange of views and perhaps serve as a confidence building measure. One should not be starry-eyed about the possibilities, but we believe that the existence of considerable common interest in free trade provides a good point of departure.

Together the variety of potential threats and the changes in the global distribution of economic and military power, as well as the increased geostrategic significance of the Western Indian Ocean, indicates that an MSR in the region must be flexible, robust and inclusive. It should be able to handle a wide spectrum of threats. It should be based on shared interests. And it should involve relevant stakeholders.

In only 7-8 years piracy based in Somalia grew from a marginal economic problem into a major security challenge. Spurred by UNSC initiatives and resolutions an array of international actors are now addressing the piracy problem and coordinating their efforts. The sheer number of actors involved in fighting the piracy problem off the east coast of Africa points towards (for the time being) a regional

threat with a global impact. At least 27 states have contributed military equipment and even more have provided personnel. For countries like Japan and China it is the first out of area naval missions in modern times (WWII excluded on the part of Japan). Still more states are active diplomatically in addressing piracy. More than 60 states participate to some degree in the forums listed below and most of these are represented in more than one forum.

With this many actors/organizations/initiatives/mechanisms at work addressing the same problem overlap and duplication is unavoidable. However, the impact of this possible overlap and duplication seems less than expected and feared. The dominating message from the actors and the forums are one of good cooperation and coordination. The gains from this unprecedented cooperation among such diverse states and organizations by far overshadow the downside of any overlap and duplication to such an extent that one may, perhaps, even claim that a global security community could be in the making.[1]

Table 1 below shows a very marked decline in successful pirate attacks in 2011 and even stronger decline in all pirate activities in 2012.

Table 1: Piracy statistics 2009-2012[2]

Year	Approached	Attacked	Pirated	Disrupted
2012	18	23	7	40
2011	58	147	22	100
2010	60	134	44	56
2009	61	132	45	46

1 Description of the region

1.1 Definitions and limitations

In this report the Western Indian Ocean is analysed as one maritime region. This large geographical area could easily be divided into several separate regions like the Gulf of Aden, the Persian Gulf etc.[3] Each of those sub-regions is characterized by local geographical and political conditions and each demands its own strategic considerations. However, they are also connected by a number of factors:

1 The central thesis of Bueger, C & Stockbruegger, J. 2012. Security Communities, Alliances and Macrosecuritization: The Practices of Counter-Piracy Governance, in *Piracy and Maritime Governance,* ed. Struett, M, Nance, T and Carlson, J.D. London: Routledge.

2 NATO Shipping Centre (2013) Piracte Activity in High Risk Area, updated 6. February.

3The International Hydrographic Organisation (IHO) defines the Arabian Sea and Lakshadweep Sea as separate from the Indian Ocean.

- First, presently the Indian Ocean as a whole and the Western part in particular, is perhaps the most important area in which global Great Power interests converge. In his book "Monsoon" Robert D. Kaplan argues that the Indian Ocean will be the geopolitical and strategic epicentre of the 21st Century. Both established and emerging powers have strong interests in the region. It is the only place on earth with a more or less permanent US, European, Russian, Chinese, Japanese and Indian naval presence.

- Second, pirates originating from Somalia now operate throughout the North-Western Indian Ocean: In 2005 the attack farthest from Somalia occurred 165 nm off the coast, in December 2010 this had increased to more than 1450 nm eastwards, not far from the coast of India, and 1750 nm Southwards, off the coast of Mozambique. [4] In early 2011 an attack occurred 1475 northwards from Somalia, off the coast of Pakistan. And in the summer of 2011 the pirates expanded into the Red Sea.

- Third, there are a many active and latent conflicts on the shores of the Western Indian Ocean. The presence of a large number of external naval forces in the region is not exclusively motivated by the need to combat piracy.

1.2 Physical features of the region

The Western Indian Ocean stretches from the coasts of Arabia and Africa in the west to a line due south from the tip of India in the East. Its northern shores belong to Iran, Pakistan and India while its southern shores wash the coast of Antarctica almost 13000 kilometres to the south. The Indian Ocean represents some 20% of the total ocean territory globally.

The region as defined here includes three narrow choke points, namely the Strait of Hormuz, the Bab-el-Mandeb and the Suez Canal. All three are vital to world trade.

The Indian Ocean is easier to navigate with small vessels than for instance the Atlantic.

Several archipelagic and coastal states in the region are threatened by the foreseen rise of the Ocean level.[5] A MSR could include plans and capabilities for disaster relief.

1.3 Resources in the region

The region, in particular the area around the Persian Gulf, is a vital exporter of oil and natural gas. In 2009 13 tankers carrying 15.5 million barrels of oil passed through Hormuz eastwards every day. A similar number of empty tankers crossed westwards. More than 75% of this oil went to Asian

4 EU Navfor information brochure, updated 6 January 2012, downloaded from http://www.eunavfor.eu/wp-content/uploads/2012/01/2012-01-06-EUNAVFOR-Media-Brochure1.pdf on 16 January 2012.

5 http://www.colorado.edu/news/releases/2010/07/13/sea-levels-rising-parts-indian-ocean-according-new-study

markets, especially to Japan, India, South Korea and China. In 2011 the number of tankers passing through Hormuz in each direction every day had increased to 14. Importantly the percentage of this oil going to Asia had risen to 85.[6]

The route through the Gulf of Aden, Bab-el-Mandeb, the Red Sea and the Suez Channel is one of the major veins of world trade. A total of 17 993 ships carrying 846 million tons of goods passed through the Suez Canal in 2010.

One should also note that the increasing Chinese and Indian investment in and trade with African countries is expanding rapidly. Access to raw materials from Africa is likely to grow even more important for those powers in the years to come.

1.4 Significance of the region

During the 19th and the first half of the 20th century the Indian Ocean was vital to the British Empire. Indeed, with a few exceptions the British controlled all the countries surrounding it. The Royal Navy was the dominant power at sea in the Indian Ocean until 1967, when the British government decided to withdraw almost all its forces from "East of Suez". In American strategy during the Cold War, the Indian Ocean was always less important than the Atlantic, the Pacific and the Mediterranean. In present US naval strategy and practice the Indian Ocean is only second in priority to the Western Pacific.

The present huge significance of the region is only partially explained by the resources mentioned above. The region is also extremely important as a transit area for trade between the large economies in the North Atlantic area and East Asia.

From 2000 to 2008 Chinese exports to Europe increased from 16.1% to 20.1% of total Chinese exports, while exports to the USA decreased from 20.4% to17.3% and to Japan from 16.3% to 8%. In other words, European markets became relatively more important to Chinese exporters. The trends were the same for Developing Asia as a total.[7] For Asia as a total, including the so-called Tigers and Japan, Europe and North America each took 17% of the export in 2010.

It is a fact that for both Europe and North America, exports to Asia makes up a larger share of the total than their trade with each other.[8] European exports to Asia represented 9% of total European exports in

---

6 Cordesman, Anthony (2011) Iran and the Threat to "Close" the Gulf, update 30 December. Commentary on CSIS webpages http://csis.org/publication/iran-and-threat-close-gulf

7 Review of Maritime Transport 2010, United Nations Conference on Trade and Development (UNCTAD)

8 World Trade Organisation, trade statistics October 2011, downloaded from http://www.wto.org/english/res_e/statis_e/world_region_export_10_e.pdf 16 January 2012.

2010 while exports to North America made up 7% of the total. (Exports to Asia outgrew exports to North-America in 2005-2010). For North America export to Asia was 21% of the total in 2010 against 17% to Europe. Globally, Europe and Asia are the two largest destinations for export, with 39% and 28% respectively of world totals. North America by comparison receives 17% of world exports.

The Western Indian Ocean is also increasingly important in geopolitical terms. The presence of vital resources and very important sea lines of communication is of course among the causes for this. However, the ongoing operations in Afghanistan, the tension between the West and Iran as well as between India and Pakistan, and the general unstable political situation in many Middle East countries and on the Horn of Africa should also be recognized. Robert D. Kaplan notes that most of the countries bordering the Indian Ocean are Islamic. Given the history during the last couple of decades of political tensions within the Islamic world and of the conflicts between militant Islamic non-state groups and almost all existing and emerging Great Powers, this is a factor that cannot be ignored. 2 Actors in the Region

Compared to most other maritime regions the presence of external forces is striking in the Western Indian Ocean. Therefore an analysis of actors should be carried out with a view to states external to the region but with strong interest and ability to operate in the region.

2. Actors in the Region

2.1 States

The Western Indian Ocean washes the coasts of 17 states, including four island states as well as territories under French and British sovereignty. An additional 10 states have coastlines to the Red Sea (including the Gulf of Aqaba) and the Persian Gulf. Several landlocked states in Africa as well as Afghanistan depend on access to the Western Indian Ocean for trade and logistics.

As shown in the table below, very few of the African states in the region have substantial maritime capabilities, be it civilian or naval. They have few air assets for surveillance. While only Somalia could be considered a collapsed state, several others are fragile or weak with strong internal tensions. The relationship between several of these states is also rather tense. Ethiopia has fought wars with Eritrea, intervened in Somalia and has difficult relations to Sudan. Kenyan troops have carried out cross border operations into Somalia. Egypt has strained relations with Sudan etc. Even so, there are examples of successful African cooperation in recent years. These will be discussed below.

The table below shows the development of East African navies from 1986 to 2010. With the exception of Egypt there has been a dramatic decrease in capability.

East African Navies 1986-2010, total number of vessels over 20 tons. Vessels with naval combat capabilities in parenthis. (missiles, torpedoes, mines or mine clearing capabilities).

	1986	1995	2010	Total displacement in 2010	Ships over 1000t, 15 knots
Egypt	129 (62)	160 (65)	175 (62)		
Sudan	7	14	2	810	-
Etiopia	26 (8)	16(6)	-	-	-
Eritrea			14	2380	-
Suez - Red Sea	***164 (70)***	***190 (71)***	***191 (62)***	**3110**	
Dijibouti	3	3	5	152	-
Somalia	16 (6)	0	0	0	-
Kenya	8 (4)	8 (6)	6 (2)	4660	-
Tanzania & Zanzibar	22 (4)	21 (2)	10 (1)	870	-
Seychellene	6	5	3	568	-
Mozambique	29 (2)	0	0	0	-
Madagaskar	9	2	3	1565	-
Komorene	4	2	2	82	-
Mauritius	3	4	5	1988	1
Bab-El-Mandeb-Mozambique Channel	***100 (16)***	***45 (8)***	***34 (3)***	**9885**	
South Africa	46 (27)	33 (20)	23 (10)	42 084	8
Total East Africa	310 (113)	268 (99)	248 (75)		

To the north of the Red Sea most Arabian states are wealthy and capable. While only Yemen stands out as a particularly weak and fragile state, the possibility exists that the monarchies around the Persian Gulf may be destabilised by the same political forces that caused the Arab spring in North Africa.

The Arab Gulf states have military forces equipped with modern systems of Western origin. Their ability to operate that technology to full effect are however, not quite proven. Still, all these states have navies with modern vessels that could obviously contribute substantially to anti-piracy operations. However, with a few exceptions they have not done so outside their own territorial waters or EEZ.

The Arab Gulf states have strong security relations to the United States, the United Kingdom and France – all of which have forces permanently stationed in the Persian Gulf or Arabian Sea.

The relationship between the Arab Gulf States and Iran has been tense for decades. The military organisations of the Arab Gulf states are partly optimised for internal security and partly for war with Iran.

2.2 Regional organisations

The African Union is the only international organisation with troops in Somalia. Since the AU replaced the Organisation for African Unity in 2002 it has made substantial progress in establishing an African Standby Force (ASF) for peace support operations (PSO). The African Union as such has carried out PSO in Burundi, Somalia, Sudan (Darfur) and the Comoros. Additionally some of the RECs, most notably ECOWAS in West Africa, have also implemented several PSO in their own area.

Security cooperation in the AU is to a large extent based on eight Regional Economic Communities (REC). In principle each REC has been responsible for setting up one brigade for the ASF. The membership of the RECs overlaps in the sense that some states are members of two or more RECs. The only REC that includes all the states on the Horn of Africa, the International Authority on Development (IGAD), has been troubled by disputes, hostility and outright conflict between several of its member states. Thus IGAD has not been able to provide a brigade for the ASF. Instead EASTBRIG has been established as an autonomous institution. In spite of these difficulties the AU has been able to conduct important and increasingly successful operations in Somalia since 2007. In early 2013 AMISOM has nearly 18 000 troops and controls a large part of southern Somalia after a series of battles with Al-Shabaab militia.

Neither the AU nor AMISOM have an organic naval capability. And as shown by the table above, few of the AU's member states have spare naval capabilities. However, AMISOM has organised a Vessel Protection Detachment that has been trained by EU Navfor. The VPD is designed to be able to protect AMISOM and World Food Programme vessels for Somalia when the EU and NATO mandates expire.

Most of the states on the Arabian Peninsula are members of the Cooperation Council for the Arab States of the Gulf, also known as the Gulf Cooperation Council (GCC). The GCC includes substantial military cooperation, including the Peninsular Shield Force. Yemen is not a member, but in negotiations for membership. The members of the GCC have modern air forces and navies clearly capable of taking part in the international efforts against piracy. In June 2009 eleven Arab states, including five of the six members of the GCC as well as Egypt, agreed to set up an Arab Navy Task Force to prevent piracy in the Red Sea. However, the initiative was not implemented and the GCC and

other Arab navies have mostly limited their actions to operations in national waters.[9] Some, like the UAE, has also supported other and less resourceful states in the region with small naval vessels and equipment.

Five out of six GCC navies and cost guards have participated in the Combined Task Force 152 in the Gulf since 2004, operating in close cooperation with vessels from the US Navy, the Royal Navy and other Western navies. CTF152 has also been engaged in Operation Enduring Freedom, as have CFT 150 operating in the Indian Ocean. CTF 152 now operates from Bahrain as a multinational force, with commanders from the GCC navies rotating in command. CTF 152 has not been used in counter piracy operations, but obviously has the potential for such a role.

Obviously, the tension between Iran and the GCC-countries is a major security challenge in the area. Thus, any increase in the area of operations for the GCC-Navies are likely to be interpreted in the light of that particular geopolitical reality, and may be seen as an escalation from the Iranian side. From the GCC's perspective the Iranian threat to close the Straits of Hormuz is a far more serious and urgent challenge than the disruptions to shipping caused by Somali pirates.

Both the African Union and the Gulf Cooperation council have the potential to become important members of a regional maritime security regime. The AU has gained real progress both in the building of the ASF and in its operations in Somalia. The GCC has contributed strongly to the CTF 152 and, with the help of its allies, are gradually turning that force into a regional multinational naval force. But both organisations face important challenges. The AU has few capabilities at sea and lacks the skills to build them. The GCC states have the capabilities but are locked in a geopolitical rivalry with Iran on the one hand, while facing internal political challenges related to the Arab spring on the other.

2.3 Non-state actors

In principle pirates should be considered non-state actors. Historically, however, pirates have usually had some kind of relationship with states or principalities. In the case of Somali piracy such a connection is not confirmed and a direct state-connection is unlikely mainly because Somalia is what can be called a "failed state"[10] with no functioning central State power.

9 See Rear Admiral Ibrahim Al-Musharrakh (2012) "Constructing a Robust GCC Response at Sea: Reviving the Arab Counter-Piracy Force", paper delivered at the UAE Counter Piracy Conference in Dubai, June. Available at http://www.counterpiracy.ae/upload/Briefing/Ibrahim%20Al%20Musharrakh-Essay-Eng-2.pdf

10 To the notion of a "failed state" see Mario Silva, Somalia State Failure, Piracy and the Challenge to International Law, 2009, p. 3 ff.; http://works.bepress.com/mario_silva/1 .

However, there could be links between pirates and local authorities and/or warlords. Puntland proclaimed its autonomy from Somalia in 1998. It had a population of an estimated 3,9 million in 2009. Puntland covers 212 000 km2, or slightly more than the combined area of England and Scotland

In a Chatham House report, Dr Anja Shortland argues that a substantial percentage of the money raised by taking ships and crews for ransom have been invested in Puntland.[11] She indicates that the larger cities, Bosasso and the inland town of Garowe, rather than the pirate bases like Eyl and Hobyo, have been the main benefactors. According to Shortland "Garowe has seen massive investments between 2002 and 2009, much of the development being concurrent with the explosion of pirate ransoms" [12]. Puntland's official government budget was $ 11.7 million in 2008. In the same year the total amount paid in ransom was about $ 40 million. In 2009 the budget was $ 17.6 million while total ransoms had increased to an estimated 70 million. Obviously, piracy represents a large part of Puntlands GDP. The simultaneous dramatic increase in both the government budget and ransoms begs the question to what extent income from piracy actually, directly or indirectly, funds the Puntland government.

Nevertheless, Somali piracy is - and should be perceived as - a form of well-organized crime and evidence points in the direction that this form of crime partly is organised outside Somali territory. Some authors try to redefine Somali piracy as a form of insurgency instead of organized crime.[13] This might from an operational point of view lead to a preferred frame for counter-piracy operations, however, from a legal point for view this argument is not convincing at all; the frame of counter-piracy operations is rules on law enforcement at sea and not the rules of armed conflict/war.

Al Qaida and other terrorist organisations are still active in the region albeit dramatically weakened after a decade of war on terror.

Another central non-state actor in the region is the shipping industry. The influence of the shipping industry in connection with maritime security in the region is due to at least two factors: On the one hand the shipping industry is a strong player in some nations involved in maritime security operations. The Danish example shows that the shipping industry has quite an important influence on Denmark's involvement in counter-piracy operations, which is quite openly described in a recent book on the

11 Shortland, Anja (2012) Treasure Mapped: Using Satellite Imagery to Track the Developmental Effects of Somali Piracy, Africa Programme Paper AFP PP 2012/01,Chatham House, London. Downloaded January 30 from http://www.chathamhouse.org/sites/default/files/public/Research/Africa/0112pp_shortland.pdf

12 Op.cit., p.3

13 Edward Lucas, Pirates and Insurgency; Reframing the Somali Piracy Problem, http://piracy-studies.org/2012/pirates-and-insurgency/

problem of piracy.[14] On the other hand, the strategies of the shipping industry towards maritime security influence the general situation of maritime regions. One central example is the increasing use of private armed security on board of merchant vessels. It can be argued that this development is one factor influencing the "success rate" of piracy attacks. However, it can also be argued that this development might lead to unintended "side effects" such as a development towards an escalation in violence and towards vigilance.

Additionally, the recent development leads to a form of privatization of maritime security, with different commercial security providers as central actors. The Western Indian Ocean and the states that surround it have been the prime geographical focus for the growth of private military/security companies during the last decade. The most important areas of operation for such companies have been Iraq, Afghanistan and increasingly at sea in the Gulf of Aden.

In a report published in September 2012 James Brown claimed that 140 firms employed 2700 armed security guards upon ships in the Indian Ocean. Some 26% of the merchant ships transiting the Gulf of Aden reported that they had private security on board. According to Brown the actual number was probably higher.[15] In support of these operations private security companies operated 18 vessels functioned as sea bases for the operations. Thus, operating in the open ocean, the PMCs did not have to relate to regulations on arms in ports ashore.

There is little doubt that the growth in the number of armed private security guards aboard merchant ships has contributed to the sharp decline in the number of attempted and successful pirate attacks during 2012. However, there have been incidents where guards have fired upon and killed innocent fishermen. Moreover, while many countries try to set strict rules of engagement for security guards on vessels under their flag, some videos posted by security guards on the internet displays a rather gung ho approach to rules of engagement for the protection of ships.[16]

In addition to the private security companies operating aboard merchant vessels, some companies have also procured their own patrol vessels. These companies offer escort and convoying packages suited to

14 See an example in Camilla Stampe/Laura Marie Sørensen, Piratjagt – kampen om menneskeliv og millioner, s. 77-80, were the Vice President of the Danish Ship Owner Association admits the influence of its organization on the Danish involvement.

15 Brown, James (2012) Pirates and privateers: Managing the Indian Ocean's Private Security Boom, September, Sydney Lowy Institute. Available at http://lowyinstitute.cachefly.net/files/brown_pirates_and_privateers_web.pdf

16 See for instance Maritime Security Review (2012) Armed Security. Published April 10 2012 at http://www.marsecreview.com/2012/04/armed-security/ Link to video at Liveleak http://www.liveleak.com/view?i=5e2_1333668975

the needs of the ship owners. Brown estimated the number of such vessels already deployed or on their way in the autumn of 2012 to be about 40.[17]

The growth of private security companies represents a dilemma for both the international community and states in general. On the one hand they may represent handy, low risk solution to difficult problems, on the other they may dilute the states' monopoly of coercive force and generate instability.

3 International efforts

This overview presents the most important organizations/initiatives/mechanisms involved in the fight against piracy off the East Coast of Africa. It will not encompass all organizations/initiatives/mechanisms established but what is regarded as either the most effective and/or those seen to be contributing to some degree to a maritime security regime or a global security community in the making in the maritime domain – whether these will be geographical and/or temporally limited or the foundation for something more permanent and global in nature.

3.1 Definitions and methods

Counter-piracy and anti-piracy

This overview is primarily based on studies of the latest and most relevant literature on the subject (reports and web-pages). In this literature the terms *counter-piracy* and *anti-piracy* seem to be treated as synonyms throughout. For clarity this overview adopts the use the military normally makes of the two terms (counter- and anti- , like counter-air and anti-air). By this analogy **anti-piracy** means the *self-protective* measures taken to avoid detection, boarding and capture as recommended in the Best Management Practice (BMP). **Counter-piracy,** by the same token, covers most of the more *active and offensive measures*, like patrolling, convoying, surveillance, deterring, capturing etc. These actions mostly take place at sea. However, any action taken on land either directly against pirates (arrest, prosecution, imprisonment), or actions aimed at solving the root causes of piracy (development, governance, capacity building) is also covered by this term.

How the overview is organized

When trying to present an overview of all the actors, organizations, mechanism and initiatives involved in countering the piracy threat off the coast of Africa, one can choose several possible approaches – neither of which will be exhaustive. It is hard to present an overview that is all encompassing and at the same time easy to read and grasp. Some form of economization is unavoidable. One possible approach is to present all organizations/initiatives/mechanisms in a

17 Brown, James (2012) Pirates and privateers: Managing the Indian Ocean's Private Security Boom, September, Sydney Lowy Institute. Available at http://lowyinstitute.cachefly.net/files/brown_pirates_and_privateers_web.pdf

hierarchical way, alike the vertical levels the military usually are organized according to, i.e the *strategic* level, the *operational* and the *tactical* level. In such a construct the strategic level is primarily diplomatic and make up the organizations/mechanisms that provide the regulatory and policy discussions and authorization - primarily the UN Security Council (UNSC). At the operational level we find the bulk of the organizations/ initiatives/ mechanisms, like the NATO, EU, the CTF (Combined Task Force), the Contact Group on Countering Piracy off the Coast of Somalia (CGCPCS), Shared Awareness and Deconfliction (SHADE) etc. On the tactical level we find the "doers" like the units participating in Operations Ocean Shield (NATO). Operation Atalanta (EU), CTF 151, the information and coordination centers etc.

However, organizing the presentation along *functional* (practical) lines seems more fruitful. In such a construct the organizations/initiatives/mechanisms are grouped in accordance with the most important functions they play in the fight against piracy. Again, the scope of this study does not allow us to embrace all functions in work fighting the piracy menace.

This way to organize an overview of such a complex undertaking as the fight against piracy will not be clear cut as several of the actors and organizations are involved in more than one of the functions and/or more than one level, e.g. the UN, the African Union, the ESA IO to mention a few.

The following organizations/initiatives/mechanisms will be covered in some detail in this overview (in alphabetical order):

- The African Union
- Combined Maritime Forces (CMF)
- The Contact Group on Piracy off the Coast of Somalia (CGPCS)
- The Djibouti Code of Conduct
- The Eastern and Southern Africa – Indian Ocean (ESA-IO)
- Independent Deployers
- The Intergovernmental Authority on Development (IGAD)
- International Maritime Bureau – Piracy Reporting Centre (IMB PRC)
- International Maritime Organization (IMO)
- INTERPOL
- League of Arab States
- The Maritime Security Center – Horn of Africa (MSC-HOA)
- NATO

- The New York Declaration
- Port and Coastal States
- Shared Awareness and Deconfliction (SHADE)
- The Somali Contact Group on Counter-piracy (The Kampala Process)
- Training Awareness and Deconfliction (TRADE)
- The United Kingdom Marine Trade Operations (UKMTO)
- The United Nations Development Programme (UNDP)
- The United Nations Office on Drugs and Crime (UNODC)
- The United Nations Political Office for Somalia (UNPOS)
- The United Nations Security Council (UNSC)

There are several other important organizations/initiatives/mechanisms involved with the general fight against piracy but these will not be elaborated further on here, mainly due to its focus outside the region in question. These other organizations/initiatives/ mechanisms are, however, important players and actors in what might be regarded as a global security community in the maritime domain. Some of the most significant organizations/initiatives/ mechanisms outside the region of focus in this study are:

- The Maritime Organization of West and Central Africa (MOWCA)
- *The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)*
- The Malacca Strait Patrols (MSP)

This presentation of this overview will be organized according to the following 3 main functional areas;

1. Diplomatic and regulatory function
2. Military Maritime activities (including surveillance, information sharing, coordination and patrolling)
3. Development and capacity building (legal and maritime)

3.2 Diplomatic and regulatory function

The organizations/mechanisms are listed in a hierarchical order – from the highest strategic level to the operational and tactical level.

a. The UNSC

Piracy is addressed in several different forums which have a primarily diplomatic and regulatory role

of which the UN Security Council (UNSC) is the most important. The *International Maritime Organization (IMO)*, a UN specialized agency, is the traditional forum for handling issues of maritime security. The UNSC began to take action on the piracy issue at the request of IMO (and the WFP) in 2007 and has since then become the main forum to discuss, regulate and authorize actions to be taken. Since the adoption of Resolution 1816 (2008) the UNSC have debated piracy on a frequent basis and adopted at least 10 resolutions that have addressed or mentioned the problem of piracy, not least because 1816 included a temporal limitation and needs to be renewed. It was last renewed by Resolution 2015 in October 2011. Although UNCLOS in principle authorizes the use of force the resolutions further authorize and specify it, e.g. Resolution1851 allows actors "to take all appropriate measures" and these measures are not limited to the high sea. Naval forces may enter Somalia's territorial waters and, after consultation with the Transitional Federal Government (TFG), even take direct actions against pirates on Somali ground.

The consensus of the UN Member States in general and of the UNSC in particular on the issue of piracy has allowed the UN to become the main arena for the strategic level discussions, coordination, planning and authorizing of actions. Several UN departments, programs and specialized agencies have been mobilized and integrated into an overall strategy aimed at helping Somalia deal with its problems, including piracy.

b. The Contact Group on Piracy off the Coast of Somalia (CGPCS)

The UN also host an informal forum, *The Contact Group on Piracy off the Coast of Somalia (CGPCS)*, created in New York on 14 January 2009, pursuant to United Nations Security Council resolution 1851 (2008), to facilitate discussion and coordination of action among states and organizations fighting piracy and armed robbery at sea off the coast of Somalia. Following the first meeting in 2009, four Working Groups were established and at the 9th plenary meeting in July 2011, a fifth working group was established. The five working groups concentrate on *1) military and operational coordination*, *2) judicial issues, 3) cooperation with the shipping industry, 4) public information*, and *5) financial flows*. The plenary meets bi-annually mainly in New York while the working groups meet more frequently and on an ad-hoc basis in different capitals.

Any nation or international organization making a tangible contribution to the counter-piracy effort, or any country significantly affected by piracy off the coast of Somalia may become a member of CGPCS. Other relevant stakeholders may participate in the meetings of the CGPCS and its five Working Groups as observers. Decisions must be taken by consensus by the members of CGPCS. As of February 2013 representatives of71 countries and 21 international organizations (including the EU, NATO, the African Union, the Arabic League and several departments and agencies of the UN) participate in one capacity or the other.

c. The Djibouti Code of Conduct

The *'Code of Conduct Concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden'* (the Djibouti Code of Conduct) was adopted at a meeting convened by the *International Maritime Organization* in Djibouti in January 2009. 21 countries located in the Western Indian Ocean and the Gulf of Aden is eligible to sign the Djibouti Code of Conduct with 20 countries having joined as of February 2013. Participating countries commit to cooperate with a view towards sharing and reporting relevant information; interdicting ships and/or aircraft suspected of engaging in piracy or armed robbery against ships; ensuring that persons committing or suspected of committing such crimes are apprehended and prosecuted; and facilitating proper care, treatment, and repatriation for victims of piracy or armed robbery against ships.

d. The Somali Contact Group on Counter-piracy (The Kampala Process)

The "Somali Contact Group on Counter-Piracy", also called the Kampala Process, was established on the basis of a request by Working Group 1 of the CGPCS at a technical meeting between the Transitional Federal Government (TFG), Puntland and Somaliland in January 2010 with a view to promote internal coordination, information-generation and -sharing, and to coordinate their respective counter-piracy offices. The meeting was convened by the United Nations Political Office for Somalia (UNPOS) and supported by IMO, the United Nations Office on Drugs and Crime (UNODC), the United Nations Development Programme (UNDP), the Food and Agriculture Organization (FAO) of the United Nations, INTERPOL and the European Police Office (Europol). The group will serve as the national focal point for Somalia as defined in the Djibouti Code of Conduct. Since the initial meeting, Galmudug has joined the Kampala Process. UNPOS, in collaboration with partners, provides secretariat functions, based in Hargeisa, to advance an integrated law reform strategy for Somalia.

e. The Eastern and Southern Africa – Indian Ocean (ESA-IO)

The Eastern and Southern Africa – Indian Ocean (ESA-IO) Regional Strategy (RS) and rolling Regional Plan of Action (RPA) were adopted by ministers from the ESA-IO countries at the second Regional Ministerial Meeting on Piracy and Maritime Security in the ESA-IO Region held in Mauritius in October 2010. The RS provides for a regional framework to prevent and combat piracy, and promote maritime security through a three pillar approach consisting of (1) the development and implementation of a Somalia Inland Action Plan to counter and prevent piracy; (2) encouraging states in the region to prosecute pirates with the financial and technical support of the international community; and (3) strengthening regional states' capacities to secure their maritime zones. The RPA underpins the RS and includes information exchange, cooperation, joint action, and capacity building measures.

f. UNPOS

The United Nations Political Office for Somalia (UNPOS) was designated the role of UN Focal Point

for counter-piracy by the UN Security Council in Resolution 1976, adopted on 11 April 2011, and has established a Nairobi-based integrated task force of relevant United Nations entities working on Somalia called ***the Nairobi Cluster,*** with regional organizations as partners. UNPOS also co-chairs a counter-piracy technical working group with the participation of Member States involved in counter-piracy efforts. It further facilitates the coordination of Somali efforts, together with IMO and UNODC, through the Kampala Process, and leads outreach activities.

3.3. Military maritime activities

This second of the three functions covers the counter-piracy efforts performed by the naval and air forces involved, and include activities at the operational and tactical level. The main activities of the military actors can be clustered in two types, 1) *preventive activities* and *2) reactive ones.* 1) *Preventive activities* include surveillance by available assets, of which maritime patrol aircraft is the most efficient but also under-resourced in all operations, not least Operation Atalanta and Operation Ocean Shield. However, surveillance is only an enabler for the more active *deterrence against pirate attacks* by naval ships in protection of merchant vessels. 2) *Reactive* activities are normally set in motion once a distress call is received. The aim is then to *distract and interrup*t the ongoing attack and should this fail and the crew of the merchant ship is not in the pirate's custody, execute a r*ecapturing* attempt. In the case of a successful interruption of an attack the correct protocol is to *arrest, transfer and prosecute* the captured pirates. Not all navies follow such an arrest, transfer and prosecute protocol of reasons elaborated on further down (Development and capacity building function).

In general the better information one has about a situation, the better and more effective the actions will be. This is particularly true in the fight against piracy off the east coast of Africa since the area to be covered is so vast and the resources available relatively scarce. A high level of *Maritime Situational Awareness (MSA)* is therefore a prerequisite for the effective employment of the naval and air assets. MSA is built by having sensors available and the ability to gather and fuse information from the sensors (technology) and other intelligence sources - and the ability (and will) to share it with other actors.

a. MSA activities

An impressive number of actors contribute to counter-piracy. At least 27 states contribute military equipment and even more provide personnel[18]. This includes most NATO and EU member states countries plus countries like Australia, China, Japan, Iran, India, the Republic of Korea, Malaysia, Pakistan, Russia and Thailand.

Several of the initiatives/mechanisms involved in the counter-piracy effort were established in order to

18 A list is provided in Appendix 1.

enhance the coordination and de-confliction among the actors involved. Some of the mechanisms have been in operation before the current piracy menace evolved into the present day scope, like the UKMTO and IMB PRC, but the majority was established as a response to this particular problem. Here is listed those directly involved in supporting the forces in the area by contributing to the effectiveness of each unit and to avoid duplication and overlap between the forces. Other initiatives/mechanisms were also established to improve coordination among actors but not to the forces directly. These initiatives /mechanisms are either grouped under the Diplomatic label despite their operational, tactical and regional focus, or the under Development/capacity building label.

The mechanisms are presented in an alphabetical order:

The Djibouti Code of Conduct information-sharing centres

Funded by the Djibouti Code Trust Fund three regional counter-piracy information-sharing centers have been set up in the Regional Rescue Coordination Centers in Dar es Salaam, United Republic of Tanzania; Mombasa, Kenya; and Sana'a, Yemen; as well as a regional training facility in Djibouti. The information-sharing centers became operational in early 2011, and are now linked to all 18 Djibouti Code signatory States through a web-based information exchange network. In Tanzania, maritime situational awareness is enhanced through the upgrading of the coastal radar and automatic identification system, linked with the Tanzanian navy and the Dar es Salaam maritime rescue coordination center.

The following states are supposed to contribute to each Centre:

- Area North (Sana'a): Dijbouti , Egypt,Eritrea, Jordan, Oman, Saudi Arabia, Somalia (North), Sudan, UAE, Yemen.
- Area Central (Mombasa): Ethiopia, Kenya, Maldives, Reunion (France), Somalia, Seychelles, South Africa, Tanzania.
- Area South (Dar es Salaam): Comoros, Madagascar, Mauritius, Mozambique,

IMB PRC

In 1992, the *International Maritime Bureau Piracy Reporting Centre* (IMB PRC) was established in Kuala Lumpur, Malaysia. It offers a range of services free of charge, including a 24 hour emergency helpline for shipmasters to report actual or attempted incidents of piracy and armed robbery, a live online piracy map, and quarterly and annual piracy reports. In addition the IMB PRC offers a number of services, including daily status reports on piracy and armed robbery to ships via broadcasts on the Inmarsat-C SafetyNET service, reporting piracy and armed robbery at sea incidents to law enforcement, helping local law enforcement catch pirates and assisting in bringing them to justice, assisting and advising ship-owners whose vessels have been attacked or hijacked, assisting and advising masters and crew members whose vessels have been attacked, collating and disseminating

information on piracy in all parts of the world, providing updates on pirate / armed robbery activity via the internet, providing access to the live piracy online map, and publishing quarterly and annual reports detailing piracy statistics.

MSC-HOA

In addition to Operation ATALANTA, EU NAVFOR has established the Maritime Security Centre – Horn of Africa (MSC-HOA) which is manned by military and merchant navy personnel and offers round-the-clock monitoring of vessels transiting through the Gulf of Aden. The MSC HOA was established to facilitate the information sharing between naval vessels and merchant ships and coordinates the three major multilateral missions in the area. It now provides an integrate information sharing mechanism to manage the patrol system of the International Recommended Transit Corridor (IRTC) and organizes convoys through the Gulf of Aden.

SHADE

The Shared Awareness and Deconfliction (SHADE) initiative began in 2008 as a mechanism of meetings aimed at coordinating and de-conflicting activities between the countries and coalitions involved in military counter-piracy operations in the Gulf of Aden and the western Indian Ocean. The meetings are held in Bahrain at regular intervals and are co-chaired on a rotational basis by the Coalition Maritime Forces (CMF), NATO, and EUNAVFOR. SHADE has been used by force-providing nations and coalitions to coordinate and discuss convoys through IRTC, options for increased coverage by maritime patrol aircraft, and the threat of piracy in the Bab el Mandeb Strait, among other things.

UKMTO

The UK Maritime Trade Operations Office (UKMTO) in Dubai acts as the primary point of contact for merchant vessels and liaison with military forces in the region. UKMTO Dubai also administers the Voluntary Reporting Scheme, under which merchant vessels are encouraged to send regular reports, providing their position/course/speed and ETA at their next port whilst transiting the region bound by Suez, 78°E and 10°S. UKMTO Dubai subsequently tracks vessels and the positional information is passed to CMF and EU headquarters.

US MARLO

The Maritime Liaison Office (MARLO) in Bahrain facilitates the exchange of information between the United States Navy, the Combined Maritime Forces and the commercial maritime community in the United States Central Command's (CENTCOM) Area of Responsibility.

b. Execution

CMF (CTF-151)

CTF 151 operates in the Gulf of Aden and off the eastern coast of Somalia. It is a multinational task force established in January 2009 to conduct counter-piracy operations under a mission-based mandate

throughout the Combined Maritime Forces area of responsibility to actively deter, disrupt and suppress piracy. Command of CTF-151 is rotated between participatory nations on a four to six month basis. The force flow in CTF 151 is constantly changing as ships and aircraft from a variety of countries assign vessels, aircraft and personnel to the task force. CTF 151 has served as coordinator for the internationally recommended transit corridor and the Somali Basin. In addition, CTF 151 co-chairs the Shared Awareness and Deconfliction (SHADE) Meetings with EU NAVFOR and NATO.

EU NAVFOR

The European Union Naval Force (EU NAVFOR) Somalia– Operation ATALANTA was launched in 2008 with a mandate to contribute to protect vessels of the World Food Programme (WFP), humanitarian aid and African Union Military Mission in Somalia (AMISOM) shipping; protect vulnerable shipping; help deter, prevent and repress acts of piracy and armed robbery; and monitor fishing activities off the coast of Somalia. The mission has been extended by the European Council until Dec 2014. EU NAVFOR normally consists of 4-7 ships and 3-4 Maritime Patrol Aircraft. The number of ships varies with the monsoon seasons, as do pirate activity.

On March 23 2012 the Council of the European Union decided to allow EU NAVFOR to take disruptive action against pirate supply bases onshore. The decision was implemented for the first time on May 15 as helicopters destroyed a number of fast skiffs at a known pirate base.

NATO

The North Atlantic Treaty Organization (NATO) has been engaged in counter-piracy missions off the Horn of Africa since October 2008 when forces from Operation ALLIED PROVIDER which provided protection to World Food Programme vessels also helped deter acts of piracy. This mission was followed by Operation ALLIED PROTECTOR and since August 2009 by Operation OCEAN SHIELD, which has been extended until December 2014. The *NATO Shipping Centre* provides the commercial link with NATO's Maritime Forces and is NATO's primary contact point with the maritime community and is used to communicate and coordinate with other military actors engaged in counter-piracy operations. NATO also co-chairs the SHADE meetings.

NATO's Operation OCEAN SHIELD entails at-sea counter piracy operations using naval forces from the two Standing NATO Maritime Groups (SNMG1 and SNMG2). These operations include: "(1) To deter, disrupt and protect against pirate attacks, rendering assistance to ships as required and if available. (2) Actively seek suspected pirates and prevent their continued activity through detention, seizure of vessels and property, and the delivery of suspects and evidence to designated law enforcement authorities, in accordance with NATO agreements. (3) Facilitate and support the development of regional states' capacity to conduct effective counter-piracy operations, in coordination with other related international efforts. (4) Coordinate NATO operations and initiatives with coalition maritime forces, EU naval forces, and other non-NATO forces conducting counter

piracy operations off the Horn of Africa."

Independent Deployers

The term 'Independent Deployers' refers to nations not part of any of the three multinational maritime coalition operations (CTF-151, Operation Atalanta, Operation Ocean Shield) which commit naval assets to counter-piracy efforts. These countries include China, India, Iran, Japan, Malaysia, and Russia.

Independent deployers participate in the Shared Awareness and Deconfliction mechanism (SHADE). China, India and Japan have also agreed to carry out more effective coordination by establishing a convoy coordination working group as part of the Shared Awareness and Deconfliction mechanism.

Independent deployers have deployed naval ships and/or aircraft to combat piracy in the Horn of Africa and Somali Basin region. Their vessels have escorted merchant ships; provided close protection for designated merchant vessels, including for vessels released by pirates; conducted rescue operations for vessels in distress; and confiscated large quantities of weapons and other contraband.

Port and Coastal States

Regional nations are attempting to organize their counter-piracy efforts, for example, the *Indian Ocean Naval Symposium* (IONS) is an initiative that seeks to increase maritime cooperating among navies and maritime agencies of littoral states in the Indian Ocean Region. *The South Asia and Africa Regional Port Stability Cooperative* (SAARPSCO) is looking to eventually represent South Asia and Africa countries as one international maritime community. Regional coast guards and navies conduct patrols and have apprehended and delivered persons suspected of piracy for prosecution and have assisted to deter pirate attacks.

3.4 Development and capacity building

Going after the pirates at sea are actions directed at the symptoms of piracy and not the disease. Only through a comprehensive approach that encompass the whole chain of actions from deterrence, apprehension, prosecution and punishment of pirates - together with actions aimed at improving the living condition of the people of Somalia thus presenting an alternative to piracy, can the present level of piracy be reduced to a level the international community can live with. The basis of which is building an indigenous capacity by the states of the region to deal with the problem

a. Development

The CGPCS Trust Fund

The Contact Group has set up a multilateral trust fund to address piracy by development means. It is presently chaired by the UN Under-Secretary General for Political Affairs and managed by UNODC. As of 16 December 2012, the Trust Fund had received a total of about $16,5 million since its

establishment. Thus far, the Trust Fund has approved a total of twenty-seven projects at a total value of US$11.95 million supporting prosecution and detention-related activities in Kenya, Seychelles and Somalia.

IGAD

The Intergovernmental Authority on Development (IGAD) is an eight-country regional development organization in East Africa. Its headquarters are located in Djibouti City. IGAD is currently drawing an integrated counter-piracy strategy.

UNDP

The United Nations Development Programme (UNDP) works through three main programmes in Somalia: Governance, Rule of Law and Security, and Recovery and Sustainable Livelihoods. Projects related to piracy include a judicial programme throughout Somalia, legal aid to suspected pirates, training of police and custodial corps, and completion of prisons.

b. Capacity building – Judicial

IMO, INTERPOL, the Office of Legal Affairs, the United Nations Development Programme (UNDP), UNODC and others have undertaken a range of activities to assist States in developing their capacity to apprehend, detain and prosecute suspected pirates in full respect of international norms and standards.

With the aim of eventually hosting piracy trials in Somalia, UNODC has organized a training course for “Somaliland” and “Puntland” prosecutors

The capacity to arrest, prosecute and detain suspected pirates has clearly increased over the last years with now more than 1000 pirates either serving or awaiting sentence in the national system of over 20 states.

However, a large number of suspected pirates are still not prosecuted for a variety of legal, practical and political reasons, including the successful evasion of naval forces, insufficiency of evidence to prosecute, and the failure to identify a jurisdiction able and willing to prosecute. Pirates today are treated as civilian criminals, with all the expansive interpretations of individual human rights inherent in that status. If pirates are captured they must be tried in court, however there is no international court in place with the authority to do so. Thus captured pirates (or rather “suspected” pirates) must be prosecuted in the court of whichever country is able and willing to take on the task, under the civilian criminal procedures of that nation and with all of the associated entitlements and requirements for evidentiary standards. However, the sheer logistical nightmare of ensuring the ‘proper’ gathering and continuity of evidence, of administering rights, of transporting suspects, witnesses, translators and sufficient evidence to a location thousands of miles from the scene of the ‘crime’ and of ensuring the

availability of the naval expert witnesses at a trial that could stretch over years (and therefore tying up the associated naval vessel that made the arrest). A large number of suspected pirates are therefore just released by several navies after having confiscated their gears and weapons. Another problem undermining the effort of prosecuting and detaining pirates are the inherent scourge of corruption in the Somalian society. In 2011 UNODC received reports that 60 convicted pirates were released from prison in "Somaliland" following the payment of bribes to court and prison officials.

UNODC

The United Nations Office on Drugs and Crime (UNODC) Counter-Piracy Programme was launched in 2009 to enhance criminal justice capacity among Somalia's neighbours and ensure that the trial and imprisonment of suspected pirates passed to them is humane and efficient and takes place within a sound rule of law framework. The programme delivers in the four areas of law enforcement, prosecution, courts and prisons and aims to leave behind a strengthened criminal justice system in the region. In 2011 the UNODC and IMO worked together to build state capacity in deterring and interdicting piracy and bringing pirates to justice. [19] It is too early to say if this initiative will have effect.

UNDP

UNDP has provided assistance and capacity-building to the police in Somalia, including in Puntland and Somaliland. While Hargeisa prison has been mostly completed in co-operation with United Nations Office on Drugs and Crime (UNODC), UNDP is facilitating work at Gardo prison and provides the Puntland custodial corps with equipment and training. In Puntland, UNDP supports a literacy project for inmates.

CGPCS – Working Group 2

Working Group 2, convened by Denmark, focuses on the legal aspects of counter-piracy, with the support of UNODC. Working Group 2 developed a legal framework for transferring sentenced pirates from prosecuting States for incarceration in Somalia. This work led to the conclusion of respective agreements between Seychelles and Somalia, including the administrations of "Puntland" and "Somaliland". The Working Group is supporting efforts to put the framework into practice, which also depends on the continuous support from the international community for the construction of prisons with international standards in Somalia and the close cooperation of the Somali authorities.

The CGPCS Trust Fund

Four of the projects are capacity building programs for the judicial sectors of Kenya, the Seychelles and Somalia to support the prosecution of piracy suspects.

19 http://www.imo.org/MediaCentre/PressBriefings/Pages/65-piracy-year-end.aspx

INTERPOL

INTERPOL is developing a maritime piracy global database that will integrate a diverse collection of maritime piracy information and intelligence to support on-going maritime piracy investigations and prosecution by Member States of criminal networks involved in piracy off the coast of Somalia. The database was transferred to the INTERPOL

General Secretariat in 2012 and will be accessible to the international law enforcement community.

c. Capacity building – Maritime

CGPCS Working Group 1

Working Group 1, on operational coordination and regional capacity-building received regular input from the Chairs of the Shared Awareness and Deconfliction mechanism, highlighting for its membership key military capability shortfalls, particularly Maritime Patrol Aircraft and oil replenishment tankers. Working Group 1 also continues to provide a platform for dialogue among military contributors. The Contact Group on Piracy off the Coast of Somalia endorsed the priority needs identified by Working Group 1, including support for a penal/judicial capacity-building programme in Somalia and the region; the implementation of the Djibouti Code of Conduct; capacity-building of prioritized counter-piracy and maritime security capabilities of regional coastguard and maritime police and military forces, in accordance with the regional plan of action on piracy and maritime security in the Eastern and Southern Africa and Indian Ocean region; the establishment of an exclusive economic zone for Somalia; and comprehensive cross-sector counter-piracy and maritime security action in Somalia, facilitated by the United Nations, especially through the Kampala Process and the United Nations rule of law and security sector reform programmes.

The Djibouti Code of Conduct training centre

To implement the Djibouti Code of Conduct in a uniform manner, a training centre has been set up in Djibouti to provide training to government officials designated by the participating governments.

Training Awareness and Deconfliction' mechanism

The *'Training Awareness and Deconfliction'* mechanism (TRADE) is voluntary coordination forum attended by governments and organizations involved in assisting nations affected by piracy with an aim to provide maritime tactical training to countries in the Western Indian Oceans Region affected by piracy. The first TRADE was held in March 2010 and TRADE has been held approximately every quarter since then. The TRADE is co-chaired by NATO (JFC Lisbon) and EUNAVFOR, participants are: NATO, EU, CMF/NAVCENT, IMO and others.

IMO

IMO has delivered training on maritime situational awareness to staff of the information-sharing centres and conducted regional workshops. The information-sharing centres became operational in

early 2011, and are now linked to all 18 Djibouti Code signatory States through a web-based information exchange network.

US effort

The US supports and provides operational capacity building projects through USAID programmes, the Global Train and Equip programme, the Africa Partnership Station, the African Maritime Law Enforcement Partnership, and as grants to for example the UNODC Counter-Piracy Programme.

The EU and NATO

Both the EU and NATO have declared their willingness to pursue regional capacity building within their means and capabilities. The EU launched an initiative on 12.12.2011 to build capabilities in eight states in the Horn of Africa and Western Indian Ocean.[20] The EU has a Special Representative for the Horn, but he is also tasked with several other functions in addition to anti-piracy measures.

The operational forces active in the area also conducts some capacity building activities with local forces. Ships from the EU NAVFOR have conducted training with several navies and coast guards in the region including Djibouti, the Seychelles and Tanzania. Such exercises allows for the transfer of tactical skills to the local forces, but also benefits the international force as they gain knowledge of the local context.

Others

One function not included in the overview above is the all- important function of self- protection by the merchant ships. The reduction of successful pirate attacks over the last year was achieved through a combination of actions by naval forces and the improved implementation of the IMO guidance and industry-developed Best Management Practices for (BMP) Protection against Somalia-Based Piracy. That included better application of self-protection measures and situational awareness by merchant ships.

The countries signing the ***New York Declaration*** commit to promulgating internationally recognized best management practices for self -protection of vessels to their registers.

The role of Denmark is worth a closer look. **Denmark** seems to be "punching above its weight" when it comes to contributions to the counter-piracy activities. Denmark has contributed with units and personnel to all 3 missions (ATALANTA, Ocean Shield and CTF 151) and has commanded the CTF 151 (2012). Working Group 2 of the CGPCS is convened by Denmark. In addition, in May 2011, Denmark launched a strategy *for the Danish counter-piracy effort between 2011 and 2014* with an aim to *"contribute to making the waters off the Horn of Africa and the Indian Ocean safe and*

20 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/126796.pdf

navigable for Danish and international maritime shipping." The strategy will be implemented by the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Justice and the Ministry of Economic and Business Affairs and includes bilateral and multilateral political, military, legal and capacity building initiatives. Moreover, due to the lack of a single international counter-piracy strategy, *'Denmark will work for the widest possible coordination of the international efforts.'* This will particularly be done through the work of the CGPCS, SHADE, the Djibouti Code of Conduct, the Kampala Process, the ESA-IO regional strategy and UN organizations involved in counter-piracy.

3.5 Conclusion international efforts

As mentioned in the beginning of this overview, despite an impressive amount of initiatives, mechanisms, organizations and actors involved the cooperation and coordination seems to be working relatively smooth. The sheer number of actors/mechanisms/organizations addressing the same problem undoubtedly involves a degree of overlap and duplication. However, the overwhelming consensus on the salience of this threat facilitates this cooperation. There are, however, some signs that this coordination and cooperation can be improved further. The UN Secretary-General's reports to the UNSC in 2010 and 2011 both states that information sharing and coordination had improved over the previous year. Reading between the lines this indicates that the information sharing and coordination was less satisfactory in 2009 and improved in 2010 and 2011 but that it still has some way to go before it is perfect. The main reason for this seems to be some lack of willingness to share information, in particular intelligence, between the actors, and not only between the different missions and organization but also within organizations. The EU Institute of Security Studies report on "Lessons from Atalanta and EU counter-piracy policies" (2011) clearly states that there are major problems with information sharing within the relatively homogenous organization of Operation Atalanta. One can only wonder how the situation is within less homogenous organizations and between the organizations.

Another indicator of less cooperation than ideal is the relatively low numbers of actors pledging and donating funds for the CGPCS Trust Fund and the Djibouti Code of Conduct Trust Fund. While states have agreed on common standards, there is a lack of willingness to finance activities with a mid-term perspective through a multilateral mechanism.

The overall impression is still one of a common willingness to expend resources to solve what is seen as both a national security challenge and a common, global threat. In order for this to evolve into a global security community however, the threat and its solutions (the institutions established) must be seen to be more durable both geographically and temporally. The activities by states as well as organizations rather indicates that they see this as a regional threat limited in time and scope, as indicated by the UNSC Resolutions that have to be renewed every year and that the majority of mechanisms remain ad-hoc and unofficial. In other words, I remains to be seen once the rate of Somali piracy incidents drops significantly (as statistics from 2012 indicates), if actors will reduce their collaborative activities and thus few long term consequences, structural effects or rethinking of

maritime space is likely to occur. If the piracy menace persists, however, these institutions and mechanisms might become more permanent and the unofficial cooperation within them might work to institutionalize the practices and become the foundation for a global security community.[21]

4. Legal considerations

Somali pirates are seldom brought to court, and few participating states are willing to imprison them in their own countries. The result is that when their arms have been confiscated the pirates are very often simply released. Obviously such practice does not deter pirates who may make a fortune in a single successful attack on a ship. In earlier eras pirates could expect no mercy if caught by naval forces at sea. Pirate ships were often sunk and pirates hanged without a trial. States and cities supporting piracy could expect to be bombarded. Still, this problem is not a completely new one. According to E.B. Potter, a naval historian, the US West Indies Squadron experienced similar problems when it was established in 1822. US courts tended to release the captured pirates for lack of evidence. The squadrons second commander however "usually found legal justification to turning [the pirates] over to the British pirate hunters in the area, who promptly hanged [them] without recourse to civilian courts".[22]

It is often stated that a main problem for the anti-piracy operations has been the legal restraints on the rules of engagement. The retrains, however, are not mainly due to the legal framework in international law but to the approach chosen by the States participating in Counter-piracy operations. [23]

International law out-laws piracy and acts of armed robbery at sea. From a legal point of view, piracy are violent acts against ships and its crew, which are conducted on the high seas (including the EEZ) and which are directed from one vessel towards another vessel (UNCLOS, art. 101). The aim of acts of piracy is private gain, therefore acts conducted or sanctioned by states authorities are not acts of piracy.[24] Acts in territorial waters are not included in UNCLOS definition of piracy, those acts are often described as "armed robbery at sea" or "armed robbery against ships" (this terminology is, however, not always stringent) and as a starting point under the coastal state's jurisdiction.

---

21 Bueger, C & Stockbruegger, J. 2012. Security Communities, Alliances and Macrosecuritization: The Practices of Counter-Piracy Governance, in *Piracy and Maritime Governance,* ed. *S*truett, M, Nance, T and Carlson, J.D. London: Routledge.

22 Potter, E.B. and H.H. Adams (1981*) Sea Power: A Naval History*, United States Naval Institute; Annapolis, Maryland, pp 110.

23 Birgit Feldtmann, Maritime piracy – possible actions against pirates, ***under publication***.

24 See Douglas Guilfoyle, "Counter-piracy Law Enforcement and Human Rights", ICLQ vol.59, 2010, p. 142 ff.

UNCLOS' provisions on piracy are supplemented by the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA-Convention). This convention is aimed at acts against ships, their crew and maritime navigation in a more general way and does not distinguish between acts in the high seas and territorial waters. The Convention obligates the States to criminalize certain acts against ships, crews and maritime navigation (art. 3, art.5) and to establish criminal jurisdiction if those acts are conducted by a citizen of the state, in the state's territory or against a ship flying the flag of the state (art. 6). The SUA convention does furthermore allow criminal jurisdiction in other situations. One of the aims of the SUA-Convention is to ensure that perpetrators committing acts against ships not only can be, but also will be, prosecuted. The convention therefore presents a "extradite or prosecute" obligation, however, the implications of this obligation are not quite clear.[25]

UNCLOS and the SUA-Convention's provisions are supplemented by a number of other international pieces of legislation, such as the Hostage Convention, however, it can be argued that in the context of Somali piracy those do not add further legal basis to counter-piracy operations.[26]

A number of SC resolutions widen the scope of measures against maritime piracy for the Somali context, for example by sanctioning counter-piracy operations in the Somali territorial sea and on land.[27]

The legal frame guiding counter-piracy operations in the region can be seen as fragmented due to the fact that is rooted in different legal acts, however, in its sum it provides a very solid frame for counter-piracy operations, sanctioning various counter-piracy activities such as the stopping of pirate vessels (also with force), the boarding and sizing of pirate vessels and equipment as well as its destruction. Furthermore, in the context of Somali piracy counter-piracy activities can be conducted on the high seas, in Somali territorial waters and on Somali soil.

Another means in counter-piracy operations is the arrest of persons suspected of piracy and in addition UNCLOS art. 105 clarify that "(...) The courts of the State which carried out the seizure may decide upon the penalties to be imposed. (...)" That means that the State seizing the suspected pirates has the right to excercise criminal jurisdiction in connection with piracy. It is even argued (and quite accepted) that UNCLOS art.100, in conjunction with art.105 enables *any* State (not only the seizing State) to

25 Douglas Guilfoyle, Treaty Jurisdiction over Pirates: A Compilation of Legal Texts with Introductory Notes, Report prepared for CGPCS's WG2 3rd meeting, August 2009 and Birgit Feldtmann, Should we rule out criminal law as a means of fighting maritime piracy?, in Andersson/Wong/Hansen (ed.), Festskrift till Per Ole Träskman, 2011, p. 183 ff. (184).

26Douglas Guilfoyle, Treaty Jurisdiction over Pirates: A Compilation of Legal Texts with Introductory Notes, Report prepared for CGPCS's WG2 3rd meeting, August 2009

27Robin Gless and Anna Petrig, "Piracy and Armed Robbery at Sea", 2011, p. 70 ff.

implement universal criminal jurisdiction for acts of piracy. That means that any State can choose to prosecute acts of piracy. But the question of an obligation to prosecute is more difficult, beside the above mentioned unclear obligation to prosecute in certain situations established by the SUA-Convention it is argued that international law does not establish a clear general obligation to prosecute acts of piracy. [28] This leads to the situation that many States have chosen a "non-prosecution approach" towards Somali piracy which leads to the release of suspected pirates if no other country is willing to prosecute. One example to such approach is the Denmark; Danish media reported in April 2012 that the Danish forces had arrested about 270 suspected pirates under their counter-piracy operations, of those only 37 where transferred to prosecution in Kenya, the Seychelles and in the Netherlands. All other suspected pirates were released without any further consequences, even in cases where the evidence against the suspected pirates was quite sufficient.[29]

Another example on the States' restrictive use of the legal frame for counter-piracy operations in the Somali context is the limitations in mandate and Rules of Engagement for different operations. First in March 2012 it was decided to enlarge the mandate for EU NAVFOR's Operation Atalanta to also allow land based operations, a possibility granted by SC res. 1851 since December 2008. [30]

5. Conclusion and Gap analysis

The region is vulnerable to a range of threats to maritime security and freedom of navigation, of which piracy is only one. In the last three decades shipping has been threatened by both state and non-state terrorism, sea denial efforts from the parties in interstate war, piracy and preparations to close international straits. Presently, due to geopolitical tensions in the area it seems utopian to envisage a regional regime based on international consensus able to handle the whole range of threats. However, a regional regime focused on efforts to manage and prevent piracy is a realistic goal. In other words there are functional limitations to the potential regional maritime security regime.

During 2011 and 2012 pirate success rates and, later, pirate activity as a whole have declined dramatically. As of yet, it seems plausible that this development is due to several initiatives and lines of actions. It is difficult, however, to conclude which of these lines of actions that has been most important. The following factors seem to have contributed:

---

28 Birgit Feldtmann, Should we rule out criminal law as a means of fighting maritime piracy?, in Andersson,Wong and Hansen (ed.), Festskrift till Per Ole Träskman, 2011, p. 183 ff. (184).

29 Danmarks Radio: http://www.dr.dk/NR/rdonlyres/5758CA25-D976-4456-8E6C-418E1952D96B/3679131/Bilag_10_Oversigt_over_tilbageholdte_DOK233622.pdf (8.4.2012).

30 See Danmarks Radio: http://www.dr.dk/Nyheder/Udland/2012/03/22/165225.htm (8.4.2012) and Robin Gless/Anna Petrig, Piracy and Armed Robbery at Sea, 2011, p. 80 ff .

- The adoption by the shipping community of IMO's guidelines and best-management practices
- The increase in private security guards aboard ships and the fact that no ships with such guards have been taken over by pirates.
- The maintenance and gradually improving efficiency of international surveillance, naval convoy and protection operations.
- The increasingly aggressive response from the EU, France and the USA towards pirates holding hostages and pirate bases. The first such attack was implemented by French helicopters in May 2012.
- Measures taken to improve the efficiency of local authorities within Somalia, particularly in Puntland, to fight piracy.

The many initiatives to build regional cooperation and capabilities initiated during the last several years may in time bear fruits and develop into a functioning regional maritime security regime. As of early 2013, however, we do not believe that those efforts have been decisive in reducing piracy activities.

Presently, two regimes attempting to secure shipping against piracy are at work in the region. One consists of the efforts of the international community of states and intergovernmental organisations. They provide the naval and air capabilities that patrol the Indian Ocean. These actors are fragmented and there is no one authority in charge of their combined efforts. However, it would seem that slowly and incrementally a broad consensus has developed as regards the need to build local capabilities. The same is true as regards the exchange of information between the various task forces operating at sea.

The other regime is based on commercial links between shipping companies on the one hand and private security companies on the other. It is an open question if this development will contribute to security for seafarers on the world's ocean in the long run. The emergence of virtual private navies thriving on insecurity and with more capabilities than many states in the region may not necessarily be a force for long term stability.

Both regimes are basically external to the region as such. And both could with relative ease be put to work anywhere in the world. Even the emerging regional cooperation is strongly dependent on external actors for skills, capabilities and resources. That cooperation has not developed from regional initiatives.

The regional actors are either limited by lack of naval and relevant civilian capabilities (most African states) or by political will in the sense that they do not take on responsibility for maritime security beyond their territorial waters (most Arab peninsula states). Arguably, the first set of actors has small

stakes in the flow of international trade through the area while the second set of actors depends on maritime security for their export of oil.

Thus, the present and emerging regimes are all imposed on the region by external actors who provide both the means for implementation of operations and the political pressure, the resources and the skills needed to build a regional regime. A relevant question is whether the regional actors, states as well as regional institutions (the AU, GCC) have the sufficient political will and the feeling of ownership to the process to sustain such a regime independently of the international community at large.

REFERENCE LITERATURE AND WEB PAGES

Brown, James (2012) Pirates and privateers: Managing the Indian Ocean's Private Security Boom, September, Sydney Lowy Institute. Available at http://lowyinstitute.cachefly.net/files/brown_pirates_and_privateers_web.pdf

Helly, D. "Lessons from Atalanta and EU counter-piracy policies". *European Institute for Security Studies Seminar Report*. Brussels, 17 June 2011.

Capt. (N) Tulloch, T. 2011. "The Problem with Pirates." *SITREP – The Journal of the Canadian Military Institute*. May-June 2011, Volume 71, Number 3.

GAO 11-449T. 2011.Testimony Before the Subcommittee on Coast Guard and Maritime Transportation, Committee on Transportation and Infrastructure, House of Representatives. *Updating U.S. Counterpiracy Action Plan Gains Urgency as Piracy Escalates off the Horn of Africa.*

GAO 10-856. 2010. Report to Congressional Requesters. *MARITIME SECURITY. Actions Needed to Assess and Update Plan and Enhance Collaboration among Partners Involved in Countering Piracy off the Horn of Africa.*

UN Security Council. S/2011/662. Report of the Secretary-General pursuant to Security Council resolution 1950 (2010). 25 October 2011.

UN Security Council. S/2010/556. Report of the Secretary-General pursuant to Security Council resolution 1897 (2009). 27 October 2010.

http://combinedmaritimeforces.com/

http://www.eunavfor.eu/

http://www.icc-ccs.org/piracy-reporting-centre

http://www.maritimesecurity.com/

http://www.mschoa.org/pages/default.aspx

http://www.shipping.nato.int/operations/OS/Pages/default.aspx

http://oceansbeyondpiracy.org/

http://piracy-studies.org/

http://www.safety4sea.com/

http://www.thecgpcs.org/main.do?action=main

Appendix

External operations in the Western Indian Ocean

Only five states in the region contributes (India, Iran, Pakistan plus Oman and Saudi Arabia)

Six states in East Asia and South East Asia have contributed (China, Japan, Korea, Malaysia, Singapore, Thailand), as well as Australia and New Zealand.

The US and Canada are regular contributors. So is Russia.

European states (Belgium, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Turkey and the UK)

28 external states

Table 2. Overview of contributors to operations (ships only)

			Contributors (ships only)
			Australia, Canada, Denmark, France, Germany, Italy, Republic of Korea, Netherlands, New Zealand, Pakistan, Portugal, Singapore, Spain, Turkey, Thailand, United Kingdom, United States.
CTF 150	Operation Enduring Freedom	Maritime Security/ Counter- terrorism Indian Ocean	
CTF 151 Jan 2009-	Based on UN mandate 1816	Counter piracy	Australia, Canada, Denmark, Republic of Korea, Netherlands, New Zealand, Pakistan, Singapore, Turkey, United Kingdom, United States
CTF 152	In Persian Gulf only	Maritime Security/ Theatre Security Cooperation	Kuwait, Bahrain, United Arab Emirates, Saudi Arabia, Qatar, Italy, Australia, United Kingdom and United States
Sep 2007-Sep 2008		Escort ships with food to Somalia for WFP.	France, Canada, Denmark, Netherlands,
NATO Oct 2008-March 2009	Operation Allied Provider		France, Canada, Denmark, Greece, Italy, Netherlands, United Kingdom
NATO March-Aug 2009	Operation Allied Protector		Canada, Greece, Italy, Netherlands, Portugal, Spain, Turkey, United Kingdom, United States
NATO CTF 508 Aug 2009-	Operation Ocean Shield	Counter piracy	Canada, Denmark, Greece, Italy, Netherlands, Portugal,Turkey, United Kingdom, United States.
EU NAVFOR	Operation Atalanta	Counter piracy, escort of WFP ships, support to AMISOM	Belgium, Finland, France, Germany, Greece, Italy, Netherlands, Norway, Portugal, Spain, Romania, Sweden, United Kingdom, (total 26 contributing states).
Russia Oct 2008-			First exercise with Tf 151 in April 2010

Japan Mar 2009-			Japanese ships participated in OEF in the Indian Ocean from 2001 to 2008.
Malaysia 2008-	Operation Dawn		Auxillaries, SOF
Oman ?		Anti-piracy in Omani waters	An Omani warship rescued hostages taken by Somali pirates 80 nm off the Omani coast in June 2010 (Jane's 429).
China Dec 2008			
India Nov 2008			
Iran Nov 2008			September 2009: joint excercises with several other navies. Janes 264
Saudi Arabia ?			«Has been taking part in counter-piracy operations off the Horn» Janes 491