

**INTERNATIONAL ORGANIZATIONS AND MARITIME PIRACY:
A CASE STUDY OF SOMALIA**

*Dissertation Submitted to Jawaharlal Nehru University
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MASTER OF PHILOSOPHY

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DECLARATION

I declare that the dissertation entitled “INTERNATIONAL ORGANIZATIONS AND MARITIME PIRACY: A CASE STUDY OF SOMALIA” submitted by me in partial fulfillment of the requirements for the award of the degree of **Master of Philosophy** of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this University or any other University.

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CERTIFICATE

We recommend that this dissertation be placed before the examiners for evaluation.

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For my Lord Jesus Christ

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List of Abbreviations

AMISOM	African Union Mission in Somalia
BMPs	Best Management Practices
CGPCS	Contact Group on Piracy off the coast of Somalia
CMF	Combined Maritime Forces
CPP	Counter-Piracy Programme
CSDP	European Common Security and Defence Policy
Djibouti Code	Code of Conduct Concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden
EU	European Union
EU NAVFOR Somalia	European Naval Force Somalia
EU SR	European Union Special Representative
EUCAP Somalia	EU Capacity Building Mission in Somalia
HRA	High-Risk Area
ICU	Islamic Courts Union
IMB	International Maritime Bureau
IMO	International Maritime Organization
IOs	International Organizations
IRTC	Internationally Recommended Transit Corridor
EU-MASE	European Union Programme to Promote Regional Maritime Security
MSC-HOA	Maritime Security Centre – Horn of Africa
NATO	North Atlantic Treaty Organization
PSCAP	Privately Contracted Armed Security Personnel
ReCAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia

SDG	Sustainable Development Goal
SHADE	Shared Awareness and Deconfliction Group
SMGs	Standing Maritime Groups
SUA Convention	Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation
UKMTO	United Kingdom Maritime Trade Organization
UN	United Nations
UNCLOS	United Nation Convention on the Law of the Sea
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UNSCR	UN Security Council Resolutions
VPDs	Vessel Protection Detachments
WFP	World Food Program

CHAPTER 1

INTRODUCTION

Maritime Piracy defined generally means armed robbery at sea. It has existed since ancient times with the first pirates appearing around 14th century B.C in the Mediterranean region. Historically, piracy has spanned across the world's oceans ranging from the ancient age Sicilian and Greek Pirates in the Mediterranean, to the medieval age Vikings in the North Atlantic, to the South China Sea Pirates to the Golden Age Pirates in the Caribbean Sea. The outlawing of Piracy as a crime took several centuries to accomplish because pirates were not just individual robbers but were also sanctioned by the states (called privateers), like England and France to commit acts of warfare against states of other ships.

Gradually, however, with the development of Navies and the British and United States of America's efforts at criminalising Piracy domestically, the state-sanctioned privateering was outlawed by the Declaration of Paris in 1856. Then, by the beginning of the 20th century, international efforts also began at outlawing Piracy which came to be seen as a threat to maritime security and freedom of the Seas. The modern-day legal basis for sovereign states to fight against Piracy came to be codified in the 1982 United Nations Law of the Sea Convention. Article 101 of this Convention defines piracy as i) any illegal act of violence or detention, or any act of depredation, ii) committed for private ends by the crew or the passengers of a private ship or a private aircraft is; iii) directed on the high seas and iv) against another ship or aircraft, or against persons or property on board such ship or aircraft (United Nations Convention on the Law of the Sea 1982:57).

In the late 20th century, piracy was mainly confined to the seas of South East Asia, the region of Malacca Straits in particular. In fact, the UN Agency International Maritime Organization (IMO), that is charged with the mandate to look at issues of Maritime Security, to regulate the Shipping Industry, so as to make seas safe for trade and travel, itself started reporting on Piracy incidents only in the year 1982.

In the 21st century, maritime piracy shifted its epicentre to Africa from Asia. Beginning 2005, reports of piratical incidents off the Coast of Somalia skyrocketed where even World for Food Programme vessels came to be targeted. The IMO spearheaded the counter-piracy efforts by involving the UN Security Council with the issue of Somali Piracy. This led to a series of Resolutions being passed by UN Security Council that accomplished two purposes. First, they not only helped to elevate the importance of Maritime Piracy from a mere economic threat to an International Peace and Security threat, but also helped to cope with the deficiencies of the UNCLOS definition, particularly the geographic limitation that confined the crime of piracy to the High Seas, by permitting counter-piracy efforts in the territorial seas of Somalia.

It was then that several other International Organizations (IOs), like the United Nations Office on Drugs and Crime (UNODC) and Interpol, regional organizations like the European Union (EU), North Atlantic Treaty Organization (NATO), to name a few, became involved in counter-piracy efforts extensively in the two piracy hotspots: the Coast of Somalia and the larger Indian Ocean and also recently, in the Gulf of Guinea region.

Piracy reduced considerably in the landmark year of 2012, with attacks on ships falling from 439 in 2011 to 297 in 2012, primarily on account of reduction in Somali Piracy (International Maritime Bureau 2012: 24). A decreasing trend in the piracy incidents has continued since 2012, with only 43 incidents of piracy and armed robbery reported in the first quarter of 2017 (International Maritime Bureau 2017: 24). However, piracy is still considered a potential threat to Maritime Security (United Nations Security Council 2016; Bueger and McCabe 2017).

Against this background, the present study aims to study the performance of International Organizations in tackling Maritime Piracy. The rationale for the study is linked to the issue that Maritime Security as a topic, (of which maritime piracy is a substantial part) has been under-studied as compared to issues of land security within the discipline of International Relations (IR). IR has rather remained a “land-locked discipline” (Ryan 2017). This sea blinded approach of IR even extends to IO Studies. However, the emerging scholarship with respect to “Piracy Studies” (the term was

coined by Johnson and Pladet 2003) has been interdisciplinary (Bueger 2014: 407-08). This present study thus aims to add to the existing literature on maritime piracy from an IO studies perspective. It attempts to see how have IOs contributed to countering maritime piracy.

Review of Literature

Maritime Piracy: A Comparison of Historical and Contemporary Practices

The study of contemporary maritime piracy has an important historical basis. There have been descriptive historical accounts of maritime piracy (for eg. Konstam 2008, Gosse 1946). But maritime piracy has also importantly, shaped understandings of sovereign and non-sovereign spaces, of maritime trade, of legitimate and non-legitimate violence and has laid foundations for the International legal regime governing the seas (Bueger 2014: 412).

Far back in 1994, Thomson explored how post delegitimisation of state-sanctioned practice of privateering, piracy as non-state violence got abolished in the 19th century and how state authority increased thereafter (Thomson 1994: 144-45). In a similar vein, Colas and Mabee, in problematising notions of private and public violence, argue that “...phenomena such as piracy and privateering, were not simply incidental to the unfolding of modern warfare, state-building, the world market and international revolution. They were intrinsic to the genesis and development of these structures of modern international relations” (Colas and Mabee 2010: 104). Similarly, Amirell and Müller (2014) conclude links between maritime violence and state formation by doing diverse case studies of 3000 years of piracy. In addition, Roazen puts forth the notion of “a piratical paradigm” that has existed throughout history, in which Pirates attain the title of “Enemy of All” as they display antagonism in general that leads to problems in tackling them as they are neither proper belligerents nor criminals (Roazen 2009: 11).

Studies on comparisons between historical and contemporary (generally seen from the period post World War II) piracy are sparse. For instance, while some scholars like (Young 2005) and (Warren 2003) have tried to look for continuities in the cases of

Piracy in Southeast Asia, others argue that, comparisons shouldn't be drawn itself as the contemporary world economy is different from the historical Mercantile empires and so modern piracy is localised and can never be state-sanctioned like privateering in the past (Colas and Mabee 2010:105-06).

The reasons for the rise of modern piracy are also well analysed. In general, Murphy (2007a:13; 2008) reasons that piracy happens on account of seven major factors such as legal and jurisdictional weakness, favourable geography, Conflict and disorder, under-funded law enforcement/inadequate security, permissive political environments, cultural acceptability, the promise of reward, legal and jurisdictional weakness. Chalk (2008:10-14) adds other reasons like massive increase in commercial maritime traffic, narrow and congested maritime chokepoints, and the need to invest rather more in land-based security than in maritime security after the rise of terrorism. Economic approaches focus on seeing pirates as rational actors who weigh costs and benefits while participating in piracy (Halwood and Miceli 2015:31), and that poor labour market opportunities play the role of a causative factor in the growth of piracy (Jablonski and Steven Oliver 2012).

On specific cases of the rise of piratical incidents in Southeast Asia in the late 1990s, scholars see the Asian Financial Crisis as a causative factor (Chalk 2008: xii; Friedman & Levisohn 2002; Liss 2010:274). Hasan and Hassan (2016) explore the unique nature of Gulf of Guinea piracy where attacks happen mostly on oil tankers are a result of corrupt law enforcement of the Nigerian Government. However, the amount of literature analysing piracy on the western side of Africa has been less as compared to the eastern side.

The Case of Somali Piracy

It is the case of Somali Piracy that has attracted maximum attention of scholars. Many have refused to look at the Somalian case as a simple law and order problem. Scholars have shown that piracy flourishes in conditions of weak government, rather than in the case of a failed state (Groot, Rablen, and Shortland 2011; Dua and Menkhaus 2012). Likewise, seeing piracy as an organised criminal activity, Percy and Shortland (2010) opine that an increase in institutional stability can actually help pirates than deterring

them. In addition, Hastings (2012) offering an empirical study concludes that a weak state enables market opportunities for stolen cargo to be sold.

However, Klein (2013) counters this view of seeing the Somali piracy as an organised criminal business. He rather sees it as a subsistence activity in response to the destruction of fisheries by foreign trawlers. It is also held that by authors that piracy in Somalia is a reaction to interference by foreign fish trawlers enabled after the instability caused after the 1991 civil war (Negi 2011; Tharoor 2009; Bashir 2009), and also due to the dumping of toxic wastes affecting livelihoods of coastal communities (Phillips 2016; Economic and Political Weekly 2009).

In addition, scholars also see that the poor Somalis have moral narratives in supporting acts of piracy against international interference (Samatar et. al: 2010) and that Somalis are acting as coast guards to protect their livelihoods is a “grand narrative” that has gained legitimacy (Bueger 2013).

International Organizations and Maritime Piracy

Scholars have tried to discern the various challenges that the International Community has faced in countering piracy. Percy and Shortland (2013), Marchal (2011) and Menkhaus (2009 :24) criticise that international efforts do not understand that it is not a failed state that leads to piracy but rather even a weak state with corrupt local officials that enables pirate businesses to thrive and it is thus, important to win over the coastal communities and create better employment opportunities for them so as to counter piracy. Percy and Shortland (2013) and Ruchita Beri (2011) also point out that use of military efforts flotilla of Navies is not sustainable in the long run and can only be a short-term measure to counter piracy. Percy and Shortland (2013) also argue that the private armed guards on board ships must not be encouraged seeing the negative record of such private actors in Iraq and Afghanistan. However, the literature is heavily specific to addressing Somalian Piracy.

Scholars have also addressed the shortcomings in the general legal framework for countering piracy found in UNCLOS which International Organizations adopt. They point out problems like the narrow definition of piracy in UNCLOS because it limits

acts of Piracy to the High Seas, it requires a two-ship requirement and excludes all acts committed for “political purposes” (Murphy 2007b; Treves 2009; Surbun 2010).

Other issues highlighted are the difficulty in prosecuting pirates, despite the unique provision of universal jurisdiction (Geiss and Petrig 2011; Kontorovich and Art 2010). Related to it, is the problem with the issue of human rights of pirates (Guilfoyle 2010). Kontorovich (2010) contends that the modern international law of international humanitarian law, the Geneva Conventions, human rights treaties, international refugee law and UNCLOS while protecting rights of individuals against the state are an obstacle to achieving international security. In addition, Dutton (2012) by studying the reporting mechanism adopted by the International Maritime Organization finds that most states have failed to implement the international legislation governing maritime piracy in their domestic laws.

Scholars have also problematised the very act of Counter-Piracy frameworks of governance that International Organizations are a part of. An interesting usage of International Relations theories to understand Counter Piracy governance is encapsulated in a single edited work by Struett et al. (2013) entitled, “Maritime Piracy and the Construction of Global Governance”. The accomplishment of this work is that rather than addressing an audience of policymakers, it conceptualises the global governance of maritime piracy using Constructivism.

In this, scholars have looked at how legal discourses of International Law construct the problem of maritime piracy. For example, Gould (2013) problematises the notion of *hostis-humani generis* (enemies of mankind) which has been constructed for pirates historically and how it is intricately linked to the notion of universal jurisdiction in the crime of maritime piracy using speech act theory.

Scholars also disagree on the level of cooperation among the international community for countering piracy. On one hand, Bueger and Stockbruegger (2013 :101) using the idea of Macrosecuritisation as formulated by Barry Buzan and Ole Weaver to study piracy securitisation, conclude that there is enough cooperation within the international community and what can be seen is as emerging is “an alliance and a security

community on a cosmopolitan or regional scale”. On the other hand, Nance and Struett (2013) disagree and argue that the International Community's response to countering piracy is scattered. Using the concept of a regime complex, they conclude there is no single overarching international regime to deal specifically with maritime piracy. They explain that the regime complex comprising 5 elements: UNCLOS, SUA convention, UNSC, IMO and International Maritime Bureau has inherent tensions that inhibit cooperation efforts. McGahan and Lee (2013) show how International Organizations construct piracy as a humanitarian issue so as to gain legitimacy, as evident from the UNSC Resolutions with respect to Somalian Piracy. Steele (2013), employing an English school approach with respect to the Somalian case, sees states as dominant actors, who construct the identity of pirates so as to protect their sovereign order.

Glück (2011) argues that the concept of “state failure” has been used to make Somalia a post-colonial state again with the International Organizations taking charge of the political, military and security functions of the Somali state. In a later piece, the same author, by innovatively applying Foucault’s notion of ‘security space’ and Marx’s theorization of circulation, launches a critique on the international community for producing a security space in the Gulf of Aden and Western Indian Ocean for “the circulation of certain ‘desirable’ elements (in this case cargo vessels, commodities, and capital) and the suppression of other ‘undesirable’ elements (that is, piracy and the interruption of commodity and capital flows)”(Glück 2015:3).

In addition, Fish (2014: 3) says “Piracy may be viewed as a North-South issue since pirate attacks predominantly originate from south-nations, while the majority of international shipping and the norms which label piracy an illegal act originate from north-nations”. Conveying the same idea in a rather unique way is the work of anthropologists Dawdy & Bonni (2012) who formulate a general theory of piracy, drawing links between intellectual piracy and maritime piracy and conclude that pirates are essentially social bandits who fight against capitalism.

Scholars have also examined in detail some particular International Organizations. They all have drawn their analysis while studying the Somalian case. The European Union, in this respect, has been a subject of considerable academic enquiry. Bueger

(2016) employing a praxiographic analysis shows how the European Union has acquired agency and the position of a leading actor by participating in actual counter piracy practices, for instance, the interruption practices through its naval mission EUNAVFOR Atalanta, and in governing practices through programmes such as the EUCAP Nestor projects, to help in capacity building. Rather than looking at agency IOs as non-state actors vis-a-vis the states, the author opines that agency of any IO must be seen through the actual practice as an agency is nothing without practice.

On analysing EU's role in regional and international security, there is disagreement among scholars. On one hand, scholars like Germond & Smith (2009) view the Atlanta, EU's first naval mission as unique and different from EU's other previously deployed military missions as it doesn't draw any support from NATO and it serves the interests of member states directly by protecting their maritime trade. Riddervold (2011), however, on the other hand, argues that EU's Atlanta doesn't mean that EU has acted in its narrow interests like a traditional great power using its military skills. Rather, EU has acted like a humanitarian actor keeping concerns of Somalia in mind. Bueger (2010) however, questions whether Atlanta is really a humanitarian mission. He argues that it is not because it hasn't used the argument of protecting seafarers and that it has rather sought to please its European public to gain legitimacy even if the real aim is to protect its geopolitical and economic interests.

Reviewing the efficacy of EU's comprehensive approach to countering Piracy in Somalia, Winn & Lewis (2017) argue that EU has been promoting the Western model of security and post-liberal state-building. Rather it needs to do employ more of land-based development approaches that can provide employment opportunities for Somalia. In a similar vein, Ehrhart & Kerstin Petretto (2014) hold that a lot still needs to be done and the process of state building must be sensitive to local identities. In contrast, Kaunert & Zwolski (2014) examine different dimensions of EU's response to piracy; (a) the immediate EU response (the EU military mission EUNAVFOR Atalanta); (b) the medium-term EU response (the Critical Maritime Routes (CMR) programme launched by the European Commission); and (c) the long-term EU response (development and security assistance) and conclude that EU has addressed the root causes of Somali Piracy.

Apart from studies on EU, scholars like Gebhard and Smith (2015) have also looked at cooperation between EU and NATO naval missions in the Indian Ocean, how they have managed to forge innovative informal links of cooperation through mechanisms like SHADE and MERCURY in the absence of formal Berlin-Plus arrangements. The fact that the operational headquarters of both organizations are in Northwood also helps in interoperability (Muratore: 2010).

Discussion on the analysis of UN in anti-piracy efforts has been wide-ranging, disconnected and sparse. Buerger (2015) does a comparative study of epistemic practices of the International Maritime Organization, the UN Monitoring Group on Somalia (MGS) and the Special Adviser on Legal Issues related to Piracy off the Coast of Somalia to see how knowledge production unfolds in practice. An analytic work on UNODC and its counter-piracy efforts has been of Gilmer (2014) in her book, "Political Geographies of Piracy Constructing Threats and Containing Bodies in Somalia" wherein from an insider viewpoint she criticises UNODC's counter-piracy programme messaging campaign for securitising piracy, by constructing identities of Somali men (as potential pirates) and women (security agents), in order to sell the idea of counter-piracy to Somalis. Oliveira (2012) sees the UN intervention in Somalia as an autonomous model of Naval Peacekeeping (rather than a seaward extension of land peacekeeping) to manage private violence at sea. She criticises this type of peacekeeping as it securitises maritime crime like piracy and wants it to be dealt with in a desecuritized framework. Aarstad (2017) has analysed the legitimising role of IMO as a public actor in facilitating private actors like the Armed guards for countering piracy.

However, a theoretical analysis of how the counter-piracy initiatives can be studied to assess the performance of IOs has not been explored.

There has been a wealth of literature from International Organization Studies literature to evaluate the performance of IOs. As far back as in 1988, Ness and Brechin spearheaded the study of looking at International Organizations as Organizations concentrating on their sociology. They argued that far from being mechanical tools

obediently doing the work of their creators (Ness and Brechin 1988: 246-47), IOs have a life of their own apart from states, and their particular environments, technology, structure and goals impact their character and performance (ibid: 248). In a special issue of *Review of International Organizations* journal, Gutner and Thompson (2010) investigate the sources of the good and bad performance of IOs so as to measure IO Performance (IOP). Others in the same issue do an empirical analysis of IOP in specific issue areas, like UN performance in peacekeeping (Lipson 2010), EU and gender mainstreaming in environmental policy regulation (Pollack and Burton 2010), performance outcomes of WTO (Elsig 2010), IMF and Independent evaluation (Weaver 2010). Abbott and Snidal (2010) have come up with a theoretical model of “Transnational New Governance wherein IOs rather than acting directly, rather act as “orchestrators” of global governance. However, the issue area of maritime security remains understudied. The lone effort of Listera et al. (2015) who explore IMO’s orchestration efforts in ‘green shipping’ initiatives is nevertheless, an important beginning.

The literature gap, thus identified is that the issue of evaluating the performance of IOs in the maritime domain is limited. This study, therefore, seeks to fill this gap by examining the performance of International Organizations in countering Maritime Piracy from an IO studies perspective.

Definition, Rationale and Scope of the Study

The study aims to limit itself to evaluating the role and performance of International Organizations in countering maritime piracy off the coast of Somalia. Although the study will provide a brief overview of IOs in countering modern piracy, it will, however, primarily focus on the time period from 2005 onwards when IOs intensified efforts to fight maritime piracy off the Coast of Somalia.

This case study of Piracy off the coast of Somalia has been chosen because of three reasons. Firstly, IOs have been most involved in countering piracy in this region. This kind of intense involvement of IOs hasn’t happened in the case of other hotspot regions like in Southeast Asia. Secondly, the drop-in piracy incidents as per the International

Maritime Bureau (IMB) report in 2012 was mostly because of the drop in Somali Piracy (as already mentioned above). Somali Piracy makes thus, a relevant study to look at the role played by IOs in reducing piracy. Finally, it is in the case of Somali Piracy that UNSC got involved and looked at this issue from the prism of an economic threat to maritime commerce to one that of an actual threat to international peace and security. What this kind of framing of the issue of maritime piracy, in the case of Somalia, has meant is relevant for the investigation.

Further, in terms of its scope, the study aims to look at the work of a select IOs that are most relevant namely: International Maritime Organization (IMO), United Nations (UN), European Union (EU) and North Atlantic Treaty Organization (NATO). The judicial capacity building efforts of EU along with United Nations Office on Drugs and Crime (UNODC) is also looked at briefly. These IOs are part of the Contact Group on Piracy off the coast of Somalia (CGPCS), a network that has been created for cooperation among several counter-piracy actors. An examination of the various counter-piracy approaches (normative and operative) taken by them in the context of Somalia is done so as to analyse the combined efforts of IOs in the issue area of maritime piracy.

With regard to the definition of piracy adopted, the study adopts the UNCLOS definition of Piracy (Art 101) as mentioned earlier. This definition has also been adopted by IMO. Also, the study does not differentiate between Universal Organizations and Regional Organizations. It uses Virally's (1977) definition of IOs— as also applicable to Regional Organizations—which comprises five factors: inter-state basis, voluntaristic basis, a permanent system of organs, autonomy, and function of inter-state cooperation. Although IOs include international non-governmental organizations (INGOs), they are not the focus of the present study; the term 'IOs' means thereby, 'international governmental organizations' (IGOs).

The study hopes to be of relevance for piracy studies as it seeks to make it more interdisciplinary, by contributing to it with an International Organization Studies perspective. The study also hopes to hold relevance for analysing the role of

International Organizations in the maritime context, an area which is understudied within IO studies.

Research Questions

The study is guided by the following four research questions that it seeks to answer. They are:

1. How and under what context have International Organizations sought to address the issue of Maritime Piracy?
2. What are the various approaches/methods adopted by different International Organizations in countering Piracy?
3. How have International Organizations performed in the anti-piracy measures taken in the specific case of Somalia?
4. What are the challenges that these International Organizations have faced in countering piracy off the coast of Somalia?

Hypotheses

The study seeks to test two Hypotheses as follows:

1. Within the maritime context of High Seas, a global common, sovereign states are willing to cooperate through IOs in countering Piracy and;
2. The overall Performance of International Organizations in countering Piracy in Somalia has been enhanced by the division of normative and operative tasks among different International Organizations.

Research Methods

The study has adopted a qualitative and a case- study method of research. It seeks to explain the performance of International Organizations in countering maritime piracy. It draws primarily on the case of Somali Piracy to assess the same.

The study is descriptive as well as analytical in exploring the anti-piracy measures that IOs have taken in countering Somali Piracy. It also seeks to use the wealth of theoretical basis found in IO studies to study the performance of IOs.

The study utilises the wealth of primary sources like resolutions, guidelines treaties, declarations, agreements etc. available on the website of the IOs to be studied. For reports on Piracy, apart from the IMO data, online reports of private organizations like the International Maritime Bureau and Oceans Beyond Piracy will also be used. Secondary literature is drawn from a diverse range of books and journals, which include but are not limited to Cambridge Review of International Affairs, Third World Quarterly, European Security, Contemporary Security Policy, Journal of Maritime Law & Commerce, Political Geography, International Organization, Global Governance and Journal of International Organizations Studies.

Chapterisation

The remaining chapters are organised as follows. Chapter 2 on “International Organizations and Maritime Security” is historical in nature, giving a brief overview of how IOs got involved in issues of maritime security, particularly, in maritime piracy, in the twentieth century.

Thereafter, the counter-piracy initiatives taken by IOs are divided into two chapters. Chapter 3 on “Counter-Piracy Initiatives of International Organizations in Somalia: Normative Roles of IMO and UNSC” examines the approaches used by the International Maritime Organization (IMO) and the UN Security Council in formulating laws and norms as well as their overall effect in countering piracy off the coast of Somalia. Chapter 4 on “Counter-Piracy Initiatives of International Organizations in Somalia: Operative Roles of EU and NATO” examines the performance of the naval missions of EU and NATO. Here, the judicial capacity building efforts of UNODC in partnership with EU will also be analysed. Lastly, Chapter 5 would summarise the findings and analysis put forth in the dissertation.

CHAPTER 2

INTERNATIONAL ORGANIZATIONS AND MARITIME SECURITY

“Fifteen men on the dead man’s chest—
Yo-ho-ho, and a bottle of rum!
Drink and the devil had done for the rest—
Yo-ho-ho, and a bottle of rum!” (Stevenson 1884: 7)

This one paragraph small sea-song composed by Robert Louis Stevenson in his book “Treasure Island” has gone a long way in creating the fictional pirate of the seas as we see on the silver screen today. The song was also mentioned in one of the parts of the American film series of the “Pirates of the Caribbean” in the movie, “The Pirates of the Caribbean : Dead Man’s Chest” in 2006. Commenting on the fictional work of “Treasure Island”, the historian Angus Konstam (2011), who has written extensively on the subject of Piracy, notes that it was Stevenson who was responsible for creating the image of Pirates as adventurous people, carrying maps, always on the lookout for the buried treasure, and who sported the wooden legs, the parrots on shoulders and the black eye patches. The fantasy of the carefree, anti-establishment, autonomous Pirate could well strike a chord with the children as well as adults (Konstam 2011 : 318). In addition, to this, the connection between skulls and crossbones on the one hand and pirates on the other hand, has been depicted in plays like the “Peter Pan” by J. M Barrie.

However, most works on the fictional pirate whether in the form of poems, plays, novels, children magazines or in cinema, bear little resemblance to the real historical Pirates, and also have been set against a brief historical period of the Golden Age of Piracy (wherein piracy flourished during 16th-18th century in the age of colonisation), ignoring thus, a large period of actual historical Piracy (Konstam 2011 : 319).

Echoing similar concerns of Konstam, who emphasised on the need to separate the historical pirate from his mythical counterpart, this work too proceeds in the direction of uncovering actual facts of maritime piracy. It does so, by seeking to examine as to how have International Organizations (IOs) dealt with the modern pirates of today with a focus on maritime piracy that has happened off the coast of Somalia in recent years.

However, as a starting point it is first important to understand how maritime piracy fits into the larger concept of maritime security. This is because studying maritime piracy without keeping in mind, what maritime security means, is futile.

Hence, this chapter proceeds in the following manner. After elaborating on the meaning of maritime piracy within the rubric of maritime security, it proceeds as to how piracy was outlawed as a crime. Giving a brief historical background of how piracy was seen as a crime, it examines in detail the legislative roles played by the League of Nations and the United Nations in the actual codification of piracy at the international scale in the twentieth century. With the international piracy provisions in place, the early role of International Maritime Organization in suppressing piracy is also studied.

The Place of Maritime Piracy within Maritime Security

Maritime security has been seen in diverse ways. The concept of maritime security has not had a definite meaning, though it has become the latest “buzzword” in International Relations eluding any possible consensus, and still, manages to highlight the various challenges that need to be tackled in connection to the sea (Bueger 2014). A concrete list of the threats that the sea needs to be devoid of, can be found in a report of the United Nations Secretary-General (UNSG) on "Oceans and the law of the sea" in 2008. On the issue of maritime security the report remarked:

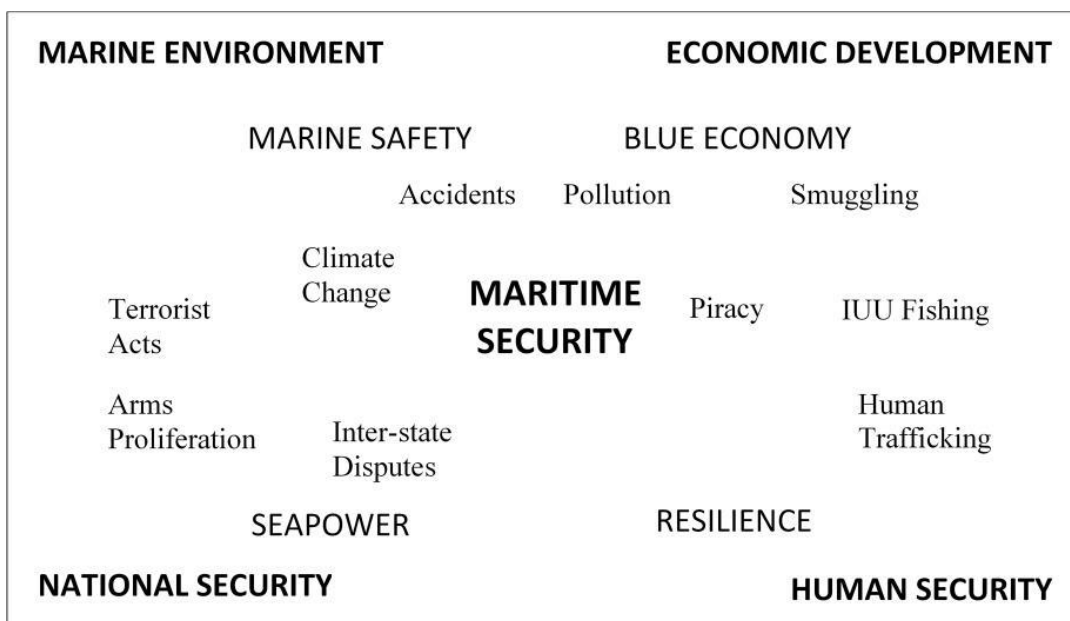
“There is no universally accepted definition of the term “maritime security”. Much like the concept of “national security”, it may differ in meaning, depending on the context and the users. At its narrowest conception, maritime security involves protection from direct threats to the territorial integrity of a State, such as an armed attack from a military vessel. Most definitions also usually include security from crimes at sea, such as piracy, armed robbery against ships, and terrorist acts. However, intentional and unlawful damage to the marine environment, including from illegal dumping and the discharge of pollutants from vessels, and depletion of natural resources, such as from IUU fishing, can also threaten the interests of States, particularly coastal States. Various approaches have been taken to maritime security, depending on the State’s perspective of the interests that may be threatened, either directly or indirectly, by activities in the oceans and seas.” (United Nations General Assembly 2008: 15).

The report thus, identified “Piracy and Armed Robbery” as one of the several threats to maritime security. The other threats being terrorist acts, illicit trafficking in arms,

weapons of mass destruction and in narcotics, smuggling and trafficking of persons by sea, illegal, unreported and unregulated fishing and the intentional and unlawful damage caused to the marine environment. Furthermore, the report also gives the notion, that the United Nations sees maritime security, as something to be achieved by the international community in eliminating these transnational threats collectively. So, maritime security gets limited to the absence of these above-listed threats.

The problem, however with this, as rightly so, has been pointed out by Bueger (2014 :3) which is that such a negative “laundry list” of threats neither prioritises issues nor gives an idea as to how these threats are really inter-linked. To give a more comprehensive picture, he maps maritime security as a matrix of relations, wherein maritime security being at the centre, is connected to seapower, marine safety, blue economy, and human resilience (see figure 1).

Figure 1: Maritime Security Matrix



(Source: Bueger 2014: 5)

What we can see from the above matrix is that maritime piracy is closely linked to the idea of economic development and poses a threat to the growth of blue economy¹. This

¹ Blue Economy has become a term associated with the idea of sustainable use of the ocean resources especially in times of global warming. However, the blue economy has an important connection with maritime security as oceans cannot be used if there are lurking dangers from criminal activities like piracy (Bueger 2017). In fact, looking at the blue economy and maritime security together is like looking at development and security together, which has an intrinsic connection.

is because it seeks to hinder the flow of maritime traffic, and thereby impacts international trade and commerce. This is an important starting point and must be kept in mind. As we shall see later, a major factor causing the International Organizations to deal with the crime of maritime piracy has been that it disrupts the flow of international trade. With the international shipping being the most efficient and cost-effective means of communication, maritime transport constitutes over 80 percent of the world's trade (International Maritime Organization 2018a). The other important aspect of maritime piracy is that it impacts upon the human security of seafarers. Here, the emotional and physical trauma that a ship crew faces in the event of a pirate attack is the main object of reference.

Different Ways of Seeing the Seas

What is clear, however, is that maritime security can be linked to so many diverse things (as evident from the above matrix). One reason for this can be found in the various roles that the sea plays. According to, Geoffrey Till (2009: 286) the sea that has been contributing to human development for the past few centuries has four main attributes namely, (i) sea as a resource, (ii) sea as a means of transportation and trade; (iii) sea as a means of exchanging information; and (iv) sea as a source of power and dominion (ibid.). Till goes on to say that maintaining a “good” order at sea is essential (especially in the 21st century) by keeping in mind all these attributes of the sea which are interconnected. However, he also notes that a clear differentiation lies between the first three values that relate to “soft” security on one hand and the last value that relates to “hard security”. So, if one would think of maritime security as comprising of “hard” and “soft” security elements, the crime of maritime piracy would fall in the latter category.

A yet another way to look at the sea would be to see it in terms of the territorial demarcations as accepted by states under the international legal framework of United Nation Convention on the Law of the Sea 1982. According to this convention, a state's sovereignty extends to its adjacent territorial sea but this decreases as one move towards other maritime zones like the Contiguous Zone, the Exclusive Economic Zone and the High Seas. While maritime security may be closely linked with national security interests of a particular coastal state in its respective territorial waters, this may not be the case when it comes to shared interests of all states with respect to global commons

of the High Seas. These various divisions of the sea into maritime zones create a problem in having a unified approach to the issue of maritime security. As Natalie Klien (2011 :3) rightly points out, while it is true, that , the sea can be seen as a place for contestation between “exclusivist” claims (relating to narrow sovereignty interests) and “inclusivist” claims (relating to common interests ocean use like freedom of navigation and overflight), maritime security must be aimed at balancing these competing claims.

The concept of maritime security and its gravity has also varied across time frames and this has an important bearing on measures taken against piracy. In fact, maritime security has become the subject of academic debate only in recent years in the post-cold war era, especially after the 9/11 attacks, when the realisation occurred that the oceans could be used as a potential medium for terrorist attacks (Bueger 2014).

One major factor distinguishing the oceans of the post-cold war era from the past era like at the time of the European powers battling for the colonies or during the two World Wars or during the American War of Independence etc. has been the drop in the occurrence of actual naval battles. While inter-state disputes continue to happen in the maritime domain, like the infamous South China Sea dispute, naval battles are hard to imagine today. On the contrary, most battles relating to the delimitation of maritime borders or the use of sea resources etc. have been taking place not in the oceans but in the courtrooms of established institutions such as the International Court of Justice, the Permanent Court of International Justice and the International Tribunal for the law of the Sea.

In the post-cold war era, maritime security has come to associate itself more so with guarding the oceans against transnational criminal activities like piracy, terrorism, trafficking and smuggling of arms, people and drugs, etc. so as to promote good governance at sea (Germond 2015: 15). This securitisation of the seas, has meant that the freedom of the seas is maintained by liberal democracies via their naval power, so as to protect free trade and globalisation, thereby, entrenching the Western liberal order of values in the sea commons (Germond 2015: 8-12). This also explains why more and more international organizations have got involved in the post-cold era to counter piracy.

Now, on one hand, an argument can be made that the crime of maritime piracy, needs to be curbed, with a constant constabulary and police vigil, so as to protect the sea from any “bad” order that might be detrimental to the flow of maritime commerce. But on the other hand, however, simply arguing that “good” order at sea can be equated with the western “liberal” order, would be a bit of a stretch. For one thing, the sea merely acts as a neutral medium of transport and communication. Almost all states and not just the western states of the world have been using the seas to conduct shipping activities for trade.

Difference between Maritime Security and Maritime Safety

It is also significant to distinguish *maritime security* from *maritime safety* for the purpose of understanding piracy. While prima facie this aspect looks trivial, the difference has an important connotation in maritime affairs. In languages like the French and Spanish (both being the official languages of the UN), not much difference had existed between the words: “safety” and “security”. For instance, the Spanish term “Seguridad marítima” and the French term “securite maritime” were used interchangeably for both maritime security and maritime safety for a long time. New terms were adopted only in 2002 when the International Maritime Organization (IMO) came up with the *International Ship and Port Facility Code (ISPS) code*. The ISPS code is one of the major initiatives of the IMO taken with respect to maritime security, in response to the 9/11 attacks. So, with respect to Spanish, *Seguridad Marítima* was assigned for maritime safety, while *protección marítima* was assigned for maritime security. Similarly, with respect to French, *securite maritime* was assigned for maritime safety, while *surete maritime* was assigned for maritime security.

Coming to the actual difference between maritime security and maritime safety, the following definitions given by scholars of the World Maritime University are useful:

“ ‘maritime security’ measures are those deployed by maritime administrations, shipowners, ship operators and managers, port facilities and offshore installation administrations, and other maritime organizations for protection against unlawful acts such as piracy, armed robbery, terrorism, and maritime violence.

By contrast, ‘maritime safety’ measures refer to those instituted by maritime administrations, shipowners, ship operators and managers, port facilities and offshore installation administrations, and other maritime organizations to prevent or minimize the occurrence of

accidents at sea that may be caused by substandard ships, unqualified crew, or operator error.”(Mukherjee and Brownrigg 2013: 250).

That these two concepts are different is also evident from the way IMO has divided them. Although it is the same Maritime Safety Committee of the IMO that deals with issues of both maritime security and maritime safety, the two are listed separately in the work of IMO on its website. With respect to the work of maritime safety, IMO has “developed and adopted international collision regulations and global standards for seafarers, as well as international conventions and codes relating to search and rescue, the facilitation of international maritime traffic, load lines, the carriage of dangerous goods and tonnage measurement” (International Maritime Organization 2018b). The prominent measure being the adoption of the International Convention for the Safety of Life at Sea (SOLAS) in 1959. With respect to the work of maritime security, IMO fulfils its mandate of ensuring safe and secure trade and travel by sea, by developing suitable regulations and norms so as prevent any potential threats (ibid.).

So, maritime safety is more closely associated with protecting the marine ecosystem of the sea itself, against accidents like oil spills due to unsafe ship operations. It would also include anthropocentric activities causing climate change specific to the marine environment. In recent times there has an increased attention towards marine safety. In fact, the UN Sustainable Development Goals give more importance to oceans unlike its predecessor, the Millennium Development Goals. The Sustainable Development Goal (SDG) number 14, stresses on the conservation and sustainable use of maritime resources (United Nations Development Programme 2018). In fact, to ensure that this goal is implement effectively, a post of UN Secretary General’s Special Envoy for the Ocean was also created in 2017.

On the other hand, maritime security would mean shielding the sea against wilful criminal acts like piracy, terrorist acts, drug and human trafficking and smuggling etc. Having said so, the Bueger’s maritime security matrix presented above, cannot be accepted in full and would require some changes. As explained, within the shipping environment, maritime safety though related to maritime security, can, however not be subsumed within it. This differentiation, in a way then, also helps to bring about greater clarity to the term of maritime piracy itself.

The Understanding of NATO and EU on Maritime Security

International Organizations as actors also see maritime security in different ways and consequently, would have a different approach at dealing with maritime piracy. Both NATO and EU have played a significant role in countering Somalia based piracy since 2008. Their understanding of maritime security can be gauged by their respective strategy documents.

For instance, the 2011 Alliance Maritime Strategy of North Atlantic Treaty Organization (NATO) sees Maritime security as a separate activity from the other three: “Deterrence and collective defence, Crisis management and Cooperative security” (NATO 2011). The strategy requires that the naval capabilities of NATO are utilised for each of these tasks separately.

Furthermore, maritime security entails mainly routine blue water activities like surveillance and patrolling, protecting critical energy infrastructure and the sea lanes of communication. What this formulation shows is that, for NATO, maritime security is different from national security. As Bueger, in relation to his matrix on maritime security himself notes that NATO’s maritime alliance strategy, "excludes the lower, left corner from its understanding of maritime security in arguing that these are separate so-called high-end tasks, and then primarily focuses on issues related to the blue economy and human resilience.” (Bueger 2014:5)

The European Union (EU), which has been an active player in the maritime domain, identifies in its Maritime Security Strategy of 2014, more or less the same maritime risks and threats that the UN Secretary-General has identified in its 2008 report. EU maintains that it wants to proactively address interstate maritime disputes, acts of non-state actors like piracy, smuggling, drug trafficking, terrorism, environmental risks including the threats by conventional, biological, radiological and nuclear weapons. It is also noteworthy, that EU gives recognition to cyber attacks as unlawful acts similar to terrorist attacks. Though the cyber threat is explicitly missing from the list of maritime security threats of the UN SG report, nevertheless IMO (a specialised agency of the UN) has recognised the need for addressing cybersecurity in maritime affairs.

In addition, EU also states its intentions in this document that it wants to not only enhance the security of its own European citizens but also seeks to play a greater visible

role of a global security provider acting independently as well as in collaboration with other international actors (European Commission 2014).

These approaches of NATO and EU are an important introduction to understand their actual role in countering piracy off the coast of Somalia, that shall be dealt with in detail, in the third chapter.

Having a fair overarching view of maritime security and the place of maritime piracy within it, it is time to look at the history of the outlawing of the crime of maritime piracy.

Historical Aspects of Outlawry of Maritime Piracy

The rampant acts of maritime piracy in the 21st century are often seen as a resurgent crime. Maritime piracy isn't something unique to this century and has existed since the ancient times of Greek city-states and the Roman Republic near the Mediterranean sea. But modern maritime piracy as we know it today hasn't happened in the same manner as its historical counterpart. For instance, piracy was once even state-sanctioned, called as privateering. The whole act of outlawing maritime piracy as a crime against all civilised nations has an important historical past. It is in fact, linked to the rise of sovereign states that we see today. Going, extensively in exploring historical piracy is, however, beyond the scope of this work. Nevertheless, this section gives a brief overview of how maritime piracy was termed as a "crime" as we know today.

Piracy as an act of robbery and kidnapping was initially not seen as restricted to the maritime boundaries. The Greeks used the term "Leistes" for pirates irrespective of the location where they committed banditry, whether on land or in the sea. Piracy gained its prefix "maritime" specifically during the age of the Romans who sought to protect their maritime trade against the Sicilian pirates during the 2nd century B.C. The pirates were seen as criminals, who had no sanction from the state and were a threat not only to the Roman Republic but the entire civilisation of mankind. The Roman philosopher, Cicero (106-46 B.C) in his work 'De Officiis' ('On Duties'), declared in the context of making an oath to the pirates, that such oaths need not be taken seriously as a pirate wasn't an enemy proper but the common enemy of all. This one statement of Cicero, has made a huge impact in history in visualising the pirates as common enemies of humanity or *hostes humani generis* and thereby associating with it the principle of

“universal jurisdiction” i.e all states can punish all pirates for the commission of the crime of piracy (Gould 2013: 23-40)

But the application of this principle of universal jurisdiction has taken many centuries to come about. This is because piracy wasn't an exclusive non-state crime before. State practices of privateering resembled piracy during the 16th century. A privateer was an individual one who had official state sanction to carry out attacks against enemy ships during wartime. The privateer (it could be an individual or a crew) was sent out with the Letter of Marque, according to which, from the goods that a privateer would seize from the enemy ship, a small portion of that was given to him while the rest would belong to the commissioning state. A privateer was paid wages as well by the state.

The problem was while for commissioning state, the privateer was like a naval mercenary, for the enemy state the same privateer was no less than a pirate. The famous example of this kind of a situation is the case of the English privateer Sir Francis Drake, also called as the ‘Sea Dog’ of Queen Elizabeth I. Drake was sent to attack Spanish ships soon after the “New World” of the Americas was colonised by Spain in the 16th century. Spain with a view to protecting their territory of Spanish main refused to recognise Drake's status of legal protection unlike the pirate (Konstam 2011: 39).

Not only did England commission privateers but the practice was followed by other states like France and Spain, up till the 19th century, when privateering was finally abolished. The main reason for the flourishing of privateering, as (Thomson 1994: 26) explains was that “it was effective as both a substitute and a foundation for state naval power.” It doesn't come as a surprise then, that privateering was an integral part of all the important historical wars of the eighteenth century like the Spanish Succession Wars, the Austrian Succession War, and the Seven Years' War to name a few. Interestingly, even rebel groups acted as insurgent privateers in the French Revolutionary wars and in the American War for Independence.

Although, piracy which was already considered an illegal act done for private motivations, states chose to create privateering as a legal exception to piracy, so as to benefit themselves (Rohrer 2015: 26). This coexistence of piracy with privateering, however, created many problems. Both were similar in form as both could be seen as forms of a maritime prize –taking. The only difference was that while the privateer had

the legal sanction, the pirate did not. In fact, in the British Atlantic World of 1540 A.D–1856 A.D, while piracy as private prize-taking fell at the black end of the legal spectrum, privateering fell on the white end of the legal spectrum (Starkey and McCarthy 2014:132-36).

Problems arose when the same privateers took to piracy during peacetime. For instance, after the War of Spanish Secession came to an end, the British Privateer, Edward Teach, also popularly called as Blackbeard, became a pirate (Hutchins 2011). But a major reason that triggered the idea for the abolition of privateering was when it became increasingly difficult with time, for the largest colonial power, Britain, itself, to control its own privateers who raided even neutral ships, thereby affecting its trade interests (Thomson 1994:70).

By the end of the 19th century, European navies also became powerful, thereby reducing the need to rely on privateers for waging wars. It was then in 1856, with the end of the Crimean War and the subsequent signing of the Treaty of Paris by the governments of France, Britain, Russia, Prussia, Austria, Sardinia, and Turkey, that the practice of privateering was abolished. Only after this, it can be seen that concrete efforts took place towards the codification of piracy on an international scale.

It is also important to note that it isn't the case that piracy was not recognised as an offence at all. In fact, piracy had for many years already been criminalised under the common law of Britain. The English common law identified the jurisdiction for the crime of piracy as one that was “sui generis” because of the nature of the pirate. This nature was borrowed by the Roman understanding of a pirate. A pirate was to be treated as a barbarian, an enemy of all mankind, who wages a war against the civilisation of peoples. The pirate, thus, was denied the protection of any national flag. Any state was justified in capturing and punishing a pirate for the commission of acts of robbery and depredation on the High seas. This was also called the principle of "Universal Jurisdiction". Taking inspiration from the English law, the United States of America too incorporated sea robbery as piracy as one of the crimes under its Federal law.

However, apart from this Anglo- American domestic law, what was lacking was a common, internationally accepted, and a codified definition of piracy, amongst all states, that could enable them to tackle piracy collectively. What was lacking was an

international approach to maritime piracy. This lacuna was then, addressed by International Organizations in the twentieth century. The international treaty law enshrined in the United Nations Convention on the Law of the Sea 1982 today, was the result of years of legislative efforts by both the League of Nations and the United Nations.

Legislative Roles of the League of Nations and the United Nations on the Subject of Piracy

One of the first efforts to internationally define the crime of maritime piracy came through the channel of the League of Nations. The League of Nations, as an International Organization was formed at the end of World War I in 1919. A committee for experts for the progressive codification of International Law submitted a report in 1927 to the Council of League of Nations. Member states, as well as other non-member states, were asked to give their replies to questionnaires regarding the provisional list of subjects that required international regulation. Piracy, along with other subjects, specific to maritime affairs, like that of 'Territorial Waters', and 'Exploitation for the products of Sea', was seen by this Committee, as a subject sufficiently ripe enough to be regulated.

The committee wanted to move in the direction of establishing an international convention for the purpose of suppression of piracy. The burden of the history of privateering, practised by states for several years, did leave an impact on the minds of the legal experts of the committee. For instance, the foremost observation that the committee made in the report, was that there was a need to separate the piracy in the strict sense of the term, from other acts similar to piracy, that came under the private laws and treaties of individual States (League of Nations 1927: 119).

This latter piracy, the committee experts believed referred to acts that resemble piracy. It mainly referred to the practice of privateering analogous to a form of piracy. However, privateering, although bearing resemblance to piracy was not regarded as true piracy, because of two major reasons. Firstly, it did not target the shipping and trade of all nations but only that of the enemy state, mentioned in its Letter of Marque. In this respect, a privateer was not at war with the whole of humanity like the pirate. Secondly, only the commissioning state had the right to punish the privateer under its domestic

laws for any acts committed outside the mandate given according to the Letter of Marque.

Apart from privateering, the report also stated that acts like rebellions by the crew against the commander of a ship during a voyage or by citizens itself who choose to make a profit by sea robbery too fell under the category of piracy under domestic law that shouldn't be confused to mean true piracy. (League of Nations 1927: 119)

The draft provisions for suppressing piracy also called as the *Matsuda draft*, named after the Committee's Japanese member Matsuda. It comprised of 8 articles. It defined the crime of maritime piracy as having the following *substantive* elements. Piracy is :

- i) an act committed on the High Sea²;
- ii) an act of depredation on property or violence against persons;
- iii) an act committed for private profit;
- iv) an act that is not committed with only political objectives and ;
- v) an act committed by a private ship (including a warship that engages in mutiny and commits piracy, thereby losing its public character) (League of Nations 1927:119)

But the draft provisions attracted a diverse range of replies from about twenty-nine governments (League of Nations 1927: 274). Amongst these twenty-nine states, eighteen states replied in the affirmative on the possibility and desirability of a convention on the question of Piracy. However, these eighteen states could be further divided into nine states which replied in the affirmative with no reservations (namely: the British Empire, Bulgaria, Cuba, India, the Kingdom of Serbs, Croats and Slovenes, the Netherlands, Poland, Salvador, and Venezuela) and nine states which replied with reservations and suggestions (namely: Australia, Belgium, Czechoslovakia, Greece, Italy, Japan, Portugal, Roumania and Spain).

² By High Seas, it was meant that pirates attack the maritime commerce only in the "High Seas". Piracy excluded any act committed within the territorial waters of a state. The High seas are meant to symbolise the entire international community of peaceful people, against whom the pirates commit acts of violence like, sea robbery. There is, however, at this time, no precise maritime limit of the High Seas. This is because at this time another question that was being deliberated upon by the League of Nations in the same report was that of codifying the extent of territorial waters. Although, it was observed that as per customary practice and various domestic laws, three nautical miles from the coast has been seen as the maritime zone of territorial waters where sovereign powers apply.

Though the suggestions put forth were not accepted, it is useful to know what were some of these proposals. An interesting point contributed by the landlocked state of Czechoslovakia was that rather than having a separate convention for suppression of piracy, it would be better to have a general convention on maritime affairs based on the principle “mare res communis omnium” i.e the freedom of the sea is presumed and the illicit activity of piracy could thereby, attract penalties (League of Nations 1927: 274).

Other suggestions included, Spain wanting clarification on the definition of a “pirate vessel”, that didn’t have the right to fly any national flag, Roumania wanting there should be the right of hot pursuit of a pirate ship from the high seas into the territorial waters and Portugal expressing reservations of restricting the crime of piracy to the High Seas ignoring thereby, the piratical acts committed near the coasts as has been prevalent in ancient and medieval times (League of Nations 1927:276).

Further, three states, namely, Germany, Brazil and Sweden, didn’t regard piracy as a subject ripe enough for international regulation. Nevertheless, they didn’t really object to the codification of an international regulation if other states so desired. Six states namely: Austria, Denmark, Estonia, Finland, Norway and Switzerland, abstained from expressing their views on Piracy.

Lastly, two states, namely, the United States of America (U.S.A) and France opposed out rightly the formulation of an international convention for the suppression of Piracy. While U.S.A considered piracy to be a trivial matter, France opined that no general international regulation for the suppression of piracy can be framed until and unless flag state jurisdiction of ships is considered widely. The table below summarises the categories of states.

Table 1: States with Affirmative Replies for the Convention on Suppression of Piracy

States With Affirmative Replies for the Convention on Suppression of Piracy	
Without Reservations	With Reservations and Observations
The British Empire	Australia
Bulgaria	Belgium
Cuba	Czechoslovakia
India	Greece
The kingdom of Serbs, Croats and Slovenia	Italy

The Netherlands	Japan
Poland	Portugal
Salvador	Roumania
Venezuela	Spain

(Source: League of Nations 1927)

Table 2: States with Dissenting Replies for the Convention on Suppression of Piracy

States with Dissenting Replies for the Convention on Suppression of Piracy	
No Need for an International Convention at Present	No Need for an International Convention at All
Germany	United States of America
Brazil	France
Sweden	

(Source: League of Nations 1927)

The lack of consensus amongst member states of the League meant that the draft provisions for the suppression of piracy couldn't materialise. Piracy was not even regarded as a subject to be placed before the agenda of the 1930 Codification Conference of the League of Nations in the Hague. Later, the League of Nations itself saw its demise as it was not able to maintain international peace and security and thereby, prevent the outbreak of World War II. Nevertheless, the League did play an important role in at least initiating the discussion amongst states, about the need to codify maritime piracy as a crime on an international scale.

Before the United Nations could take over from where the League left, in drafting the provisions for the convention on the suppression of Piracy, an important contribution was made by Professor Joseph Bingam-led Harvard Law school. This group produced the Harvard Research Draft Convention on Piracy, consisting of 19 articles. In terms of defining the crime of maritime piracy as an act of depredation and robbery and which is occurring beyond the limits of state's territorial jurisdiction in the sea for private purposes, the draft closely resembled the five-year-old Matsuda draft. Nevertheless, the Harvard Research Draft had important contributions to make.

Firstly, it was recognised that piracy under international law and piracy under the domestic municipal law are two different subject matters. The purpose of codification

of the crime of piracy was to accord special jurisdiction to any state for trying out pirates. The draft mentioned made it clear that “piracy is not a universal crime, but rather a crime of universal jurisdiction” (Kraska 2011:115).

Secondly, with respect to punishing the pirates, states were to apply the principle of “due process of law”, offer a fair trial and provide with humanely treatment when the alleged pirate was under trial.

Thirdly, the draft convention through article 18, stressed the requirement that states combat the crime of maritime piracy not only separately but also collectively (Bingham 1932: 746). This has inspired the incorporation of *the duty to cooperate* in tackling piracy on part of the states.

Fourthly, the draft convention also put forth a provision for the settlement of disputes. States could also approach institutions like the Permanent Court of International Justice in the case of any disagreements regarding the interpretation or application of the articles of the Convention.

And fifthly, most importantly, in its form, the Harvard Research draft convention was well researched and it cited existing judicial opinions, state practice, case law and scholarly writings on the subject of piracy. This was something missing from the Matsuda draft.

This research done by the Harvard group of legal experts was appreciated, valued and endorsed by the International Law Commission (ILC). ILC was constituted by the UN General Assembly for the purpose of codification of international legal principles relating to sea in 1954. The ILC then came up with the draft report on the *Convention on the High Seas* that it submitted in 1956 to the UN General Assembly.

Consequently, the UN organised the Conference on the Law of the Sea in Geneva from February 24 to April 27, 1958, to discuss this ILC draft of the Convention on the High Seas. Within this draft Convention, articles 38-45 were devoted to anti-piracy provisions (International Law Commission 1956: 282-283). However, some states like Uruguay, Romania, Czechoslovakia and Albania expressed dislike on devoting so many articles to a maritime crime that was now history and didn't pose a potential

maritime threat (Geib and Petrig 2011:40). Nevertheless, the majority of the states, that were part of this UN conference, agreed to discuss this legal regime on piracy.

What followed next was the ILC draft being amended and accepted as the High Seas Convention of 1958. This convention entered into force four years later in 1962. It has also gone on to influence to a great extent, the long drawn negotiations (1973-1982) of the third UN conference on the Law of the Sea. The outcome of this conference was the United Nation Convention on the Law of the Sea (UNCLOS) 1982. And, in the specific case of maritime piracy, provisions present in the High Seas Convention 1958 have been carried forward without any changes to the UNCLOS 1982. The articles 100-107 of UNCLOS 1982 form the basis of the international law on maritime piracy in the modern era.

According to the UNCLOS 1982 provisions on Piracy, the general principle laid down was that states would fail in their duty under international law if they didn't cooperate in tackling maritime piracy together. However, it is also important to note that there were no penalties prescribed for states that refused to cooperate.

Piracy is defined in article 101 of UNCLOS 1982 as "Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or private aircraft" (United Nations Law on Convention of the Sea 1982: 61). In addition, the geographical location fixed for the crime of piracy is High Seas or any area beyond the territorial jurisdiction of a state. This is similar to the requirement in the Matsuda draft prepared under the auspices of the League of Nations. It is only in this maritime zone that piracy could occur. If the same violent act occurred within the Territorial waters of a state (defined as 12 nautical miles from the baseline of the coast of a state), the act couldn't be termed as Piracy but only armed robbery.

The geographical location of piracy is also important to determine other procedural aspects of the crime. Firstly, it is only on the High seas or any area beyond the territorial jurisdiction of a state, can any state exercise the principle of "universal jurisdiction". Any state within this specific maritime zone, through its ships on government service, like warships or a military aircraft, have the right to visit, any vessel that it suspects to be involved in acts of piracy (Art. 110 of UNCLOS 1982). The state could also seize a

pirate vessel and its property and arrest the crew. However, an important condition laid down in this regard is that any suspicion must be based on adequate grounds. Later on, if it is found that the vessel is innocent, then the state making the arrest, would be liable to compensate for the economic losses (like the increase in voyage time) so caused by the arrest. Secondly, no right of hot pursuit (chasing a ship) could extend into the territorial waters of any coastal state.

Regarding the nature of the crime of piracy, it was maintained that it was committed for private ends. In fact, this distinction between private and public ends is related to similarities between the practices of privateering and piracy. So, only private ships and not warships (except in cases of mutiny by the crew) can engage in piracy. Interestingly, during the negotiations in the ILC in its eighth session in 1956, two states, Moscow and Beijing wanted that the conduct of the nationalist Taiwanese navy along with U.S. Navy in causing obstruction to the supplies flowing to the Communist Chinese should be seen as “piratical” conduct (Kraska 2011:119). However, this was not agreed upon.

Furthermore, as clear from the definition of piracy above, not only private ships but private aircrafts could also be involved in piracy. Also, it is not the case that a private ship or an aircraft would altogether lose its national character just because it has got involved in acts of piracy. Any loss of national character would depend on the laws of the state from where the national character was so derived in the first place.

The above provisions of piracy enshrined in UNCLOS 1982, as described above are essential to look at because they have also been criticised for being inadequate with respect to counter piracy operations. These legal criticisms relate firstly, with the problem of narrow definition of piracy in UNCLOS as it limits acts of Piracy to the High Seas and secondly, with the problem of an absence of a uniform penal code for pirates despite universal jurisdiction (Trevis 2009). In the following chapters, we shall see how International Organizations have sought to cope up with these legal issues in the specific case of Somali piracy.

Early Efforts to Combat Modern Maritime Piracy by International Maritime Organization

As the United Nations engaged in legislative efforts to codify piracy, one of the foremost steps taken to address maritime global governance was the creation of the specialised maritime agency of UN in the form of the International Maritime Organisation (IMO). Formerly, the agency was called the Inter-Governmental Maritime Consultative Organization. Its name was changed to IMO only in 1982.

The IMO Convention was adopted in 1948 post the holding of an international conference in Geneva. Interestingly, the IMO convention entered into force in 1958, the same year when the High Seas Convention was adopted. The need to create a specialised agency so as to take care of the subject of shipping received a push from the United Nations and its surrounding legislative efforts on maritime activities.

Up to the twentieth century, maritime security issues were not so prominent on the global scale. IMO also gave preference to dealing with maritime safety issues and addressed the problem of oil spills that caused environmental damage, especially after the infamous Torrey Canyon disaster of 1967. Nevertheless, in the first few decades into its existence, IMO, in the early 1980s, started to quantify piracy by coming up with piracy statistics in its quarterly reports, extending it later to monthly and annual reports.

IMO, recognised that the primary step to tackle piracy would be to first have knowledge about the geographical location and the modus operandi about pirates. So, IMO, in its Assembly Resolution (1983) introduced by the Swedish government, paid attention to the problem of piracy by requesting governments to take strong steps to repress piracy and armed robbery against ships entitled to fly their flag and also report these incidents to the IMO (International Maritime Organisation 1983). It was only after this development, that the subject of piracy and armed robbery was placed on the work of the Maritime Safety Committee³ of the IMO. In its subsequent Assembly Resolutions in 1991 and 1993, IMO, also stressed on the need for neighbouring states to cooperate and address the problem of piracy together, thereby, giving importance to the article

³ Although as already highlighted, in the shipping sector, there are vast differences between the terms maritime safety and maritime security, IMO has not created a separate committee to deal with maritime security. Its Maritime Safety Committee deals with maritime security issues in addition to maritime safety issues.

100 of UNCLOS 1982 on the duty to cooperate (International Maritime Organisation 1991; 1993).

By publishing piracy reports, IMO has acted as a laboratory of epistemic practice, as a “centre for calculation” by turning piratical incidents into actual quantifiable numbers (Bueger 2015:9-10). Consequently, IMO has helped to give international legitimacy to the fact that maritime piracy is not a thing of the bygone era but is very much a contemporary phenomenon.

IMO recognises and promotes the piracy provisions under UNCLOS 1982. This fact has an important relevance. Piracy under UNCLOS means that it happens in an area beyond the territorial waters of a coastal state. However, this has been criticised as most piratical attacks happen close to the coasts of states. It is for this reason, IMO doesn't use the term piracy alone. It always uses the phrase "piracy and armed robbery". Although, it started using this phrase since the 1980s, IMO gave a clear definition of what armed robbery means only in the *Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships* that was adopted in 2001. As per the Code, Armed Robbery is defined as:

“...any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, directed against a ship or against persons or property on board such a ship, within a State's jurisdiction over such offences” (International Maritime Organisation 2002:4)

As already pointed above, the narrow definition of piracy being geographically limited to the High Seas was criticised. This was primarily because it was ignorant of the ground reality which is where most piratical episodes happened close to the coasts in territorial waters. IMO recognising this aspect, defined armed robbery so as to complement piracy under UNCLOS. In contrast to IMO's treatment of seeing piracy occurring in international waters as opposed to armed robbery occurring in territorial waters, a non-government organisation, the International Maritime Bureau (a specialised division of the International Chamber of Commerce) for a long time, made no difference between these two cases for the purpose of ‘commercial expediency’(Anyiam 2014). However, in recent times, IMB has also adopted the definition of piracy under UNCLOS 1982 and IMO's definition of armed robbery in its quarterly and annual piracy reports.

Another important initiative taken by IMO to enhance maritime security was the adoption of the *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* (or the SUA Convention) in 1988. The main purpose of the Convention is to ensure that governments take legal action against those engaging in unlawful acts against ships like the seizure of ships by force. Though this convention doesn't address the problem of piracy directly and rather intended to address acts of terrorism, it has been suggested that it can be used in cases of hijackings of ships by pirates like in the case of Somali piracy (Roach 2012: 56).

Nevertheless, it was only after the 9/11 attacks, that it was felt that terrorism could adopt a maritime route as well and so there was an urgent need to focus on maritime security. It was the 9/11 attacks that made maritime violence, a top agenda for the IMO (Mejia 2003). In fact, majority of the initiatives in the form of guidelines and other technical advice from IMO to governments so as to address maritime security have come after this realisation. For instance, IMO's International Ship and Port Facility Security (ISPS) Code, under chapter XI-2, of the International Convention for the Safety of Life at Sea (SOLAS) 1974, entered into force in 2004. Previously chapter XI only dealt with measures to enhance maritime safety. This additional part of the ISPS Code is considered as the major legislative tool to address security concerns in shipping. ISPS' key objective is to foster cooperation at all levels: national, regional and international, so as to help in the speedy exchange of maritime security-related information for preventing such threats.

At the beginning of the 21st century, IMO reported a rise in the incidents of piracy in Southeast Asia (particularly in the Malacca Straits region). But, although IMO brought this to the forefront, it didn't really get directly involved in the region as compared to its role in the case of Somalia based piracy. In the case of Southeast Asia piracy, efforts to combat have been at the regional level. One major regional initiative has been the government-to-government agreement, called as the *Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia (ReCAAP) 2004*. It has also led to the birth of the ReCAAP Information Sharing Centre (ISC) that helps to facilitate the sharing of piracy and armed robbery related information amongst contracting parties. IMO has appreciated this model of regional cooperation in fighting the maritime crime of piracy and has encouraged other states in piracy hotspots to adopt

such framework. As we shall see in detail in the subsequent chapter, IMO has itself promoted the development of such a regional framework, namely the *Djibouti Code of Conduct* to counter Somalia- based maritime piracy.

Conclusion

Maritime piracy within the larger framework of Maritime Security has meant protecting the sea from unlawful human acts that seek to target maritime traffic. Piracy is seen as a threat to the flow of international trade and to the security of the seafarers and thus, must be countered.

Piracy isn't a new phenomenon. It has been prevalent since the ancient Greek and Roman civilisations. Over time, however, its meaning hasn't remained the same especially for the era during which it has coexisted with the state-sanctioned form of piracy called as privateering. It is only with the abolition of privateering in the 19th century that progress could be made towards the criminalisation of piracy at an international level.

In the twentieth century, the legislative roles played the League of Nations and the United Nations helped in the codification of piracy at an international level. The process started with the League's efforts in the form of the Matsuda draft that went on to till the enshrining of piracy provisions in the UNCLOS 1982. This codification that took many years to come has performed two roles. Firstly, it has helped to provide clearly defined terms, an international approach to dealing with the crime of piracy. And secondly, it also helped to reiterate the fact that piracy is not a historical crime, but is indeed a maritime security threat, for the coming centuries as well. The subsequent occurrence of incidents of piracy, in the 21st century, in areas of South East Asia and along the coasts of Africa (both the eastern and the western sides) only testify the importance of timely completion of an internationally codified law on piracy in place.

Another international organisation that played a crucial role in the twentieth century has been the specialised agency of the UN, the International Maritime Organisation. By bringing out piratical incidents from the sea to statistical figures in its reports, IMO has generated the awareness in the international community that piracy is indeed a modern phenomenon and can no longer be seen as a thing of the past. The next chapter looks at

the normative role of IMO along with United Nations Security Council in the specific case of piracy in Somalia.

CHAPTER 3

COUNTER PIRACY INITIATIVES OF INTERNATIONAL ORGANIZATIONS IN SOMALIA: NORMATIVE ROLES OF INTERNATIONAL MARITIME ORGANISATION AND UNITED NATIONS SECURITY COUNCIL

The subject of International Relations has focussed on the organisation of the international system rather than studying the organizations within this system (Ness and Brechin 1988). This has led to International Organizations (IOs) being largely seen as mechanical tools of their creators: the states (ibid.). However, IOs are more than just “yes men” of their creators. They do have an impact on differences issue areas of global governance. To measure this impact, it is necessary to analyse their performance.

Beginning in 2007, piracy levels off the Somali coast, shot up, and many international organizations and states responded to this challenge of maritime crime. Piracy then reduced considerably in the landmark year of 2012, with attacks on ships falling from 439 in 2011 to 297 in 2012, primarily on account of reduction in Somali Piracy (International Maritime Bureau 2012: 24). The decline in piracy has continued. Only in 2017, hijacking of an oil tanker brought fears of a comeback of Somali pirates, overall levels of Piracy still remain considerably low.

The counter-piracy initiatives taken by several IOs have played an important role in registering this decline in piracy levels. Furthermore, IOs have not worked in isolation but in connection with each other and it is the combined outcome of different organizations working within the issue area of maritime piracy, that has helped in countering piracy.

It is beyond the scope of this work, to analyse every organisation so involved in the counter-piracy fight. Broadly, the initiatives taken to counter piracy can be divided into two categories: normative and operative initiatives. Based on this differentiation, the measures taken by five organizations – International Maritime Organisation (IMO), United Nations Security Council (UNSC), European Union (EU), North Atlantic Treaty Organisation (NATO) and United Nations Office on Drugs and Crime (UNODC) have

been analysed. It is submitted that IMO and UNSC have laid down the normative framework that acts as a basis for the operative activities undertaken by EU, NATO and UNODC. There has thus, evolved a clear division of labour that has helped in lowering down the piracy levels off the Coast of Somalia (see Table 3).

Table 3: Division of Tasks amongst International Organizations to Counter Somali- Based Piracy

Name of Organisation	Normative Tasks Performed	Operative Tasks Performed
International Maritime Organisation (IMO)	<ul style="list-style-type: none"> • Enabling the formulation of the regional “Djibouti Code of Conduct” • Endorsing Technical Norms like BMPs • Permitting the Use of Armed Guards • Linking Piracy with Humanitarian Aid Concerns • Monitoring State Piracy Laws and finding gaps 	
United Nations Security Council (UNSC)	<ul style="list-style-type: none"> • Making Somali based piracy as a threat to international peace and security • Creating an exception for Somali Pirates under UNCLOS • Authorising military measures against Pirates under Chapter VII of UN Charter • Encouraging the formation of Contact Group off the Coast of Somalia as a Coordination Mechanism 	
European Union (EU)		<ul style="list-style-type: none"> • Naval Operations (Operation Atlanta) • Capacity Building Measures like EUCAP Nestor

North Atlantic Treaty Organisation (NATO)		<ul style="list-style-type: none"> • Naval Operations (Operation Shield and Allied Protector)
United Nations Office on Drugs and Crime (UNODC)		<ul style="list-style-type: none"> • “Judicial Capacity Building” Measures through Counter-Piracy Programme (later developed into Global Maritime Crime Programme)

This division of tasks is linked to the nature of these organizations and the functions that they perform. Also, this division hasn’t been pre-planned, rather it has come about gradually as it will become clear in the following pages. While this chapter focusses on the normative tasks performed by IMO and UNSC listed in Table 3, in detail, the subsequent chapter deals with the operative tasks performed by EU, NATO, and UNODC.

Normative Role of International Organizations

One of the important functions performed by International Organizations is the development of norms, that basically implies a shared understanding of accepted behaviour for actors in the international community. The actors targeted are primarily the states in the international system. Broadly, these norms in the case of Somali-based piracy as set by the specialised agency relating to maritime affairs, the International Maritime Organisation (IMO), has been mostly technical standards, for example, dissemination of the *Best Management Practices* that ships must follow while transiting high-risk piracy prone areas off the coast of Somalia. On the other hand, the UN through its principal organ, the United Nations Security Council (UNSC) by its various resolutions, with respect to piracy originating from Somalia, has prescribed norms. For example, it has given guidelines on how to intervene in combating piracy, while at the same time respecting the sovereignty of Somalia. It has elaborated, that combating pirates in Somali territorial waters is restricted to the Somali case and cannot extend to other cases of piracy in the world.

The normative role played by IMO and UNSC, that this chapter seeks to uncover, is to do so by employing a broad understanding of the term “normative role”. The *working*

definition of this normative role adopted here, comprises of two main activities: (i) norm-setting in the form of development of norms and standards in the form of guidelines (known as soft law) or conference outcome documents or through rules and other conventions and (ii) norm- implementation in the form of having in place monitoring or review mechanisms to ensure compliance of norms. While the norm-setting role is similar to what Clive Archer (2001) calls as the “Rule-Making” function of International Organizations, the norm-implementation role is similar to the ‘Rule-Application’ function of whereby, states can be monitored but not compelled to apply rules.

This chapter shall focus on examining the various normative roles played by IMO and UNSC in countering piracy off the coast of Somalia in detail, in accordance with the above working definition. But before this examination, it is important to understand the origins of Somali piracy and how it became an issue of international concern so much so that it led to many international organizations got involved in countering it especially after the piracy levels spiked from 2007 onwards.

The Problem of Somali-based Piracy: Somali “Robin Hood” Pirates or Somali “Criminal” Pirates?

The problem of piracy originating from Somalia is complex to grasp in terms of its causes. What caused Somali piracy and what is its nature are two questions that have generated diverse viewpoints. Moreover, each of the viewpoints is backed by strong arguments.

The genesis of piratical activities is mostly traced back to the beginning of the decade of 1990. One viewpoint is that after the collapse of the Siad Barre regime and the consequent civil war ensuing, there came about exploitation of the marine wealth of Somali waters in the form of illegal fishing activities, carried out by foreign trawlers. The foreign vessels, mainly came from countries of the European Union (EU), Russia and Japan (Daniels 2012: 33). So, without an effective Somali government to maintain a vigil on the activities happening off the coast of Somalia, pirates began to act as ‘coastguards’ defending their country’s fish. As IMO reported, a merchant ship, MV *Bonsella* was hijacked by 26 pirates acting as Somali coastguards using a *dhow*

(wooden fishing vessel) and then, for about 5 days, MV Bonsella was used to launch attacks on other foreign ships (Ryan 2000).

By 1998, more than 300 foreign trawlers looted and destroyed Somali's marine resources (Kulmiye 2001), and it was this stealing of marine resources that was responsible for making the Somali pirate. In fact, it was the Somali fisherman who took on the avatar of a pirate to save his fishing-based livelihood from the foreign trawlers. As one ex-pirate who was interviewed by Jatin Dua explains the process of becoming the Somali Robin Hood,

“ In the 1990s, I used to be a fisherman in Eyl catching lobster mostly but also snapper and tuna. One day a trawler cut our nets in the middle of the night when we were fishing not far from the coast. A few of us decided enough was enough and we boarded the boat. The captain was a Pakistani and we made him pay \$1000 as a tax to fish in our waters. We went back to the village and told everyone about it. Soon the boys started getting on the fibre boats and chasing trawlers to get money from them. This is how we became pirates. After a while, we started going after bigger fish, but the principle was the same as you find a ship and make them pay a tax to be in our waters. In this way, we have been protecting our seas from the foreign fishing vessels.”
(Dua and Menkhaus 2012: 763-764)

The whole politico-economic context of Somalia post the 1991 civil war must then be brought into context. The political disintegration of the state of Somalia gave rise to not one type of pirate, rather it gave rise to two types of pirates, first, the “Resource Pirates” who are the foreign trawlers that cause depletion of Somali marine resources and second, the “Defense Pirates” who only repel their transgressions (Samatar et. al 2010: 1385)

In addition to the illegal fishing, another illegal foreign activity that contributed the “coastguard narrative” of Somali pirates (Bueger 2013) was of the illegal dumping of toxic wastes by countries of Europe and Asia. Somali pirates saw themselves as protectors of Somalia and not criminals, performing the state's duty to protect, whereby the ransom money collected by hijacking ships was to serve as a legitimate tax that belonged to the Somalis (Bueger 2013: 1818-19).

Also, with respect to the authenticity of claims of toxic dumping, Greenpeace, in the 1990s itself, reported that this activity is true and blamed the Swiss firm Achair Partners and an Italian firm, Progresso for the same (Clayton 2005). Later, the United Nations

Environment Programme (UNEP) spokesman, Nick Nuttal as well as Ahmedou Ould-Abdallah, the then UN envoy for Somalia confirmed that toxic dumping had been going on for a decade. This they said was evident from the fact that, the tsunami waves that hit the Somali coastline in 2004, unleashed the toxic waste containers on the shore, whose contents ranged from chemical waste to medical waste to even nuclear waste (Abdullahi 2008).

Whether piracy can be justified because it seeks to counter illegal activities like fishing and toxic dumping by foreign ships is can be contested. But the sequence of events occurring after the collapse of the Siad Barre regime in 1991 is important.

Another viewpoint that debunks the notion that Somali piracy linked to illegal fishing and sees it merely as a myth. Rephrasing the “Coastguard” argument of pirates as the “exclusion/deprivation argument”, Stig Jarle Hansen, asserts that this argument is flawed as the Somali pirates, since the failure of the Barre government, have targeted in reality the ordinary cargo ships and bulk carriers rather than really the fishing trawlers and so they were mainly profit-oriented when they collect ransoms for hijacked crew (Hansen 2009:8). That Somali pirates are money-minded rather than being nationalistic is also argued by other scholars. Halwood and Miceli (2015) opine that pirates act for the money and not for any “honour” because the ransom money that acts as an economic incentive, motivates an average poor Somalian to choose piracy over other occupations for private gain. Moreover, the narrative used by Somali pirates calling themselves as protectors of Somali national interests is only to construct a "victim" narrative that all criminals, usually use to defend their illegal acts (Halwood and Miceli 2015:22).

Being profit-driven, becoming a criminal and committing an illegal act of piracy then, all go together. The genesis of piracy originating from the land of Somalia is because of the greed that takes over among men amidst the lawlessness incurred by the civil war. As Martin Murphy, using the example of breaking up of Somalia into warring fiefdoms explains that, “piracy - and criminality at sea generally - can thrive when coastal regions are troubled by war or civil disturbance, or their aftermath, as the absence of law-enforcing authorities and desperate circumstances combine to draw people towards criminality.”(Murphy 2007:15).

The cause of piracy, is consequently, attributed to the failure of the Somali state. The failed Somali state is a reason for pirate attacks, that are typically less-sophisticated hijackings, with a focus on kidnappings to obtain ransom rather than indulging in actual seizure of ships and cargos to dispose their goods as the latter requires development of networks which isn't possible in a failed state (Hastings 2009:217).

Apart from these possible causes –‘greed motivation’ and ‘duty to protect Somali waters’ motivation’ – another contrarian viewpoint tries to combine the two. According to it, although piracy in Somali waters has its original roots in the fishing disputes and foreign interference through dumping of toxic waste materials, over a period of time, the element of greed has taken over and piracy has become a criminal enterprise.

It is important to note that the nature of piracy in Somalia didn't remain static but changed drastically in the twenty-first century, from being merely an act of self-defence of the 1990s (Daniels 2012: 35). Not only fishing vessels but all types of ships were taken hostage and ransoms were demanded. Interestingly, the attacks by 2005 were not just restricted to Somali territorial waters or the Exclusive Economic Zone where the coastguard argument could still hold water. Rather, the piratical attacks started reaching ‘outlandish proportions’, extending farther into the Gulf of Aden, the Red Sea and the Indian Ocean maritime areas (International Expert Group on Piracy off the Somali Coast 2008:14).

Another major cause or worry for the international community began when the piratical ransoms came to be used to fund arms and ammunitions worsening the already politically unstable environment of Somalia. Piracy in Somali waters that became widespread by 2005 was seen as dangerous as it now generated funds for the warlords to purchase arms and perpetuate militarisation defying thus, the arms embargo that had been placed on Somalia by the UN in the light of continuing unrest and violence in the country. Although illegal fishing continued to happen, the view that pirates were mere fishermen scaring away foreign trawlers soon became unfounded. The self-described coastguards were replaced by sophisticated Pirates that didn't hesitate to use modern day technology to aid their attacks.

As the UN Monitoring Group on Somalia reported to the UN Security Council in 2005:

“The main motive behind acts of piracy in Somali waters appears to be an attempt by local administrations or individual warlords and militias to obtain large sums of money through ransom demands....The pirates off the coast of Somalia are trained fighters, often dressed in military fatigues, using speedboats equipped with satellite phones and Global Positioning System equipment. They are typically armed with automatic weapons, anti-tank rocket launchers (shoulder-fired) and various types of grenades” (United Nations Security Council 2005: 28)

Pirates got categorised into various gangs led by warlords who survived on the ransoms obtained to fund their purchase of arms and ammunition. In its subsequent report in 2006 submitted to the UN Security Council, the UN Monitoring Group identified different types of pirate groups in place each led by different warlords and each displaying different levels of organisation, from the scattered and loosely organised *Marka group* to the *Puntland group* composed of traditional fishermen to the highly sophisticated *Somali Marines* that even displayed an elaborate military structure of admirals as well as a head of financial operations (United Nations Security Council 2006:27).

Another feature that took the pirates on the road to becoming an industry or a criminal enterprise was the formation of secret international financial networks that became essential to conduct ransom negotiations even as the money was collected in cash and in the currency of US Dollars. Furthermore, what really transformed the pirates from mere sea robbers into dangerous criminals was the modus operandi of the piratical attacks. A typical attack saw the use of speedboats by armed pirates with AK 47, so as to target a big ship. Once the ship was hijacked, the crew was made to follow orders and the same was communicated to the headquarters of the pirate group located on the land. The hijacked ship was then used as a “mother ship” to launch more piratical attacks. As a case of pirate attack by Somali Marines on an Indian vessel, Al Bisarar was narrated as follows:

“....Following the pirates’ radio contact with their leadership, the captain of the Al Bisarar was ordered to change his ship’s direction of travel and move not towards land, but out to sea, to the busy shipping lanes. At that point, the intent of the pirates seemed clear enough: the Al Bisarar would be used as a mother ship, a platform that the pirates would use to approach other unsuspecting vessels and then suddenly launch their attack....” (United Nations Security Council 2006:29)

Thus, far from being benign coastguards, the image of Somali pirates in the eyes of International Organizations like the United Nations was that of maritime militias, who were a threat to international shipping and maritime commerce.

Somali Pirates as an International Concern

Although Somali based piracy existed in the 1990s, the spotlight on the Somali pirates started coming from the international media only from 2005 onwards. A number of factors were responsible for this.

The Attack on Humanitarian Aid

The attack on UN-chartered, MV Semlow, that was carrying emergency humanitarian aid for the Tsunami hit Somalis, in 2005, became a high-profile attack. The Guardian reported the attack with the heading “The pirate attacks that threaten the lives of Somalia's poor” (Vasagar 2006). Somalia at this time was already reeling under a drought and under these circumstances, the interception of the emergency food aid as carried by MV Semlow, by the pirates became a serious concern. The attack was brutal. Semlow was hijacked for about 100 days, a ransom of \$500,000 was demanded and even the ship (MV Torgelow) that came with food aid to the rescue of the ten hijacked crew members of Semlow was also not spared (Vasagar 2006).

The IMO took immediately the cognizance of this attack on humanitarian assistance by pirates. In its Assembly Resolution on “Piracy and Armed Robbery Against Ships in Waters off the Coast of Somalia”, apart from being already aware on the targeting of cargo ships was detrimental to maritime trade, IMO also expressed concern, “at the *negative impact* such attacks have on the prompt and effective delivery of food aid and of other humanitarian assistance to Somalia and the serious threat this poses to the health and well-being of the people of Somalia,...”(International Maritime Organisation 2006:3).

This resolution was also transmitted to the UNSC for highlighting the urgency of the issue so that an appropriate response could be initiated.

The attack on the Might of United States

Another high-profile attack that sought to grab worldwide attention, especially of the United Nations, was the attack on the Bahamas flagged, cruise ship, *Seabourn Spirit*,

carrying about a hundred tourists. The ship avoided the warnings of International Maritime Bureau of not sailing too close to the coast of Somalia. As it was at a distance of 100 miles from the coast, it was attacked and chased by the pirates. Although the cruise ship was able to repel the attack, because it was a U.S owned ship, it further prompted the matter to be taken by UN Security Council (of which the U.S is a permanent member) that alone could approve a military intervention to repress Somali piracy (Fairplay 2005).

In March 2006, a Presidential statement of the UN Security Council taking note the IMO Assembly 2005 Resolution, encouraged that

“...Member States whose naval vessels and military aircraft operate in international waters and airspace adjacent to the coast of Somalia to be vigilant to any incident of piracy therein and to take appropriate action to protect merchant shipping, in particular, the transportation of humanitarian aid, against any such act, in line with relevant international law.” (United Nations Security Council 2006: 2).

The statement was indeed influential. This was because, at this point in time, a U.S led Coalition Task Force (CTF-150) was already in place, patrolling in the Arabian Sea with the mandate to counter terrorism. The U.S after the 9/11 attacks had launched its “Operation Enduring Freedom” in Afghanistan in 2001. Patrolling the Arabian Sea was seen as necessary to halt any attempt by the terrorists to escape from Pakistan to the war-ridden Somalia (Murphy 2010: 102). With the UNSC presidential statement issued, CTF-150 adopted an aggressive stance towards piracy (Murphy 2010:103). United Nations thus, provided legitimacy to a more robust action by the international navies of states.

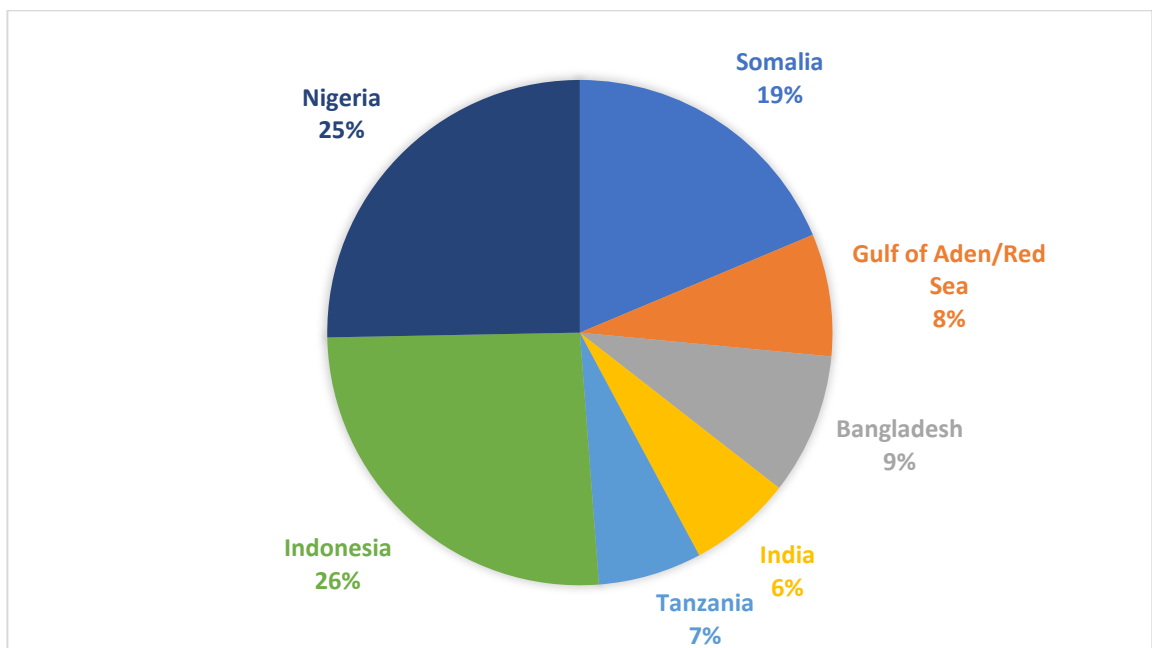
Spike in Piracy Levels After the Exit of Islamic Courts Union

Piracy also came to be suppressed from within Somalia. The new government of Islamic Courts Union (ICU) that came to power in 2006 curtail piracy. The act of Piracy was declared as “Haraam”, forbidden by the religion of Islam by the Supreme Court of Islamic Courts. The government then attacked various pirate ports, wounding and apprehending many pirates (Hansen 2009: 27). Piracy dropped to negligible levels under the new government, as pirates feared harsh punishments under the Sharia Law (The Telegraph 2006).

However, this positive trend in the decline of levels of Somali based piracy was not to continue for long. The United States (U.S), prompted by the fear of Islamist influence on the horn of Africa that is near to the strategic waterways of maritime trade i.e. the Suez Canal which connects the Mediterranean Sea to the Indian Ocean. Consequently, U.S, gave support to Ethiopian forces to remove ICU from power. ICU was deposed and soon, there was a spike in the levels of piracy off the coast of Somalia.

In its Annual Piracy Report of 2007, the International Maritime Bureau, revealed that, not only did Somalia see a hike from 10 piracy attacks in 2006 to 31 in 2007, but it was also the case that Somali pirates were responsible for the highest number of hijackings (154) in that year (International Maritime Bureau 2007: 24). The year 2007 became a landmark year, in the sense that, it was from this year onwards, that the share of Somali-based piracy (both off the coast of Somalia and in the farther Gulf of Aden and the Red Sea), reached a significant portion (27 percent) in the worldwide pirate attacks (see Figure 2 below).

Figure 2: Locations Responsible for Two Third of Total Pirate Attacks in 2007

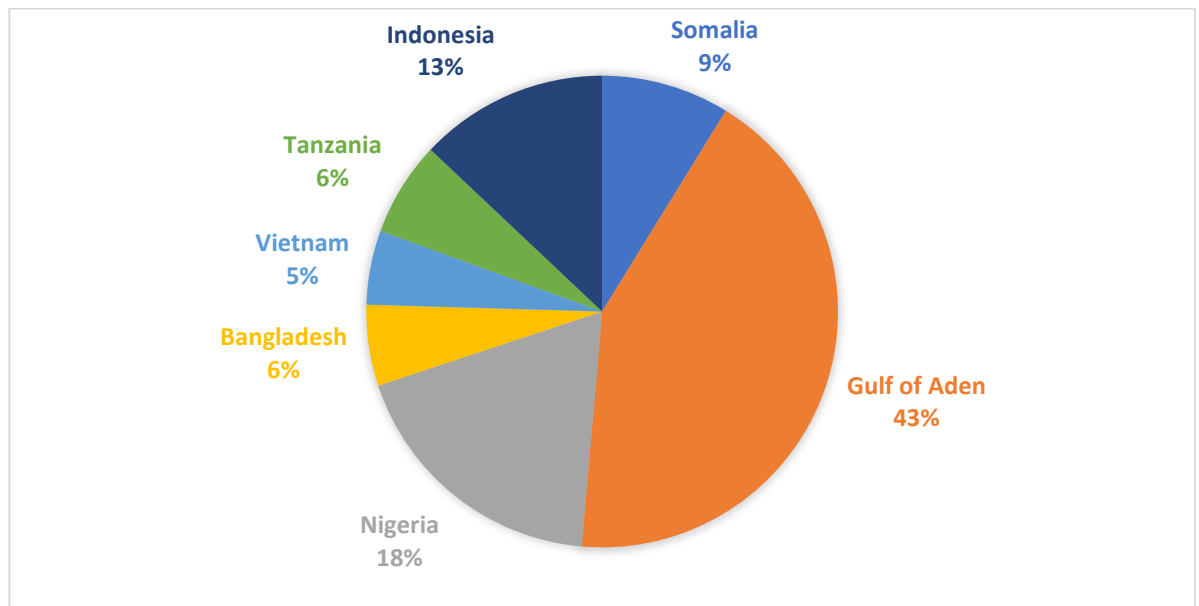


(Source: International Maritime Bureau 2007)

From a share of 27 percent, there was a spike in the levels of Somali based piracy further in 2008, with an unprecedented number of attacks that happened in the Gulf of Aden. This trend displayed the bold stance of the pirates to attack many miles away from Somali territorial waters with the help of automatic weapons and rocket-propelled grenades to hijack ships and hold the crew as a hostage.

With respect to the exact figures, in 2008, the share of attacks by Somali pirates (both off the coast of Somalia and in the Gulf of Aden) almost doubled to 53 percent (see Figure 3 below). About 111 attacks out of a total of 293 incidents of piracy and armed robbery were a result of the acts of Somali pirates, an increase of 200 percent as compared to the level in 2007 (International Maritime Bureau 2008)

Figure 3: Locations Responsible for Two-Third of Total Pirate Attacks in 2008



(Source: International Maritime Bureau 2008)

The threat to International Maritime Traffic

A rise in piratical attacks in the Gulf of Aden further aggravated international concerns about the repercussions of Somali- based piracy. For one thing, the Gulf of Aden is a strategic maritime route for over thirty thousand ships transiting annually, that also carry about 7 % of the world's oil supply (Miller 2008).

The maritime crime of piracy happening in such waters, came with the potential threat to disrupt global chains of supply, affecting international trade and setting in process a reversal of globalization (Sullivan 2010). For e.g. the hijacking of the *MV Sirius Star*, a massive Saudi company owned oil tanker, carrying two million barrels of oil, in November 2008, is a case in point. The attack triggered panic as it was feared that with the high demand for ransom, the oil prices could rise drastically, especially when such an attack, happened at the time of global recession (Daniels 212:44). The cost-effectiveness of shipping also came under attack. This is because any diversion of ships through the Cape of Good Hope, to avoid the hotspot of piracy in the Gulf of Aden, wasn't feasible as it increased the costs of maritime transport by increasing the distance by several miles. Also, the danger of piracy meant a rise in insurance premiums for ships, that not only could make the maritime transport of goods expensive but also raise the cost of goods itself for the final consumer.

Thus, it was against this background of several factors, namely, (i) attacks on humanitarian aid meant for Somalia; (ii) direct threat to the might of United States; (iii) the spike in piracy levels in 2007 after the ousting of ICU government in Somalia and; (iv) the harm caused to the material interests of international shipping community in the Gulf of Aden, that, diverse International Organizations intensified the fight against Somali based piracy.

Counter Piracy Initiatives of International Maritime Organization

Humanitarian Approach

IMO has adopted a variety of approaches to counter piracy originating from Somalia.

Firstly, IMO applied the humanitarian angle to the problem of piracy in order to galvanise International Organizations to address the problem in a speedy manner. Though as already mentioned above, IMO already took up the issue of piracy and its negative impact on the safe delivery of humanitarian aid to Somalia in its 2006, Assembly Resolution. However, IMO intensified its efforts further on this issue. In mid-2007, more and more, World Food Program (WFP) chartered vessels carrying humanitarian relief for war-stricken Somalia, came under the attack of pirates.

Consequently, IMO led by its Secretary-General Efthimios E. Mitropoulos, along with WFP, issued a joint communique to raise the grave concern of the humanitarian “lifeline” of the Somali population, being put in peril, due to the acts of pirates and armed robbers (ReliefWeb 2007).

The norm that IMO sought to promote within the fight against piracy was to protect the human rights of Somali citizens to have access to relief. As the then, WFP Executive Director, Josette Sheeran, revealed, “close to 80 per cent of WFP’s assistance to Somalia is shipped by sea but, because of piracy, we have seen the availability of ships willing to carry food to the country cut by half,” (World Food Programme 2007). A concerted and coordinated action was urged thereby, from the International Organizations, to treat the crime of piracy as an issue that created a situation of emergency. What was at stake was the life-saving assistance (transported mostly by sea), that thousands of Internally Displaced Persons in Somalia would need in the face of continuing civil war conflict (World Food Programme 2007).

This joint communique, a product of a liaison between IMO and WFP, was also cited by the UN Security Council just one month later in its adopted resolution 1772 in July 2007 with respect to the “upsurge in piracy off the coast of Somalia” (United Nations Security Council 2007: 2). In the same resolution acting under Chapter VII of the UN Charter, UNSC authorised member states to take appropriate military action to apprehend pirates in international waters “to protect merchant shipping, *in particular, the transportation of humanitarian aid*” (United Nations Security Council 2007: 5). The larger focus, however, of the 1772 resolution was not on piracy but was on extending the period of the African Union Mission in Somalia (AMISOM) that was already stationed there. Piracy found mention into this resolution tangentially, due to the damage it did to the UN's larger humanitarian role in the international system, by attacking the WFP-chartered vessels.

The concern for the supply of humanitarian aid to the Somalis, however, started finding utmost attention in all the subsequent resolutions that UNSC adopted exclusively to address the problem of Somali-based piracy.

For instance, the UNSC in its Resolution 1816 (2008) expressed grave concern about the threat that Somali pirates posed to “to the prompt, safe and effective delivery of

humanitarian aid to Somalia, the safety of commercial maritime routes and to international navigation” and deplored “hijackings of vessels operated by the World Food Program and numerous commercial vessels and the serious adverse impact of these attacks on the prompt, safe and effective delivery of food aid and other humanitarian assistance to the people of Somalia, and the grave dangers they pose to vessels, crews, passengers, and cargo,”(United Nations Security Council 2008a: 1,2).

What is interesting to see in these resolutions, is the fact that the humanitarian concern of Somalis is more stressed upon rather than the humanitarian concerns of seafarers who are subjected to mental torture and violence in the event of a vessel taken as hostage. There could be two reasons for this.

One reason could be that violence against seafarers in general, is under-reported. In fact, a non-governmental organisation, Oceans Beyond Piracy, in its 2011 report on “Human Cost of Somali Piracy”, disclosed that concerns of the seafarer community have been sidelined for a long time in the fight against piracy. This was because of an absence of a “designated lead agency or framework to interpret and promulgate data related to crime in international waters” that leads to ignoring the violence that seafarers are subjected to in case of a piracy attack (Oceans Beyond Piracy 2011: 2).

However, there is another more convincing reason for using the language of humanitarianism to inform the anti-piracy discourse. Humanitarian angle is stressed upon as then it is easier to garner legitimacy and mobilise several actors to combat piracy as a common goal, especially when piracy is originating from a country that has had a history of failed UN Peacekeeping Mission before in the 1990s (McGahan and Lee 2012: 161). Piracy when understood not just as a mere maritime crime against a few crew members, but as something capable of jeopardising lives of thousands of people, becomes a more alarming threat. In this respect, IMO by coordinating with WFP, became the first actor to infuse this humanitarian angle to the problem of piracy, and thereby, helped in orchestrating the international response to piracy.

High-Level Approach: Approaching the UNSC

IMO also employed a high-level approach in countering Somali-based piracy in orchestrating the international response to piracy. Rather than limiting the issue of piracy to its own jurisdiction, IMO approached the UN Security Council, the principal organ of United Nations, that is charged with the responsibility of maintaining international peace and security.

As already mentioned above, the influential UN Security Council Presidential Statement of 2006, giving a green signal to states to take military action in the event of a pirate attack in the international waters close to Somalia, was in response to the resolution that IMO Assembly has passed in 2005. A copy of that IMO resolution was transmitted by the IMO Secretary-General “to the Secretary-General of the United Nations for consideration and any further action he may deem appropriate including bringing the matter to the attention of the Security Council for consideration and action as appropriate” (International Maritime Organisation 2005:5). Furthermore, in its 2007 Assembly Resolution, IMO gave due recognition to the action taken by the UNSC through its operative paragraph 18 of 1772 Resolution (2007) to encourage states to take military action against the acts of piracy and armed robbery (International Maritime Organisation 2007: 4).

Apart from reaching the UNSC directly, IMO also approached the UNSC in an indirect manner. IMO Council recommended the Transitional Federal Government (TFG) of Somalia that it gives permission to warships or military air crafts engaged in counter-piracy operations, in the Indian Ocean, to enter its territorial waters, if the situation demands so (International Maritime Organisation 2007: 7). This sovereign consent was then to be communicated to the UNSC that alone could authorize military operations even in Somalia’s territorial waters.

As the TFG government later gave consent for the same and asked for international assistance to repress piratical acts, IMO not only succeeded in filling a lacuna in the international piracy law that limits the crime of piracy to international waters but also upheld the norm of sovereignty and territorial integrity of a state.

There are a couple of reasons as to why IMO adopted a high-level approach. One reason is that the high-level approach is a way to promote the IMO within the UN system and

simultaneously ensuring that IMO's work doesn't overlap with that of other organizations, to avoid duplication of efforts (IMO 2007:13). So, this use of a high-level approach is only a routine affair in IMO's conduct of its external relations.

But apart from that, there is also the fact that it is only the UN Security Council, that can under Article 42, of chapter VII of the UN Charter, authorise military action (by air, sea or land force) that it finds as necessary to maintain and restore international peace and security (United Nations 1945). By approaching the UNSC, IMO helped in elevating the crime of piracy from an ordinary threat to maritime traffic to one that should be attended to as a breach of international peace and security. As a matter of fact, the UNSC in all its resolutions (1816, 1838,1846,1851) adopted in 2008, determined that the crime of piracy and armed robbery originating from Somalia, against international vessels "exacerbate the situation in Somalia which continues to constitute a threat to international peace and security in the region" (United Nations Security Council 2008a; 2008b; 2008c; 2008d :2).

Review Approach

This approach of the IMO is related to its monitoring role. IMO recognised that a lack of uniform national legislation on piracy will make it difficult to prosecute pirate especially because piracy is a unique maritime crime in the sense that it is a crime of universal jurisdiction. So, the legal committee of the IMO conducted a review of all national laws to see as to where the crime of piracy stands.

The committee reviewing a small sample of 30 countries' laws came up with disturbing preliminary observations:

- i) Only a handful of countries incorporated the UNCLOS definition of piracy being sensitive to its nature of universal jurisdiction;
- ii) Most of the countries don't treat piracy as a separate maritime crime but rather clubs it with other crimes like robbery, kidnapping etc. thereby defeating the whole purpose of universal jurisdiction that applies only to the crime of piracy and;

- iii) In a few cases, even if the crime of piracy is codified, it lacks details making prosecution and punishment of pirates difficult (International Maritime Organisation Legal Committee 2009a).

By monitoring the national anti-piracy laws of states, IMO displayed a vigilant stance, identifying the gaps that need to be plugged in, if counter-piracy efforts have to be strengthened. This particular review exercise, conducted by IMO, helped to do a reality check on whether or not the norm of treating piracy as a crime of universal jurisdiction, as defined within the UNCLOS framework, was diligently applied by states in their national legislation or not. And the picture that came out was indeed grim, as there was a lack of harmony between the international law and the municipal laws of states on the question of piracy.

Another point of concern was that not all member states of IMO participated in the review. While only 30 states participated in this review in 2009, the number only slightly increased to 41 in 2010. This IMO admitted hindered its efforts to bring to light a comprehensive picture of all national anti-piracy laws. Enhancing national legislations, consequently, became one of the objectives of the IMO led Djibouti Code of Conduct as a regional framework for countering Somali-based piracy.

Regional Approach: 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”, also called as the Djibouti Code of Conduct (hereinafter, the Djibouti Code) was adopted by on 29 January 2009 by the East African countries of: Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, the United Republic of Tanzania and Yemen (International Maritime Organisation 2009). Gradually, more countries have adopted this Code and as of 2018, about twenty countries, including from West Asia in the Persian Gulf (Saudi Arabia, Oman, United Arab Emirates, Kuwait) have signed it. Other countries included are Comoros, Egypt, Eritrea, Jordan, Mauritius, Mozambique, South Africa, and Sudan (International Maritime Organisation 2018c).

Map 1: Countries (in Red) as signatories to the Djibouti Code of Conduct



(Source: International Maritime Organisation 2018c)

The Djibouti Code which has become a regional tool, to counter and repress acts of piracy in the Gulf of Aden, was a result of the efforts that IMO put into it. The Code was signed under IMO's auspices when a sub-regional meeting on maritime security was called by IMO, in Djibouti in 2009. The Code wasn't a product of one meeting but was rather a result of the discussions that states had when IMO organised a sub-regional seminar on maritime security in Sana, Yemen in 2005 followed by a sub-regional workshop in Oman, in 2006.

The Djibouti Code is then a product of the efforts of IMO to bring regional states together so that they can prevent and repress the crime of piracy and armed robbery by cooperating in five areas namely,

- (a) the “investigation, arrest and prosecution of suspected persons involved in the crime of piracy and armed robbery;
- (b) the “interdiction and seizure of suspect ships” along with its property;
- (c) the “rescue of ships, persons and property” subject attacked by the pirates
- (d) the “repatriation of seafarers”, especially those subjected to acts of violence; and

(d) the “conduct of shared operations” amongst navies of signatory States as well as with outside navies, against acts of piracy and armed robbery (International Maritime Organisation 2009b: 3)

In addition to this, drawing inspiration from the success of the “Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia” (ReCAAP) Information Centre in curbing piracy levels in Southeast Asia, the Code provides for issuing of alerts by sharing information, through centres like the Regional Maritime Coordination Centre in Mombasa, the Rescue Coordination Sub-Centre in Dar es Salaam and regional maritime information centre in Sana'a and various national focal points.

To promote the objectives of the Djibouti Code IMO has also focussed on capacity building initiatives funded through the Djibouti Code Trust Fund. One such initiative has been the establishment of the Djibouti Regional Training Centre that seeks to enhance the coast guard abilities of regional states in Eastern Africa. Such initiatives help in entrenching the Code as a regional norm amongst signatory states even if the Code, per se, is not legally binding.

The Djibouti Code as a regional maritime security arrangement to fight piracy has been relevant and dynamic. Recently, in 2017, the Code was revised even as the signatory states adopted the *Jeddah Amendment*, broadening the scope of the Code to also target other maritime crimes like human trafficking and Illegal, Unreported and Unregulated (IUU) fishing.

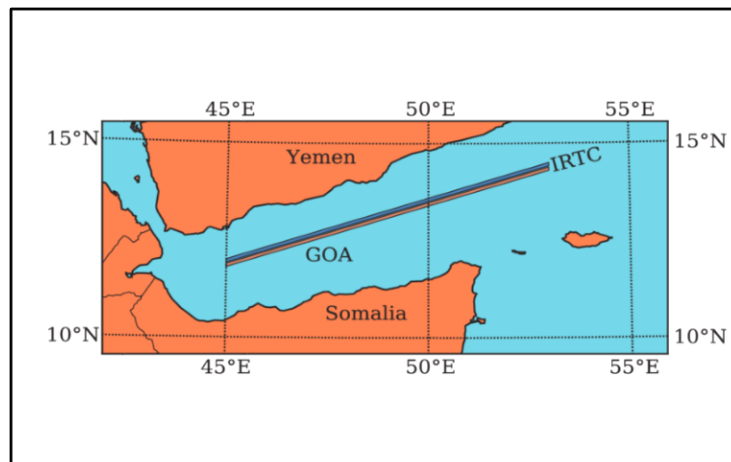
IMO by spearheading the efforts for creating the Djibouti Code, has helped states to implement their duty to cooperate in tackling with the maritime crime of piracy under the UNCLOS framework. Adherence to international law becomes pertinent as states are weak in their national laws against piracy.

Inclusive Approach: Orchestrating Technical Norms Framed by Private Actors

IMO as discussed in the previous chapter was established as a technical organisation. In the field of maritime piracy, its Maritime Safety Committee has adopted circulars to

guide states, ship owners, operators and crew, on adopting safety measures in the event of an attack. Most important has been IMO's endorsement of the "*Internationally Recommended Transit Corridor (IRTC)*" to member states to be followed while transiting the Gulf of Aden, an area highly susceptible to attacks by pirates in 2009. IRTC is a specially designated maritime lane with specific eastbound and westbound geographical limits. A ship entering the IRTC must report in detail about its movement to organizations like the Maritime Security Centre – Horn of Africa (MSC-HOA) or the International Maritime Bureau Piracy Reporting Centre or the United Kingdom Maritime Trade Organisation (UKMTO). IRTC isn't a product of the IMO. However, IMO by endorsing it has given it legitimacy, making IRTC a norm for the mariners traversing the piracy-prone Gulf of Aden region.

Map 2: Map of the Gulf of Aden with the International Recommended Transit Corridor (IRTC)



(Source: Defence Research and Development Canada 2011)

Similarly, in 2011, IMO provided legitimacy to the "*Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area*" (BMP) as developed by the shipping industry led by the International Chamber of Shipping (Maritime Safety Committee 2011). These practices basically relate to the self-protection measures that several stakeholders – the shipowners, the crew, masters and operators - must take proactively, to prevent their ships from becoming victims of maritime piracy. These include, for example, installing physical barriers on the ship like

water cannons, razor wires, securing the bridge of the ship, installing a distinct alarm for a pirate attack and increasing the vigilance by having an effective radar watch etc. (International Chamber of Shipping 2011).

By endorsing these practices and circulating them amongst member states, IMO has recognised the importance of these technical norms in deterring acts of piracy and armed robbery off the coast of Somalia. Also, the fact that IMO has accommodated these technical norms that have been developed by private actors, shows an inclusive approach that the organisation has followed in its counter-piracy initiatives. Apart from private actors of the shipping industry, IMO has also appreciated the International Maritime Bureau- Piracy Reporting Centre, a non-governmental actor, for issuing warnings in its annual piracy reports to ships sailing off the coast of Somalia. IMO, being a governmental international organisation has not excluded other non-state actors and has rather given them space in forging a common fight against piracy.

Abbott and Snidal (2010) suggest that an era of ‘transnational new governance’ has set in, where IGOs rather than acting directly, act as “orchestrators” in solving problems of global governance. By cooperating with private actors, they enhance their own regulatory performance (ibid.). IMO has by endorsing the technical norms made by private actors has played the role of an orchestrator. IGOs engage in “facilitative orchestration” when they involve “private schemes in international rulemaking” (Abbott and Snidal 2009). This is similar to what IMO has done in this case.

Flexible Approach: From Opposing to Approving the Use of Private Security

While IMO’s official endorsement of the Best Management Practices hasn’t drawn any criticism, the same isn’t true for IMO and its flexible stance on the use of Privately Contracted Armed Security Personnel (PSCAP). IMO’s stance has rather evolved. From strongly discouraging the use and carrying of firearms, for self-defence of the seafarers, in the 1990s to acknowledge, that the use of privately contracted armed guards on ships, is accepted by the shipping industry and some flag states (International Maritime Organisation 2018d). The rationale for IMO strongly discouraging the use of firearms was because of three reasons:

- 1) The carrying of firearms on ships may tempt the attackers to also carry firearms, thereby leading to the possible escalation of violence
- 2) Firearms cannot be used without proper training and hence, there is a risk of accidents taking place when civilian crew operate them.
- 3) The killing of a citizen of any country may incur unfavourable consequences even if the act is done in self-defence (Maritime Security Committee 2002: 9)

What led to a shift in IMO's stance was the increased use of privately contracted armed guards, post the spike in piracy levels in the Gulf of Aden in 2008. A couple of factors were responsible for this increased use of armed guards. Firstly, the "International Transport Workers' Federation" (ITF) saw the use of private armed guards as an important defence measure against the hijacking of crew members for high ransoms by the Somali pirates and consequently, putting pressure on the (Staff 2017). Secondly, the ship insurance industry⁴, seeing the rising costs of a piracy attack due to (i) the high ransoms demanded by the pirates and (ii) the declaration of maritime waters affected by Somali Piracy as a "High-Risk Area" in 2008, also started providing adjustable premiums to incentivise to use of PSCAP (ibid.).

IMO didn't endorse the practice nor condemned it but nevertheless gave official recognition to the growing practice (International Maritime Organisation 2018). Instead of creating an overarching regulatory framework, IMO has left the decision to employ PSCAP to the ship owners subject to the laws of their respective flag states. In 2011, IMO issued interim guidance related to the embarkation and disembarkation from ships of PSCAP (International Maritime Organisation 2011). This approach of IMO however, may be criticised. Aarstad (2017) rightly argues that leaving a sensitive issue to the individual Flag states is inappropriate, as not all Flag states are equal in imposing strict regulations and often ship owners flock to Flag of Convenience⁵ that have lenient

⁴ It is interesting to note that, the ship insurance industry organizations like the London Market's Joint War Committee also participated in the drafting of the Best Management Practices. But BMP doesn't directly include within itself the use of PSCAP. Leaving the matter to individual ship operators, PSCAP can be used but when used they are to be seen as an "additional layer of protection and not as an alternative to BMP" (International Chamber of Shipping 2011: 40).

⁵ Today it is possible for a ship to be owned by a different country and registered under the flag of a different country. As of 2017, more than 70 per cent of the commercial fleet is registered in this manner (United Nations Conference on Trade and Development 2017)

shipping laws. These Flags of Convenience countries like Antigua and Barbuda, the Bahamas, Bermuda, Liberia, Panama, Cyprus, the Isle of Man, Malta and the Republic, of the Marshall Islands, represent 33.66% of the total fleet of world's merchant vessels and except for Cyprus, all of them lack a proper legal framework to regulate the use of PSCAP (Hespen 2014).

The use of firearms is a sensitive issue because of human rights concerns in case of abuse. While on land, there have been efforts to regulate the private military companies in the cases of armed conflict, most notable is the "Montreux Document: On pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict". However, there is a lingering sea-blindness on the maritime front. Consider this, the latest report by Human Rights Council, on "the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies" doesn't consider the possible misuse of firearms in the maritime domain (UN General Assembly 2017). In fact, the word maritime is not mentioned even once in the entire report, rendering thus, a blind eye to all the developments that have taken place post-2008, especially the official recognition of the use of private military companies by the IMO.

Even as IMO has accepted that countries are still in the process of regulating the use of PSCAP, it is important that an overarching legal framework is negotiated by countries at the IMO in order to address human rights concerns. Otherwise, there is a glaring gap in holding private actors accountable for possible misuse, like firing on innocent fishermen by mistaking them to be pirates. If piracy is a crime of universal jurisdiction, it is important that IMO creates a uniform law on the use of PSCAP. This is an area of challenge for the IMO. In the event of a mishap, as a public actor, it is important that IMO doesn't come across as an organisation being run to only support the interests of the shipping industry.

Such Countries like Panama, Liberia, Marshall Islands to name a few, offer Open Registry to ships are called as Flags of Convenience having less regulatory controls vis a vis other port states. Consequently, these countries figure as leading Flags of Registration. In 2017, for instance, the top three Flags of Registration were Panama, Liberia and the Marshall Islands (ibid.).

Table 4: A Summary of the Six-Pronged Approach of IMO to Counter Somali-based Piracy

Approach	Meaning
Humanitarian Approach	Highlighting the importance of the humanitarian concerns of Somalis and the need to deter pirate attacks on vessels transporting aid
High-Level Approach	Approaching the UNSC in the fight against piracy in the Gulf of Aden, a maritime crime having the potential to be a threat to international peace and security
Review Approach	Taking a review of already existing national piracy laws and finding them inadequate to deal with the crime of piracy
Regional Approach	Bringing regional states together to cooperate, leading to the adoption of the Djibouti Code of Conduct, a regional instrument that enables collective efforts to counter piracy in the East African region
Inclusive Approach	Orchestrating technical norms like Best Management Practices, framed by private actors to improve regulatory standards
Flexible Approach	From opposing the use of armed guards on ships to permitting their use as subject to the laws of flag states

Counter Piracy Initiatives of United Nations Security Council

As already discussed above, the high-level approach of IMO helped to get UNSC into the loop of countering piracy in the Somalian case. Apart from recognising that the issue of Somali piracy was not just an economic threat to international trade, but one that had the potential to disrupt international peace and security, UNSC also undertook other initiatives as evident from its resolutions.

Clarifying the Existing Normative Framework of Piracy

UNSC has maintained that in all its resolutions adopted since 2008 that the international law to curb the acts of piracy and armed robbery is to be found in UNCLOS 1982. While prima-facie this reiteration looks insignificant, the opposite is true. This is because, many states have still not signed the UNCLOS treaty, including the United States. But, this recognition of UNCLOS with respect to piracy, helps to make UNCLOS as a norm by which even non-signatories to UNCLOS must abide. In addition to this, as the review of domestic laws on piracy reveals above, there is a need for uniform implementation of UNCLOS across all criminal laws, if piracy is to be treated as a crime of universal jurisdiction. After this clarification made by UNSC, regarding the definition of piracy, a further impetus has been given in this direction.

UNSC also recognised the problem that even if international naval forces caught the pirates, states lack domestic laws to successfully prosecute them leading to their release. Consequently, in its resolution 1851 (2008), it has urged states to use the provisions of “Suppression of Unlawful Acts Against the Safety of Maritime Navigation” or the SUA Convention so that state parties could create appropriate criminal jurisdiction and enhance the prosecution efforts (United Nations Security Council 2008d: 2). As mentioned in the previous chapter, the SUA Convention was adopted by the IMO and while the Convention addresses cases of maritime terrorism, it has provisions that can be applied in cases of the hijacking of ships and crew members. A strategy widely adopted by the Somali pirates has been to hold the crew as a hostage and use the hijacked ship, as a mother ship to launch further attacks. That SUA is an instrument well suited to be used in Somali-based piracy, was thus, reiterated by UN’s principal organ.

Creating an Exception for Somali-based Piracy

UNSC also performed the balancing act of upholding the norm of sovereignty and territorial integrity of states, on one hand and creating a robust framework to combat piracy originating from Somalia, on the other hand. The Transitional Federal Government (TFG) consented for international assistance and in cooperating with other regional organizations and states in combatting piracy. This consent by TFG meant that pirates could be caught even within territorial waters of Somalia, something which was prohibited under the UNCLOS. According to UNCLOS, as discussed previously, piracy as a crime is limited to international waters and doesn't extend to the territorial waters of a state.

But, while the UNSC adhered to the request of Somalian government seeing its weakness in addressing the maritime crime of piracy, care was taken not to make this development into an international custom that would then apply to all other cases of piracy elsewhere. This was a result of the concerns expressed by countries like Indonesia, a country affected by piracy near the Malacca Straits. At the 5902nd meeting of UNSC, Indonesia agreed to vote in favour of UNSC Resolution 1816 (2008) only if the following conditions were met:

- a) The UNSC Resolution, so adopted, must not replace the international law as encapsulated in UNCLOS 1982, which is like the Constitution for the Oceans;
- b) It must not create additional customary international law for repressing piracy thereby, becoming detrimental to the sovereignty and territorial integrity of states and;
- c) It should only be applicable in the case of Somalia, as requested by the TFG from the UNSC (United Nations Security Council 2008e: 2)

Indonesian concerns were expressed by other countries like Vietnam, China and Libya as well at the time of voting (ibid.). Consequently, the language finally adopted in the UNSC resolution was in line with the concerns expressed. It was adopted by members of UNSC, that although states in cooperation with the TFG are authorised to use all necessary means (including military means as the resolution is under Chapter VII of the

UN Charter) to counter acts of piracy and armed robbery, even in Somali territorial waters, this:

“applies *only with respect to the situation in Somalia* and shall not affect the rights or obligations or responsibilities of member states under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that it shall not be considered as establishing customary international law, and affirms further that this authorization has been provided only following receipt of the letter from the Permanent Representative of the Somalia Republic to the United Nations to the President of the Security Council dated 27 February 2008 conveying the consent of the TFG” (United Nations Security Council Resolution 2008a).

In this way, UNSC created an exception for Somalia, so that piracy could be countered in a more effective manner.

Delegated Naval Peacekeeping

By acting under Chapter VII of the charter, UNSC has allowed counter-piracy operations of states and regional organizations in the case of Somalia. What followed thus, was NATO and EU launching their naval operations to combat the pirates. Although UNSC didn't mandate them directly to do so, it has welcomed and “commended” the efforts of EU's *Operation Atlanta* and NATO's operations *Allied Protector and Ocean shield* to suppress piracy and protect ships especially of WFP carrying humanitarian aid (United Nations Resolution 1897 – 2009: 3). This can be considered as an indirect delegation of the activity of naval peacekeeping by the UN to other actors. So, while the operations are under the command and control of the respective regional organizations, they have received the legitimacy of UNSC.

It has been opined that this decision of the UNSC, is a demonstration for the first time an “autonomous form of UN naval peacekeeping” in the sense that it is different from previous peacekeeping operations as it has no with no connection with land (Oliveira 2012). While in the past, UN has mandated naval operations, as a part of its peacekeeping operations on land, it has not mandated purely naval operations (ibid.). This view does hold some water. For example, in recent times, the Maritime Task Force was deployed in 2006 as part of the United Nations Interim Force in Lebanon, to support the Lebanese Navy. The Task Force formed a part of an already existing peacekeeping

operation on land. Similar to this, has been the UN Advance Mission in Cambodia (UNAMIC) in 1992 to engage in mine detection while UN mission in Haiti at the time of the earthquake in 2010 was involved in coastal patrol and surveillance, both of which are not “eminent maritime peacekeeping operations” (Beirão 2017: 254)

The UN has engaged less in naval operations vis-a-vis land operations wherein the command of the operation has been under the Secretary-General. Most conflicts originate on land than at sea but a major reason for the UN not having a proper naval management system in place is hampered by the fact that only a few states have the required naval abilities needed for sophisticated marine operations (Ginifer and Grove 1994: 140). In addition to this, naval operations are more expensive than land operations. For one thing, as one UN official remarked, while UN faces scarcity of assets in terms of helicopters, the naval ships are way too costly to provide by member countries to the UN (Oceans Beyond Piracy 2015).

However, while UNSC has mandated the naval operation in countering pirates, indirectly so, it will be wrong to see it as an autonomous peacekeeping operation having no connection with the land. This is because UNSC has recognised that the root cause of piracy goes back to the land of Somalia that has faced political instability. So, piracy at sea is intricately connected to the conditions on the land. Nevertheless, military authorisation by the UNSC has led to more actors forging a common front against the pirates.

The effect of these naval operations could be seen in 2012, when worldwide piracy levels touched a five year low (calculated from 2007 onwards), majorly to the reduction of Somali based piracy (International Maritime Organisation 2012). IMB highlighted three reasons for this decrease in hijacking of ships, (i) deterrence activities of navies involving pre-emptive strikes and targeting mother ships used by pirates, (ii) adherence to Best Management Practices by the ship’s crew and (iii) use of privately contracted armed personnel (ibid.). This shows how the norms laid down by both IMO and UNSC have helped in lowering down the piracy levels, the results of which appeared in 2012.

Contact Group on Piracy off the Coast of Somalia: Orchestrating a Coordinated Response

The Contact Group on Piracy off the Coast of Somalia (CGPCS) was formed in 2009 directly in response to UNSC directions found in Resolution 1851(2008) that encouraged “all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia *to establish 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” (United Nations Security Council 2008d: 3).

The initiative for the Contact Group came from one of the permanent members of the council, the United States. In the Security Council meeting, the country’s delegate Ms Rice explained that while many countries and organizations have responded to combatting the Somali pirates, “the response has been less than the sum of its parts” in the absence of a coordination framework (United Nations Security Council 2008f: 9). To correct that deficiency in the counter-piracy efforts, the Contact Group on Somalia was proposed, as “a mechanism to share intelligence, coordinate activities and reach out to other partners, including those in the shipping and insurance industries” (ibid.). UNSC was thus, used as a forum to attract countries to the idea of a coordinated mechanism to aid collective counter-piracy efforts.

CGPCS was formed in 2009 and has over eighty members ranging from states to international organizations to the shipping industry actors to Non-Government Organizations representing interests of seafarers like Seamen’s Church Institute and Maritime Piracy Humanitarian Response Programme to research organizations like Oceans Beyond Piracy. Also, the membership isn’t formal and permanent, and an actor committed to fighting piracy is welcome to participate in the bi-annual plenaries in which common actions are deliberated upon. This kind of mechanism provides flexibility and helps to bring diverse actors on an equal footing at a common point of contact.

Apart from this, the Contact Group has working groups dedicated to different issue areas: the capacity building efforts, multilateral coordination of the navies, relevant legal issues, prosecution of pirates, sharing of information and disruption of financial

networks ashore (Contact Group on Piracy off the Coast of Somalia 2014). The group works in an informal way as it lacks a secretariat, and each of its working group or plenary is led by chairs (that could be both state and non-state actors). It thus, cannot be called as an international organisation as it lacks a formal permanent structure. CGPCS can be seen as an informal network put in place by UNSC to enhance public-private coordination to counter Somali-based piracy. The forum has tried to strengthen the norms already in place, as promulgated by IMO. For instance, in 2009 key open registry countries like Panama, Bahamas, Marshall Islands and Liberia signed the New York Declaration of commitment to BMPs at the group's plenary session. Although the communiqués adopted by the forum are non-binding on states, CGCPS has certainly helped to promote compliance through peer pressure by cheerleading states that take counter-piracy measures (Oceans Beyond Piracy 2015). This includes following the norms laid down by IMO.

The CGPCS is not a UN contact group, even though the secretariat facilities of the UN office in New York are utilised for holding meetings. Nevertheless, UNSC has enabled the formation of this coordination mechanism and as the group reaches out to private actors, it won't be wrong to say that UNSC has played, in Abbott and Snidal terminology the "orchestrator" in counter-piracy governance.

Conclusion

A normative framework has been laid down as a consequence of the combined efforts of the IMO and the UNSC post the drastic rise in piracy levels, off the coast of Somalia from 2007 onwards. IMO has adopted an extensive six-pronged counter-piracy approach: humanitarian, high-level, review, regional, inclusive and flexible, in the case of Somalia. By identifying the problem of piracy and its negative impact on the transportation of humanitarian aid to Somalis, IMO brought the issue to the attention of UNSC. UNSC then, recognised that piracy off the coast of Somalia must be treated not just as a maritime crime but a real threat to international peace and security. This realisation enabled it to authorise states and regional organizations to take naval measures against the pirates. The naval peace operations undertaken by EU and NATO can be seen as a form of "delegated naval peacekeeping" by the UN that by itself has not involved itself in full-fledged naval operations, unlike its peace operations on land.

Furthermore, to improve coordination among several actors involved in the fight against piracy, the informal coordination framework of the Contact group has been encouraged by the UNSC, moving clearly, beyond a state-centric as well as formal organizations- centric model of global governance. Similarly, IMO has followed an inclusive approach in endorsing the technical norms made by the shipping industry, like the self-protection ship measures enshrined in the Best Management Practices, endorsed officially by the IMO.

Since 2012, piracy levels have seen a declining trend with zero levels of hijacking in 2016 (Oceans Beyond Piracy 2016a). However, attempted pirate attacks have started occurring on account of the lowering down of vigilance by shipping operators (like the use of armed guards and observance of Best Management Practices) and decreased naval presence in the region (ibid.). A decrease in naval presence has been due to the exit of NATO. Seeing the attacks on ships plummeting, NATO ended its naval operations in 2016. But fears of a resurgence of Somali- Piracy have arrived. Beginning 2017, the first successful pirate attack occurred, with the hijacking of a commercial ship, named “Aris 13” with eight Sri- Lankan crew onboard, flying a Comoros Islands flag (Reuters 2017). A total of nine piracy incidents were reported in 2017 with attacks as far as 200 nautical miles from the coastline, clearly revealing the intent and ability of Somali pirates to launch attacks hasn’t died (International Maritime Bureau 2017).

In such a scenario of fears of a possible resurgence of Somali-based piracy, the existing normative framework as laid down by IMO and UNSC shall be useful to intensify counter-piracy efforts.

CHAPTER 4

COUNTER PIRACY INITIATIVES OF INTERNATIONAL ORGANIZATIONS IN SOMALIA: OPERATIVE ROLES OF EUROPEAN UNION AND NORTH ATLANTIC TREATY ORGANISATION

After having seen the normative roles played by the IMO and the UNSC in countering piracy in the case of Somalia, this chapter looks into the operative roles played by the European Union (EU) and the North Atlantic Treaty Organisation (NATO). The primary way in which EU and NATO have attempted to counter piracy is by launching their individual naval operations. The focus of this chapter will be largely on analysing the performance of the counter-piracy naval operations of these two regional organizations. This will be done by using a theoretical framework provided by Ness and Brechin that sees International Organizations as living entities, interacting with their environment, having their own goals and technology. In addition to studying these naval missions, the judicial capacity building efforts of the United Nations Office on Drugs and Crime (UNODC) so as to support the naval mission of EU will also be looked into briefly. The overall purpose is to examine the combined outcome of these organizations in bringing down piracy levels off the coast of Somalia.

Naval Missions of EU and NATO

For both the organizations, EU as well as NATO the basic legal normative framework has been the UNSC resolutions and UNCLOS. In response to the UNSC call for countering the Somali pirates, EU Council decided to launch the European Naval Force Somalia - Operation Atalanta (EU NAVFOR - ATALANTA) in December 2008, its first-ever naval mission under its European Common Security and Defence Policy (CSDP) which is still in operation (European Union Naval Force Somalia Operation Atalanta 2014). The legal normative framework on which EU chose to build this operation is clearly specified by it. The mission's website highlights that, "the EU launched the European Union Naval Force ATALANTA (EU NAVFOR) in December 2008 within the framework of the European Common Security and Defence Policy (CSDP) and in accordance with relevant UN Security Council Resolutions (UNSCR) and International Law" (EU Naval Force Somalia 2018a). The relevant UNSCR are

namely, 1814, 1816, 1838, 1846 (see Table 5), all passed in 2008, dealing with the problem of Somali piracy.

Table 5: Relevant United Nations Security Council Resolutions for Anti-Piracy Missions of EU and NATO

UNSC Resolution Number (Year)	Relevance
Resolution 1814 (2008)	UNSC called on the international community to take action to protect the shipping delivering humanitarian aid to Somalia.
Resolution 1816 (2008)	UNSC expressed its concern at the threat of piracy and armed robbery occurring in high seas and territorial waters off the coast of Somalia. It authorized states to cooperate with the Somali Transitional Federal Government (TFG), to even enter the territorial waters of Somalia and to use all necessary means, in accordance with prevailing international law, for repressing acts of piracy and armed robbery at sea.
Resolution 1838 (2008)	UNSC commended the ongoing planning process towards a possible EU naval operation.
Resolution 1846 (2008)	UNSC welcomed the initiative of the decisions of EU and of NATO to launch, naval operations to protect WFP maritime convoys and to repress acts of piracy and armed robbery at sea off the coast of Somalia, pursuant to resolutions 1814 (2008), 1816 (2008) and 1838 (2008).

(Source: United Nations Security Council 2008a; 2008b; 2008c; 2008d; 2008g)

NATO, in contrast to EU, launched two operations with respect to countering the Somali pirates. First, the Operation Allied Protector (Oct-Dec 2008 and from Mar-Aug 2009) was launched mainly to protect the slow-moving, humanitarian aid-carrying,

World Food Programme (WFP) vessels that became susceptible to pirate attacks in the Gulf of Aden and the Horn of Africa region (North Atlantic Treaty Organization 2018a). This Operation Allied Protector was then followed by the Operation Ocean Shield mission, that was not only larger in terms of its geographical reach, covering even the Indian Ocean region, but it also ran for a longer duration from August 2009 till December 2016 when it was finally terminated on account of a consistent drop in the piracy levels. NATO's Mission Website also emphasizes like EU that Operation Ocean Shield was conducted "in full complementarity with the relevant UN Security Council Resolutions" (North Atlantic Treaty Organization 2018a).

Theoretical Framework: The Organizational-Sociological Prism of Ness and Brechin

As it was mentioned in the previous chapter, one of the three factors responsible for a sharp reduction in piracy by 2012, as reported by the International Maritime Bureau (IMB), was the role played by navies in deterring the pirates. Apart from EU and NATO, several other actors have also been involved in naval operations. These include, the United States led Combined Maritime Forces (CMF) and the navies of other countries, most prominent among them are that of China, India and Russia. Although the IMB takes into account the cumulative effort of all the naval actors present to combat Somali-based piracy, analyzing the performance of each of these other state actors is beyond the scope of this work. Moreover, the only regional organizations conducting naval operations in this region are the EU and NATO.

To better understand the role played by EU and NATO in combatting piracy, the Ness and Brechin framework of seeing International organizations as organizations having a life of their own and are not merely subservient tools of sovereign states, is employed. Ness and Brechin (1988) argue that the sociology of International organizations can be comprehended if three factors are taken into account that is:

1. *Organizational Environment*: this includes general environment affecting all IOs or specific environment affecting only particular IOs and stable or turbulent environments in which the particular organization is situated;

2. *Organizational Goals and Structure*: this deals with goals that an IO pursues apart from its main goal of survival. Structure refers to whether the IO is hierarchical or flat and;
3. *Technology in International Organizations*: this includes tools and procedures of IOs, its character known as a core technology, a stock of technology available in the environment for the organization, strategies etc. (Ness and Brechin 1988).

Seeing the naval operations of EU and NATO through this organizational-sociological prism shall help in their better analysis of their performance. However, it is clarified, that because the focus of the work is on the output of these naval operations, the internal structure of the respective organizations, and their tools and procedures, shall not be examined.

The “Environment” of the Counter-Piracy Naval Missions

The context under which both EU and NATO launched their anti-piracy missions is same: the rise in piracy levels off the coast of Somali especially in the Gulf of Aden in 2008 and the subsequent involvement of UNSC that declared the problem to be an international security threat. The environment became turbulent with a sharp rise in piracy levels in the strategically important Gulf of Aden and the Horn of Africa region being detrimental to the humanitarian aid-carrying WFP vessels as well as the free movement of maritime commerce and trade. This turbulent environment is indeed complex. As Rear Admiral Hudson explained to the House of Lords the business of the Gulf of Aden maritime channel and the Horn of Africa region,

“...about 25,000 ships transited the area every year, principally through the Gulf of Aden, representing around 25 per cent of global trade. It was a “vital strategic artery”. An important energy supply route led from the Gulf of Aden into Europe and across to America. Container ships bound for the far east also regularly used that route.” (House of Lords 2010:10).

It is this complex turbulent environment of the seas, marred by unlawful activities of the Somali pirates, that EU and NATO have sought to restore with peace and good order by launching their respective naval operations.

The geographical area of operations of both the naval military missions has been similar. The area of operations is rather of mammoth operations, extending even into

the India Ocean, that became a necessity in the light of the capacity of Somali pirates to launch long-range attacks by the using mother ships.

The EU NAVFOR operates in a vast area including:

1. the Southern Red Sea,
2. the Gulf of Aden,
3. the Somali Territorial Waters⁶ and;
4. large parts of the Indian Ocean, close to Seychelles, Mauritius and Comoros (European Union Naval Force Somalia Operation Atalanta 2014)

Such a vast area of operation also applied to the operation field of NATO anti-piracy mission, Operation shield (see Map 3).

Map 3: NATO Operation Ocean Shield Area of Operations



(Source: North Atlantic Treaty Organization 2018b)

So, both EU and NATO have launched naval operations in the same maritime theatre. However, they have not launched it as a joint operation nor do they have a formal cooperation agreement in place. This is surprising as EU and NATO have not been IOs

⁶ Permission to enter Somali territorial waters to apprehend the pirates is possible because of the exception made for Somali-based piracy (for details see chapter 3 on counter-piracy initiatives by UNSC)

that have worked in silos. EU and NATO have forged a strategic partnership. The legal basis for this strategic relationship is encoded in the “Berlin- Plus Agreements” adopted in 2003, that allow an EU led operation to make use of NATO’s assets and capabilities in crisis management and peacebuilding operations (European Union 2016). These agreements were based on the rationale that because EU and NATO have similar memberships, it is required that their working relationship is close-knit, so that their synergies are released by avoiding unnecessary duplicity of work (ibid.).

The case of Somali piracy offered an opportunity for the EU and NATO to cooperate with each other. The international community recognized this maritime threat, not as a mere threat to international maritime traffic but as a threat to international peace and security itself. All UNSC resolutions in relation to Somali piracy urge “all necessary means” (that includes military measures as well) to be taken against pirates, under Chapter VII of the UN charter. However, EU and NATO despite working in the same issue are (maritime piracy) and the same operational field (maritime region off the Somali coast) haven’t cooperated in a manner to make use of the legal framework already in place. Nevertheless, EU and NATO have forged informal networks for increased coordination of their naval operations. A factor that has led to informalized coordination and not formalized cooperation between the two organizations has been the different goals that the two have sought to pursue.

Goals of EU and NATO in launching Counter-Piracy Operations

The central goal by which all International Organizations is guided by is “one real goal of survival” (Ness and Brechin 1988: 264). Fulfilling this principal goal of survival and to remain relevant in global governance, could be seen as one of the factors as to why EU and NATO have launched their counter-piracy operations separately, despite sharing a similar membership. As a matter of fact, out of the 14 countries that contributed their naval assets for Operation Ocean Shield (see Annexure 1), half of them are also member states of the EU namely, United Kingdom⁷, Denmark, Spain, The Netherlands, Italy, Portugal and Greece. Although the aims of both organizations

⁷ UK is on the road to exit from EU. On Thursday 23 June 2016, through a referendum vote, citizens of the UK decided to leave EU. UK will officially leave the EU by 29 March 2019 (British Broadcasting Corporation News 2018)

are common: to combat the pirates by the use of naval assets (often accompanied by airborne assets like helicopters), the objectives and the approaches that EU and NATO have pursued have been different.

Objectives of EU NAVFOR Atalanta

EU was quick to foresee in its EU Security Strategy of 2003, albeit with a one-liner that "a new dimension to organised crime which will merit further attention is the growth in maritime piracy." (European Union 2003: 5). But a perusal of this strategy paper, clearly reveals that maritime security concerns weren't a priority for the EU as the key threats identified were those of terrorism, weapons of mass destruction, state failure, regional conflict and organised crime.

Maritime Security concerns came to the forefront with the onset of Somali piracy in the strategically important Gulf of Aden that challenged the smooth flow of international trade, much important for the European Union. As the EU's Maritime Security Strategy 2014, released after the Atalanta mission was already 6 years old, confirms on paper, that the sea matters for the European Union and its member states and a large part of EU's external trade is transported by sea and thus, its strategic interests include securing the seaborne trade by addressing potential threats from unlawful human activities at sea (Council of the European Union 2014:2). Maritime Piracy has been identified by EU as one of the maritime security risks falling under the category of cross-border and organized crime that must be tackled to promote a rules-based order at sea (ibid.). One of the EU Maritime interests relevant for this study, is that of "ensuring global supply chains and freedom of navigation as 30% of world vessels and 42% of value of seaborne trade is managed by EU ship-owners and also there are more than 80,000 EU fishing vessels worldwide" (European Commission 2014:2).

EU aspires to play a role of "a global actor and security provider, taking on its responsibilities in conflict prevention and crisis response and management in the areas of interest, at sea and from the sea, and achieving stability and peace through comprehensive and long-term EU action" (Council of the European Union 2014: 6). EU's launch of its first autonomous naval operation under CSDP, to combat piracy, can be seen to reflect this ambition.

All the above goals and interests as outlined by EU Maritime Security Strategy have matched with individual interests of key member states of EU that helped to propel the Atalanta into action. France in the place of EU presidency pushed for EU's greater role as a security provider outside the NATO framework (Riddervold 554). As Dr Lee Willett, as the Head of the Maritime Studies Programme, Royal United Services Institute for Defence and Security Studies (RUSI) admitted in the House of Lords that, “there is always global tension between the French and the US about who is doing what and why, so you have a grand strategic power play out there between the French, the Americans and others as to having to be there, having to be seen to be there.”(House of Lords 2010:40). Also, though France’s counter-piracy operations were showing results even before the launch of an EU mission, the incident that triggered a “hawkish approach” from France was when its own citizens were attacked with the hijacking of the French luxury yacht, Le Ponant (Novaky 2015:501). As France lobbied for support, it got Spain by its side as the latter had its own fishing interests in the region (Riddervold 554).

The mandate of EU Mission Atalanta (currently in operation till December 2018) comprises of four broad activities:

1. “Protect vessels of the World Food Programme (WFP), African Union Mission in Somalia (AMISOM) and other vulnerable shipping;
2. Deter and disrupt piracy and armed robbery at sea;
3. Monitor fishing activities off the coast of Somalia and;
4. Supports other EU missions and international organizations working to strengthen maritime security and capacity in the region” (European Union 2014:5).

EU has placed the protection of humanitarian aid WFP and AMISOM vessels, that are slow moving and hence vulnerable to piracy, as a top priority in its list of tasks to be performed. In fact, the EU Operation Commander Rear Admiral Peter Hudson RN categorically remarked in the House of Lords that “one of the strengths of Operation Atalanta was the clarity of its mandate: to support the World Food Programme (WFP) in its efforts to transport humanitarian aid into Somalia—a top priority” (House of Lords 2010: 8). This decision of the EU can be seen as a result of the fact that the IMO

followed a humanitarian approach when it communicated to the UNSC, collaborating with the WFP, that, the problem of Somali piracy should be dealt in an urgent manner. The issue of maritime piracy became a threat to international peace and security primarily because Somali lives were at stake, as the humanitarian aid meant for them was in peril. Launching thus a naval operation, in response to the series of UNSC resolutions, and specifying it clearly, meant that the operation would have the required legitimacy.

Another reason why EU has placed the protection of humanitarian aid-carrying vessels as its topmost priority could be because of the values it seeks to promote. EU wants to be seen as a distinct foreign policy actor projecting its “normative power” of values (Manners 2002). The normative power of EU comes from the same values on which it is itself based: peace, democracy, liberty, rule of law and human rights (Manners 2002: 242). By launching an anti-piracy operation against the pirates, EU wants to project its values in the seas. In fact, the EU operation commander Rear Admiral Jones revealed that the “protection of World Food Program shipping ...is the number one thing that I must do” (Riddervold 2011: 397). In fact, EU officials have also stressed that when it comes to making the choice as to which ships to protect –the aid-carrying ships or the merchant ships, the former wins and this is the unique thing about the EU operation making it very different from NATO (ibid.).

Although EU has coordinated with NATO, its approach has been different from NATO while conducting anti-piracy operations. As Alderwick, an analyst from the International Institute for Strategic Studies (IISS) explained how EU’s character was that of a soft political organization vis a vis the hard-militaristic NATO,

“ the advantage of the EU was that it had a variety of political instruments; it could enter into political agreements with states in the region, both as a collective entity and through its Member States. By contrast, NATO was seen as a military organisation. The EU has put in place status of forces agreements with states in the region. These acted as a “force multiplier”, as Atalanta could operate out of Djibouti and Oman.”(House of Lords 2010:15).

With the promising results shown by the interdiction of pirates in reducing piracy, EU planned for additional measures to counter piracy by addressing its root causes. In a letter dated 28 May 2009, sent by the EU Council High Representative, Javier Solana to the EU Foreign and Defense Ministers, it was urged that EU Navfor is an ‘impressive mission’ and that its ‘success’ must be enhanced by looking at the “longer term durable

solutions for stability in Somalia and the region -- both at sea and on land.”(Wikileaks 2009).

What followed thus, was EU’s choice to follow what it calls a “comprehensive approach” that has a two-pronged strategy. While the naval operation, EU Navfor tackles the short-term deterrence and combat actions against the Somali pirates, there is also a long-term commitment on part of EU, to contain the origin of piracy itself by addressing its root causes related to political instability on land.

The long-term commitment of EU, includes the EU Capacity Building Mission (EUCAP) Nestor Project launched in 2012, to complement its naval mission, EU launched its civil maritime capacity building mission that sought to strengthen the regional maritime capacities of Djibouti, Kenya, Tanzania, and the Seychelles (European Union External Action 2013). It also focused on developing the rule of law in Somalia’s regions of Puntland and Somaliland through a Coastal Police Force (ibid.). The project’s geographical scope was later reduced to Somalia, becoming thereby the EU Capacity Building Mission in Somalia (EUCAP Somalia) with a mandate “to assist Somalia in strengthening its maritime security capacity in order to enable it to enforce the maritime law more effectively” (European Union External Action 2018a).

In addition to EUCAP Somalia, EU Training Mission -Somalia engages with the Security Sector institutions by training the Somali National Armed Forces (European Union External Action 2018b). The political character of EU is also highlighted by the way in which it engages with the Horn of Africa region. Since 2012, EU has appointed a Special Representative (SR) to serve as the face of EU. The EU SR for the Horn of Africa is charged with the mandate to “contribute to developing and implementing a coherent, effective and balanced EU approach to piracy, encompassing all strands of EU action” (Council of the European Union 2011:2).

Objectives of NATO’s Operation Ocean Shield

It is NATO’s character as a maritime organization, that has helped it to quickly respond to the crisis situation of threat to transport of humanitarian aid for the Somalis, on account of maritime piracy (Bueger 2017). That NATO could launch its Operation Allied Protector swiftly, even before its full-fledged Operation Ocean Shield, was largely a result of the presence of its standing presence of immediate reaction naval

forces, known as the Standing Maritime Groups (SMGs). These SMG are composed of vessels provided by the member states of NATO and are permanently available to it for performing naval tasks and operational missions (North Atlantic Treaty Organization 2018c). Although NATO launched its Allied Protector in 2008 to counter piracy and protect maritime convoys of WFP, it replaced it with yet another mission called as the Operation Ocean Shield in 2009. This new mission was launched with an enhanced mandate to assist states in the Horn of Africa, upon their request, to help them develop their native counter-piracy capacities (North Atlantic Treaty Organization 2009).

The mandate of NATO's Operation Shield, however, has been narrow than that of EU. Unlike EU's elaborate comprehensive approach, NATO has followed a restrictive approach in countering the Somali pirates. NATO clearly specified that operations on Somali land weren't part of the mandate of Operation Shield. This is in contrast to EU's counter-piracy approach that has involved the use of helicopters to target pirates' bases attacking their skiffs, on Somali mainland (British Broadcasting Corporation News 2012). Moreover, though NATO's claims to have capacity building goals under its Operation Ocean Shield they haven't been that elaborate and long-term, as compared to EU. While EU has dedicated websites for its EUCAP Nestor and EU Training Mission projects, NATO's capacity building initiatives have been sparse. A tedious hunt in all the news stories of this archived mission of NATO leads to very few stories of capacity building efforts. Notable among them is the NATO's efforts in conducting training of the Somali port police in Boosaaso and Galmudug region (Allied Maritime Command 2014). Other innovative initiatives include providing floating health clinics to Somali villagers just offshore (North Atlantic Treaty Organization 2012). But these have only been additional activities that are done once the main tasks of deterring the pirates have been completed.

The mission's main purpose has been of providing naval escorts and deterrence against pirate attacks and doing so in an optimum manner by cooperating with other increasing cooperation with other counter-piracy actors in the area (North Atlantic Treaty Organization 2018a). In fact, as the international naval presence led to a significant drop in pirate attacks in 2012, NATO made plans of exiting by 2016, by maintaining a "focused presence" of patrols only during the inter-monsoon season, a period more prone to piracy (North Atlantic Treaty Organization 2014).

What goals NATO seeks to pursue through its maritime capabilities can be found in its Alliance Maritime Strategy of 2011. Though the strategy was released after NATO's involvement in counter-piracy activities, a need was felt to devise a maritime strategy because of the non-traditional maritime security challenges that came with the onset of piracy. While in the Cold War era, NATO was engaged with coercive naval diplomacy against the Soviet Union, in the post-cold war period, NATO turned to law enforcement activities that involved maintaining a 'good order at sea' (Gade and Hilde 2016:133).

According to NATO's Alliance Maritime Strategy of 2011, the key security concerns of the member states include "the maintenance of the freedom of navigation, sea-based trade routes, critical infrastructure, energy flows, protection of marine resources and environmental safety" (North Atlantic Treaty Organization 2011:2). To fulfil these concerns there are four main areas of activities to be undertaken by NATO's naval forces. Three of them are called as the "core pillars" namely: *Deterrence and Collective Defence* (includes activities like nuclear deterrence, deterrence from conventional attacks etc.), *Crisis management* (includes activities like maintaining arms embargo, interdiction, counter-terrorism, mine clearance operations etc.) and *Cooperative security* (outreach activities through partnerships, dialogue, and cooperation etc.) (North Atlantic Treaty Organization 2011:3-4). The fourth pillar comprises of *Maritime Security*. According to the strategy, Maritime Security entails blue water activities in order to create a safe maritime environment like, conducting surveillance and patrolling, interdiction, and sharing information for the purpose of law enforcement (North Atlantic Treaty Organization 2011: 5). Countering maritime piracy can thus be seen to fall within the ambit of this fourth pillar of maintaining law and order at sea, to the benefit of smooth movement of maritime trade and commerce, much important for the process of globalization.

Structure: The Interorganizational System in Countering Piracy

While analyzing the performance of IOs, it is useful to see how IOs enhance their performance by forming links and networks with organizations working in the same issue area. Rather than focusing on the specific internal structure of a single IO, or studying the quantity or quality of networks created, it is more relevant to see the internal differentiation of the entire inter-organizational system in a specific field of

action (Ness and Brechin 1988). EU and NATO by launching their own naval operations as a response to the normative framework laid down in UNSC resolutions have led to a system of organizations being generated in the field of counter-piracy.

Although EU and NATO though, have not cooperated under the Berlin -Plus framework, they have nevertheless maintained its essence through “unity of effort” if not “unity of command” (Smith 2014: 246). EU and NATO have coordinated their separate missions at operational and tactical levels if not cooperated through a joint mission. Firstly, both organizations have benefited from having their operational Head Quarters in the same location: Northwood, UK. Northwood played an important role as it enabled joint briefings of liaison officers from both EU and NATO wherein information could be shared (Gebhard and Smith 2015). It thus has helped to increase interoperability between the forces of NATO and EU, as their missions operate in a vast area of oceans (Muratore 2010).

Another important avenue provided for tactical coordination between NATO and EU is the Shared Awareness and Deconfliction (SHADE) Group formed in 2008. SHADE offers a means to share best practices and organise informal discussions so as to deconflict the activities of militaries engaged in countering piracy in the same theatre. Although the group has gradually allowed counter piracy actors from the shipping industry as well as the navies of individual countries (like Russia, China, Japan and India to name a few) for discussions, EU and NATO have had a special place as all of its meetings. All SHADE conferences are held in Bahrain and have been chaired on a rotational basis by only the “big three navies” in the region: EU, NATO and the US-led Combined Maritime Forces. As an international forum, SHADE facilitates the exchange of “frank and open discussions” between actors on a regular basis who would otherwise not do so (Combined Maritime Forces 2014). Also, to avoid the possibility of political confrontations and enhance operational coordination of the navies, the chair of SHADE is premeditatively restricted to the level of Colonel or Commander (Gebhard and Smith 2015). One of the notable achievements of SHADE includes acting as a stimulant in the introduction of the Internationally Recommended Transit Corridor (IRTC) for shipping in the Gulf of Aden.

Another way in which an inter-organizational system in the field of counter-piracy has been generated is the cooperation between EU and UNODC in prosecuting the captured

suspected pirates. After the suspected pirates have been apprehended, they must be subjected to a fair trial. Piracy is a unique crime of universal jurisdiction and there is no 'international piracy court' designed specifically to try the suspected pirates. They must be tried in domestic systems of apprehending states.

EU has forged for this purpose, transfer agreements and mutual understanding with the regional states of Kenya (2009), Mauritius (2011) and Seychelles (2009) for the purpose of trial and detention of apprehended pirates as well as associated property. EU being, however, conscious of international human rights obligations to be followed by prosecuting states funded and assisted the United Nations Office for Drugs and Crime (UNODC) Counter-Piracy Programme (CPP) launched in 2009. UNODC CPP⁸ aims to establish suitable conditions in prosecuting countries in the region to allow fair and efficient piracy trials of the Somali pirates. UNODC engagement is comprehensive by nature, addressing targeting the whole length of the criminal justice system (United Nations Office on Drugs and Crime 2018a). UNODC has engaged in key activities like improving prisons courts and police stations, providing interpretation services to piracy suspects, giving training for lawyers, judges, coast guards and prison officials, and supporting legislative implementation and reform (United Nations Office on Drugs and Crime 2018b). These have helped UNODC to develop a regional piracy prosecution model. Table 6 below shows the statistics of suspected pirates that were detained by EU NAVFOR Contributing Ships.

Similarly, EU under its Programme to Promote Regional Maritime Security (MASE) has funded UNODC in its aims of strengthening the national justice institutions in Kenya, Seychelles, Mauritius and Tanzania to ensure the human rights of persons suspected or convicted of piracy and other maritime crimes are protected through fair and efficient trials and humane detention facilities. For a project duration of about five years (October 2013 - June 2018), the European Commission has contributed €5.000.000 (United Nations Office on Drugs and Crime 2018c).

⁸ UNODC CPP was renamed as Global Maritime Crime Programme with the decline in levels of piracy. The new programme intends to use its experience gained in countering piracy, to other threats of other maritime crimes like drug trafficking in the Indian Ocean (United Nations Office on Drugs and Crime 2016).

Table 6: Details of Suspected Somali Pirates Detained by EU NAVFOR Ships as of 2014

Prosecuting State	EU NAVFOR Contributing State	Number of Prisoners	Status
Kenya	Spain	18	Convicted
Kenya	Germany	23	Convicted
Kenya	France	22	Convicted
Kenya	Sweden	7	Convicted
Kenya	Italy	9	Convicted
Mauritius	France	12	On Remand
Seychelles	France	5	On Remand
Seychelles	Netherlands	2	Acquitted
Seychelles	France	11	Convicted
Seychelles	Spain	11	Convicted
Seychelles	Netherlands	9	Convicted

(Source: United Nations Office on Drugs and Crime 2018b)

Some of the notable initiatives of UNODC using EU funds have been the introduction of customized electronic case management systems and video-link facilities to hear remote witnesses, in Kenya and Seychelles so as to improve trial efficiency, provision of items for personal hygiene, education and sports equipment to piracy prisoners in Kenya, Seychelles, and Mauritius, and facilitation of communication in prisons English language lessons for detainees by Somali-English interpreters (United Nations Office on Drugs and Crime 2016). In fact, UNODC claims that piracy trials supported by EU MASE (see Table 7) have been successful not being failed on account of lack of due process or witnesses.

Table 7: Piracy Trials Supported under EU-MASE as of 2016

Prosecution Centre	Cases heard	Individuals tried
Kenya	17	164
Mauritius	1	12
Seychelles	13	152

(Source: United Nations Office for Drugs and Crime 2016)

Another dimension of EU and UNODC cooperation has been in conducting workshops and seminars to help Indian Ocean countries in their judicial skills. A recent example of one such seminar called as “Justice Pathway” held in March 2018, to provide training to law enforcement agencies in Seychelles in areas of media handling, evidence collection and crime scene management (EU Naval Force Somalia 2018c).

An inter-organizational system of EU and UNODC has thus been generated in the area of the judicial capacity building for prosecuting pirates. This has helped to solve the problem of "catch and release" to some extent. Catch and release is associated with the maritime crime of piracy. In the case of Somali-piracy, often international naval forces have caught alleged pirates, but most of them didn't face prosecution and were often left to go free. Countries that caught pirates feared that if they brought pirates back to their own state, then it could lead to uncomfortable asylum requests (Voice Of America News 2010). For instance, Malloch-Brown, a member of the House of Lords of United Kingdom(UK) gave evidence in 2010 to the House of Lords, that, there was indeed extreme reluctance on part of UK to bring suspect pirates back to the country for trial “for fear that they would then try to claim refugee status” (House of Lords 2010:14). Another reason is that most states have domestic piracy laws out of sync with the requirements of UNCLOS, a problem revealed by a review exercise done by IMO in 2009⁹. In such a scenario, the efforts of UNODC in providing a legal wrap up to EU NAVFOR operations, through judicial capacity building efforts have been promising. The regional piracy prosecution model so forged has helped to solve the problem of “catch and release”.

The “Technology” of EU and NATO in Countering Piracy

If the regular meetings of SHADE provided opportunities for NATO and EU to come closer in offline mode, the use of internet-based sharing platform “Mercury” brought them closer in the online mode. The Mercury system that functions like the Facebook of counter-piracy has allowed the exchange of information like the position of assets and the incident reports quickly (Bueger 2016). Although not all classified intelligence

⁹ For details of the results of IMO Review of domestic piracy legislation, see chapter 3

is shared, still the system as developed by EU has allowed for a “fairly low level but widespread dissemination of intelligence” (House of Lords 2010: 76).

Information Communication Technology has also helped in IOs to cooperate with the shipping industry by developing “Maritime Domain Awareness” which basically implies knowing the sea. A notable example of this is the Ships transiting through IRTC can report to the Maritime Security Centre – Horn of Africa (MSCHOA) a joint initiative of EU NAVFOR and the shipping industry (Maritime Security Centre- Horn of Africa 2018). The MSCHOA monitors the vessels transiting through the Gulf of Aden, an area designated as a ‘High-Risk Area’ (HRA) due to activities of the Somali pirates. MSCHOA provides an interactive website that has a dual purpose: (i) the shipping companies and operators can register the movements of their vessels while transiting through the HRA so as to reduce the risk of a pirate attack and (ii) MSCHOA can disseminate the latest anti-piracy guidance (like the “Best Management Practices for Protection against Somalia Based Piracy”) to the Mariners. Another initiative of MSCHOA has been the initiation of ‘Group Transits’ wherein the vessels passing through the Gulf of Aden are synchronised to pass together. Such a harmonized fleet of ships helps the military forces of EU NAVFOR to “sanitise” the field for the smooth journey of merchant ships. Similar to MSCHOA, the NATO Shipping Centre provides guidance and proactively advises merchant shipping on future risks. In fact, even when NATO has exited in December 2016, its shipping centre still actively monitors the developments happening with respect to Somali-based piracy.

The hardware of EU and NATO in countering piracy refers to the naval and air assets as deployed by their respective member states. Currently, the deployed assets of EU NAVFOR include the surface vessels like Italian frigate *ITS Carlo Margottini* and the Spanish frigate *ESPS Meteoro (P41)* and also anti-submarine and maritime surveillance aircraft like the *German P-3C Orion* and the *Spanish P-3M Orion* (EU Naval Force Somalia 2018b). For, NATO when the operation was in force NATO, member states also called as ‘Allies’ have provided the hardware in the form of ships and maritime patrol aircraft to the NATO Standing Maritime Groups. On average, three to five NATO ships had been contributing to Ocean Shield at a given point of time (North Atlantic Treaty Organization 2014).

Another unique way in which EU member states have contributed to EU NAVFOR is through providing military personnel to be deployed on ships itself as a self-defence measure against piracy. These teams of military personnel once embarked on ships are called as Vessel Protection Detachments (VPDs). They are defined as a form of contracted maritime security different from “uniformed military personnel embarked on a vessel with the explicit approval of the Flag State.” (Oceans Beyond Piracy 2017: 1). They can also be regulated through a mutual understanding and agreement between the home state of the VPD and the Flag State of the Vessel (e.g. World Food Program Vessels in this case) (Oceans Beyond Piracy 2017).

Countries, like Lithuania, Croatia, Estonia and Finland have provided Vessel Protection Detachments (VPDs) to support EUNAVFOR Operation Atalanta’s aim of protecting World Food Program humanitarian aid deliveries to Somalia. Using VPDs has been seen to be more efficient as they reduce the burden of escorting slow-moving WFP vessels by warships (ibid.). VPDs thus can be considered part of floating armoury technology. However, this technology is similar to the privately contracted armed guards that ship owners can contract from private military companies. As identified before, there doesn’t exist an internationally codified framework in place to regulate them and hence the concerns of possible misuse of firearms by targeting innocent fishermen remain.

Both EU and NATO have coordinated not only with each other but have also collaborated with other countries engaged in counter-piracy operations in the same maritime theatre. The platform of SHADE has helped not only EU and NATO in coordination and deconflict but have also given opportunities to both these organizations to conduct counter-piracy exercises and joint drills together with navies of Combined Defence Forces, China, India, Russia, Japan and South Korea. This has helped EU and NATO in utilizing the stock of technology already existing in their environment. This level of military coordination amongst several states also shows the threat of maritime piracy has brought states together as the non- state actors, the pirates, impinge on the sovereign interests of all states alike.

Evaluation of Performance of Counter-Piracy Missions and Challenges Ahead

Both EU and NATO have sung praises of their counter-piracy naval missions. EU highlights its main achievement since the launch of the EU NAVFOR Operation in

2008 as has having a cent percent “success rate in providing protection to WFP vessels delivering food / aid to the Somali people and to AMISOM shipments critical to the success of the African Union operation in Somalia” (EU NAVFOR Somalia 2018a). Other achievements include protecting vessels in the High-Risk Area by deterring maritime piracy and transferring suspected pirates to regional governments of Seychelles, Mauritius, and Kenya (ibid.).

However, when it comes to monitoring fishing activities off the coast of Somalia, which is part of EU NAVFOR mission, the organization is silent. In fact, the EU has drawn criticism in relation to this aspect of its mission. The Council of Somali Organizations based in London admitted to the House of Lords that, the Somali population was unhappy with EU NAVFOR as the operation neglected its commitment to monitoring fishing off the Somalian (House of Lords 2012). The Somali fishermen have been reported to suffer on account of the problem of Illegal, Unreported and Unregulated fishing in Somali waters. With the coming of navies to combat pirates, not only have illegal fishing vessels received protection, but innocent fishermen have been attacked being mistaken to be pirates (African Development Solutions 2015). In fact, the real aim behind giving an additional task of monitoring fishing activities off the Somali coast to Operation Atalanta was actually concerned with protecting European fishing vessels, something that was absent in the earlier mandate (Dirk et al 2014). Somali fishermen have been angry with the Operation Atalanta for allowing countries like Spain to participate in combatting piracy when it has been already accused of illegal fishing in Somali waters (Hansen 2009). It has also been revealed through unofficial interviews with Atalanta officials that “Spain has been protecting illegal fishers by dispatching vessels from the Atalanta operation” (Hansen 2009: 13). So, even though EU claims to monitor fishing, particularly illegal fishing, it is engulfed with questions regarding whose interests, Somalis or EU member states, does it really serve.

Furthermore, it is also difficult to assess the current levels of illegal fishing happening in Somalian waters due to lack of data and information. For one thing, it was only as recent as in 2014 that Somalia declared its Exclusive Economic Zone under UNCLOS. So, often it is difficult to separate illegal fishing from illegal fishing. In addition to this, even the foreign trawlers legally fishing, have been criticized for adversely affecting the livelihoods of artisanal fishermen, by scaring them away with guns, destroying their fishing nets and depleting the Somalian fish stock. A study conducted by Oceans

Beyond Piracy recently to gauge the local Somalian perspectives on piracy and illegal fishing revealed that it was in response to the problem of illegal fishing that piracy began and it still exists as a major driver for this maritime crime along with other drivers of poverty and unemployment (Oceans Beyond Piracy 2016b). Despite recognizing that efforts of foreign navies have reduced piracy levels, a resentment among the local population hasn't really gone. As some of the interviewees remarked:

“Yusuf, Fisher: I see the international navies have a hidden agenda, which is to support those looting our resources.

Qamar, Midwife: The international navies in our sea are there for their interest. They say we are guarding your sea, but the reality is they are engaged in the exploitation of our resources in the sea. They are protecting those trawlers in our sea. If we decided to act against those, they would defend them.

Nor, Fisher: They apprehend pirates and hand them over to foreign countries for trial. We are very satisfied that they arrested pirates, but why they don't apprehend those doing illegal fishing in our sea?

Yusuf, Fisher: They capture pirates but they don't capture those taking or destroying our fishing nets. When the fishing season comes, you can see tens of the trawlers are in our sea taking our marine resources and no one will help us against them.” (Oceans Beyond Piracy 2016b)

Against this background of the daunting challenge of illegal fishing, it thus, cannot be concluded that EU NAVFOR has been a "successful" mission with respect to its own mandate objectives. Its performance has to be assessed in the light of this.

Furthermore, EU has suo moto set itself for the highly ambitious tasks through its comprehensive approach to tackling onshore drivers of Somali-based piracy. So long as political instability persists in Somalia, it will be difficult to exit for EU.

In contrast to EU, NATO kept its mission objectives limited and it is more justified to call its mission as “successful”. In fact, seeing the piracy levels reduced and no reported incidents of hijacking after the year 2012, NATO's Operation Shield exited in 2016. NATO's mission was responsible for conducting 116 interdictions of piracy that involved 672 suspected pirates (NATO Allied Maritime Command 2016). NATO also took the decision to exit as it sought to divert its assets to other core tasks of collective defence, crisis management and deterrence like launching its Operation Sea Guardian to address illegal migrant trafficking in the Mediterranean Sea (ibid.). That NATO played an important role in countering piracy has also been recognized by the UN. In

the latest report of UN Secretary General in 2017, it was identified that successful pirate attacks like that on the Aris 13, the Casayr II-No. 30, the Al Kausar and the Salama vessels happened on account of the decreased naval presence in the region caused by the departure of NATO's Operation Shield off the coast of Somalia (UN Security Council 2017). Although NATO has claimed to be successful in combatting the pirates and in disrupting the business networks of piracy, the comeback of pirate hijacking show only the symptoms of piracy have been addressed in a short-sighted manner.

It is in eradicating the root causes of piracy that can make the achievements of EU and NATO missions really sustainable. Although the UN Secretary-General has identified a list of root causes that have still not been addressed and have the potential to cause a resurgence in piracy activities. These include perceptions of coastal communities with respect to illegal fishing by foreign vessels, the lack of alternative employment opportunities for the coastal communities, the existence of strong pirate criminal networks and the ongoing humanitarian crisis within Somalia (UN Security Council 2017). Bringing about political stability onshore in Somalia is thus important to bring offshore stability in the seas. This is really the most important challenge in tackling maritime piracy. As of now, the situation looks grim as Somalia has still been facing the pressures of deadly terrorist attacks by the Al-Qaeda affiliated group, Al- Shabaab. The group that has been wanting to overthrow the Somali government regularly targets the African Union forces stationed in the country (Al Jazeera 2018).

There is also the presence of other surrounding factors that can impinge upon the achievements of EU and NATO so far. A major cause for the rise in pirate attacks in 2017 is because of the complacency that has come about within the shipping community. The use of privately contracted armed guards has also been declining. For instance, in 2016, the Security Association of the Maritime Industry (SAMI), a maritime security association, voluntarily had to go into liquidation due to financial constraints caused with the fall in its membership (Fairplay 2016). Furthermore, the Best Management Practices are not being adhered to by commercial ships, the Internationally Recommended Corridor isn't being strictly followed and there is lack of information sharing within the international community (UN Security Council 2017).

So long as these conditions remain, it cannot be said that maritime piracy has been tackled once and for all and it won't come back. Also, the achievements of naval

operations EU and NATO must be seen in the light of the fact that there hasn't really been a proportionate use of force. In fact, the scenario is such that there have been more sophisticated warships in the region than the total number of pirates (Yadav 2017). So, this victory of the international navies over the pirates must be seen with a pinch of salt. Moreover, sustaining the deterrence efforts will also be difficult in the long term. This is because there is still little funding when it comes to building regional maritime capacities to counter piracy. According to a report of Oceans Beyond Piracy, total deterrence efforts comprise of 95 percent efforts at sea by international navies and only 5 percent of regional maritime security capacity (Oceans Beyond Piracy 2016c). So, it will be difficult for international navies to exit even if piracy levels have dropped. In this context, the challenge for the EU NAVFOR that is still in operation in the maritime field would be to devise an exit plan that ensures that piracy levels remain low in future.

Conclusion

This chapter has highlighted the operative roles played by EU and NATO in countering Somali-based operations. In continuation of chapter 3, this chapter has shown how EU and NATO have based their naval operations on the resolutions passed by the UN Security Council that called for naval deterrence. As piracy levels have reduced considerably since 2012, evaluating the role of EU and NATO in this regard is relevant.

In this regard, the Ness and Brechin sociological framework of studying IOs was employed. Three aspects of IOs: their environment, goals and structure and the technology were looked at with respect to EU and NATO. Both EU and NATO launched their anti-piracy mission when the sea environment was threatened with the rise in piracy levels off the coast of Somali especially in the Gulf of Aden in 2008.

However, the goals and approaches of EU and NATO have been slightly different in countering piracy. While NATO has focused mostly on the naval interdiction of pirates, EU, in addition to this has also launched a comprehensive approach to tackle root causes of piracy on land. The long-term commitment of EU includes the EU Capacity Building Mission (EUCAP) Nestor Project (now EU Capacity Building Mission in Somalia) to strengthen the regional maritime capacities of Djibouti, Kenya, Tanzania, and Seychelles and on developing the rule of law in Somalia through a Coastal Police Force. In addition to this, there has been the EU Training Mission -Somalia of EU that engages with the Security Sector institutions by training the Somali National Armed Forces. As

these missions seek to complement the naval operations of EUNAVFOR, EU has attempted to demonstrate that it is not just a military organization like NATO.

Although EU and NATO have not launched their naval operations jointly they have devised informal ways to bring about tactical coordination on the field. An inter-organizational system of coordination came into being through the Shared Awareness and Deconfliction (SHADE) meetings and the proximity of the operational headquarters of EU and NATO in Northwood, UK.

In addition to this, EU, as part of its comprehensive approach to counter piracy has collaborated with UNODC to make sure that suspect pirates receive a trial. For this purpose, UNODC contributed to judicial capacity building efforts in countries in the region like Seychelles, Mauritius and Kenya, with which EU made arrangements for the transfer of apprehended pirates.

The Technology element of IOs in countering piracy includes several things. There is the development of “Maritime Domain Awareness” wherein the ships transiting through IRTC can report to the Maritime Security Centre – Horn of Africa (MSCHOA) a joint initiative of EU NAVFOR and the shipping industry. Also, the internet-based Mercury platform has been used for communication between EU and NATO to enhance their coordination of forces.

Furthermore, the routine hardware comprises of naval frigates, aircraft and submarines, deployed by EU and NATO. There has also been the practice of sending Vessel Protection Detachments, that is, the placing of uniformed military personnel on a vessel as a self-defense measure against piracy, by some EU countries. Finally, EU and NATO have also sought to make use of the technology available in their environment by coordinating and conducting joint naval exercises with other independent countries so as to better counter piracy.

Despite a significant drop in the piracy levels off the coast of Somalia since 2012, challenges remain in the fight against piracy. NATO claimed its mission to be successful and exited from the scene in 2016. However, there are fears of a resurgence of piracy with recent episodes of hijacking of ships that have been attributed to the persistence of strong pirate criminal networks, anger among coastal communities with respect to illegal fishing by foreign vessels, the lack of alternative employment

opportunities amidst political instability, complacency within the shipping community in following Best Management Practices, the decline in the use of privately contracted armed guards and finally, the decreased naval presence. So long as these conditions remain, it will be difficult to say that the problem of Somali-based piracy is resolved completely.

CHAPTER 5

CONCLUSION

This study sought to analyse the case of Somali-based piracy and the role of International Organizations (IOs) in tackling the same. The central purpose of the study was to see what role did IOs play in countering piracy as the levels of piracy off the coast of Somalia. Once rampant in 2008, Somali-based piracy has reduced considerably since 2012. So, the study aimed at analysing the performance of IOs in this field of counter-piracy taking Somalia as a case-study.

The context in which International Organizations sought to address the issue of maritime piracy was not new. This is because maritime piracy has existed as a maritime crime since ancient times of Greek city-states and the Roman Republic. However, historically piracy was confused with privateering, that was a form of state-sanctioned piracy. As privateering was abolished in the 19th century, progress was made towards the international criminalisation of piracy. In making maritime piracy an exclusively a crime committed by non-state actors, IOs contributed to the legal codification of outlawing piracy. One of the first efforts to suppress the crime of maritime piracy at the international level started at the League of Nations in the early twentieth century. The Matsuda Draft that was initiated in defining the parameters of this maritime crime that later influenced the piracy provisions that got incorporated in the High Seas Convention 1958 and the United Nations Convention of the Law of the Sea (UNCLOS) 1982. Although maritime piracy was seen as a crime of the past, legislative roles played the League of Nations and the United Nations (UN) in the codification of the international law on maritime piracy has helped in countering modern-day piracy.

In the twentieth century, the International Maritime Organisation(IMO), the specialised maritime agency of the UN. In the early 1980s, IMO made the epistemic intervention of publishing piracy reports, thus quantifying the crime into clear statistics. IMO also helped in defining armed robbery as different from maritime piracy and other conventions like the Safety of Life at the Sea (SOLAS) 1974 and the Convention for the Suppression of Unlawful Activities Against the Safety of Maritime Navigation (SUA Convention). Although the IMO had facilitated the formation of ReCAAP in

2004, an initiative to combat piracy in Southeast Asia region, however, its involvement was more in the case of piracy in the Somalian region. In fact, the case of Somali piracy has attracted a response from a large number of international organizations.

There were a number of factors that contributed to making Somali-based piracy an international concern. The Somali pirates started attacking humanitarian aid-carrying vessels, particularly that of World Food Programme since 2005. Then there were also attacks on U.S flagged ships that attracted worldwide media attention. The U.S led Coalition Task Force-150 then took an aggressive stance against the crime of piracy. A respite for a short duration was received with the coming of the government of Islamic Courts Union in 2006 that curtailed piracy by declaring it as “haram” i.e. forbidden under Islam. But as this government was ousted from power by an intervention by Ethiopia, piracy levels shot up in 2007 and there came about an unprecedented rise in piratical attacks on ships in the strategic Gulf of Aden region. Piracy became a threat to international traffic itself having the potential to disrupt the global chains of supply.

To counter this situation, various approaches and methods were adopted by different International Organizations. IMO and UNSC laid down the necessary normative framework for this. IMO took several initiatives. Firstly, it took a humanitarian approach recognising the pirate attacks on humanitarian aid-carrying vessels as a grave threat to the well-being of the Somali people that were already facing a drought situation and food crises. By collaborating with WFP, it came out with a joint communique and approached the UNSC. This high-level approach of IMO to approach the UNSC helped in elevating the crime of piracy from an ordinary threat to maritime traffic to one that should be attended to as a breach of international peace and security.

The IMO also conducted a review to monitor the national legislation on piracy of countries. It established the disturbing but timely observation that only a handful countries had incorporated the standards set up by UNCLOS with respect to piracy in their municipal laws. Seeing this state of affairs, IMO facilitated the formation of the Djibouti Code of Conduct, as a regional instrument to enable cooperation amongst states so as to counter and repress acts of maritime piracy in the Gulf of Aden region.

The IMO has also acted as an orchestrator in endorsing the technical norms like the *Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area* as developed by the private players in the maritime industry. By following

such an inclusive approach IMO has enhanced its own regulatory performance. Finally, the IMO has followed a flexible approach regarding the use of privately contracted armed security personnel to counter the pirates. This, however, has been controversial due to the possible misuse of firearms that can result in the commission of human rights violations.

Along with the IMO, the UN Security Council has also taken various initiatives to establish the normative framework for countering Somali-based piracy. Firstly, it laid stress on UNCLOS 1982 as the primary legal instrument for combatting piracy. Secondly, UNSC created an exception for Somali-based Piracy so that with the consent of the government of Somalia, pirates could be apprehended in the territorial waters of Somalia as well making the combat efforts more effective. Moreover, by not making this as a general norm that could be extended to cases of piracy elsewhere, UNSC ensured the existing norms of territorial sovereignty and integrity of states is also protected. Thirdly, by acting under Chapter VII of the UN Charter and mandating naval operations against the pirates, what can be inferred is that UNSC has delegated the task of naval peacekeeping to countries and regional organizations like EU and NATO. Finally, UNSC has orchestrated a coordinated response amongst the several state and non-state actors in countering piracy by helping in the formation of the Contact Group on Piracy off the Coast of Somalia (CGPCS).

Based on this normative role played by IMO and UNSC, the EU and NATO as regional organizations have launched their individual naval operations, Operation Atalanta and Operation Ocean Shield, respectively. Both the organizations, EU and NATO, have launched their anti-piracy missions when the sea environment was threatened with the rise in piracy levels off the coast of Somalia especially in the Gulf of Aden in 2008, drawing the legitimacy from various UNSC resolutions. However, what is apparent is that the naval approaches of EU and NATO have been slightly different. While NATO has focused mostly on the naval interdiction of pirates, EU, in addition to this has also launched a comprehensive approach to tackle root causes of piracy on land. The long-term commitment of EU includes the EU Capacity Building Mission (EUCAP) Nestor Project (now EU Capacity Building Mission in Somalia) to strengthen the regional maritime capacities of Djibouti, Kenya, Tanzania, and Seychelles and on developing the rule of law in Somalia through a Coastal Police Force. In addition to this, there has been the EU Training Mission -Somalia of EU that engages with the Security Sector

institutions by training the Somali National Armed Forces. As these missions seek to complement the naval operations of EUNAVFOR, EU has attempted to demonstrate that it is not just a military organization like NATO.

In addition to this, EU, as part of its comprehensive approach to counter piracy has collaborated with UNODC to make sure that suspect pirates receive a trial. For this purpose, UNODC contributed to judicial capacity building efforts in countries in the region like Seychelles, Mauritius and Kenya, with which EU made arrangements for the transfer of apprehended pirates. This system of inter-organizational coordination between EU and UNODC has helped to curb the problem of “catch and release of pirates” wherein the suspect pirates are not simply released but are made to undergo a fair trial.

Although EU and NATO have launched their maritime missions separately and not jointly, even when operating in the same maritime region, off the coast of Somalia, they have adopted informal methods to bring about tactical coordination. An inter-organizational system of coordination between the organizations came into being through the Shared Awareness and Deconfliction (SHADE) meetings and the proximity of the operational headquarters of EU and NATO in Northwood, UK. In addition to this, the internet-based Mercury platform was used for communication between EU and NATO to enhance their coordination of forces. An inter-organisational system was thus, created between EU and NATO as well.

In terms of analyzing the performance of IOs, the operative roles played by EU and NATO in terms of their naval approach and that by UNODC in terms of judicial capacity building efforts through its Counter-Piracy Programme have helped in reducing Somali-based piracy. The IMO reported the worldwide piracy levels reached a five year low in 2012 since 2007, when there was a spike in piracy levels, mainly due to the reduction in piracy off the coast of Somalia. The IMB highlighted three factors for this result that are deterrence activities of navies, adherence to Best Management Practices by the shipping community and the use of privately contracted armed guards as a self-defence measure. These factors could not have been possible without the normative efforts of IMO and UNSC as well as the operative roles in terms of naval deterrence efforts of EU, NATO and judicial prosecution efforts of pirates by the UNODC.

Seeing these positive results, organizations have claimed success in countering piracy. Calling its mission Ocean Operation Shield, a success, NATO exited in 2016. The EU highlights the main achievement of its EU NAVFOR Operation in 2008 as having a cent per cent in protecting the humanitarian aid-carrying WFP vessels against the Somali pirates. The UNODC also claims that piracy trials supported by it in collaboration with EU have been successful and have not ever failed on account of lack of due process or witnesses.

However, several challenges still remain in countering piracy off the coast of Somalia. It has been seen by the UNSC, that, successful pirate attacks in 2017 like that on the Aris 13, the Casayr II-No. 30, the Al Kausar and the Salama vessels have occurred due to the decreased naval presence after the exit of NATO. Moreover, even when the piracy levels have considerably reduced, the recent pirate attacks show that the root causes of piracy have not been fully eradicated. These include the anger of coastal communities with respect to illegal fishing by foreign vessels, the lack of alternative employment opportunities for the coastal communities, the continued existence of strong pirate criminal networks and the overall climate of political instability due to the presence of the terrorist group Al-Shabaab.

Apart from these internal factors, external factors like complacency in the shipping community to follow the Best Management Practices and in using privately contracted armed guards on ships can also cause a reversal in the positive results achieved so far. So long as these factors remain it cannot be said that a possible resurgence in piracy activities at a massive scale in near future is ruled out. Moreover, the costly naval deterrence efforts of international navies will be difficult to sustain in the long term as there is still little progress on building actual regional maritime capacities to counter piracy. So, it will be difficult for international navies to exit even if piracy levels have dropped.

This study began with the intention to test two Hypotheses that were (i) within the maritime context of High Seas, a global common, sovereign states are willing to cooperate through IOs in countering Piracy and (ii) the overall Performance of International Organizations in countering Piracy in Somalia has been enhanced by the division of normative and operative tasks among different International Organizations.

With respect to the first hypothesis, it is submitted that it is not really the presence of High Seas, a global common that has urged sovereign states to cooperate through IOs in countering piracy. Rather states have cooperated as they have identified a common interest in protecting the busy maritime highways in the Gulf of Aden region for the smooth flow of international maritime trade and commerce. If it was the case that the presence of a global common urged states to cooperate through IOs then states would have cooperated in a smooth manner for protecting the environment from climate change. But what is seen is that the sovereign interests of states have clashed in deciding the national targets for reducing the Green House Gas emissions. The case of piracy has been different in the sense that the sovereign interests of countries haven't really clashed. In fact, all states have had an equal interest in promoting the "good order" at sea free by managing the criminal activities of the non-state actors, the pirates. It is for this reason that IOs have been given more space by the states in countering this maritime crime.

Also, the cooperation has not been limited to only the High Seas where the crime of piracy takes place as per the definition in UNCLOS 1982. On the contrary, the cooperation of states has extended to even the territorial waters of a state. This was because an exception was made for the Somalian case by the UNSC wherein pirates could even be apprehended within its territorial waters. This was possible because the weak Somalian government mired with political instability, itself gave the consent for the same on account of its own coastguard limitations. But even in making this exception states ensured that this is not seen as a step towards the formation of a customary international law for countering other cases of maritime piracy (like in Southeast Asia), that could impinge on the sovereignty and territorial integrity of states. Thus, the first hypothesis stands falsified.

Coming to the second hypothesis, it is submitted that the overall performance of IOs has been enhanced due to the normative and operative roles played by IMO, UNSC, EU, NATO and UNODC. These IOs have not worked in isolation but in connection with each other and it is the combined outcome of different organizations working within the issue area of maritime piracy, that has helped in countering and reducing Somali-based piracy. The normative framework as laid down by IMO and UNSC has been utilised by EU and NATO to launch their naval operations so as to counter the

pirates. Furthermore, the UNODC has complemented the efforts of EU in ensuring that suspect pirates face a timely trial. Thus, the second hypothesis is true.

The focus of this study was not about concentrating on one organization. Rather, it was on identifying the internal differentiation of the entire inter-organizational system in terms of the normative and operative tasks in the field of counter-piracy. To analyse the performance of IOs in this issue area of maritime piracy, insights from the literature in the discipline of International Organisation studies were utilized. Borrowing from the concept of “transnational new governance” by Abbott and Snidal, it was shown that how IMO and UNSC have played the role of “orchestrators” in bringing different state and non-state actors together so that a common front could be forged in countering this maritime crime. In addition to this, the organizational-sociological prism of Ness and Brechin was applied to understand as to how an inter-organizational system between the EU and NATO and the EU and UNODC has been generated in the field of counter-piracy operations. For this, an in-depth analysis was done of the goals and objectives, the environment and the technology of IOs. It is here, the study has hoped to add to the discipline of International Organisation Studies that has mostly neglected issues of maritime security.

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