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**Research Report**

## Learning from Danish counter-piracy off the coast of Somalia

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**LEARNING FROM DANISH COUNTER-PIRACY OFF THE COAST OF SOMALIA**

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## LIST OF ACRONYMS

AU	African Union
BIMCO	Baltic and International Maritime Council
BMPs	Best Management Practices
CGPCS	Contact Group on Piracy off the Coast of Somalia
CMF	Combined Maritime Forces
CTF	Combined Task Force
CSPD	Common Security and Defence
ECOWAS	Economic Community of West African States
EU	European Union
EUTM	European Union Training Mission
ICS	International Chamber of Shipping
IMO	International Maritime Organisation
ISO	International Organization for Standardization
IUU	Illegal, Unreported and Unregulated fishing
MSCHOA	Maritime Security Centre – Horn of Africa
NATO	North Atlantic Treaty Organisation
OCIMF	Oil Companies International Marine Forum
PSCs	Private Security Companies
PSF	Peace and Stabilisation Fund
SHADE	Shared Awareness and Deconfliction
SMI	Særlig Maritim Indsatsstyrke
UK	United Kingdom
UKMTO	United Kingdom Maritime Trade Operations
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNODC	United Nations Office on Drugs and Crime
WG2	Working Group 2
WFP	World Food Programme

## ABSTRACT

Since the mid-2000s, piracy off the coast of Somalia has posed a serious threat to international shipping and the safety of seafarers. As a seafaring nation, combating Somali piracy quickly became an important security and foreign policy priority for Denmark. This report documents Denmark's recent role in international counter-piracy off the coast of Somalia and examines the challenges and opportunities posed by Danish involvement. The report offers central points for policy-makers to take into account when planning future participation in international maritime security operations, including other forms of maritime crime such as drug- and weapon-smuggling in the Indian Ocean and human trafficking in the Mediterranean. The report identifies four areas in particular in which Denmark may contribute to maritime security. These areas are aligned with Danish capabilities and interests, as well as critical gaps in existing international engagement.

They are:

- continuing support to the international agenda of multilateralism in maritime security;
- emphasising long-term capacity-building of regional maritime security capabilities;
- accounting for local conditions in policy planning regarding cooperation with regional states;
- strengthening Danish maritime security policy by systematically evaluating civil–military cooperation.

## INTRODUCTION



Maritime piracy has been on the rise in many parts of the world. This includes the Caribbean, the Malacca Strait in Southeast Asia and, most recently, the Gulf of Guinea in West Africa. However, over the last decade, maritime piracy around the Horn of Africa became a prominent international security challenge. Piracy attacks were launched from the coast of Somalia into the Gulf of Aden and further into the western Indian Ocean. More than half of all reported piracy incidents in the world between 2008 and 2015 took place in the waters off Somalia.<sup>1</sup> The particular version of piracy practised in this region was to hijack merchant vessels transporting goods between Asia and Europe and hold crews captive under deplorable conditions until ransom negotiations were settled with the ship's owner. At its height in 2011, Somali piracy accounted for 327 attacks and 28 successful hijackings in the Indian Ocean (OBP, 2012: 8). The total amount paid in ransom was estimated at USD 160 million, while the total cost of piracy was a staggering USD 6.6-6.9 billion (OBP, 2012: 1).

The Gulf of Aden in the Horn of Africa is particularly sensitive to piracy attacks. It is one of the busiest sea lanes in the world, linking international trade relations between Asia and Europe through the Suez Canal. Therefore, the international community, including both state and non-state actors, reacted with force to suppress Somali piracy. Under the auspices of the United Nations (UN) Security Council, a comprehensive range of initiatives were launched to counter Somali piracy. First, the European Union (EU), the North Atlantic Treaty Organisation (NATO) and a US-led coalition (CMF) formed naval missions, in which willing member states (along with single states) deployed warships to conduct maritime policing in the western Indian Ocean, while states in the region around Somalia made their domestic courts available for the prosecution of piracy suspects. Secondly, the shipping industry adopted a range of counter-measures to protect their vessels from piracy attacks. Thirdly, donor governments and international organisations, in particular the UN and EU, undertook capacity-building in Somalia and neighbouring countries to strengthen maritime security and law enforcement in the region.

This collective effort to suppress piracy in the western Indian Ocean is generally considered a success. May 2012 saw the last successful reported attack in the region. But despite the vast decline in attacks, the current success of counter-piracy remains fragile. New instances of piracy were reported again in the summer of 2017,<sup>2</sup> and the root causes of piracy are still largely present: the situation in Somalia is volatile, with continued fighting between Islamic militants, recurring droughts causing poverty and food insecurity, and a national government suffering from poor political legitimacy. Piracy accordingly remains a ready livelihood option, which young Somali men in particular can slip in and out of between other means of earning a living.

## Objectives and methodology

This report examines counter-piracy efforts off the coast of Somalia, focusing on the role of Denmark. Denmark was a key contributor to the international response to Somali piracy from its inception in 2008. Through military and civilian interventions, Danish engagement included especially the deployment of naval assets to conduct maritime policing, capacity-building and active participation in, and leadership of, international policy networks. Danish counter-piracy activities followed the so-called comprehensive, whole-of-government approach by being coordinated across ministries and combining military and civilian policy tools.

Knowing how Danish policy contributed to international counter-piracy is significant in its own right. Denmark is a major shipping nation, and since 2008 it has spent a substantial amount of financial, material and human resources in efforts to suppress Somali piracy. Compiling lessons learned is therefore important for informing future Danish policy-making. It is, however, also of interest to a wider audience, both inside and outside Denmark as an example of the application of the comprehensive approach to security and development.

The objective of the report is to examine the specific Danish civilian and military interventions in international counter-piracy efforts. The report illustrates how a small state like Denmark can contribute proactively to international security operations, here the suppression of maritime crime. But the report also critically examines how Danish counter-piracy policy has been translated into challenges and opportunities in practice. It reflects on key lessons to be learnt from Danish activities and offers recommendations for future Danish policy, addressing international maritime security through a comprehensive approach.

The report draws on data gathered through approximately 70 interviews with counter-piracy actors in Denmark, European and regional states. These actors include relevant representatives from Danish and foreign Ministries of Defence and Foreign Affairs and other government bodies, such as embassies and state agencies. It also includes state law enforcement actors and military personnel involved in counter-piracy. Finally, it includes Danish politicians and private stakeholders, such as the shipping industry. All interviews have been anonymized. In addition, the report treats relevant laws and policies specific to both Danish and international counter-piracy efforts off the coast of Somalia. The report also draws on transcripts of parliamentary debates and official documents such as government platforms and parliamentary decisions.

### Structure of the report

After three years of Danish engagement in international counter-piracy activities, the Danish government published a counter-piracy strategy for 2011-2014, followed by another for 2015-2018. The strategies organised Danish interventions and consisted of three overall aims, according to which this report is also structured:

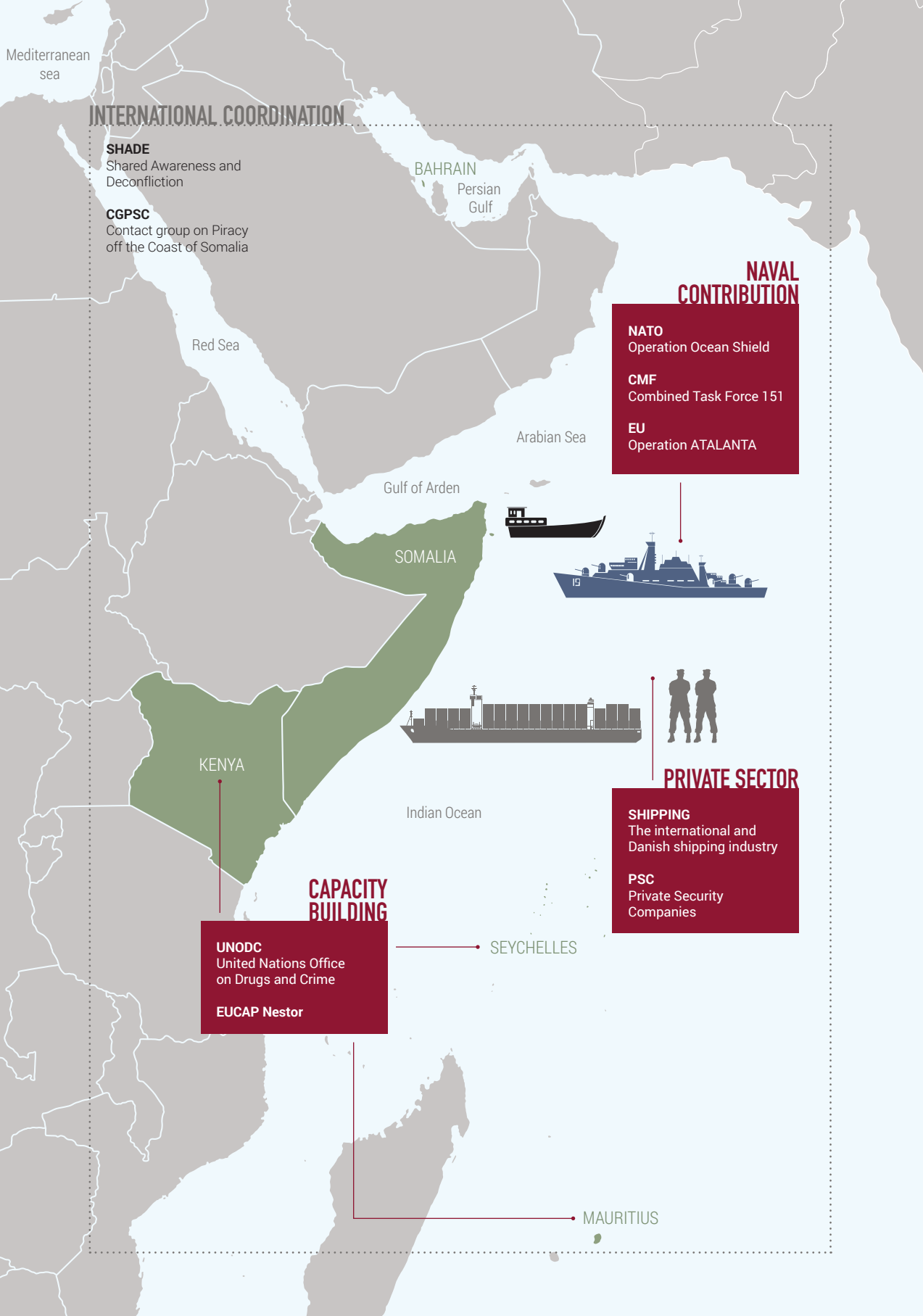
- Combating piracy through law enforcement
- Protecting the shipping industry
- Capacity-building of the regional maritime security sector

The report is organised according to these three aims, as they broadly cover Danish priorities since the beginning of its participation in counter-piracy from 2008.<sup>3</sup> Chapter Two briefly describes the international response to Somali piracy and discusses the specific drivers of Danish participation in international counter-piracy. Chapters Three, Four and Five examine the three aims of Danish counter-piracy listed above. These three chapters discuss which effects Danish counter-piracy had in practice vis a vis the stated aims. They then point to central opportunities and challenges that counter-piracy produced from a strategic, operational and not least legal perspective, which was very important for Denmark. As the report is not an evaluation, it does not provide a comprehensive assessment of all aspects of Danish counter-piracy. Rather, the chapters collect important lessons that merit attention because of their wider value to future maritime security interventions. These are discussed in the concluding Chapter Six, which also identifies central perspectives for future policy-making and provides recommendations accordingly.

**THE INTERNATIONAL RESPONSE TO  
MARITIME PIRACY OFF THE COAST  
OF SOMALIA AND DRIVERS OF DANISH  
INVOLVEMENT**







In order to examine Denmark’s role in counter-piracy off the coast of Somalia, this chapter provides a brief overview of the international response to Somali piracy and of the determinants of Danish participation. First, this chapter presents the main states and international organisations that became central actors in the counter-piracy architecture and the main interventions of which this counter-piracy architecture consisted. Secondly, the chapter examines how these interventions correlate to Danish foreign and security policy priorities and how such priorities became translated into a comprehensive Danish counter-piracy strategy. This provides a baseline for discussing Danish counter-piracy strategy and practices in the following chapters.

**INTERNATIONAL COUNTER-PIRACY:  
A COMPREHENSIVE BUT AD HOC APPROACH**

As a first response by the international community, France, Denmark, the Netherlands and Canada unilaterally began escorting World Food Programme (WFP) aid shipments to the Horn of Africa in 2007 (Struwe, 2013). At this time, Somali piracy was on the rise, and it became clear that an ambitious and longer-term international response was required to protect not only the delivery of humanitarian aid but also international shipping more generally, to coordinate the suppression of piracy itself and to collaborate in addressing its root causes. Over the following years, the UN Security Council passed a string of resolutions<sup>4</sup> –unanimously and under Chapter VII of the UN Charter – urging states to suppress Somali piracy with all necessary means. This referred to establishing maritime security through warship policing, in accordance with the 1982 UN Convention on the Law of the Sea (UNCLOS), but also to prosecute suspects and support the rule of law in the region through various forms of capacity-building. The UN Security Council’s attention to Somali piracy instigated a comprehensive international response consisting of counter-piracy measures focused on four main themes. These are briefly presented below.

**Maritime policing by naval coalitions**

Willing states deployed warships to patrol the waters off Somalia in a law enforcement capacity, primarily through three naval coalitions:

- **Operation Atalanta:** The European Union (EU) established Operation Atalanta in December 2008 (EU, 2008). Headquartered in Northwood, UK, it was the EU’s first naval common defence and security (CSDP) mission, one that would later be replicated in the Mediterranean with patrols to counter incidents of human smuggling and trafficking (EU, 2015).

- **CMF:** The US established a naval fleet under the auspices of the US-led Combined Maritime Forces (CMF). Headquartered in Bahrain, the CMF was originally mandated by UN Security Council Resolutions 1368 (2001) and 1373 (2001) to address terrorism and maritime security in the region around Somalia by means of Combined Task Force 150 (CMF 150). When the UN Security Council began passing resolutions on Somali piracy in 2008, a separate task force was established in January 2009 to act specifically as a counter-piracy mission, known as Combined Task Force 151 (CTF 151).
- **Operation Ocean Shield:** The North Atlantic Treaty Organisation (NATO) established Operation Ocean Shield in March 2009 (NATO, n.d.). Like the EU's Atalanta mission, it was headquartered in Northwood, UK. This enabled the EU and NATO to develop an extensive informal and practical relationship free of political or strategic deadlock between the various institutions involved (Gebhard and Smith, 2015).

In addition to these large institutional naval operations, there were also single-state deployments, such as those conducted by Russia, China, South Korea and Iran.

#### **Piracy prosecution in regional states**

The international response instigated by the UN Security Council resolutions saw a distribution of law enforcement tasks between willing states. Thus, while some states conducted maritime piracy policing (see above), others undertook prosecution. In particular, countries in the region around Somalia, namely Kenya (Muteti, 2012), Seychelles (Larsen, 2015) and Mauritius (Narain, 2013), received piracy suspects for prosecution and incarceration from warships that had apprehended them in the western Indian Ocean.

Since piracy is a crime that has rarely been prosecuted in modern times, prosecuting states adopted new legislation or revised their existing criminal law to facilitate effective criminal prosecution. The burden-sharing between policing and prosecuting states also required naval states to sign transfer agreements with the regional states. These agreements laid out the general conditions of the inter-state exchange and the rights of the detained.<sup>5</sup> Since the prosecuting states were developing countries, these tasks were undertaken under the auspices of international development programmes and policy networks dealing with maritime crime.

#### **Regional capacity-building**

Donor countries and international organisations undertook capacity-building of the region's maritime security infrastructure and law enforcement capabilities. Engaging neighbouring states in counter-piracy required international support to ensure, in the short term, that piracy prosecution lived up to human rights standards – and, in the long term, to enable the countries in the region to deal better with their individual and joint maritime security issues.

Capacity-building programmes were carried out in Kenya, Seychelles, Mauritius, Tanzania, Djibouti and Somalia, the littoral states in the western Indian Ocean in closest vicinity to Somali piracy. Two principal maritime security programmes were set up in these countries:

- **The UN Office on Drugs and Crime (UNODC),** which supported legal reform, prison renovations and the training of judicial and prison staff (UNODC, 2014).
- **The EU's civilian mission, EUCAP Nestor,** which provided training and equipment for police, the judiciary, air forces and coast guards (EUCAP Nestor, 2014).<sup>6</sup>

In addition, the naval forces conducted capacity-building and training exercises with the regional navies, coast guards and maritime police units.

While member states of the UN and EU contributed financially to these activities, states like Denmark, the UK, France and Norway also supported the region through bilateral civilian and military interventions. Denmark's efforts are examined in the following chapters.

#### **International policy fora**

Lastly, willing and participating states, along with organisations and private actors, gathered in international policy forums to facilitate and link the strategic and tactical levels of counter-piracy. In particular, two forums provided key platforms for Denmark and the international community on the operational and executive levels:

- **Shared Awareness and Deconfliction mechanism (SHADE):** SHADE gathers naval authorities and practitioners from over 50 states and organisations to discuss operations on the tactical level. It provides a platform from which to coordinate maritime patrolling and ensure that operational tasks and movements do not overlap or conflict (Bueger, 2017: 11). Meetings take place in Bahrain and are hosted by CMF. Its members include naval forces and international organisations, but also the shipping industry takes part in the

regular meetings through their own membership organisations. Importantly, SHADE has been able to bring in powers such as China, India and Russia to collaborate and agree on operational issues free from high-level politics. In an interview conducted by the authors, one commanding officer from Atalanta described SHADE as 'genius', because it was a bottom-up forum, rather than involving lengthy discussions at the political level.

- The Contact Group on Piracy off the Coast of Somalia (CGPCS): CGPCS provided a forum in which state executives, practitioners, international organisations and researchers can discuss broad issues related to counter-piracy at the strategic level. The CGPCS came into being in January 2009 following the UN Security Council's recommendation in Resolution 1851 (2008). It was not intended as a body under the UN Security Council but one of willing states and organisations. At the first CGPCS plenary, 29 actors were represented, but participation soon grew to 70 states and 19 organisations committed to counter-piracy (Bueger, 2013: 98). Originally organised with five consultative working groups, the CGPCS later merged them into three (CGPCS, 2014: para. 5). The working groups addressed the coordination of maritime operations; the development of legal reform; self-protection of the shipping industry; communication and diplomacy in Somalia against piracy; and the pursuit of illegal funds facilitating maritime piracy. In addition, the CGPCS set up a Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia (CGPCS, 2009a: 1).

## **DRIVERS OF DANISH ENGAGEMENT IN COUNTER-PIRACY OFF THE COAST OF SOMALIA**

In line with the broad international attention it received, combating piracy in the western Indian Ocean quickly became a foreign and security priority for Denmark. This section discusses the main drivers behind the strong Danish engagement. The drivers fall into three general categories: protecting economic interests, using existing naval capabilities and promoting multilateralism.

### **Protecting economic interests**

The Danish merchant fleet accounts for 10% of international shipping. With a major economic stake in the global maritime industry, Denmark quickly realized the urgency of keeping international waters safe from piracy. A significant part of the story of the initial Danish engagement began on 1 June 2007, when the Danish

cargo ship MV Danica White was hijacked. The incident stimulated early domestic awareness in the Danish public about the issue of Somali piracy. It created a situation in which politicians felt pressure from particularly the historically powerful Danish shipping industry to commit national resources to finding a substantial solution to the problem. The Danish maritime industry was very active in messaging politicians and the wider public that protecting Danish trade interests was a key reason to engage militarily in the Horn of Africa. As an editorial in one of the largest Danish newspapers, *Berlinske Tidende*, put it in mid-2007: 'It is in the nation's interest to bear its share to protect free trade' (Berlinske 2007, our translation).

Thus, soon after the Danica White episode, the fight against Somali piracy became a core foreign and security policy priority for Denmark's international engagement. It was included in the Government Platform published in 2007 (Government Platform, 2007), and Denmark became one of the first countries to participate in the international counter-piracy missions in the western Indian Ocean. The Danish Parliament mandated military assets and crews to participate under CTF 150 in the beginning of 2008 (B33, 2008), and later in NATO's newly established Operation Ocean Shield in 2009 (B59 2009). Political support for protecting Danish commercial shipping interests came from across the political spectrum. One example is Holger K. Nielsen, political spokesman on defence policy for the Socialist People's Party, who stated that 'Denmark is a seafaring nation with maritime interests that we have to safeguard (...) we must be able to protect the Danish merchant navy' (Parliamentary Debate 2009: 40; our translation).

The political concern with commercial interests is corroborated in interviews carried out with representatives of the Danish defence authorities and relevant ministries, hereunder three Ministers of Defence and Foreign Affairs who served during the period 2009 to 2015. They stressed that shipping was one of, if not the most important reason for Denmark's extensive engagement in counter-piracy at the time. As the former Defence Minister Hækkerup put it: 'We went to war, or at least used the Danish military – not to protect a people against genocide or other idealistic causes that normally drives Danish military engagement, but to protect the shipping industry. To protect Danish jobs'.<sup>7</sup>

Accordingly, the Danish government collaborated with the shipping industry to develop legislation that allowed Danish flagged merchant vessels to use armed protection when transiting through piracy-prone waters. The Danish government also promoted international best management practices (BMP) developed under the auspices of the International Maritime Organisation (IMO) for the shipping industry.

### **Using existing naval capabilities**

Politically, participation in counter-piracy off the coast of Somalia came at a low cost and contained little human risk, thus allowing the government to retain its legitimacy in explaining the decision to the electorate. This seems a relevant consideration in the decision to participate in counter-piracy. As stressed by then Defence Minister Hækkerup: 'Ships are easy to send because they are their own little unit, and it doesn't matter if they sail in the Baltic Sea or the Gulf of Aden. This means that they have low economic cost and low political and normative costs: no soldier is sent home in body bags'.<sup>8</sup>

In terms of resources, any state must prioritise when and where to deploy its military forces abroad. For a small country like Denmark, with a relatively restricted pool of total resources, this is even more the case. In addition to financial resources, prioritisation is also limited to technical resources – existing strengths and capabilities. As a seafaring nation, Denmark has historically maintained a capable naval force. This was stressed by several politicians in political debates when Parliament decided to participate in maritime policing, namely that the Royal Danish Navy was particularly well suited to taking part in counter-piracy operations (B32, 2008; B33, 2008; B59, 2009). For instance, John Dyrby Poulsen, spokesman on defence for the Social Democrats, commented: 'We are of the opinion that Danish defence [forces] should be used where it is good, and this is one of the things that the defence [forces] and the Navy are particularly good at (...) We think it is important to fight piracy, and that it happens with one of Denmark's new and impressive ships, and 180 staff members tell how we all find this important' (Parliamentary Debate 2009: 39; our translation).

This sentiment was shared by the Royal Danish Navy. After years of Danish military interventions in Iraq and Afghanistan in which the army and air force had played a significant role, counter-piracy provided an opportunity for the navy to demonstrate its expertise. As a navy commander involved in Somali piracy since 2006 remarked in an interview: 'We had the military capabilities that were needed for the mission. Our ships would be able to do this job very successfully, and they really wanted to prove that'.<sup>9</sup>

### **Promoting multilateralism**

A final factor in engaging in counter-piracy was that it fitted Denmark's perception of itself as an active member of the international community. Although Danish counter-piracy engagement was first and foremost seen as a necessary means to protect maritime shipping, it was also framed as an opportunity to support an

internationalist agenda on piracy and the UN-track in particular. The fight against Somali piracy had a clear UN mandate, and from the outset it consisted of a very broad international coalition of willing states and international organisations, including key security and political alliances, such as NATO and the EU.<sup>10</sup>

On each of the occasions when the Danish Parliament agreed to contribute to international efforts – be it the French WFP mission, the CTF 150 or NATO's Operation Ocean Shield – the decisions were legitimised by most political parties. Military engagement was argued to have a 'noble' purpose as well as a firm legal basis in UN Security Council resolutions (B32, 2008; B33, 2008; B59, 2009).

Thus, counter-piracy efforts off the coast of Somalia proved an opportunity for Denmark to promote core values of a rules-based international order. These included promoting the rule of law and human rights obligations, with Denmark supporting development cooperation in the region. For instance, it was stressed in the decision to deploy Danish capabilities in NATO's Operation Ocean Shield that 'the Danish efforts in the NATO operation should be seen in close connection with the support that Denmark gives to capacity building in East Africa' (B59, 2009, p. 2; our translation).

Accordingly, Denmark soon allocated resources to other dimensions of international counter-piracy, apart from purely military intervention, which positioned Denmark as one of the main donors to capacity-building initiatives in the region's maritime security sector.

Finally, Denmark became involved in the CGPCS, chairing WG2 on legal issues from its inception in 2009 until 2014, when the CGPCS working groups were reorganised (CGPCS 2014).

### **Consolidating Danish efforts in a strategy document**

To emphasise the extent to which Denmark considered Somali piracy an international security challenge of grave dimensions, the Danish government published a wide-ranging counter-piracy strategy after three years of its engagement in the Horn of Africa. As mentioned in the introduction, the strategy adopted a comprehensive approach. It was developed through cross-ministerial collaboration between the Ministries of Foreign Affairs, Defence, Justice, and Economic and Business Affairs. Running from 2011 to 2014, it was renewed once, extending the period of concerted engagement to the period from 2015 to 2018.

The two consecutive strategies shared the same three overall aims:<sup>11</sup>

#### **Combating piracy**

- Deployment of naval military contributions, maritime patrol aircraft and personnel to NATO's Operation Ocean Shield.
  
- Support to international initiatives, primarily the CGPCS, in finding practical solutions to legal challenges in counter-piracy efforts, including
  - Establishing domestic piracy legislation to enable piracy prosecution
  - Seeking transfer agreements between naval and prosecuting states
  - Finding a model of international burden-sharing for the prosecution of piracy suspects

#### **Protecting the shipping industry**

- Coordination between Danish state authorities and the shipping industry on issues related to:
  - Providing legislation that authorises civilian armed security guards on board Danish vessels
  - Promoting the industry's self-protection through adherence to the IMO's best management practices (BMPs)

#### **Regional capacity-building of maritime security capabilities**

- Training regional coast guards and navies.
  
- Contributing to the cooperation between the affected littoral states, including information-sharing.
  
- Strengthening the capacities of judiciaries and penitentiaries in the region, including in Somalia.
  
- Addressing the financing of piracy and the illegal flow of money.

The three aims reveal that the Danish government prioritised a broad range of interventions that effectively extended across the scope of the international counter-piracy architecture. This corresponds to the general Danish emphasis on combining civilian and military instruments to promote stability and development in international operations.<sup>12</sup>

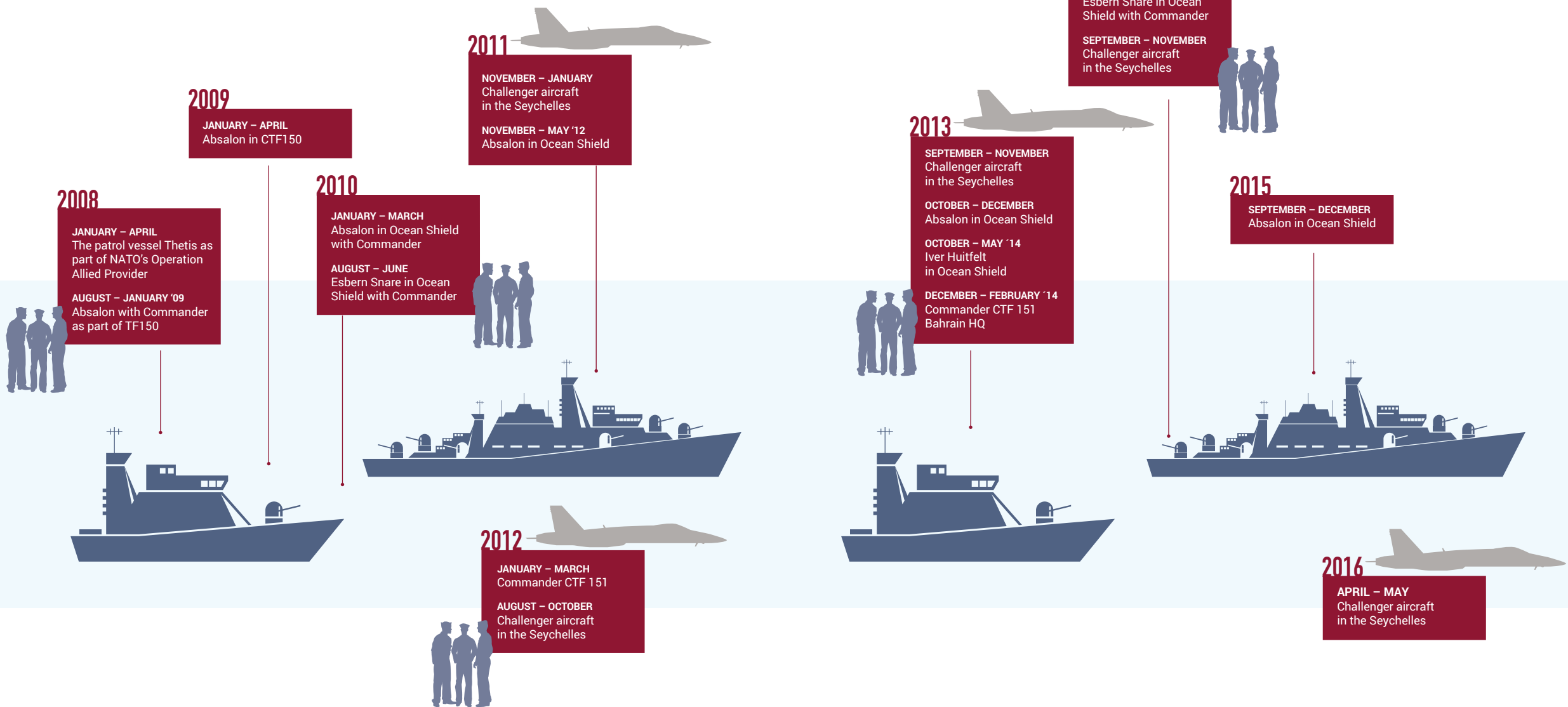
As a concerted, cross-ministerial effort, the counter-piracy strategies communicated officially, both domestically and internationally, that Somali piracy was a distinct Danish security and foreign policy priority. It allowed Danish authorities to establish a point of coordination and drew earmarked funding to its efforts. While a comprehensive evaluation of the effects of the strategies remains beyond the scope of this report, the following chapters draw out key lessons regarding each of their three aims by comparing the strategy with its translation into practice.



**COMBATING PIRACY THROUGH LAW  
ENFORCEMENT**

As a seafaring nation, Denmark's counter-piracy efforts consisted in large part of regular deployments of naval and air force assets from 2008 to 2016. To ensure legal finish, Denmark also contributed to the international efforts to establish a sufficient legal framework that allowed the transfer and prosecution of piracy suspects held at sea. This chapter examines these aspects of Denmark's participation in counter-piracy and discusses lessons learned from these efforts.

### Timeline of Danish military participation in international counter-piracy, 2008-2017<sup>13</sup>



### DANISH EFFORTS TO COMBAT SOMALI PIRACY

In this section, we present the main components of Danish counter-piracy activities regarding the suppression of Somali piracy, namely its military assistance to piracy policing and its contributions to ensure sufficient legal means for piracy prosecution.

### **Danish military interventions off the coast of Somalia**

The Royal Danish Navy and Air Force were regularly present in the western Indian Ocean between 2008 and 2016, as shown in the timeline page 26-27.

At the time of the first UN Security Council resolution on Somali piracy (see Chapter Two), Danish naval capabilities were already present in the region as a contributing partner to the US-led Task Force 150, which was broadly mandated to combat counter-terrorism and maritime crime.<sup>14</sup> While part of the CMF, Denmark led the mission from September 2008 to January 2009, and two officers were deployed to CMF's headquarters in Bahrain. From January to April 2009, Danish naval capabilities switched to Task Force 151, which was mandated to combat Somali piracy in particular.

For approximately six months of every year, a fully equipped warship was deployed in first CTF 150 and 151, then NATO's Operation Ocean Shield from August 2009 (B59 2009). The Navy primarily deployed its largest vessel type, the Absalon class support vessel. But also the a frigate of the Iver Huitfeldt class and an inspection vessel of the Thetis class were deployed. Furthermore, the Danish Air Force regularly provided a Challenger aircraft for NATO surveillance and sent a naval commander to CTF's headquarters in Bahrain. On multiple tours, the Danish warship acted as flagship.

On the basis of Parliamentary Decision B59, the Danish authorities quickly established relevant structures at the strategic and tactical levels for dealing with Danish aspects of counter-piracy. A special maritime insertion unit (Særlig Maritim Indsatsstyrke, known as SMI) was devised. The SMI team consisted of military police officers, de-mining personnel and personnel from the Danish Special Forces (Førmandskorpset). Attached to the SMI team was also a Somali interpreter, allowing the boarding team to communicate with the Somali crew of a suspected piracy vessel including during their potential apprehension. An inter-ministerial task force was established with the responsibility for managing piracy incidents that involved the Danish warship or attacks against a Danish flagship. Finally, relevant regulatory documents supporting naval operations were developed (e.g. SOK, 2013). In total, Danish naval forces off the coast of Somalia apprehended 295 Somalis suspected of piracy between 2008 and 2013 (FKO, 2014).

Denmark's military contribution also included air force capabilities. From 2011 until the end of 2016, a Royal Danish Air Force detachment rotated with other states to provide counter-piracy intelligence within the framework of NATO. Operating out of

Seychelles, the Danish Air Force conducted surveillance missions in a Challenger maritime patrol aircraft along the Somali coast in search of indications of illegal activities related to the planning and operations of maritime piracy. Surveillance was carried out under the mandate of NATO, but information was shared among the naval forces patrolling in the western Indian Ocean for piracy incidents via the SHADE framework described in Chapter Two.

### **Danish contributions to legal issues of counter-piracy off the coast of Somalia**

After the apprehension of piracy suspects comes prosecution. However, the international legal framework governing counter-piracy provided some challenges in its application. First, while piracy is an age-old crime, there were limited cases of prosecution from which to draw legal experience. Secondly, since Somalia had no functioning legal system, prosecution of Somali suspects had to be conducted in other states. As the counter-piracy model developed, countries in the region took on this responsibility, namely Kenya, Seychelles and Mauritius.

Denmark was a central player in resolving the legal challenges. The Danish Ministry of Foreign Affairs, with Ambassador Thomas Winkler at the helm, chaired CGPCS Working Group 2 (WG2) on legal issues from 2009 until 2014, when it changed to an online consultative forum. The role of WG2 was to advance the 'judicial track to arrest, detain and prosecute pirates' (CGPCS, 2009; Communiqué of 1st Plenary Session). Or, as Ambassador Winkler himself put it: 'We were looking at each other and asking, what is piracy from a legal perspective, and how do we deal with it. No one knew at the time'.<sup>15</sup>

Under Danish leadership, WG2 produced a comprehensive legal toolbox that was disseminated widely among states participating in counter-piracy. The toolbox provided analyses of the legal framework governing counter-piracy and guidance to, for instance, state prosecutors conducting piracy cases. Furthermore, WG2 facilitated the establishment of legal and practical frameworks for a post-trial prisoner transfer system that allowed Somalis convicted of piracy in the region to be transferred to serve their sentences in Somali prisons.

### **LESSONS LEARNED FROM DANISH PARTICIPATION IN COMBATTING PIRACY**

Denmark thus played an active role in international policy and practice in combatting piracy. As we saw above, Denmark participated in both CGPCS and SHADE, as well as deploying naval assets in international military alliances. This section discusses



central opportunities and challenges of Danish efforts within the policy aim of combatting piracy. Opportunities regard Danish influence in international policy networks and the promotion of international norms. Challenges are in particular ensuring prosecution and common legal standards.

### **Danish leadership and influence in international counter-piracy networks**

A small state with limited resources, Denmark was quick to see the benefits of the new types of coordination forums that were established to combat Somali piracy. In particular, the establishment of the CGPCS and WG2 provided a welcome opportunity for Denmark. The CGSPC became one of the main forums that shaped international law on piracy. Denmark seized the opportunity when it was asked to lead the WG2 on legal affairs and devoted the resources necessary to carry out the task. By chairing WG2, Denmark was able to move the international agenda forward and address some of the central challenges to international counter-piracy. In interviews across regional countries with legal practitioners involved in piracy prosecution, Ambassador Winkler was widely recognized for his efforts. Likewise, in interviews conducted in the judiciaries of regional states, the authors noted how the toolbox was valued and played an important role in standardising piracy prosecution.

Apart from being an effective tool for cooperation, WG2 allowed Denmark to 'upload' national interests in an international setting. From interviews with counter-piracy actors in Denmark, it is clear that Denmark was not willing to prosecute suspects domestically. By ensuring that transfer agreements were signed with regional states and that a toolbox existed for prosecution, apprehending states, including Denmark, could thus hand over apprehended piracy suspects to a third state without obstruction.

In combating piracy, Denmark also benefitted from the coordination and deconfliction in SHADE. As appears from section 2 above, and from the official Danish counter piracy strategies (cf. Chapter Two), the NATO mission remained the most central institutional framework for Denmark's naval contribution. Former Defence Ministers Gitte Lillelund and Nick Hækkerup stressed this in interviews with the authors, explaining that NATO was considered the framework and chain of command regarding Danish military efforts off the coast of Somalia.<sup>16</sup>

The Danish emphasis on NATO was reinforced by Denmark's defence opt-out from EU military cooperation, which prevented Denmark from joining the EU's Operation Atalanta and from supporting the EU military training mission in Somalia (EUTM Somalia). Here, the Shared Awareness and Deconfliction (SHADE) forum played an

important tactical role in Danish military counter-piracy. As mentioned in Chapter Two, SHADE provided a forum through which naval forces and other key stakeholders could coordinate efforts at the tactical level, share information about operations and activities, and organise joint operations, such as group transits or surveillance. The fact that the forum allowed for operational and tactical coordination, and did not take place at the political level, proved valuable for Denmark. A notable example was that its de-politicised nature reduced operational limitations posed by the Danish EU defence opt-out. For instance, whereas the opt-out meant limited options for information-sharing at sea with the EU Atalanta mission, SHADE provided a way for Denmark to still collaborate with EU naval assets. As a commander in the Danish Navy put it: 'In practice, information between the "Big Three" (i.e. Atalanta, Ocean Shield and Task Force 151) was shared between all parties, and the Danish opt-out didn't play a role here. Denmark was still able, sometimes indirectly through another member state rather than directly through Atalanta, to receive information and intelligence collected by the Atalanta mission'.<sup>17</sup>

- Through international policy networks, Denmark positioned itself centrally in international efforts of collaboration and actively shaped the international agenda on counter-piracy.
- On a strategic level, Denmark in particular managed to shape the agenda on the legal framework for combatting piracy in line with Danish priorities.
- On a tactical level, Denmark benefitted from engaging multilaterally in informal networks to enhance the effectiveness of operations to combat piracy through, for instance, information-sharing.

### **Emphasizing the rule of law and human rights obligations in Danish counter-piracy operations**

Denmark has traditionally been a strong supporter of basing solutions to security issues on international law, thereby achieving legitimacy and sustaining multi-lateralism. This is seen in a number of aspects of Danish counter-piracy, where Denmark pushed for the rule of law and human rights as guiding norms in international counter-piracy within various institutional frameworks, e.g. in the conventional NATO framework and in the more ad hoc CGPCS.

In Operation Ocean Shield, detention facilities for piracy suspects apprehended by the Royal Danish Navy and detention practices by naval crew followed Danish law and were in accordance with international law (cf. SOK, 2013). Detainees were kept in make-shift cells on a covered deck within the warship. While in custody, the detainees were treated according to certain basic rights (SOK, 2013: Annex 4). For instance, they received three meals a day; they were allowed to call their families; they were taken up on deck for one hour a day; and they were supported in their practice of Islam.<sup>18</sup>

While a focus on the rule of law is not unique to the Danish approach as such, it was nevertheless highlighted by a range of actors as a comparative Danish advantage. As former Defence Minister Hækkerup put it, 'The Danish mark on the operation was the way we treated pirates, which gained respect among our alliance partners. The Danish way is a general idea of equality that we are worth the same as they are, and we implemented that in our conduct'.<sup>19</sup> Similarly, former Defence Minister Gitte Lillelund emphasised that 'The rule of law is a part of Danish crisis management identity, and I believe that Denmark managed to shape the overall mission so that the rule of law became respected to a larger degree'.<sup>20</sup> Finally, legal actors in Seychelles commended the Danish navy in interviews with the authors for providing sound evidence packages for the prosecution case.

- Denmark's naval regulation and law enforcement practices contributed to shaping legal standards in Operation Ocean Shield according to the rule of law.

### **Room for improvement in Danish detention practices in relation to human rights obligations**

The focus on human rights and the rule of law proved a challenge in practice. In particular, the length of detention of piracy suspects on Danish warships deserves attention, while the Danish authorities in the inter-ministerial task force established (a willing) jurisdiction to try the piracy suspects.

As part of the legal regime governing counter-piracy law enforcement, the suspects enjoy the right in international human rights to be put before a judge within a reasonable time (ECHR Article 5(3); ICCPR Article 9(3)). The Danish Administration of Justice section 760(2) stipulates that a detained person shall be brought before a judge within 24 hours, echoed by the Danish Constitution Article 71(3). If the

person is not released, the judge must decide within three days whether he or she is to be held further (cf. also Justice Act section 260(5)). Moreover, section 729a provides for access to a lawyer. Reference to relevant law regarding detention is also made in the naval regulation governing Danish counter-piracy (SOK 2013).

Adhering to these provisions proved a challenge, when a Danish warship intercepted a suspected piracy vessel on the high seas. The naval regulation stipulates that the military police investigator must send a preliminary police report within 24 hours to the Danish naval authorities, who forward it to the inter-ministerial task force and state prosecution for assessment (cf. SOK, 2013: 10.2.3). This 24 hour deadline does therefore not pertain to putting the case before a (Danish) judge, but before the Danish authorities involved in the assessment of the future path of the case, i.e. whether the suspects are to be tried in Denmark, transferred to another jurisdiction or released without trial. Interviews with Danish naval actors confirm that this was regular practice.

The time needed for deliberations between the state prosecution and the inter-ministerial task force to decide whether to exercise jurisdiction over the detained piracy suspects significantly protracted the length of detention. In interviews with naval actors, it was explained to the authors that crime scene investigations were completed within a couple of days and that any hostage witnesses were released to their further voyage within this time. Yet detention continued for an additional number of days, and sometimes for weeks, while the Danish state apparatus deliberated on options for adjudication, along with diplomatic negotiations between states before jurisdiction was finally claimed, typically by Kenya or Seychelles (FKO, 2014).<sup>21</sup>

- During detention of piracy suspects on the high seas, Danish authorities deprived piracy suspects of their liberty for many days without being put before a judge – and without access to a lawyer. This is a violation of habeas corpus.

### **An unclear policy stance on the exercise of Danish adjudicative jurisdiction**

Of 295 Somali suspects apprehended by Danish forces, none were prosecuted domestically. Fifty suspects were prosecuted in Kenya and Seychelles (FKO, 2014). The rest were released without trial. While some legal constraints in Danish law affect the ability to exercise jurisdiction over extraterritorial crime (Larsen, 2017:

163-165), a sentiment among Danish legal actors was detected in interviews conducted by the authors that Denmark's rejection of the piracy cases was of a political nature, rather than due to limitations in Danish criminal law. Interviewees have pointed to a concern in political circles that the piracy suspects might claim asylum in Denmark as the reason the Danish authorities did not transfer Somali suspects to Denmark for prosecution. Such concerns are also reflected in the counter-piracy literature (Kontorovich, 2010: 267; Riddervold, 2014: 555; Murphy, 2016: 221). This sentiment may be detected in official policy as well. For instance, Parliamentary Decision B59 mandating Danish naval forces in NATO's Operation Ocean Shield refers to the international legal framework authorising maritime policing, and it sets out the tasks and restrictions related to this for the Danish naval contribution. But B59 is silent on anything after apprehension, not least what the Danish authorities are to do in terms of prosecution.

While this is a politically legitimate stance, the authors identified in interviews with naval law enforcers a call for prompt, standardised and official procedures regarding in which situations Denmark would exercise adjudicative jurisdiction, and when suspects would be transferred for prosecution in a third state.

- In Danish policy on piracy prosecution, there was a problematic lack of clarity on whether Denmark will exercise jurisdiction.

# PROTECTING THE SHIPPING INDUSTRY



At the height of Somali piracy, 25-30 naval vessels were patrolling the western Indian Ocean. Tellingly, this has been compared to having 25 police cars patrolling a land mass twice the size of Europe (Guilfoyle, 2012: 769). In other words, the maritime area of potential piracy attacks is too great for warships to be able to react to incidents in time. Accordingly, an important part of Danish counter-piracy was enabling the shipping industry to protect its own ships from risk, in particular by allowing armed private security companies (PSCs) on board Danish-flagged vessels. This chapter examines these aspects of Denmark's participation in counter-piracy and discusses the lessons learned from its efforts.

## DANISH EFFORTS TO PROTECT THE SHIPPING INDUSTRY

Below, we briefly present the main contribution of Danish counter-piracy regarding the protection of Danish and international shipping. This includes revising legislation to provide for private armed security personnel to serve on board Danish-flagged merchant vessels and promoting the industry's compliance with best management practices.

### Danish legislation on the private use of force

After the hijacking of the Danish-flagged MV *Danica White* in June 2007 – and the simultaneous escalation of piracy off the coast of Somalia – the Danish ship owners' association, Danish Shipping, realised the need to address the problem at the political level. In interviews with the authors, representatives of Danish Shipping explained that the organisation met with relevant state actors. This was most notably the Danish Maritime Authority but also ministries, in particular the Ministries of Defence and Foreign Affairs. Through such meetings, the Danish Shipping sought to promote the serious security needs of their members. As highlighted by several interviewees in the state apparatus and the industry alike, Danish Shipping was successful in this endeavour leaving a distinct fingerprint on Danish policies and practices on the ground.<sup>22</sup> This is also apparent from the Danish counter-piracy strategies, which emphasised the government's consultation with the shipping industry (CP Strategy, 2011: 25).

Concretely, exchanges took place on the question of using armed guards to protect shipping vessels. Despite the vast attention paid to the suppression of Somali piracy by large-scale military operations, such as NATO's Ocean Shield, very rarely was a piracy attack caught in the act. The Gulf of Aden alone encompasses 530,000

km<sup>2</sup> – more than the size of Spain. Warships in maritime operations off the coast of Somalia therefore typically have a narrow window of less than half an hour to respond to a distress call (Friman and Lindborg, 2013), and catching suspects red-handed is uncommon. After 2008, Somali piracy spread more deeply into the western Indian Ocean through the use of so-called motherships. This created a growing expanse for piratical operations and thus an expanded area for the state-deployed naval vessels to patrol.

A need therefore arose to include PSCs to increase the level of vessel protection in high-risk areas. Some states with shipping interests in the Indian Ocean began passing legislation and adopting policies that allowed private armed guards to protect their vessels transiting the waters off the Horn of Africa. Denmark was for instance the first Scandinavian country to allow private armed security personnel on board its ships (Berndtsson and Østensen, 2015).<sup>23</sup>

The process was started on the initiative of the Danish shipping industry, which requested the Danish state to provide armed military protection, a model already known from the Netherlands (Siig and Feldtmann, 2013). This, however, was not granted, primarily because the Danish defence opposed the idea of having Danish soldiers provide military protection for Danish ships.<sup>24</sup> However, from interviews with shipping representatives, it is evident that the industry was also opposed to it. This was based on a question of principle: the shipping industry was generally reluctant to allow weapons on board merchant vessels. It was also based on a practical concern that the presence of armed personnel may lead to an escalation of violence in the modus operandi of piracy groups.

The government then considered the option of having civilian armed guards on board Danish-flagged merchant vessels. While initially sceptical, the Danish government came to change its stance on the matter concurrently with the developments of piracy in the Gulf of Aden described earlier and were pushed along in this respect by the Danish shipping industry. The change in the government's position is reflected in the 2011 Danish counter-piracy strategy, drawn up when Somali piracy was at its height (CP Strategy, 2011: 23-25).

To facilitate appropriate legislation, the Danish parliament amended the Weapons and Explosives Act in March 2011. It allowed Danish-flagged vessels to employ private armed security guards. The amendment included requirements for an application process for vessels to be granted the use of armed security. It also

required the chosen PCS to be vetted and armed guards to be subject to background checks. Furthermore, the application was to include an assessment of the current security threat. Added to this was the condition that permits were issued by the Danish state for only one transit at a time (see Berndtsson and Østensen, 2015).

According to interviews with representatives from the shipping industry, the amendment was welcomed, but the cumbersome and time-consuming procedure led to criticism. The Danish Parliament therefore amended the Weapons and Explosives Act again in June 2012 process by issuing an executive order with the objective of easing the application.<sup>25</sup> This effectively relieved the Danish state of an oversight function regarding the quality of the security companies. It was now the sole responsibility of the shipping company to vet security companies (section 7), and permits were issued to the applicant shipping companies for up to one year at a time (section 9).

#### **Promoting international best management practices**

It is a widely shared understanding among counter-piracy practitioners and analysts that self-protection measures by the shipping industry, and in particular compliance with international best management practices (BMPs), has been one of the main reasons for the success in containing Somali piracy. It appears from the Danish counter-piracy strategy that the BMPs are regarded as a decisive measure against piracy.

Originally drafted by a group of industry representatives, the BMPs were developed in consultation with the IMO, as well as the CGPCS and the shipping industry (Bueger, 2015). The purpose of the BMPs is to provide a set of specific recommendations that can be used to deter, avoid or delay piracy attacks (e.g. barbed wire, additional look-outs, citadels, water hoses and armed security guards). Moreover, shipping companies are recommended to register their movements with the so-called Maritime Security Centre – Horn of Africa (MSCHOA) and to report to the United Kingdom Maritime Trade Operations (UKMTO) in the event of an attack. This allows responding naval forces an overview of the ships sailing in the area and enables them to react as quickly as possible.

Thus, the BMPs rely on successful cooperation between state agencies and the industry. Denmark therefore aimed to promote the BMPs actively within the Danish and international merchant fleets and to follow up on their compliance with them through the Danish Maritime Authority (CP Strategy, 2011: 28). The Danish strategy underlines that Denmark prioritised actively promoting compliance internationally

in order to ensure that the BMPs continue to be an effective counter-piracy measure. Here, the CGPCS and SHADE provided platforms for collaboration between the state and the private sector, as they included the private sector as observers in policy-making and planning. Danish Shipping and its members were represented through the Baltic and International Maritime Council (BIMCO), the Oil Companies International Marine Forum (OCIMF), Intertanko and the International Chamber of Shipping (ICS), which participated in forum meetings. Through these channels, the industry was also able to contribute to policy by commenting on and drafting parts of for instance the BMPs.

#### **LESSONS FROM DANISH ENGAGEMENT WITH THE SHIPPING INDUSTRY**

On both the practical and strategic levels, the private sector played an important role in shaping and implementing public counter-piracy policy. This section discusses challenges and opportunities of Danish efforts within the policy aim of protecting Danish and international shipping. They include an examination of the Danish legislation on armed guards, the collaboration between state and private actors and the role of the private sector in vessel protection.

#### **Lack of state oversight on the private use of force**

The increased use of private guards has been seen as an effective measure in combatting piracy. In lieu of state presence in a sea as vast as the Indian Ocean, outsourcing armed protection to private security companies became an established practice in piracy-prone waters and was welcomed by significant parts of the shipping industry.

However, the very broad legal mandate in Danish law regulating private armed security on Danish vessels has also been subject to criticism. Generally speaking the use of force is traditionally the responsibility of the state. But here, it is largely left to private actors with little state oversight. Legal scholars have argued that the liberal regulation of private armed security is an anomaly in Danish regulations on private security – in comparison to the lean procedure allowed the shipping industry, even an unarmed guard working night shifts on a building site in Denmark is under state control (Feltdmann and Siig, 2013).<sup>26</sup> While an ‘anomaly’ is not necessarily critical in itself, the lack of state oversight may be problematic in a number of ways:

First, the law allows the granting of year-long permits to shipping companies, which are not specific to the voyage. Thus, multiple PSCs may be deployed within the granted time span without state oversight as to the quality of the shipping company's choices and changes of security partners, nor is there any state sanction of these choices.<sup>27</sup>

Secondly, there is no state-issued vetting procedure available to assist shipping companies and standardise the procedure (Frier, 2015: 282). There is, however, an international ISO standard for PSCs (ISO, 2012; 2015), just as the IMO has issued guidelines for ship owners and flag states recommending certain requirements when using PSCs (e.g. IMO 2012). Yet neither is codified in Danish law.

Thirdly, the law leaves the captain of the ship responsible for the armed guards' actions on board. The law means that the captain may be liable in the event of any wrong-doing, injury or death caused by or to the guards (Siig, 2011). In an interview with the authors, an industry representative explained that, whereas the introduction of PSCs was praised by the crew, the captains were very uneasy about it.

Finally, there is a more general legal issue for Danish-flagged vessels transiting foreign waters. As long as the armed security guards are on the contracted vessel, they act under the laws of the flag state. It is therefore up to each flag state to ensure legitimate procedures, oversight and quality of armed protection on the high seas. Yet merchant vessels under private protection must also comply with the laws of the littoral state in the port of which, or through the waters of which, the vessel may transit on its voyage. This further complicates the rules on the use of force, the right (or not) of private actors to carry weapons and the question of accountability.

Parts of the shipping industry called not only for Danish legislation but for an international effort to establish regulation on the issue at large. In this respect, floating armouries have been discussed but no concerted effort has yet been undertaken internationally to streamline standards and create long-term solutions through binding regulation.

- Danish legislation on the use of private armed protection on board merchant vessels has allowed for a more flexible approach to address the challenge of piracy effectively through multiple paths.
- However, the amended Weapons Act allows poor state oversight, to the risk of the quality of protection.
- For the shipping industry, the issue of the captain's responsibility is considered unsolved in Danish law, leaving an uneasy relationship between the PSC, the shipping company – and the state.
- The use of force at sea lacks international standards.

#### **The role of public-private relations in the shipping industry's self-protection**

The collaboration between the Danish shipping industry and the Danish state authorities has proved a productive relationship over the last decade of counter-piracy. Danish Shipping has exchanged information with relevant state ministries and agencies, for instance in the context of legislative consultation – as did individual shipping companies, for instance during an attack. There is historically an established line of communication between the two actors, and it was possible to draw on this relationship, generally benefitting the policy aim of protecting merchant vessels.

On the tactical level, both internationally and nationally the public-private relationship played an important role in the implementation of the best management practices (BMPs). According to interviews with industry representatives, Danish ships generally comply with the BMPs and are still following their recommendations despite piracy having died down. As one explained, 'If you get caught, it's your own fault', referring to BMP4 as highly useful. The Danish policy aim of promoting the BMPs can thus be considered successful.

Furthermore, Denmark's counter-piracy strategy has been received positively by industry representatives. Parts of the shipping industry expressed in interviews a keenness for Denmark to renew its piracy strategy, which ends in 2018, and to allocate military resources especially to the protection of important trade routes. As discussed in Chapter Two, there are multiple reasons why this is also in the interest of the Danish state, both economically for Denmark and in terms of promoting the

rule of law internationally. However, it is worth critically assessing whether Danish resources and capabilities are better applied in other areas, such as being channelled through international organisations like the UNODC for regional capacity-building, which allows for local solutions to maritime crime.

- Existing lines of communication between the public and private sectors in national and international contexts allowed policy-making to become relevant and effective for its 'beneficiary', the shipping industry.
- While some parts of the Danish shipping industry want continued military engagement in the western Indian Ocean, the balance between public and private concerns must be critically assessed, as public resources may be more effectively spent elsewhere.

#### **Consequences of private security elements in Danish counter-piracy policy**

It is arguably unthinkable that the industry should not collaborate with the state on the issue of protecting international shipping. The shipping industry is the very object of state protection in the western Indian Ocean. However, some general questions arise as to the nature and the balance that has to be struck between public and private concerns, when law enforcement priorities are established.

While private guards lower the risk of successful pirate attacks on merchant vessels, they do so at the risk of exacerbating or even escalating the violence and thus further endangering all parties, including any hostages.<sup>28</sup> In line with the previously mentioned apprehension of the shipping industry in allowing weapons on board, the use of PCSs does not seem to be a long-term solution to the problem of Somali piracy.

The private protection of Danish-flagged merchant vessels raises a number of principled concerns, if it is to become an integral element in the Danish state's counter-piracy strategy. The use of PSCs challenges traditional conceptions of the sovereign state and its monopoly on the use of force. If PSCs become effective, this effectiveness inevitably involves not just the capability of but also the use of force. While this is neither a surprising nor an unregulated assignment, private companies do not fall under the same legal structures of accountability as states (Liss, 2015: 95). This is not least evident in the liberal Danish law on the use of PSCs, as discussed

above. Further, PCSs have commercial interests that rely on continued contracting, rather than establishing long-term maritime security. If not handled properly, including sound regulation, it may question the legitimacy of the state, when PSCs are able to act with little state oversight and are not subject to public scrutiny.

- The use of PSCs is not a long-term solution to the problem of piracy under the current regulatory framework, if the use of force is to remain a state-sanctioned task.
- The established collaboration between public and private actors, and the latter's integration into Danish counter-piracy policy, require explicit attention to continue to be paid to their relationship.





**REGIONAL CAPACITY-BUILDING**

Denmark recognised early on that addressing the challenge of piracy also required a long-term approach focused on regional capacity-building in order to enable the littoral countries of the western Indian Ocean to address the problem of piracy and other maritime security challenges by themselves in the long run. Capacity-building was therefore the third main objective of Denmark's counter-piracy policy. To achieve this, Denmark channelled its efforts through both bilateral relations and international frameworks. This chapter examines the capacity-building aspects of Denmark's participation in counter-piracy and discusses the lessons learned from its efforts.

## **DANISH PARTICIPATION IN THE REGIONAL CAPACITY-BUILDING OF MARITIME SECURITY CAPABILITIES**

From a strategic perspective, Danish capacity-building has had two main focuses, namely contributing to the capacity-building of maritime security capabilities and to its judicial capabilities. These are described in turn below.

### **Maritime capacity-building**

Danish support to maritime capacity-building aimed at strengthening maritime policing competences and maritime domain awareness in Somalia and the western Indian Ocean countries. This was done through the training of coast guards, navies and maritime police, as well as contributing to cooperation and information-sharing between regional states and conducting joint training exercises (CP Strategy, 2011: 13-23).

Denmark directed its efforts and resources through various channels. One framework has been the EU civilian maritime security mission, EUCAP Nestor, to which Denmark contributed with seconded staff (from one to five a year, primarily police officers) since the mission was launched in 2012. From 2014 to 2016, Denmark placed an official seconded by the Ministry of Foreign Affairs as head of the EUCAP Nestor's country office in Seychelles.

Through EUCAP Nestor, Denmark was able to contribute to several initiatives promoting regional cooperation in maritime security and capacity-building. The Nestor mission specifically focused on strengthening the sea-going maritime capacities of Djibouti, Kenya, Tanzania and Seychelles, as well as the rule of law sector, initially by supporting the development of a Coastal Police Force in the Somali regions of Puntland and Somaliland. Activities here included expert advice on legal, policy and operational matters concerning maritime security; coast guard

training to develop their ability to enforce the law on the sea; and procuring equipment. The Nestor mission also cooperated with the naval forces on capacity-building, most notably EU's Atalanta operation, but sometimes also NATO's Operation Ocean Shield, where Danish warships carried out capacity-building exercises with coast guards and maritime police when calling at regional ports, e.g. in the Seychelles (two to three times a year).<sup>29</sup>

Denmark also used other international frameworks to contribute to regional maritime capacity-building. From 2012 to 2016, a Danish maritime expert was embedded in the African Union (AU) in support of the implementation of the first African Integrated Maritime Strategy (AU 2012), which aims to assist AU member countries' capacity to implement and strengthen maritime security governance (CP Piracy Strategy, 2015: 17). Moreover, from 2015-2017 Denmark supported the UNODC's Maritime Crime Programme financially, focusing specifically on regional coast guards.<sup>30</sup>

From 2011 to 2017, Denmark also channelled funding for the capacity-building of maritime capabilities through bilateral programmes, namely the Peace and Stabilisation Fund. In particular, Denmark supported the Kenyan navy with advice, training and equipment and placed a military advisor in the Royal Danish Embassy in Nairobi.

### **Judicial capacity-building**

With regard to judicial capacity-building, the Danish focus has been on contributing to the establishment of functioning legal structures, especially in Somalia. This entailed the construction of prisons and strengthening the judicial and security sectors, including the police force, through training and financial aid. Through the UNODC, Denmark has financed the construction of Somali prisons, as well as the training of personnel. Denmark provided support for an expansion and improvement of the prison capacity in Puntland and Somaliland, allowing Somalia to receive convicted pirates to serve their sentences in prison facilities that meet international standards. Denmark participated in monitoring the new prisons in coordination with the WG2 and Ambassador Thomas Winkler.

Denmark furthermore emphasised the need to address the financing of piracy and the illegal flow of money. Support was thus given to the training of the Kenyan and Somali police authorities through UNODC and the CGPCS. Through CGPCS, we have already seen in Chapter Three how Denmark was involved in finding solutions to the challenges of implementing the legal framework governing counter-piracy. These activities create synergies with the judicial capacity-building efforts.

In addition to the specific efforts that are explored in this report, Danish capacity-building activities included other forms of development assistance to East African countries aimed at addressing the root causes of piracy. These activities, however, are beyond the scope of this report, as they do not address maritime security, but instead seek to alleviate poverty and create employment in a broader, long-term perspective.

## **LESSONS FROM DANISH CAPACITY-BUILDING IN THE REGION AROUND SOMALIA**

The Danish focus on capacity-building underlines a core Danish strategic goal of having a comprehensive approach to its crisis management efforts, whereby military and civilian policy instruments are combined to create a balanced and wide-ranging intervention (CP Strategy, 2011; 2015<sup>31</sup>). This section discusses particular opportunities and challenges of Danish efforts regarding the extent of civil-military coordination, the use of Danish civilian experts and the consequences of collaborating with developing countries on important aspects of law enforcement.<sup>32</sup>

### **Implementing a comprehensive approach to the challenge of Somali piracy**

Denmark was one of the few countries to have a counter-piracy strategy at the outset. The strategy brings together all the strands of Danish counter-piracy initiatives across different policy areas into one collected paper. The aim was to achieve a genuinely 'comprehensive approach' resting on a broad array of different crisis management instruments.

Examining the strategic level of capacity-building in Danish counter-piracy policy, military and civilian policy instruments seem well balanced; we have already seen in this and the preceding chapters the multi-pronged courses of action taken by the Danish state in order to combat piracy. This balance is reflected in the process behind creating the two counter-piracy strategies. The process was a result of a coordinated effort by the Foreign Ministry (in a leading role), the Ministry of Defence, the Ministry of Justice and the Ministry of Economic and Business Affairs, which contributed to its design and implementation. This acknowledges on the institutional level that the efforts required a multi-agency approach. However, the comprehensive approach is not seen as having been clearly implemented in practice. Civilian policy instruments and resources seem somewhat limited compared to their military counterparts. More than 200 Danish military staff were deployed on a yearly basis, including naval deployments in maritime policing.<sup>33</sup> This should be compared to fewer than 10 legal and technical advisors,<sup>34</sup> as well as police officers, being deployed on a yearly basis.

It is not surprising that regularly deploying a warship, a Challenger aircraft etc. requires a significant amount of resources, including personnel, as compared to taking part in small capacity-building missions. That said, the imbalance is nevertheless notable when considering the equal emphasis put on the importance of civilian capacity-building in the Danish strategies.

An indication that civilian capacity-building instruments enjoy less emphasis in practice also pertains to how civilian contributions were used. Interviews conducted with seconded civilian experts show that the strategic level had little or no contact with seconded Danish officials in situ. This seems a general trend; it is standard procedure that the strategic level relies on official information from mission HQs, but keeps no direct, regular or coordinated contact with its national seconded staff.<sup>35</sup> There would arguably be synergies to be gained in applying a comprehensive approach, if the strategic and practical levels in counter-piracy capacity-building were better integrated.

- At the strategic level, Denmark applied an effective inter-ministerial approach, where its collected counter-piracy efforts were merged into a single strategic document governing its actions.
- The comprehensive approach was not fully realised in practice; contrary to its international role in combatting Somali piracy through military means, on the strategic level Denmark made little active use of its experts seconded to civilian missions.

### **Innate limitations in the scope of Danish foreign policy possibilities**

As an extension of the above, Danish foreign policy itself posed some limitations on the full use of a comprehensive approach when it comes to capacity-building in particular. Such limitations pertain to the Danish opt-outs from EU common defence policy, which exclude Denmark from participating in EU military activities and consequently lead Denmark to channel its contributions primarily through NATO and bilateral country programmes.

The EU's counter-piracy activities were multifaceted compared to those of other crisis management actors (Riddervold, 2014). Atalanta is authorised to conduct operations both at sea and on land, and it is supplemented by the EU Training Mission in Somalia, as well as the civilian mission EUCAP Nestor. Because of the EU's larger 'foreign policy tool box', it could draw on a powerful range of non-military

tools, such as development aid and already established diplomatic and political relations with states in the region. Most notably, the EU managed to negotiate transfer agreements with regional countries and had financial instruments to push for the conclusion of these agreements. This turned out to be pivotal in building the necessary legal framework to facilitate Atalanta naval contributions and ensure legal finish by way of regional piracy prosecution.

The EU's counter-piracy mission thus had a broader mandate than NATO's purely military mission, to which Denmark contributed, and it was naturally more extensive than Denmark's comprehensive national approach. Based on interviews with key politicians and officials in the Ministries of Defence and Foreign Affairs, this point seemed a concern. Interviewees underlined that the EU provides the most suitable framework for applying a comprehensive approach to international security. As stressed by former Defence Minister Hækkerup: 'Unlike other comparable actors such as the UN or NATO, the EU in cooperation with its member states has available a wide array of political, operational, diplomatic, economic and structural instruments for the management of crisis and conflicts, and thus has better options for spanning across different dimensions of security as was the case in Atalanta'. Former Defence Minister Gitte Lillelund similarly saw the EU as the ideal framework for pursuing such a comprehensive policy: 'NATO doesn't do the long-term civilian support track. This is the added value of the EU. Atalanta is one example of this. And in this regard it is a shame to be outside the EU defence cooperation because one small country cannot do it ourselves.'

- Denmark did not emphasise the civilian component of its comprehensive approach as much as it prioritised its military contribution.
- In the case of counter-piracy, it is a challenge for a small state like Denmark to gain significant traction with a national comprehensive approach by its own means.
- Applying a comprehensive approach in practice would have been considerably easier had Denmark been able to participate in the EU framework, which aimed to coordinate a combination of instruments in practice, while the NATO framework (supported by Denmark) did not allow for such coordination to take place.

### **A critical look at resources in the burden-sharing between donor and regional countries**

Because there is no obligation to prosecute piracy suspects under international law (UNCLOS Article 105), states were able to opt out of prosecuting piracy suspects and instead release them without trial. To counteract the impunity this involved, the international community developed a law enforcement architecture based on burden-sharing between states. In this way, Denmark collaborated with both Kenya and Seychelles in several prosecution cases regarding Somali piracy.

The burden-sharing provided several opportunities. It spread out responsibilities between willing states. This allowed Denmark, for instance, to focus its resources on where its foremost capabilities and policy priorities lie: maritime patrolling and support to the development of the regional security sector. Accordingly, Denmark was instrumental through its role in CGCPS WG2 on legal affairs in developing transfer agreements between navies and regional states, further supporting its political priorities of keeping prosecution confined to the region around Somalia.

The burden-sharing with regional states also added value for the regional states. Participating in counter-piracy provided an opportunity for them to gain leverage in international relations, since they were in effect prosecuting piracy suspects on behalf of all states. For instance, Seychelles used its active role in counter-piracy to publicly promote its 2017 candidacy as a member of the UN Security Council.<sup>36</sup>

This leads to an important point regarding regional politics, which shows the challenges, or the flipside, of Denmark collaborating with regional states. Whereas Seychelles was a willing and active partner, who used its participation in counter-piracy actively, the opposite turned out to be the case with Kenya. In 2010, Kenya announced that it would no longer be receiving suspects and wished to terminate the transfer agreements signed with, among others, Denmark and the EU. The Kenyan Foreign Minister explained that he did not want his country to be the 'dumping ground' for Somali pirates (Sterio, 2012: 114).

Although Seychelles and Mauritius took over from Kenya as prosecuting states, the case shows how regional politics came to infuse the space of international counter-piracy. Here, ad hoc transfer agreements have proved to be a fragile instrument around which to build international burden-sharing. On the one hand, the flexibility and non-binding nature of the agreements are attractive for states in deciding whether to become involved. But on the other hand, they are not sustainable for long-term collaboration. The challenge not only relates to the practical loss of a

judiciary but also to one of a misapplication of resources: as we saw above, Denmark contributed significantly to Kenyan participation in counter-piracy through its comprehensive approach, seconding experts to national agencies under the Peace and Stabilisation Fund. Likewise, the UNODC established a major programme renovating prisons and educating legal staff, after which Kenya pulled out of its transfer agreement.

- International burden-sharing allows states to focus resources on their distinct areas of expertise and for developing states to receive capacity-building in return, which is a mutually beneficial situation.
- Resources spent on capacity-building undertaken in preparation of piracy prosecution, as well as the institutional knowledge gained through years of experience with piracy prosecution, is compromised when the ad hoc nature of burden-sharing allowed a country like Kenya to opt out of its role in international counter-piracy activities.

#### **Ensuring the rule of law when collaborating with regional states**

Another challenge related to the burden-sharing arrangement pertains to the international prioritisation of regionalising piracy prosecution. In interviews with non-regional counter-piracy actors, concern was voiced about the prosecution practices in the region. Interviewees pointed to the lower evidentiary standards in regional countries and their treatment of suspects transferred by the naval coalitions, hereunder the Royal Danish Navy. Indeed, research shows that suspects were sometimes tried without physical evidence being presented in court and that the Court accepted the prosecution case *prima facie*, although the case relied on grainy naval photos (Larsen, 2017: 183). Further, witnesses from the attacked vessel were sometimes unable to identify the accused in court (*ibid.*: 186).

Yet regional countries showed a near 100% conviction rate. At worst, this suggests that there may be issues regarding standards of criminal proceedings and ensuring the right to a fair trial, when Denmark transfers suspects to regional judiciaries. At best, it raises concerns about legal certainty for piracy suspects, where evidentiary standards depend on where they are prosecuted within the international burden-sharing architecture.

A final challenge related to the regionalisation of piracy prosecution in the burden-sharing architecture is the unintended consequences of the sheer weight of international attention being paid to Somali piracy. From interviews with legal actors in the region, it is clear that Somali piracy trials took priority in regional states; they had received extensive capacity-building and were now 'paying it back' by prosecuting piracy on behalf of the international community. While capacity-building of regional judiciaries was extensive, it was mostly qualitative. That is, it involved qualitative improvements through legal reforms, the training of staff and prison renovations. Conversely, quantitative improvements to the regional criminal systems – foremost providing support for additional legal staff – did not follow. Judges and counsels were thus diverted for lengthy piracy cases without being replaced by others relieving them of their core duties. This created pressure on domestic criminal systems, which resulted in substantial backlogs of domestic criminal cases.

Such practical issues raise concerns about the possibility of complying with human rights obligations in the structure of transferring suspects from naval to prosecuting states. ECHR Article 6, UDHR Article 10 and ICCPR Article 14 all provide for the right to a fair trial, including a public and impartial hearing; the presumption of innocence; access to legal defence; the assistance of an interpreter if needed; and the right of review.

- When the Danish authorities conducted capacity-building in regional states, the question of prosecutorial resources was not sufficiently addressed.
- Ensuring due process in regional piracy prosecution had the unintended consequence of delaying due process for citizens detained and awaiting trial in the regional countries.



**CONCLUSION**

Counter-piracy in the Western Indian Ocean seems a story about international cooperation at its best. The international community shared a relatively uncontroversial interest: keeping a major international shipping lane safe for the benefit of international trade, security and freedom of navigation. Willing states, international organisations and the private sector quickly engaged in a coordinated international response spanning maritime policing to include law enforcement and capacity-building of the regional security sector. The concerted effort was a critical condition in addressing the immediate problem of Somali piracy – at least in terms of its suppression, if not elimination of its root causes.

Denmark was a key player in this effort. From 2008, and with two comprehensive counter-piracy strategies, Danish military and civilian expertise was put to use in the region around Somalia. This reflects Denmark's policy strategy of intervening by adopting a comprehensive approach. It also reflects the fact that Denmark – a small state with a large merchant fleet – has a great interest in keeping international sea lanes safe and has the means to contribute meaningfully to this task.

However, the current success of maritime security efforts off the coast of Somalia is fragile. If the deterrent effect of NATO and other warships was an important factor in suppressing Somali piracy, the recent minimization of naval presence, such as the recent closing of Ocean Shield, could lead to a resurgence of piracy. Somalia is furthermore in a volatile state, leaving the root causes of Somali piracy insufficiently addressed. Moreover, other types of maritime crime are on the rise in the western Indian Ocean, such as drug-smuggling. Maritime crime is also on the rise in other parts of Africa and the world. For instance, piracy is an increasing concern to shipping in the Gulf of Guinea and in Latin America and the Caribbean. Human trafficking is creating devastating effects in the Mediterranean.

In the last decade, therefore, maritime security is increasingly becoming a 'high politics' matter. Major actors in international security have begun to include maritime security in their mandates and are reframing their work in such terms, including NATO, the EU and the UN, as well as a number of key states. Such developments draw attention to how Denmark should prioritise future participation in international maritime security activities. As the latest Danish counter-piracy strategy is coming to an end in 2018, this chapter points to a number of implications for Danish policy that may be drawn from experiences with combatting Somali piracy, showing how Denmark may best utilise its capabilities in international efforts to combat future maritime security challenges in the western Indian Ocean and beyond.

## **IMPLICATIONS: FUTURE DANISH MARITIME SECURITY ENGAGEMENT**

Based on the analysis above, we highlight four points deserving of attention that may inform future policy planning and discussions of Denmark's continued involvement in combatting Somali piracy in particular, as well as maritime security more broadly.

### **Continue support to the international agenda of multilateralism in maritime security**

In a context in which maritime security has now become a central issue on international security policy agendas, Denmark as a seafaring nation should build on its experiences from the Gulf of Aden and use its position to continue playing a significant role in international maritime security governance.

As we have seen, the international response to Somali piracy also represented a new international governance model: CGPCS and SHADE are forums driven by common interests, but they have no formal structures, budgets or rules and are open to a diverse constellation of actors. This allowed innovative and flexible solutions to emerge for complex problems. Denmark was very quick to realize how beneficial these frameworks could be for a small seafaring nation. Strategically, Denmark shaped the international agenda on the legal framework for piracy in particular, thus ensuring the effective and legitimate combating of piracy in line with Danish priorities via CGPCS. Tactically, Denmark benefitted from engaging multilaterally in the formal and informal networks to enhance the effectiveness of operations to combat piracy.

While Denmark has chosen a less active role in CGPCS after handing over the chair of Working Group 2 in 2014, Denmark should continue to promote a continued and broader maritime security agenda on the international scene. Danish proactive participation in Somali piracy and ocean governance has provided an opportunity to embed core national priorities into international security policy. Active participation in international maritime governance provides goodwill and protection for a small state; it encourages multilateralism and the continued cohesion of international relations; it promotes internationalist norms that are central to Danish foreign policy such as human rights and the rule of law; and it allows economies of scale, when states pool resources and expertise. For Denmark, continuing positive working relations in international fora is thus imperative in matters of maritime security, as the success of interventions relies on effective collaboration between multiple actors.

Furthermore, promoting positive working relations between traditionally adversary states in one area of international policy (as seen in the case of counter piracy, where states such as Russia, China, the US and Iran worked side by side) may strengthen international relations in other areas as well. Strengthening multilateralism and its foundations in the rule of law and human rights is not least valuable in the light of recent developments towards 're-nationaliation' and the crisis of international institutions that currently challenge the *raison d'être* of the EU, UN and NATO.

- As a seafaring nation, Denmark is well placed to ensure that international attention remains on maritime security and to emphasise the importance of keeping shipping lanes safe for international trade, not least within the institutional frameworks of NATO, the EU and the UN Security Council.
- In an age of fast shifting geopolitics, Denmark should continue using established and ad hoc international policy forums, including those it helped establish and shape, as exemplified by the case of counter-piracy.

#### **Emphasise long-term capacity-building of regional maritime security capabilities**

Through bilateral development cooperation, and by supporting EU and UN capacity-building programmes, Denmark has promoted the region's ability to govern its own waters. Such a focus is pivotal because capacity-building efforts are a way of moving beyond merely treating the symptoms, namely reacting to maritime crime through military patrols, to promoting more lasting stability.

However, the current lull in Somali piracy has made states prioritise their scarce resources on other, more immediate security threats. This includes not least those threats that are considered to stem from migration to Europe and the war in Syria. Accordingly, indications are that the Danish counter-piracy strategy will not be renewed, and consequently that resources spent on maritime capacity-building in East Africa are likely to decrease in the medium term.

Other security threats notwithstanding, there is a need for continued engagement in regional states affected by maritime crime to maintain the positive results of Danish and international counter-piracy efforts. If a new Danish strategy on maritime security is not developed, efforts may still be integrated into bilateral and international

support programmes. This is not least important, as Denmark is a relatively small donor with limited means but major stakes in international shipping. Future engagement should be long-term and address the structural level of getting littoral states to deal with maritime security by using a comprehensive approach. This includes in particular:

- Supporting the rule of law both at sea and on land by focusing on the further training of police, coast guards and the judiciary through, for example, the Peace and Security Fund instrument and on-going international programmes such as EUCAP Nestor and UNODC's Global Maritime Crime Programme.
- Strengthening regional cooperation and information-sharing by supporting regional initiatives such as the Djibouti Code of Conduct and the Yaoundé process, as well as promoting common training exercises such as CUTLAS Express.
- Combatting maritime crime in a sustainable manner by training regional personnel across legal institutions to ensure the prevention of maritime crime and the detection of its organisers.

#### **Account for local conditions in policy planning**

While Somali piracy is waning, piracy is increasing in other parts of the world, with, for instance, hijackings and illegal oil bunkering in Nigeria and Latin America. At the same time, other maritime crime is increasing off the coast of Somalia, for instance, drug- and weapon-smuggling. Illegal, Unreported and Unregulated fishing (IUU) is likewise a constant concern, as is human trafficking. These types of crime pose different kinds of threats. Some are violent, while others affect the safety of seafarers or the livelihoods of littoral communities. They are also governed by different legal frameworks, which vary in comprehensiveness and direct applicability. For instance, combating Somali piracy enjoyed numerous UN Security Council resolutions, as well as several provisions in UNCLOS (Articles 100-107, 110). Off the coast of Nigeria, on the other hand, the international community cannot pursue law enforcement with the same force, as much of Nigerian piracy takes place in territorial waters. This prohibits international naval presence without the collaboration of littoral countries in the Gulf of Guinea – in this case 19 sovereign states.



Adjusting Danish initiatives to new maritime security threats entails the active use of local and context-specific knowledge to account for the distinct threats posed by different types of maritime crime. For instance, piracy may be a major disrupter of international trade in the Gulf of Aden and illegal oil bunkering in the Gulf of Guinea. But to local populations, IUU is perhaps as, or more, grave; IUU poses a risk to livelihoods and thus food insecurity for communities dependent on water resources for their livelihoods. It is therefore necessary to identify context-specific needs for maritime security in the regions that are subject to Danish policy.

Such an approach speaks against the currently common practice of transferring best practices from for instance Somalia to Nigeria in devising new maritime security programmes. It also seeks to mitigate the unintended consequences seen from the case of regional capacity-building, where qualitative support did not take into account local conditions, hereunder the quantitative needs to be able to uphold the rule of law in piracy prosecution.

A sustainable Danish maritime security intervention should therefore be grounded in the region's understandings and definitions of maritime insecurity and its root causes. It should also be owned by and anchored in the region's maritime security institutions and legal frameworks to ensure sustainability and avoid fragile structures of collaboration.

- As part of Danish bilateral support and international programmes, maritime security interventions should seek to enhance specifically regional structures and activities, such as the Djibouti Code of Conduct, the Yaoundé process and the implementation of the AU's and Economic Community of West African States' (ECOWAS) maritime strategy.
- Research should guide policy development to clarify what are defined as the main challenges to maritime security in the affected regions by the affected regions.

### **Strengthen Danish maritime security policy by systematically promoting and evaluating civil-military cooperation**

The Danish counter-piracy strategies exemplify Denmark's quest to address piracy strategically by means of a comprehensive approach that combines different policy tools. Just having a counter-piracy strategy communicates the importance Denmark attaches to the threat of piracy. The fact that such strategies are comprehensive in nature and seek to collect different policy areas has ensured institutional coordination. It has also been a means of creating synergies on the ground by integrating civilian and military elements, although the balance between the different means has not always been equal, as discussed earlier.

However, a more detailed understanding of how the inter-ministerial coordination and comprehensive approach of Denmark's counter-piracy strategies worked in practice is absent. The strategies have not yet been subjected to the systematic and encompassing evaluation that was planned.

The Danish counter-piracy strategy will not be renewed after it ends in 2018, as far as known. This reflects the general trend of the international naval coalitions and international organisations reducing their engagement. It risks losing the momentum currently gaining hold in the region around Somalia. In future Danish involvement in international maritime security operations – for example, under the auspices of the EU's Frontex operations in the Mediterranean or bilaterally under the Peace and Stabilisation Fund in the Horn of Africa and Gulf of Guinea – the lack of a comprehensive strategy also risks losing the opportunity to design a policy that is anchored and implemented inter-ministerially.

- Renewing the Danish counter-piracy strategy would maintain the momentum of maritime security efforts up until now and benefit Denmark's financial interests in protecting international shipping efforts. A renewed strategy should shift its focus from Somali and Nigerian piracy to supporting international structures that promote a comprehensive – and regionally-based – approach to ensuring maritime security.
- In tandem, a systematic review of Denmark's comprehensive approach to counter-piracy efforts across ministries and (international) organisations supported by Denmark would provide valuable input into adjusting and refining priorities in future Danish policy on international maritime security. An evaluation could not least address the opportunities and challenges identified in Chapters Three, Four and Five of this report.

## FINAL REMARKS

Piracy has existed as long as mankind has travelled by sea. In the past decade, piracy off the coast of Somalia has posed a serious threat to Danish and international shipping and the safety of seafarers. While eradicating piracy may never happen, minimising it and mitigating its effects are still important priorities for Denmark. This includes not only Somali piracy, but also other forms of maritime crime, such as drug-smuggling in the Indian Ocean and human trafficking in the Mediterranean.

To minimise and mitigate the effects of maritime crime, there is no one-size-fits-all option. Legal frameworks, political conditions and operational possibilities differ in the specific areas of (co-)operation in which piracy and other maritime crimes take place. But Denmark's recent role in countering Somali piracy has offered important experiences from which to learn and plan future engagement in international maritime security.

For the purposes of Danish policy planning, this report has identified four areas in which Denmark can contribute meaningfully and effectively to maritime security:

- Continuing support to the international agenda of multilateralism in maritime security
- Emphasising long-term capacity-building of regional maritime security capabilities
- Accounting for local conditions in policy planning involving cooperation with regional states
- Strengthening Danish maritime security policy by systematically evaluating civil-military cooperation

With the Danish counter-piracy strategy coming to an end in 2018 and a new Defence Agreement being negotiated at the time of writing, the above focus areas offer research-based pointers to direct policy planning.

## NOTES

- 1 Cf. <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Reports/Pages/Default.aspx>, accessed 18.10.2017.
- 2 <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Reports/Pages/Default.aspx>, accessed 19.09.2017.
- 3 While the latest Danish counter-piracy strategy addresses piracy in Somalia as well as in the Gulf of Guinea, practical experiences from the latter field are limited. The report therefore focuses on Somalia.
- 4 The UN Security Council Resolutions were 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008), 1851 (2008), 1897 (2009), 1918 (2010), 1950 (2010), 1976 (2011), 2015 (2011), 2020 (2011), 2077 (2012), 2125 (2013), 2184 (2014) and 2246 (2015).
- 5 E.g. EU-Kenya 2009; EU-Seychelles 2009; EU-Mauritius 2011; EU-Tanzania 2014.
- 6 EUCAP Nestor was complemented by an EU military training mission (EUTM) in Somalia established in 2010, as well as Operation Atalanta, mentioned above.
- 7 Authors' interview with then Defence Minister, Social Democrat Nick Hækkerup.
- 8 Ibid.
- 9 Authors' interview with anonymous commander in the Danish Royal Navy.
- 10 Due to the Danish defence opt-out from 1992, Denmark cannot participate in EU military operations and was thus not a part of EU's Operation Atalanta.
- 11 CP Strategy (2011).
- 12 See the Foreign Ministry, Defence Ministry and Ministry of Justice: 'Denmark's integrated stabilisation engagement in fragile and conflict-affected areas of the world', Policy Strategy, 2013.
- 13 <https://www2.forsvaret.dk/viden-om/udland/adenbugten/Pages/Adenbugten3.aspx>, accessed 08.08.2017.
- 14 In fact, Denmark had already deployed naval assets in the region following UN Security Council Resolution 1772 (2007), which stressed concern about how instability in Somalia was posing a threat to peace and security; this included maritime security, hereunder pointing out the rise of Somali piracy. UN Security Council Resolution 1772 (2007) encouraged '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' and to 'take appropriate action to protect merchant shipping, in particular the transportation of humanitarian aid' (UNSCR 1772: para. 18). Denmark responded to this resolution with Parliamentary Decision B32 (2008), deploying a naval vessel to escort World Food Programme ships for the first four months of 2008. Resolution 1772 was followed up by UN Security Council Resolution 1814 (2008).
- 15 Author's interview with Ambassador Thomas Winkler.
- 16 Authors' interviews with former Defence Ministers Gitte Lillelund Bech and Nick Hækkerup.
- 17 Author's interview with Danish Navy Commander.
- 18 This includes providing the Somali suspects with the Quran, a prayer mat and an indication of the direction of Mecca to allow for proper Islamic practice. Further, they are served food in accordance with Muslim prescriptions.
- 19 Authors' interview with former Defence Minister Nick Hækkerup.
- 20 Authors' interview with former Defence Minister Gitte Lillelund Bech.
- 21 It should be noted here that in 2013 the Danish Eastern High Court criticised the counter-piracy operations of the Danish warship when nine apprehended piracy suspects in the *Torm Kansas* case were not presented before a judge within 24 hours, as stipulated in Danish and international law, but only after twelve days (U.2014.10440; para. 1045). The delay was considered a violation of the Justice Act section 760(2) and Article 71(3) of the Danish Constitution – to which could be added ECHR article 5(3) on bringing an arrested or detained person promptly before a judge. The judge ordered the release of the suspects.
- 22 Authors' interviews with key ministerial officials, representatives of Danish Shipping and key Danish politicians.
- 23 While it is beyond the scope of this report to compare the revision of Danish legislation with that of other countries, Sweden and later Norway amended their regulations regarding armed private security for the sake of its shipping industry, with more lenient regulations in Denmark and Sweden compared to Norway (see Berndtsson and Østensen, 2015).
- 24 Authors' interviews with various practitioners within the Danish Defence Force and with key politicians.
- 25 <https://www.retsinformation.dk/forms/R0710.aspx?id=142224>, accessed 03.08.2017.
- 26 The regulation of armed guards on board Danish vessels is found in the amended weapons law rather than in the law on civilian guards (*vagtvirksomhedsloven*). The latter is bound to the territory of the Danish state and therefore does not apply on the high seas.
- 27 Berndtsson and Østensen 2015: 145.
- 28 To the knowledge of the authors, the liberal regulation of private security has so far not resulted in any increased use of violence.
- 29 Authors' interviews with NATO and EU staff.
- 30 Background information from Johan Zilmer, Danish Ministry of Defence.
- 31 See also strategy paper, 'DENMARK'S INTEGRATED STABILISATION ENGAGEMENT IN FRAGILE AND CONFLICT-AFFECTED AREAS OF THE WORLD' (2013).
- 32 This section is limited to reflections of a general nature specifically pertaining to maritime capacity-building. It does not treat Danish development cooperation with regional countries in any detail, even if under the Peace and Stabilisation Fund's Horn of Africa programme, as these fall under other Danish policy instruments.
- 33 B32, 2008; B33, 2008; B59, 2009.
- 34 Authors' interviews with Foreign Ministry officials.
- 35 Authors' interviews with Foreign Ministry officials and seconded officials in various missions.
- 36 According to Seychelles' President James Michel, 'We can bring a unique perspective to the work of the Security Council. We have demonstrated our readiness for this seat by playing a leading role in the fight against piracy and for the advancement of peace and stability in Somalia' (SEYMFA, 2015).

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