

GLOBAL GOVERNANCE AND TRANSNATIONAL CRIME: SITUATING THE CONTACT GROUP

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SUMMARY

This paper analyses the Contact Group against the background of other international initiatives against crime. The Contact Group represents a recently emerging type of organization. As the comparison to other initiatives of global crime governance shows, in particular the local focus of the contact group has helped bringing together a variety of actors and multiple levels to deliver solutions to a global policy problem. The model of the Contact Group would be less successful, however, in cases where the criminal activity is more wide-spread and more conflicting interests and veto-players would needed to be moderated. These limits are shown by presenting alternative scenarios. Taken together, the Contact Group has its main strengths in implementation and delegation, less so in finding compromise across hugely disparate political camps.

GOVERNING GLOBAL CRIME

Global crime governance, the international cooperation against crime, dates back to the 19th century, but has flourished most since the end of the Cold War. As a consequence, multiple and quite diverse forms of cooperation

have been established, including agreements on common norms and procedures aimed to counter crime worldwide.¹

International police and judicial cooperation already started in the late 19th and early 20th century, together with the fight against anarchy, drugs or other crimes. While narcotic drugs remained a prominent issue on the global agenda for decades, the international community has increasingly started to criminalize a larger number of activities, including money laundering, corruption or human trafficking. At the same time, mandates of international organizations have been enlarged and more funding has been dedicated to counter crime, as well as new organizations, for instance Europol, have been created.²

For most of the time, the fight against piracy has remained outside of the expanding efforts to govern crime on the global level, for the simple reasons a lacking necessity: From a historical perspective, maritime piracy is an interesting case, because it is one of the few criminal activities that seemed almost eradicated worldwide and therefore seemed to

¹ This paper partially draws on an overview of global crime governance presented in Jakobi, Anja P. (2013) *Common Goods and Evils? The Formation of Global Crime Governance*. Oxford: Oxford University Press.

² Andreas, Peter and Ethan Nadelmann (2006) *Policing the Globe. Criminalization and Crime Control in International Relations*. New York: Oxford University Press.

represent an early success of global counter-efforts. Until the 1990s, its significance decreased and modern shipping systems and technical surveillance of the oceans suggested that this crime was an anachronism depicted in films, but not a challenge to the international community of states.

The rise of maritime piracy off the coast of Somalia has proven otherwise, and also put other enclaves of piracy to the spotlight, for instance in Western Africa. The Contact Group made important contributions to the effective governance of this crime. Given this success, it is reasonable to ask for lessons learned, and how similar models could help solving future world problems. It is worth noting, however, that policy learning often suffers from the fact that political situations can be unique, and solutions for one case might be less successful in another. The paper therefore also sheds light on the limits of such lesson-drawing.

The paper first elaborates on different types of coordination in global crime control, showing the changes over time in how the international community dealt with crime. In a further step, the paper particularly examines the role of 'communities of inquiry' in global crime governance, presenting specific advantages and disadvantages of this mode of cooperation. Finally, scenarios of global crime governance are developed, examining whether the model of the Contact Group is more or less likely to succeed under given conditions. Drawing on these findings, the concluding section presents several recommendations for using the model of the Contact Group.³

³ For a different perspective on lessons from the Contact Group, yet with partly similar results, see: Bueger, Christian (2014) *Experimental Governance: Can the lessons of the CGPCS be transferred to other problematic situations?* In: *The Contact Group on Piracy off the Coast of Somalia (CGPCS). A Lessons Learnt Compendium*, edited by Thierry Tardy, Paris: EUISS, forthcoming.

COOPERATION, NETWORKING AND ORCHESTRATION IN GLOBAL CRIME CONTROL

Global crime governance today involves a multitude of states, international organizations and non-state actors. The first international activities agreements against crime date back to the early fights against piracy and slavery. State-based international agreements provided the basis of the global anti-crime agenda in the early and mid-20th century:⁴ International treaties against crime have been developed early, regulating interstate behaviour and common rules. Extradition or mutual legal assistance became more common decades ago. In particular narcotic drugs became a repeating issue in the United Nations and codified in several international conventions. Since the 1970s, also terrorism became more broadly discussed, in the European Union but also in Interpol and other international forums.

With the end of the Cold War, international cooperation shifted to a less state-centric approach of fighting crime.⁵ The idea of global governance opened up space to additionally consider the activities of non-state actors and their interplay with state actors for effective management of policy problems.⁶ Transnational governance, global policy networks and others emerged, pointing at the growing exchange of different actors in a specific issue area.⁷ Most recently, 'orchestration' has been identified as a core activity of international

⁴ Krasner, Stephen D. 1983. *International Regimes*, Ithaca, Cornell University Press; NADELMANN, Ethan A. 1990. Global Prohibition Regimes: The Evolution of Norms in International Society. *International Organization*, 44, 479-526.

⁵ Grabosky, Peter N. 1995. Using Non-Governmental Resources to Foster Regulatory Compliance. *Governance: An International Journal of Policy, Administration, and Institutions*, 8, 527-550.

⁶ Dingwerth, Klaus and Philipp Pattberg. 2006. Global Governance as a Perspective on World Politics. *Global Governance*, 12, 185-203.

⁷ Slaughter, Anne-Marie 2004. *A New World Order*, Princeton and Oxford, Princeton University Press.

organizations, emphasizing their coordination of different states, civil society actors and businesses in common problem-solving.⁸ At the same time, ideas of common world problems and the evaluation of adequate instruments became central: Today, peer reviews, international policy evaluations or even league tables are common in many policy areas. International networks are often characterised as expert networks that find solutions to political problems, and terms like ‘experimental governance’ reflect this trend.⁹ As a consequence, there is an increasing collaboration among different actors, evaluating best practices and possible solutions.

The Contact Group aligns to this trend: Its plenum and working groups focus on providing solutions to the different dimensions of maritime piracy. The Contact Group evaluates possibilities and limits of political activity, and coordinates a range of different actors for achieving a common goal. The idea of ‘community of inquiry’¹⁰, presented in the analytical primer to this series of analyses, denotes that the Contact Group is a forum to develop and evaluate, to coordinate and to implement.

However, this also denotes what the Contact Group is *not*: It does not primarily aim at a political debate across a broad spectrum of opinions. For good reasons, countering piracy is seen as a widely technical exercise, and this leaves its mark on the mode of cooperation. This characteristic of the Contact Group is also

visible in some other, successful initiatives against crime.

This does not imply that power asymmetries would be inexistent or simply ‘devolve’ in any technical debate. These asymmetries to persist and are perpetuated in one or another form. However, there is a difference between fighting *for* power in a discussion and a discussion that mirrors power, but is not essentially about power. The latter is more frequent in many cases of global crime governance – despite the fact that it is mostly Western states that shape the global anti-crime agenda.

GLOBAL CRIME GOVERNANCE AND ‘COMMUNITIES OF INQUIRY’

Global crime governance is a cooperative activity and many national and international forums are dedicated to prevent, prosecute or monitor crime. There are frequent examples of how global crime governance developed as ‘communities of inquiry’, most prominently in the early 20th century, when Interpol was developed by police authorities that used professional exchange to deal with transborder crime.¹¹ The UN established the UNODC, which administers global anti-crime treaties and hosts international forums as the International Narcotic Control Board.

Since the 1990s, however, new models of global crime governance emerged, two of them are of particular interest with regard to the Contact Group: Starting from negotiations in existing international organizations (the Organization of American States/OAS and the Organization of Economic Cooperation and Development/OECD), anti-corruption activities gained momentum. In particular the OECD Working Group against Bribery devel-

⁸ Abbott, Kenneth W., Genschel, Philipp, Snidal, Duncan and Bernhard Zangl. 2010. *IOs as Orchestrators. Draft paper presented to be presented to the SGIR 7th Pan-European International Relations Conference, Stockholm 9-11 September 2010.*

⁹ Nance, Mark T. and Patrick. M. Cottrell. 2014. A turn toward experimentalism? Rethinking security and governance in the twenty-first century. *Review of International Studies*, 40, 277-301.

¹⁰ Bueger, Christian. 2014. Transnational Governance, Somali Piracy and the Contact Group: An analytical primer. *Lessons from Piracy. Working Paper.* [online], <http://www.lessonsfrompiracy.net/2014/07/25/transnational-governance-somali-piracy-and-the-contact-group-an-analytical-primer/>

¹¹ Deflem, Mathieu. 2002. *Policing World Society: Historical Foundations of International Police Cooperation*, Oxford: Clarendon.

oped into a forum that started developing best practices and peer-reviews among countries to ensure effective implementation of international anti-corruption regulations. For this purpose, the Working Group has published studies and best practices, and it has established exchange and monitoring procedures. At the same time, countries have been required to subscribe to the emerging international 'hard law' against corruption, in particular the OECD Convention against Bribery. Non-state actors like Transparency International further pushed anti-corruption efforts in the public and in exchange with governments. By combining the different tools of regulation, monitoring and exchange, the Working Group could ensure that countries were aligned in their anti-corruption efforts. As the OECD is widely considered to be an expert organization, it provides an early example of a 'community of inquiry', and the many guidelines and recommendations published on corruption underline this status.

A second, central network in global crime governance has been the Financial Action Taskforce on Money Laundering (FATF), which is today widely considered to be a prime example of global governance networks and the coordination of different state and non-state actors. Founded in 1989 by the G7, the Taskforce developed recommendations against money laundering, terrorism financing and other illicit financial transactions. It grew into a global network of multiple regional bodies that exchange best practices and monitor implementation. The recommendations of the FATF are formally non-binding, but they are backed by an effective sanctioning power of major financial centres.

Through continuous work on technical questions, naming-and-shaming and sanctioning threats, the FATF developed from a small network to a global standard setter and oversight body.¹² Today, it is a network that in-

cludes states, regional organizations, police and financial intelligence bodies, associations of banks and financial professions. It also coordinates with international organizations and other standard setters. Moreover, an integral part of monitoring and implementation is carried out by non-state actors like banks, lawyers or accountants, which turns the international regulation to a multi-level game of different actors. Given the breadth and comprehensiveness of its coordinative abilities, the FATF is often mentioned as a prime example of global governance and evaluated as a success story in other policy areas.

Other examples of global crime governance include international treaties and conventions, or UN congresses on crime prevention, or UN.GIFT, a forum established to prevent and prosecute human trafficking. In these and other areas, however, policy coordination takes place less frequently and is not integrated into one overall network or central body. Reasons for this range from historical path-dependencies to the fact that some crimes are controversially debated internationally.

For instance, drug control has been linked to a global prohibition regime, and only slowly measures are becoming more flexible with regard to traditional use of drugs (e.g. cocaine leafs in Latin America) or in legalizing cannabis. It is also debated whether drug use should mainly be conceived as a public health issue, not primarily as a moral or legal wrong doing – a further controversial point. International law had been particularly controversial with regard to counterfeit medical products. Initially, trade laws banned reproductions (generics) of available medical products on the grounds of protecting intellectual property of those pharmaceutical industries that developed these drugs. Some states nonetheless allowed generics because these drugs were needed, but unaffordable for the original price. While trade laws today allow for some exceptions,

¹² Tsingou, Eleni 2010. Global financial governance and the developing anti-money laundering regime: What

lessons for International Political Economy? *International Politics*, 47, 617-637.

the production of generics has partly been conceived as product counterfeiting – a position that is justified with regard to intellectual property rights, but is a challenge to the public health of poorer countries.

As the examples show, global criminalization processes and means to counter crime require a broad debate, and the perceptions, means and outcomes also change over time. Coordination among states and non-state actors differs widely, and ranges from inter-state negotiations to deliberation and awareness-raising. The Contact Group is a forum that focusses on the single issue of maritime piracy in a specific region. While not all states are equally concerned about the impact of maritime piracy, existing regulations like the Law of the Seas define maritime piracy and therewith serve as a common point of reference. The main problems faced by the Contact Group relate to implementation of existing, widely shared rules in a specific geographical area. It is this focus and its preconditions that make the Contact Group special and effective. Yet, these conditions also limit transferability of the group's experience to other policy areas or global crime governance and beyond.

The reasons for limited transferability have much to do with the unique problem structure that the Contact Group faced. The Somali state has failed, and the international community lacked an effective addressee that could implement anti-piracy measures. The Contact Group was able to act as an administrative body that was needed to enforce the rule of law and to ensure cooperation. Also, the need for cooperation was clearly limited to a specific geographical area. It was not a group responsible to counter worldwide criminal activities – which is likely to be the standard in global crime governance or the fight against transnational terrorism.

The fight against maritime piracy clearly triggered many political questions, as where to bring pirates to court, what the meaningful role of the military or private security is, and

which states should lead the fight against piracy. All these problems, however, emerged against a clear international consensus what piracy is and that it needs to be targeted. This turns the work of the group to a rather technical exercise, and issue areas that are such 'technical' in nature are typically served well by professional networking and inter-agency exchange. The reason for this is a professional closure among agencies and a focus on common, professionally shared norms. The advantage of this is a high effectiveness toward reaching a shared goal by established means. The disadvantage is that other, important perspectives – e.g. political implications - might be ignored or even be perceived as disturbance.¹³

The labelling of 'experimentalist governance', of 'community of inquiry', therefore also indicates what the Contact Group is not: A forum of political debate across diverse or even incommensurable positions. This again is different in many fields of global crime governance: There is a deep divide among states on how the drug problem should be dealt with, and this is not only a technical question, but entrenched with moral questions. One can debate on what the 'drug problem' actually is.¹⁴ There is also substantial disagreement on where human trafficking starts – is it only trafficking, or bonded labour, extremely harsh working conditions, or even all forms of prostitution?¹⁵ Any of these approaches have been discussed, without a larger consensus appearing. And ultimately, the United Nations still lack a common definition of terrorism.¹⁶ This

¹³ Deflem, Mathieu. 2002. *Policing World Society: Historical Foundations of International Police Cooperation*, Oxford: Clarendon; Jakobi, Anja P. (2013) *Common Goods and Evils? The Formation of Global Crime Governance*. Oxford: Oxford University Press.

¹⁴ Friesendorf, Cornelius 2007. *US Foreign Policy and the War on Drugs. Displacing the cocaine and heroin industry*, London and New York: Routledge.

¹⁵ Lee, Maggy 2011. *Trafficking and Global Crime Control*, Los Angeles: Sage.

¹⁶ Boulden, Jane and Thomas, G. Weiss (eds.) 2004. *Terrorism and the UN*, Bloomington: Indiana University Press.

has not prevented states to cooperate against terrorism, but it explains why different lists of terrorists will persist. It also shows that not all details in global crime governance are 'technical', and can be solved by inquiry, experimentalism or other sorts of task-oriented decision-making.

OTHER SCENARIOS OF COOPERATION

The Contact Group provides an important example of how different state and non-state actors can be aligned to reach a common, international goal. The model of the Contact Group is best replicated in future scenarios that are based on a widely shared perception of the policy problem and where challenges arise from the implementation. A Contact Group is a prime forum for mostly technical questions, while discussions on the crime itself, the nature of the problem or on alternative views –might be less effectively handled in this model. Also, a regional scope facilitates coordination, while a truly global focus might hinder it and would best be served by different regional groups. The Contact Group also derived some of its positive momentum from its legitimacy: Even if not all relevant actors were included, the group was perceived as a central authority, which makes other actors more likely to cooperate and which also avoids 'forum-shopping' of actors that are unsatisfied with a specific policy. The Contact Group would be less likely to succeed if it was one actor among many, given that this might hamper its coordinative reach. The most critical points in transferring the experience of the Contact Group to other policy areas, however, are related to its restricted focus and the widely established political consensus on core issues. This means any lesson-drawing related to the Contact Group needs to incorporate alternative scenarios where the group's design is more likely to be challenged.

The case of Somali piracy is quite unique in that it relates to a failed state, and the international community could effectively take decisions regarding this territorial space. The Contact Group benefitted from this fact as it provided the opportunity to administer a policy problem without taking into account strong interests of states in this crime: after all, crime often benefits those involved in it, and, for instance, tax heavens or drug-producing states are not always eager to cut the profits from these activities.¹⁷ The existence of such states as veto-players turn technical questions to political ones, and group activities could be perceived as intervention to sovereign territory. In such case, a Contact Group would mainly be a forum for exchange among like-minded states to evaluate possibilities for counter-activities. Internal communication might still be technical, but the external role would be a diplomatic one.

Another scenario that would challenge the Contact Group is a lacking consensus regarding the policy problem. Piracy has been regulated worldwide for a long time, and there is no substantial disagreement on countering it. The Contact Group needed to find consensus on the measures, but it did not face substantial debates on what is to be prohibited and why. Other areas of global crime governance do not necessarily show a similar, shared problem perception. A Contact Group would only be able to effectively manage a problem if stakeholders agree on what the main problem is and how it needs to be approached. If this is not given, a Contact Group is unlikely to reach an effective coordination, or it may suffer from trying to realize different, possibly incommensurable goals. One way out would be to continue working with incommensurability in tasks, or to cooperate among like-minded states only. Any of these possibilities, however, would lead to a less effective work

¹⁷ e.g. Frimann, H. Richard and Peter Andreas (eds.) 1999. *The Illicit Global Economy and State Power*, Lanham: Rowmann and Littlefield.

compared to the existing model of the Contact Group.

Finally, the model of the Contact Group benefits from its regional scope. The group can focus on the specificities of a particular region and the way how piracy is committed in this area. This regional focus reduces transaction costs, given that only a limited number of countries, social and economic conditions need to be considered, and these were widely coherent. If the model of the Contact Group was used to govern a crime that is committed simultaneously in different states across the world, divergent state interests, different social and economic approaches would need to be coordinated. Also, participating countries might be more likely to use the forum as a tool of foreign and domestic policies, not necessarily as a tool to solve an international policy problem. At the same time, a global, high profile forum also carries more weight in representative terms, and would need to coordinate with a large number of other international organisations, business and civil society organisations. The model of the Contact Group represents a task force created for a specific and focussed problem.

CONCLUSIONS: THE WAY AHEAD FOR A 'CONTACT GROUP 2.0'

Taken together, the local focus of the Contact Group has helped bringing together a variety of actors and multiple levels to deliver a solutions to a common problem. The model of the Contact Group is likely to be less successful in cases where the criminal activity is more wide-spread and more conflicting interests and veto-players would need to be moderated. The Contact Group has its main strength in implementation and delegation, less so in finding compromise across hugely disparate political camps.

The lessons learned from the Contact Group are the benefits that have been achieved by

this central coordination body that targeted the problem of maritime piracy from different perspectives and used a design of different working groups to solve political issues in a constant and coordinated way, including states and non-state actors.

Lesson-drawing on the basis of the Contact Group is possible and could benefit to other cases of global crime governance. Following on from the analysis presented above, a Contact Group seems well-equipped to deal with challenges in global crime governance

- If the challenge is related to the implementation of a widely shared policy, rather than related to a major political dissent among states (incl. questions of territorial integrity).
- If, in cases of political dissent, a Contact Group is used to coordinate like-minded countries, but not used as a forum for debating divergent views.
- If there is a focus on a specific region or a group of countries with comparable background, so that the Contact Group has limits in its membership and the related transaction costs.

Finally, the magnitude of the Contact Group's contribution to tackle maritime piracy off the coast of Somalia might become most visible when we imagine the Group's absence – after all, it is hard to imagine another existent forum that works on piracy in a comparable way.

About the Author

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