National Maritime Foundation

Routledge
Taylor & Francis Group

Check for updates

The normative role of the International Maritime Organisation in countering Somali-based piracy

Tejal Khanna

Centre for International Politics, Organization and Disarmament (CIPOD), School of International Studies, Jawaharlal Nehru University, New Delhi, India

ABSTRACT
At its peak in 2007–08, piracy off the coast of Somalia attracted the attention of a specialised agency of the United Nations, the International Maritime Organisation (IMO), which responded by laying down the normative framework for counter-piracy operations launched by States and other collective parties such as the EU and the NATO. In creating a rubric of norms for reducing piracy off the coast of Somalia, the IMO has followed a six-pronged strategy employing an approach that is humanitarian, high level, reviewable, regional, flexible, and inclusive. The resulting norms have played a crucial role in reducing Somali-based piracy. While the levels of this piracy are currently negligible, a resurgence of this threat to maritime traffic and commerce cannot be ruled out completely. Thus, this normative framework continues to hold relevance for the future and the IMO remains an important player in maritime governance.

Introduction

The discipline of international relations has focussed on the organisation of international systems as opposed to studying the organisations within such a system.[1] This has led to International Organisations (IOs) being seen largely as mechanical tools of their creators, namely, States.[2] However, IOs are more than just proverbial "yes men" for the world's nation-states, and impact various areas of global governance. To measure this impact, it is necessary to analyse their performance.

The beginning of the year 2007 saw many International Organisations and States responding to the challenge of maritime crime posed by the rampant levels of piracy that were occurring off the coast of Somalia. By 2012, global piracy levels had reduced considerably, with attacks on ships falling to 297, (as opposed to the 439 cases that were recorded in 2011), primarily on account of a sharp reduction in Somali piracy.[3] While the overall levels of piracy have remained low ever since, the hijacking of an oil tanker in 2017 has instilled the fear of a possible resurgence of Somali pirates.

An important function performed by International Organisations is that of the development of norms, which basically implies a shared understanding of accepted behaviour

for various parties (primarily States) in the international community. This paper analyses the role played by the International Maritime Organisation (IMO) in laying down the normative framework for counter-piracy operations.

In order to comprehend the nature of the role played by the IMO in countering piracy, it is important to provide a broad understanding of the term "normative role". A working definition of this normative role that has been adopted here comprises two main activities: (i) norm-setting, via the development of standards, guidelines (known as soft law), conference-outcome documents, or, rules and other conventions; and (ii) norm-implementation, in the form of creating provisions for monitoring- or review-mechanisms to ensure compliance with these norms. These are similar to the "rule-making" and the "rule-application" functions of International Organisations, as proposed by Clive Archer.[4]

This paper focusses on examining the normative role played by the IMO in countering piracy off the coast of Somalia, in accordance with the above working definition.

Counter-piracy approach of the International Maritime Organisation (IMO)

The IMO has adopted a variety of approaches to counter piracy originating from Somalia. These are set forth in the succeeding paragraphs.

Humanitarian approach

First, the IMO applied a humanitarian angle to the problem of piracy. This was done in order to galvanise International Organisations to address the growing problem of piracy speedily, since, in mid-2007, many chartered-vessels under the World Food Program (WFP), which were carrying humanitarian relief for war-stricken Somalia, came under attack by Somali pirates. The IMO, led by its Secretary, General Efthimios E Mitropoulos, along with the WFP, responded to this by issuing a joint communiqué that raised the grave concern over the humanitarian "lifeline" of the Somali population being put in peril due to the acts of pirates and armed robbers.[5]

Thus, within the fight against piracy, the norm that IMO sought to promote was to protect the human rights of Somali citizens so that they could have access to relief. As the erstwhile WFP Executive Director, Josette Sheeran, revealed, "*close to 80% of [the] 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*".[6] A concerted and coordinated action to treat the crime of piracy as an issue that created an emergency was accordingly undertaken, since the life-saving assistance – which was transported mostly by sea, because frequent roadblocks by militias and other armed groups made delivery by road difficult – that thousands of Internally Displaced Persons (IDP) in Somalia would need, in the face of continuing civil war and other forms of armed conflict, was at stake.[7]

This joint communiqué, a product of liaison between the IMO and the WFP, was also cited by the UN Security Council (UNSC), just a month later, in UNSC Resolution 1772, which was adopted in July 2007, with respect to the "*upsurge in piracy off the coast of Somalia*".[8] In the same resolution, acting under Chapter VII of the UN Charter, the UNSC authorised member States to take appropriate military action to apprehend pirates in international waters in order to "*protect merchant shipping, in particular the transportation of humanitarian aid*".[9] Piracy found mention in this resolution

tangentially, due to the damage it did to the UN's larger humanitarian role in the international system, through attacks on WFP-chartered ships.

It is interesting to note that the humanitarian concern of the Somalis who were being denied access to life saving assistance was emphasised far more than were the humanitarian concerns of seafarers, who, in the event of a vessel being taken hostage, were subjected to considerable degrees of mental torture and violence. There is a reason for using the language of humanitarianism to inform the anti-piracy discourse. Stressing this angle made it easier to garner legitimacy and mobilise several actors to combat piracy as a common goal, especially given the fact that this piracy had originated from a country that had a history of earlier, failed UN Peacekeeping Missions, especially in the 1990s.[10] Piracy, when viewed as more than just a mere maritime crime against a few crew members, and instead, as an act capable of jeopardising the lives of thousands of people, becomes a much more alarming threat. In this respect, the IMO, by coordinating with the WFP, became the first actor to incorporate this humanitarian angle into the problem of piracy, thereby orchestrating the international response to piracy.

High-level approach: Approaching the UNSC

The IMO also employed a "high-level" approach in "orchestrating" the international response to counter Somali-based piracy. Rather than limiting the issue of piracy to its own jurisdiction, the IMO, through its Secretary General, approached the UNSC (the principal organ of United Nations that is charged with the responsibility of maintaining international peace and security), and brought the urgency of the matter to the latter's attention.

The adoption of this high-level approach provided the IMO with a few benefits as well. For one thing, it served as a way to promote the IMO within the UN system, while simultaneously ensuring that the IMO's work did not overlap with that of other organisations, thus avoiding any duplication of effort.[11] This particular use of a high-level approach is, therefore, only a routine affair in the IMO's conduct of its external relations within the United Nations and its specialised agencies.

Aside from this, there is also the fact that it is only the UNSC that can (under Article 42, of chapter VII of the UN Charter) authorise military action (by air-, sea- or land forces) that it deems necessary in order to maintain and/or restore international peace and security.[12] By approaching the UNSC, the IMO was able to escalate the crime of piracy from an ordinary threat to maritime traffic, to one that needed to be attended-to as a breach of international peace and security. As a matter of fact, the UNSC affirmed that the crime of piracy and armed robbery originating from Somalia against international vessels "*exacerbate[d] the situation in Somalia [,] which continues to constitute a threat to international peace and security in the region*".[13]

The UNSC undertook the primary initiative of creating an exception for Somali-based piracy. On the one hand, it performed the balancing act of upholding the norms of sovereignty and territorial integrity of the concerned States, while on the other, it set about creating a robust framework to combat piracy originating in Somalia. When the Transitional Federal Government (TFG) of Somalia gave its consent to the receipt of international assistance and agreed to cooperate with other regional organisations and States in their attempt to combat piracy, it intrinsically enabled the capture of pirates even within the territorial waters of Somalia; something which was prohibited under the

UNCLOS. According to UNCLOS, maritime piracy as a crime, is limited to international waters alone, and does not extend to the territorial waters of a State.[14] However, while the UNSC adhered to the request of Somalian government, in view of its weakness in addressing the maritime crime of piracy, care was taken to ensure that this development would not be benchmarked as an international custom that would then apply to other cases of piracy elsewhere. At the 5902nd meeting of the UNSC, Indonesia, a country affected by piracy in the proximity of the Strait of Malacca, agreed to vote in favour of UNSC Resolution 1816 (2008), but only if the following conditions were met[15]:

(a) The Constitution for the Oceans of UNCLOS 1982, would not be replaced.
(b) No additional customary international law would be created for repressing piracy that could be detrimental to the sovereignty of States.
(c) It was only applicable in the case of Somalia.

Indonesian concerns were echoed by other countries like Vietnam, China, and Libya. Consequently, the language finally adopted in the UNSC resolution was in line with the concerns expressed. It was adopted by members of the UNSC, that although States in cooperation with the TFG were authorised to use all necessary means (including military means, as the resolution is under chapter VII of the UN Charter), this authorisation would only be restricted to "*the situation in Somalia*"[16] and not in cases of piracy elsewhere.

What followed from this exception was a system of delegated naval peacekeeping. By acting under Chapter VII of the UN Charter, the UNSC has allowed counter-piracy operations of States and regional organisations in the case of Somalia. Consequently, the North Atlantic Treaty Organisation (NATO) and the European Union (EU) launched naval operations to combat the pirates.[17] Although the UNSC did not mandate this directly, it has welcomed and commended the efforts of the EU's *Operation Atalanta* and NATO's operations *Allied Protector and Ocean Shield* to suppress piracy and protect ships – especially those belonging to the WFP and carrying humanitarian aid.[18] 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 organisations, they have received international legitimacy through the UNSC.[19]

This decision of the UNSC, is a demonstration of an "autonomous form of UN naval peacekeeping" for the first time, and is different from previous peacekeeping operations, as it has no connection with land.[20] While the UN has mandated naval operations as a part of its peacekeeping operations on land, it has not mandated purely naval operations (*ibid*). For example, in recent times, a Maritime Task Force was deployed as part of the United Nations Interim Force in Lebanon to support the Lebanese Navy, in 2006. However, this Task Force formed a part of an already existing peacekeeping operation on land. Similarly the UN Advance Mission in Cambodia (UNAMIC), in 1992, was deployed to engage in mine-detection, while the UN mission in Haiti, at the time of the earthquake in 2010, was involved in coastal patrol and surveillance, both of which are not preeminent maritime peacekeeping operations.[21] The UN has engaged less in naval operations vis-à-vis land operations wherein the command of the operation has been under the Secretary General. While it is true that more conflicts originate on land than at sea, the major reason for the UN not having a proper naval management system in

place, is that it is significantly hampered by the fact that only a few States have the required naval capability for sophisticated marine operations. This results in the UN having limited naval expertise and forces it to outsource naval activities to other parties such as NATO.[22] In addition to this, naval operations tend to be more expensive than land ones. As one UN official remarked, while the UN faces scarcity of assets in terms of helicopters, naval ships are way too costly for member countries to provide to the UN.[23]

The effect of these naval operations could be seen in 2012, when worldwide piracy levels touched a five-year low (calculated from 2007 onwards), owing largely to the drastic reduction of Somalia-based piracy.[24] The IMB highlighted three reasons for this decrease in hijacking of ships: (i) deterrent activities of navies, involving pre-emptive strikes and the targeting of mother-ships used by pirates, (ii) adherence to best-management practices by ships' crew, and (iii) use of privately contracted, armed personnel.[25] This shows how the norms laid down by both the IMO and the UNSC have helped in lowering piracy levels, the results of which can be seen in 2012.

Review approach

This approach of the IMO relates to its monitoring role. The IMO recognised that a lack of uniform national legislations on piracy would make it difficult to prosecute pirates, especially since piracy is a unique maritime crime, in that it is a crime of universal juris- diction. Thus, the legal committee of the IMO conducted a review of national legislations so as to determine where the crime of piracy stands.

The committee reviewed a sample of legislations across 30 countries and came up with disturbing preliminary observations:[26]

(a) Only a few countries fully incorporate the definition of piracy, contained in Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS), as well as a jurisdictional framework based upon the concept of universal jurisdiction regu- lated by UNCLOS.
(b) In most cases, piracy is not addressed as an independent, separate offence with its own jurisdictional framework, but is subsumed within more general categories of crime, such as robbery, kidnapping, abduction, violence against persons, etc. In such cases, prosecution and punishment can only take place in accordance with a jurisdic- tional scope that is, inevitably, more restricted than the scope of universal jurisdiction regulated in UNCLOS.
(c) In a few cases, even if the crime of piracy was codified, it lacked details, thus making the tasks of prosecution and punishment of pirates rather difficult.

By monitoring the national anti-piracy laws of these States, the IMO took a vigilant stance, identifying gaps that need to be plugged in order to strengthen counter-piracy efforts. This review helped provide a much-needed reality-check regarding the treatment of piracy as a crime of universal jurisdiction (as defined within the UNCLOS framework). It illustrated the true levels of adoption of this norm and its consequent application by States in their respective national legislations. The resultant picture was, indeed, grim, and displayed a complete lack of harmony on the subject of piracy between international law and the municipal laws of States.

Another point of concern was that, not all member States of the IMO participated in the review; only 30 states were reviewed in 2009, and the number only increased slightly – to 41 – in 2010. This, the IMO itself 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", which served 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 known as the Djibouti Code of Conduct (hereinafter referred to as "the Code"), was adopted, on 29 January 2009, by the East African countries of Djibouti, Ethiopia, Kenya, Madagascar, Maldives, the Seychelles, Somalia, the United Republic of Tanzania and Yemen.[27] Since then, more countries have adopted the Code and, as of 2018, twenty countries (out of the 21 eligible to sign), including some from West Asia in the Persian Gulf (Saudi Arabia, Oman, United Arab Emirates, Kuwait) have signed it. Other countries that have since been included are Comoros, Egypt, Eritrea, Jordan, Mauritius, Mozambique, South Africa, and Sudan.[28]

The Code, which has become a regional tool to counter and repress acts of piracy in the Gulf of Aden, was signed under the IMO's auspices when it convened a sub-regional meeting on maritime security in Djibouti in 2009. However, the Code did not arise from one meeting alone, but was also the result of the combined discussions that took place during the IMO-organised sub-regional seminar on maritime security, which was held in Sana'a, Yemen, in 2005, followed by a sub-regional workshop, in Oman, in 2006.

The Code is thus a product of successive efforts of the IMO to bring regional States together, so that they could prevent and repress piracy and armed robbery by cooperating in five areas,[29] 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 their cargo/property.
(c) The "*rescue of ships, persons and property*" subject to attacks by pirates.

(d) The "*repatriation of seafarers*", especially those subjected to acts of violence.
(e) The "*conduct of shared operations*" amongst navies of signatory States, as well as with outside navies, against acts of piracy and armed robbery.

In addition, the Code provides for the issuing of alerts by sharing information through centres such as the Regional Maritime Coordination Centre (RMCC) in Mombasa, the Rescue Coordination Sub-Centre in Dar-es-Salaam, the Regional Maritime Information Centre (RMIC) in Sana'a, and various national focal points.

To promote the objectives of the Code, the 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, which 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 though the Code, *per se*, is not legally binding.

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

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

Inclusive approach: Orchestrating technical norms framed by private actors

The IMO was established as a technical organisation. In the field of maritime piracy, its Maritime Safety Committee has issued circulars to guide States, ship owners, operators and crew, in the adoption of safety measures in the event of an attack. One of its key contributions was the IMO's endorsement of the "*Internationally Recommended Transit Corridor (IRTC)*" to its member States, which is required to be followed by ships transiting the Gulf of Aden, an area that was highly susceptible to attacks by pirates in 2009. The IRTC is a designated maritime lane with specific geographical limits for eastbound and westbound shipping. A ship entering the IRTC must report details of its position and movement to organisations such as the Maritime Security Centre – Horn of Africa (MSC-HOA), the International Maritime Bureau Piracy Reporting Centre, the United Kingdom Maritime Trade Organisation (UKMTO), etc. While the IRTC itself is not a product of the IMO, the IMO has, by endorsing it, given it international legitimacy, making it a norm for mariners traversing the piracy-prone Gulf of Aden region.

Similarly, in 2011, the IMO provided legitimacy to the "*Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area*" (BMP) that were developed by the shipping industry and promoted by the International Chamber of Shipping.[30] These practices basically relate to self-protection measures that several stakeholders – shipowners, crew, masters and operators – must proactively take, in order to prevent their ships from becoming victims of maritime piracy. These include, for example, installing ship-board physical defences such as water cannons, razor wires, securing the bridge of the ship, installing a distinct alarm to warn of a pirate attack, increasing vigilance by maintaining an effective radar watch, etc.[31]

By endorsing these practices and circulating them amongst member States, the IMO has recognised the importance of these technical norms in deterring acts of piracy and armed robbery off the coast of Somalia.[32] Also, the fact that IMO has accommodated these technical norms that have been developed by private actors, demonstrates the inclusive approach that the organisation has followed in its counter-piracy initiatives. Apart from private actors of the shipping industry, the IMO has also appreciated the Piracy Reporting Centre set up under the auspices of the International Maritime Bureau, which is a non-governmental actor, for issuing warnings in through its annual piracy reports to ships sailing off the coast of Somalia. The IMO, despite being an intergovernmental organisation has not excluded benevolent non-State actors and has given them space in forging a common front against piracy.

Abbott and Snidal (2010)[33] suggest that an era of "transnational new governance" has set in, where IGOs act as orchestrators in solving problems of global governance rather than acting directly. By cooperating with private actors, they enhance their own regulatory performance.[34] In keeping with this formulation, by endorsing the technical norms made by private actors, the IMO has played the role of an orchestrator. IGOs can engage in "facilitative orchestration" when they involve "private schemes in international rule making",[35] something that IMO has done here.

Flexible approach: From opposing to approving the use of private security

While the IMO's official endorsement of the Best Management Practices has not drawn any criticism, the same is not true for its flexible stance on the use of Privately Contracted Armed Security Personnel (PSCAP). The IMO's stance on this has evolved over the years – from strongly discouraging the usage and carrying of firearms for self-defence of the seafarers in the 1990s, to the present day where it is now acknowledging that the use of privately contracted armed guards on ships is accepted by the shipping industry and some flag States.[36] The earlier rationale for IMO strongly discouraging the use of firearms was threefold:

(a) The carrying of firearms on ships might tempt the attackers to also carry firearms, thereby leading to possible escalation of violence.
(b) Firearms cannot be used without proper training and hence, there is a risk for accidents taking place when civilian crew operate them.
(c) Killing of a citizen of any country may incur unfavourable consequences even if the act is done in self-defence.[37]

It was the increased use of privately contracted armed guards, following the spike in piracy levels in the Gulf of Aden in 2008 – despite the deployment of international navies and adherence to the BMPs[38] – that led to a shift in the IMO's stand on the subject. Further, the International Transport Workers' Federation (ITF) also saw the use of private armed guards as an important defensive measure against the hijacking of crew members for ransoms by the Somali pirates.[39] Likewise, the ship insurance industry, seeing the rising costs of a piracy attack associated with (i) the high ransom 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 the use of PSCAP.[40] In 2011, the ICS, too, recognised that the use PSCAP as a counter-piracy measure was a reality that could no longer be ignored.[41]

The IMO neither endorsed this growing practice nor condemned it, but gave it official recognition, nonetheless. At the same time, the IMO stressed that the use of PSCAP should not be seen as an alternative to other protective measures like Best Management Practices. That said, instead of creating an overarching regulatory framework, the IMO has left the decision to employ PSCAP to individual ship-owners, subject to the laws of their respective Flag States. For this purpose, in 2011, the IMO issued interim guidance related to the embarkation and disembarkation from ships of PSCAP.[42] The IMO later issued other guidelines as well for different stakeholders such as ship-owners, ship-operators and Flag States.[43] Due to the lack of a consensus, an international convention could not be

created at the IMO.[44] Such an approach leaves this sensitive issue to individual Flag States. This is problematic because not all Flag States are equally conscious of the need to impose strict and uniform regulations. Often, ship-owners flock to Flag of Convenience States (which have lenient shipping laws).[45] Today, it is common for a ship to be owned by a national of one country but be registered under the flag of a different country. A very large number of commercial ships are, indeed, registered in precisely this manner. "Flag-of-Convenience" countries such as 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 the world's merchant vessels and, for the most part, they lack a proper legal framework to regulate the use of PSCAP.[46] Regulating PSCAP is important since, legally speaking, private armed guards are private citizens who can deter a pirate attack only in self-defence of themselves or in the defence of others.[47] Therefore, it is important to formulate a binding and uniform law, in the form of an international convention, which clearly articulates the amount of force that can be used, the level of training that such guards must undergo, the manner in which weapons must be stored safely, etc.[48] The use of firearms is a sensitive issue because of the inherent potential for abuse of human rights. While on land there have been efforts, such as the Montreux Document to regulate private military companies in the event of an outbreak of armed conflict, a lingering "sea-blindness" appears to persist amongst policy makers. Thus, the Montreux Document does not apply to the maritime sector. What is more, one of the latest report by the 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*",[49] does not consider the possible misuse of firearms in the maritime domain at all! The report has completely ignored almost all important maritime developments that have taken place since 2008, most notably, the official recognition of the use of private military companies by the IMO.

Even as the IMO has accepted that countries are still in the process of regulating the use of PSCAP, it is important for an overarching legal framework to be negotiated in order to address human rights concerns, especially when these are in the context of international crime, (piracy in this case). Delaying this process leaves a glaring gap in a State's ability to hold private parties accountable in situations of possible misuse, such as firing on innocent fishermen by mistake, assuming them to be pirates, since unlike on land, there exists a web of several State jurisdictions that one has to navigate through when at sea. A glimpse of this may be seen in the ongoing *Enrica Lexie* case, wherein two Italian marines onboard an Italian merchant ship, the MV *Enrica Lexie*, allegedly killed Indian fishermen off the coast of Kerala, mistaking them to be pirates. Both States, India and Italy, claimed criminal jurisdiction and the case is currently being tried before the International Tribunal for the Law of the Sea.[50] While in this case, the guards were military personnel and not privately contracted armed guards, three types of jurisdictions remain; first, that of the Flag State of the vessel from which the firing took place; second, that of the Flag State of the vessel into which the firing was directed; and third, that of the nationality of the person(s) who was/were killed or injured in the episode.[51] The responsibility of the State that hired such guards[52] further complicates the scenario. It is, thus, important for the IMO to create a uniform law on the use of PSCAP. This in and of itself, poses a challenge for the IMO. In the event of mishap, as a public actor, it is important for the IMO to avoid coming across as an organisation that does not regulate the shipping industry properly.[53]

Piracy has seen a sharp decline since 2012, with no case of hijacking having been reported in 2016.[54] However, attempted pirate attacks have started recurring on account of the lowering of vigilance activities (for instance, the use of armed guards and observance of other Best Management Practices) by shipping operators, and, decreased naval presence in the region such as the exit of NATO,[55] which, seeing the attacks on ships plummeting, ended its naval operations in 2016.[56] Fears of a resurgence of Somali-Piracy have arisen following this development. The first successful pirate attack occurred in early-2017, with the hijacking of a commercial ship the *Aris 13*, flying a Comoros Islands flag and with eight Sri-Lankan crew aboard.[57] Although there were fears of a resurgence of piracy in the region, the waters have remained relatively calm. In the period between January and September 2018, only two piracy incidents were reported. However, having reported this, the International Maritime Bureau has warned that the threat of piratical attacks still exists off the coast of Somalia.[58] Although Somali-based piracy is currently at a low, the existing normative framework as laid down by the IMO with the help of the UNSC and private players as well, will be useful to intensify counter-piracy efforts in the future.

Conclusion

A normative framework has been laid down by the IMO following the sharp rise in piracy attacks, off the coast of Somalia, in 2007. The IMO has adopted an extensive six-pronged counter piracy strategy that combines approaches across humanitarian, high-level, reviewable, regional, inclusive and flexible parameters, in the case of Somalia. A summary of these six approaches is tabulated in Table 1.

By identifying the problem of piracy and its negative impact on the transportation of humanitarian aid to Somali citizens, the IMO brought the issue of piracy to the attention of the UNSC. The UNSC then recognised that piracy off the coast of Somalia must be treated not just as a maritime crime, but also as a credible threat to international peace and security. This realisation enabled it to authorise States and regional organisations to take naval measures against the pirates. The naval peace operations undertaken by the EU and NATO may be viewed as a form of "delegated naval peacekeeping" by the UN, which has not involved itself in full-fledged naval operations, unlike its peacekeeping operations on land. The IMO has also followed an inclusive approach in

Table 1. A summary of the six-pronged approach of IMO to counter Somali-based piracy.

Approach	Description
Humanitarian approach	Highlighting the importance of the humanitarian concerns of Somali citizens and the need to deter pirate attacks on vessels transporting food and other forms of critical aid
High-level approach	Approaching the UNSC in the fight against piracy in the Gulf of Aden, elevating it to a maritime crime that has 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 such as 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

officially endorsing the technical norms made by the shipping industry, such as the self-protection shipboard-measures enshrined in the Best Management Practices.

This rubric of norms that has been created by the IMO will continue to be relevant, id and when fresh cases of piracy are reported from the region. Therefore, the IMO remains a valuable international party in formulating norms in the field of maritime global governance and is well placed to continue its role in facilitating effective methods of countering piracy.

Notes

1. G.D. Ness and S.R. Brechnin, "Bridging the Gap: International Organisations as Organisations," *International Organisation* 42, no. 2 (1988): 245–73.
2. Ness and Brechnin, "Bridging the Gap."
3. "Annual Report: Piracy and Armed Robbery against Ships 2012," ICC International Maritime Bureau, 24, file:///C:/Users/USER/Downloads/2012%20annual%20imb%20piracy%20report%20(1).pdf (accessed October 1, 2018).
4. Clive Archer, *International Organisations* (Routledge, 2001), 102–4.
5. "IMO Assembly Issues Renewed Call for Action on Piracy Off Somalia," *ReliefWeb*, November 29, 2007, https://reliefweb.int/report/somalia/imo-assembly-issues-renewed-call-action-piracy-somalia.
6. "Coordinated Action Urged: Piracy Threatens UN Lifeline to Somalia," World Food Programme, October 7, 2007, https://www.wfp.org/news/news-release/coordinated-action-urged-piracy-threatens-un-lifeline-somalia.
7. "Coordinated Action Urged."
8. "Security Council Resolution 1772 (2007) The Situation in Somalia," August 20, 2007, S/RES/1772 (2007), 2, United Nations, https://www.refworld.org/docid/46cbdf692.html (accessed January 14, 2019).
9. "Security Council Resolution," 5.
10. Kevin McGahan and Terence Lee, "Frames, Humanitarianism, and Legitimacy: Explaining the Anti-piracy Regime in the Gulf of Aden," in *Maritime Piracy and the Construction of Global Governance*, eds. M.J. Struett, M.T. Nance, and J.T. Carlson (Routledge, 2012), 161.
11. "Assembly Matters," International Maritime Organisation, 2007, http://www.sjofartsverket.se/pages/10877/98-17-c.pdf (accessed July 5, 2018).
12. United Nations, "Charter of the United Nations and the Statute of International Court of Justice," United Nations Treaty Collection, https://treaties.un.org/doc/publication/ctc/uncharter.pdf (accessed September 18, 2018).
13. Security Council Resolution 1816 (2008) [on acts of piracy and armed robbery against vessels in territorial waters and the high seas off the coast of Somalia], June 2, 2008, S/RES/1816 (2008), https://www.refworld.org/docid/48464c622.html (accessed January 14, 2019).
14. "United Nations Convention on the Law of the Sea," United Nations, 63, http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (accessed August 22, 2017).
15. "5902nd Meeting on the Situation in Somalia," June 2, 2008, 3.15 p.m., New York, United Nations, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.5902 (accessed September 15, 2018).
16. "United Nations Convention on the Law of the Sea."
17. It is important to note that there are historical precedents of countries fighting together against piracy, like the Anglo-Dutch fleet attack on Algiers, which was a stronghold of the Barbary pirates; the coalition of Britain and other European nations to curb piracy in East Asia in the Nineteenth Century, etc. In the Twenty-first Century, too, States such as Indonesia, Malaysia and Singapore, have cooperated to fight against piracy in the vicinity of the Strait of Malacca. However, what is new here is that for the first-time, States launched naval operations under the aegis of formal regional organisations (EU and NATO in this case).

18. Security Council Resolution 1897 (2009) [on acts of piracy and armed robbery against vessels in the waters off the coast of Somalia], November 30, 2009, S/RES/1897 (2009), United Nations, https://www.refworld.org/docid/4b18cff1d.html (accessed September 20, 2018).

19. The launch of these naval operations by EU and NATO was however, not really altruistic in nature. While in the Cold War era, NATO engaged in coercive naval diplomacy against the Soviet Union, in the post-cold war period, NATO turned to law-enforcement activities that involved maintaining "good order at sea", which includes, *inter alia*, curbing activities such as piracy, which threaten the flow of maritime traffic [*see* Jo G. Gade and Paal Sigurd Hilde, "NATO and the Maritime Domain," in *International Order at Sea: How it is Challenged. How it is Maintained*, eds. Jo Inge Bekkevold and Geoffrey Till (Palgrave Macmillan, 2016.)] For the EU, this has meant protecting the shipping and trading interests of its member States in the region. The EU's maritime interests include "*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 Union Maritime Security Strategy: A Guide for Stakeholders," European Commission 2014, https://ec.europa.eu/maritimeaffairs/sites/maritimeaffairs/files/leaflet-european-union-maritime-security-strategy_en.pdf, 2).

20. Gilberto Carvalho de Oliveira, "Naval Peacekeeping and Piracy: Time for a Critical Turn in the Debate," *International Peacekeeping* 19, no. 1 (2012): 48–61.

21. André Panno Beirão, "Why Not Eminently Maritime UN Peacekeeping Operations?" *Contexto Internacional* 39, no. 2 (2017): 245–61.

22. Jeremy Ginifer and Eric Grove, "UN Management of Naval Operations," in *Maritime Security and Peacekeeping: A Framework for United Nations Operations*, ed. Michael Pugh (Manchester University Press, 1994), 140.

23. "Burden Sharing: Multi-level Governance: A Study of the Contact Group on Piracy off the Coast of Somalia" (A One Earth Future and Oceans Beyond Piracy Report), 2015, http://www.lessonsfrompiracy.net/files/2015/03/OBP-Burden_Sharing.pdf (accessed September 21, 2018).

24. "Annual Report."

25. Ibid.

26. Report of the Legal Committee on the Work of its Ninety-Sixth Session, 96th session Agenda item 13, LEG 96/13, October 14, 2009, International Maritime Organisation, https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/5ps/International%20Maritime%20Organization/LEG/leg96-report.pdf?ver=2017-06-29-130001-683 (accessed August 5, 2018).

27. "Djibouti Code of Conduct," International Maritime Organisation, 2018, http://www.imo.org/en/OurWork/Security/PIU/Pages/Content-and-Evolution-of-the-Djibouti-Code-of-Conduct.aspx.

28. "Djibouti Code of Conduct."

29. Protection of Vital Shipping Lanes: Sub-regional meeting to conclude agreements on maritime security, piracy and armed robbery against ships for States from the Western Indian Ocean, Gulf of Aden and Red Sea areas' Council 102nd session Agenda item 14, C 102/14, April 3, 2009, International Maritime Organisation, 3, http://www.imo.org/en/OurWork/Security/PIU/Documents/DCoC%20English.pdf (accessed September 1, 2018).

30. Implementation of Best Management Practice Guidance, Resolution MSC.324(89), IMO Doc. MSC 89/25/Add.4, Maritime Safety Committee, International Maritime Organisation, http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Maritime-Safety-Committee-(MSC)/Documents/MSC.324(89).pdf (accessed August 17, 2018).

31. Best Management Practices for Protection against Somalia Based Piracy, MSC.1/Circ.1339, September 14, 2011, International Maritime Organisation, http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/MSC.1-Circ.1339.pdf (accessed July 15, 2018).

32. Although the IMO has endorsed these technical norms initiated by private actors, it has also promulgated important technical norms of its own and has even expanded on the work of

other UN specialised agencies. For instance, to enhance maritime security, the IMO adopted the "*Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*" (or the SUA Convention) in 1988. Even though this convention does not address the problem of piracy directly, as it intended to address acts of terrorism, it can also be applied in cases of hijackings of ships by pirates. The protocol to this SUA Convention was later adopted in 2005, in the aftermath of the 9/11 attacks. Also, these guidelines borrowed heavily from the existing aviation-related instruments such as the 1970 Hague Convention and the 1971 Montreal Convention as developed by the International Civil Aviation Organisation (ICAO), which is seen as a "sister organisation" of the IMO. (For more information *see* "Transport-related Civil Aviation and Maritime Terrorism Offences," United Nations 2014, https://www.unodc.org/documents/terrorism/Publications/Module_on_Transport/13-89032_Ebook_from_DM_9-9-2014.pdf).

33. K.W. Abbott, "International Regulation without International Government: Improving IO Performance through Orchestration," *Review of International Organisations* 5, no. 3 (2010): 315–44.
34. Abbott, "International Regulation without International Government."
35. Kenneth Abbott and Duncan Snidal, "Strengthening International Regulation through Transnational New Governance," *Vanderbilt Journal of Transnational Law* 42 (2009): 501–78.
36. "IMO's Evolving Position on PCASP," International Maritime Organisation 2018, http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Pages/Private-Armed-Security.aspx.
37. Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships', IMO Doc. MSC/Circ.623/Rev.3, May 29, 2002, 9, Maritime Safety Committee, International Maritime Organisation, https://www.yen.gr/documents/20182/139132/msc_circ+623rev3.pdf/20d8518a-bcc5-4f85-b69b-8c690c178c5b (accessed August 19, 2018).
38. Y. Dutton, "Gunslingers on the High Seas: A Call for Regulation," *Duke Journal of Comparative & International Law* 24, no. 1 (2013): 107–60.
39. Helge Staff, "The Emergence of Private Security Governance. Assessing Facilitating Conditions in the Case of Somali Piracy," *Global Change, Peace & Security* 29, no. 1 (2017): 21–37.
40. Staff, "The Emergence of Private Security Governance."
41. Åsne Kalland Aarstad, "Maritime Security and Transformations in Global Governance," *Crime Law Soc Change* 67, no. 3 (2017): 313–31.
42. Interim Recommendations for Port and Coastal States Regarding the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area, Maritime Safety Committee, MSC.1/Circ.1408, September 16, 2011, International Maritime Organisation, http://www.imo.org/en/MediaCentre/HotTopics/piracy/Documents/1408.pdf (accessed September 20, 2018).
43. "Private Armed Security," International Maritime Organisation 2018, http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Pages/Private-Armed-Security.aspx (accessed December 17, 2018).
44. Aarstad, "Maritime Security and Transformations."
45. Ibid.
46. Van I. Hespen, "Protecting Merchant Ships from Maritime Piracy by Privately Contracted Armed Security Personnel: A Comparative Analysis of Flag State Legislation and Port and Coastal State Requirements," *Journal of Maritime Law & Commerce* 45, no. 3 (2014): 361–400.
47. Dutton, "Gunslingers on the High Seas."
48. Ibid.
49. Mandate of the open-ended Intergovernmental Working Group to Elaborate the Content of an International Regulatory Framework on the Regulation, Monitoring and Oversight of the Activities of Private Military and Security Companies, Human Rights Council Thirty-sixth

Session, September 11–29, 2017, Agenda item 3, UN General Assembly 2017, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/294/64/PDF/G1729464.pdf?OpenElement (accessed September 5, 2018).

50. "The 'Enrica Lexie' Incident (Italy v. India), Provisional Measures," International Tribunal for the Law of the Sea (ITLOS), https://www.itlos.org/cases/list-of-cases/case-no-24/ (accessed January 2, 2019).

51. "Shooting Fishermen Mistaken for Pirates: Jurisdiction, Immunity and State Responsibility," Douglas Guilfoyle 2012, https://www.ejiltalk.org/shooting-fishermen-mistaken-for-pirates-jurisdiction-immunity-and-state-responsibility/ (accessed January 11, 2019).

52. "Shooting Fishermen Mistaken for Pirates."

53. This concern must be seen in the context of some recent allegations that have been raised against the IMO in the context of climate change negotiations. A study allegedly stated that the IMO is being "captured" by corporate interests, and that shipping organisations such as the International Chamber of Shipping (ICS), BIMCO, and the World Shipping Council (WSC), have lobbied in the IMO to delay the acceptance of any binding regulations regarding greenhouse gas emission targets. However, the IMO has denied these allegations. "Corporate Capture of the IMO?" *The Maritime Executive*, October 23, 2017, https://www.maritime-executive.com/editorials/corporate-capture-of-the-imo (accessed December 15, 2018).

54. "The State of Maritime Piracy 2016: Assessing the Economic and Human Cost," Oceans Beyond Piracy, http://oceansbeyondpiracy.org/reports/sop/east-africa (accessed August 23, 2018).

55. "The State of Maritime Piracy 2016."

56. Although NATO accepted that the root causes of Somali-based piracy have not been eradicated, it still chose to exit so that it could focus on challenges in the Mediterranean ("NATO Co-chairs Counter-piracy Conference as Operation Ocean Shield's Mandate Terminates," NATO Allied Maritime Command 2016, https://mc.nato.int/media-centre/news/2016/nato-cochairs-counterpiracy-conference-as-operation-ocean-shields-mandate-terminates-.aspx (accessed December 1, 2018). Also, in November 2016 itself, NATO launched its new operation, "Sea Guardian" in the Mediterranean, to support the EU's "Operation Sophia", to implement United Nations Security Council Resolution 2357, which calls for the arms embargo against Libya. ("Operation Sea Guardian," NATO Allied Maritime Command 2018, https://www.nato.int/cps/en/natohq/topics_136233.htm (accessed December 1, 2018).

57. "Somali Pirates Hijack First Commercial Ship since 2012," *Reuters*, March 14, 2017, https://www.reuters.com/article/us-somalia-hijack/somali-pirates-hijack-first-commercial-ship-since-2012-idUSKBN16L0EW.

58. "Piracy and Armed Robbery against Ships, Report for the Period 1 Jan- Sept 2018," 21, ICC International Maritime Bureau, https://www.icc-ccs.org/reports/2018_Q3_IMB_Piracy_Report.pdf (accessed January 1, 2019).

Notes on contributor

Tejal Khanna is Doctoral Candidate at the Centre for International Politics, Organization and Disarmament (CIPOD), School of International Studies, Jawaharlal Nehru University, India.