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Pragmatic ordering: Informality, experimentation, and the maritime security agenda

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Abstract

The question of when and how international orders change remains a pertinent issue of International Relations theory. This article develops the model of pragmatic ordering to conceptualise change. The model of pragmatic ordering synthesises recent theoretical arguments for a focus on ordering advanced in-practice theory, pragmatist philosophy, and related approaches. It also integrates evidence from recent global governance research. We propose a five-stage model. According to the model, once a new problem emerges (problematisation), informality allows for experimenting with new practices and developing new knowledge (informalisation and experimentation). Once these experimental practices become codified, and survive contestation, they increasingly settle (codification) and are spread through learning and translation processes (consolidation). We draw on the rise of the maritime security agenda as a paradigmatic case and examine developments in the Western Indian Ocean region to illustrate each of these stages. The article draws attention to the substantial reorganisation of maritime space occurring over the past decade and offers an innovative approach for the study of orders and change.

Keywords: Ordering; Pragmatism; Practice Theory; Informality; Maritime Security

Introduction: The transformation of order at sea

A substantial shift in the political evaluation of maritime space has taken place over the past decades. The oceans have re-emerged as a problematic space in international politics. Maritime interstate rivalries in the Arctic, the South China Sea, and elsewhere question existing institutions and the law of the sea.[1] Transnational maritime crimes, including piracy, illegal fishing, trafficking of people, or smuggling of illicit goods increasingly occupy the international security agenda,[2]

[1]Jonathan D. Caverley and Peter Dombrowski, 'Too important to be left to the admirals: The need to study maritime great power competition', *Security Studies*, 29:4 (2020), pp. 579–600; Felix K. Chang, 'China's naval rise and the South China Sea: An operational assessment', *Orbis*, 56:1 (2012), pp. 19–38; Douglas Guilfoyle, 'The rule of law and maritime security: Understanding lawfare in the South China Sea', *International Affairs*, 95:5 (2019), pp. 999–1017; Kathrin Keil, 'The Arctic: A new region of conflict? The case of oil and gas', *Cooperation and Conflict*, 49:2 (2013), pp. 162–90; James Kraska, *Arctic Security in an Age of Climate Change* (Cambridge: Cambridge University Press, 2011).

[2]Christian Bueger and Timothy Edmunds, 'Blue crime: Conceptualising transnational organised crime at sea', *Marine Policy*, 119 (2020); Peter Lehr, *Violence at Sea: Piracy in the Age of Global Terrorism* (London and New York: Routledge, 2007); Martin N. Murphy, *Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World* (London: C. Hurst & Co Publishers Ltd, 2010); Sarah Percy, 'Counter-piracy in the Indian Ocean: A new form of military cooperation', *Journal of Global Security Studies*, 1:4 (2016), pp. 270–84; Christian Bueger and Jessica Larsen, 'Maritime insecurities', in Fen Osler Hampson, Alpaslan Özerdem, and Jonathan Kent (eds), *The Routledge Handbook of Peace, Security and Development* (London: Routledge, 2020), pp. 149–63.

while the rise of China and India as naval powers questions the naval hegemony of the United States.[3]

These new challenges have confounded the relatively settled international maritime order of the immediate post-Cold War period. A range of complex, interconnected, and globalised challenges have emerged, against which the established norms and practices have struggled to cope. This article demonstrates that we witness not necessarily a rise of disorder at sea, but the emergence of a new ordering processes. This transformation serves us as an empirical case to advance a new model for understanding international ordering.

Drawing on and advancing recent arguments for shifting the analytical perspective from order and change to processes of *ordering*, we develop a five-stage model of ordering practices in the light of empirical evidence drawn from maritime space. As a growing range of authors has shown, the move from noun to verb is productive as order can be analysed as an effect of ongoing ordering moves.[4] Order is an achievement, rather than a given. Ordering thus shifts attention to processes.

The model of *pragmatic ordering* advanced in this article proposes a much-needed heuristic for empirically studying such processes. Providing a synthesis of recent theoretical arguments and empirical global governance research, we identify five stages of an ordering process: problematisation, informalisation, experimentation, codification, and consolidation.

We illuminate each of these stages through empirical material from contemporary maritime ordering processes. We show how ordering emerges in response to new problems and is driven by practical activities geared at coping with and governing these. According to the model, once a new problem emerges (problematisation), informality allows for experimenting with new practices and developing new knowledge (informalisation and experimentation). Once these experimental practices become codified through 'best practices', 'lessons learned', and other instruments they increasingly settle (codification). If they resist controversy and contestation, they may produce a newly settling order. The principles of the new order may then further consolidate and spread through activities such as capacity building or the spread of best practices geared at educating and training practitioners in the new ways of handling things (consolidation).

The model of pragmatic ordering has the potential to make visible practical processes that have often flown beneath the radar of much International Relations (IR) scholarship. As a new way of studying the emergence of international orders, the model allows for consideration of informal and experimental forms of governance, and a better grasp of short-term and incremental political transformations, as well as bringing us closer to the practical activities of those engaged in building orders. We translate core insights from pragmatist philosophy and practice theory into a concrete model for the empirical study of ordering processes.

Our argument proceeds in three steps. In section two we introduce core insights from recent moves towards ordering in the IR literature and consider what understandings of order and change evolve from these. We pay particular attention to recent pragmatist and practice theoretical debates. Drawing on these core premises, we then outline the five stages of the pragmatic ordering model.

The remainder of the article then uses empirical material from the oceans to flesh out each of the stages of the model. We start out with a general discussion of the problematisation of maritime space implied by the new maritime security agenda. The next section zeros in on a *paradigmatic* case. We study the Western Indian Ocean in order to demonstrate how informality and experimentation drive the formation of new practices and the emergence of new orders at sea.

[3]David Michel and Russel Sticklohr, *Indian Ocean Rising: Maritime Security and Policy Challenges* (Washington, DC: Stimson Center, 2012); Robert S. Ross, 'China's naval nationalism: Sources, prospects, and the U.S. response', *International Security*, 34:2 (2009), pp. 46–81.

[4]Emanuel Adler, *World Ordering: A Social Theory of Cognitive Evolution* (Cambridge: Cambridge University Press, 2019); Daniel H. Nexon and Iver B. Neumann, 'Hegemonic-order theory: A field-theoretic account', *European Journal of International Relations*, 24:3 (2018), pp. 662–86.

We discuss how these new practices consolidate and spread. We end in discussing the specificities of the case. Since the power of paradigmatic case studies is not only to elaborate a model, but also to invite comparisons, we draw some general lessons for the maritime and other international orders.

From orders to ordering

The question of how to conceptualise and empirically study order and change remains one of the most pertinent theoretical challenges in IR theory. In particular, the recognition that international relations are subject to forms of order other than the modern international system of sovereign states has since the 1970s led to a growing range of conceptual proposals for (sub)orders including 'regimes', 'regions', 'communities', and other forms of normative and ideational structures.[5] Although one of the main intentions of introducing such concepts was to account for the emergence and transformation of orders, these proposals have been frequently criticised for offering too static a picture and remaining weak in understanding change.[6]

Responding to such critiques, a wave of scholarship has drawn on recent ideas, concepts, and structural metaphors from social theory to advance alternatives. Inspired by pragmatist philosophy, practice theory, and related approaches, scholars have put forward relational and process-oriented proposals of order. 'Assemblages',[7] 'actor-networks',[8] 'communities of practice',[9] 'fields',[10] or 'pragmatic networks'[11] present such new concepts of order.

What unites these proposals is that they question the usefulness of a binary division between order and change. They focus instead on the plurality of international order, including nestedness and overlap within and between orders, and the importance of ongoing processes of *ordering* within these. While not a homogenous circle of scholars who cite and follow each other's works or share a distinct objective, there are enough common ideas and a shared intellectual project to justify speaking of an emerging movement. The core ideas of the 'ordering movement' revolve around an emphasis on process, practice, and a pragmatist model of change.

Arguing against a dichotomy that contrasts stability and order with change and disorder, the call for ordering emphasises *process*. The new concepts of order aim to offer simultaneous accounts of change and stability recurring through processes of learning, evolution, innovation, or translation.[12] Order is hence neither seen as a given, nor as being continuously in flux, but as an *achievement* that requires enactment and reproduction. As Ray Koslowski and Friedrich Kratochwil argued early on, 'any given international system does not exist because of immutable structures, but rather the very structures are dependent for their reproduction on the practices of the actors'.[13] Practices, understood as organised patterns of activities, become the core unit of

[5]Janice Bially Mattern, *Ordering International Politics: Identity, Crisis and Representational Force* (New York: Routledge, 2005), pp. 28–32.

[6]Trine Flockhart, 'The problem of change in constructivist theory: Ontological security seeking and agent motivation', *Review of International Studies*, 1:22 (2016), pp. 799–820.

[7]Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (California: Universities Presses of California, 2006).

[8]Martin Müller, 'Opening the black box of the organization: Socio-material practices of geopolitical ordering', *Political Geography*, 31:6 (2012), pp. 379–88.

[9]Adler, *World Ordering*.

[10]Nexon and Neumann, 'Hegemonic order'.

[11]Deborah D. Avant, 'Pragmatic networks and transnational governance of private military and security services', *International Studies Quarterly*, 60:20 (2016), pp. 330–42.

[12]Adler, *World Ordering*; Christian Bueger and Frank Gadinger, *International Practice Theory* (2nd edn, New York: Palgrave Macmillan, 2018).

[13]Rey Koslowski and Friedrich V. Kratochwil, 'Understanding change in international politics: The Soviet Empire's demise and the international system', *International Organization*, 48:2 (1994), p. 216. Related early arguments using the concept of practice can be found in the institutionalism of James G. March and Johan P. Olson, 'The institutional dynamics of international political orders', *International Organization*, 52:4 (1998), pp. 943–69.

analysis to understand order and the locus of change.[14] These notions, as developed in IR, conceptualise orders as patterns of practice and relations between them.

Ordering is a continuous process of adjustment. It requires innovation, but also repetition and maintenance work. It therefore implies a *performative* element; that is, how in and through action, new orders or new components of them emerge, and an *ostensive* element; that is, how that which has already been established, such as expectations or rules, is re-enacted and maintained in a situation. Order in this sense is reproduction and we can speak of a 'settled order' if the ostensive elements dominate. However, the indefiniteness and uncertainty of new situations generate context-specific reinterpretations of existing practices. These in in turn force and facilitate fresh approaches, which in their (at least partial) innovation, represent more than pure repetition.[15]

Ted Hopf clarified that such a focus offers two potential understandings of change: one based on the principle of indexicality, the other based on deliberate reflection.[16] The principle of indexicality suggests that, since no two situations or actors are the same, any enactment of a practice in a given situation implies adjustment and hence transformation. This leads to an incremental understanding of change. Following Hopf, a second understanding is to see change as the outcome of deliberate practical reflection on how to proceed in the face of difference, an acceptable alternative, a crisis situation, or an innovation.[17] This brings to the fore a pragmatist understanding of change, which associates transformations with crisis moments; that is, when routines and existing rules are challenged through a new experience or a problem that existing practices are ill-equipped to deal with.[18]

Our intention in the following is to take these key insights from the ordering movement forward. Yet, instead of adding further philosophical abstraction, our ambition is to turn them into a *model* useful for understanding how ordering occurs in actual international practice, such as those processes evolving in response to the maritime security agenda. Following Kevin A. Clarke and David M. Primo, models have to be understood as productive fictions.[19] They are 'partial representations of objects of interest' and their accuracy is limited.[20] A model hence does not offer testable propositions, nor should it be judged by its accuracy or truthfulness, but by its 'elegance' and how well it serves the purpose at hand.[21] As such, models operate as tools or 'mediating instruments', made of a 'mixture of elements'[22] of 'bits of theory' and 'bits of data'.[23]

[14]The core premises of practice theory are outlined in Emanuel Adler and Vincent Pouliot, 'International practices', *International Theory*, 3:1 (2011), pp. 1–36; and Bueger and Gadinger, 'International practice theory'.

[15]Andreas Reckwitz, 'Toward a theory of social practices: A development in culturalist theorizing', *European Journal of Social Theory*, 5:2 (2002), p. 555.

[16]Theodor Hopf, 'Change in international practices', *European Journal of International Relations*, 24:3 (2017), pp. 687–711.

[17]Ibid.

[18]Ulrich Franke and Gunther Hellmann, *American Pragmatism in Foreign Policy* (Oxford: Oxford Research Encyclopedia of Politics, 2017); Ulrich Franke and Ralph Weber, 'At the Papini Hotel: On pragmatism in the study of International Relations', *European Journal of International Relations*, 18:4 (2011), pp. 669–91; Sebastian Schmidt, 'Foreign military presence and the changing practice of sovereignty: A pragmatist explanation of norm change', *American Political Science Review*, 108:4 (2014), pp. 817–29; and Simon Frankel Pratt, 'Pragmatism as ontology, not (just) epistemology: Exploring the full horizon of pragmatism as an approach to IR theory', *International Studies Review*, 18:3 (2016), pp. 508–27.

[19]Kevin A. Clarke and David M. Primo, *A Model Discipline: Political Science and the Logic of Representation* (Oxford: Oxford University Press, 2012).

[20]Ibid., p. 9.

[21]Ibid., pp. 8, 12–13; Andrew Abbott, *Methods of Discovery: Heuristics for the Social Sciences* (New York: Norton, 2004), p. 34.

[22]Margaret Morisson and Mary S. Morgan, 'Models as mediating instruments', in Mary S. Morgan and Margaret Morisson (eds), *Models as Mediators: Perspectives on Natural and Social Science* (Cambridge: Cambridge University Press, 1999), p. 14.

[23]Clarke and Primo, *A Model Discipline*, p. 8.

The model of pragmatic ordering presented in the following draws together the abstract premises from the ordering movement and empirical insights from current global governance research. It then refines the model through the analysis of a carefully chosen paradigmatic case from the reordering of the maritime space. Paradigmatic case studies are means for rendering phenomena such as ordering intelligible; they are, as George Pavlich puts it, 'designed to reveal' and particularly useful for developing models.[24] They allow for exploring mechanisms in depth and open up a space for comparison and contrast with other cases.

Pragmatic ordering: A five-stage model

On the basis of the core assumptions of the ordering movement, we propose a model in which new orders emerge in response to new problematic situations. Orders are constructed in practical activities geared at coping with and governing problems. They are hence the effects of the practical everyday ordering and coordination work of diverse actors dealing with problems. This work is not necessarily directed towards establishing formal and legal rules and is often informal and ad hoc in character. The principle of experimentation, of identifying and testing mechanisms and responses to cope with and order problems, structures such practices. Since new problems tend to involve high levels of uncertainty, pragmatic ordering relies heavily on epistemic practices, expertise, and knowledge production.

These dimensions together form a model of transformation. This begins with the emergence of a new problem. Established practices (routines, rules, and procedures) do not allow for the problem to be adequately addressed, while its novelty creates uncertainty. In the face of uncertainty, new practices and knowledge are required to grapple with the new problem. Actors resort to informality and experiment, since there are insufficient settled practices or formal rules to follow. Informality provides the space for experimentation. Conditions of informality provide the flexibility to try new solutions, include new or different actors but also to accommodate potential failures of experiments. Experiments require expertise, but in turn also lead to new knowledge as the outcome of the tests are recorded. Once a new set of practices is developed, these may increasingly become settled as actors strive to codify them in best practices, lessons learned, or practical agreements and install, maintain, and institutionalise them. In time, and if they resist controversy and contestation, these practices may instantiate a new order, which in turn becomes nested in or part of the established orders governing a particular domain (Figure 1). Each of these stages is further elaborated below.

Problematisation

Orders develop along and in response to new problematisations. A problematisation occurs once collectives are concerned about a distinct situation, consider it problematic, and start to attend to it. In the process of 'problematisation', actors identify what the challenges are and how they might be addressed. Problematisation has been identified as a vital component of contemporary politics by pragmatist philosophy, in particular John Dewey's political theory. It is also a central theme in the work of Michel Foucault, and the driving idea in economisation and securitisation research. All of these approaches provide important clues into the logics of problematisation.

In Dewey's pragmatist political theory, politics arises primarily to solve problems of the commons. For Dewey the starting point for politics was the rise of what he called a 'problematic situation', which is a situation in which issues cannot be solved through private interaction.[25] When a problematic situation arises collectives face difficulties in proceeding by everyday routine and a

[24]George Pavlich, 'Paradigmatic cases', in Alberts J. Mills, Gabrielle Durepos, and Elden Wiebe (eds), *Encyclopedia of Case Study Research* (Thousand Oaks, CA: Sage, 2010), p. 646; as well as Bent Flyvbjerg, 'Five misunderstandings about case-study research', in Clive Seale, Giampietro, Gobo, Jaber F. Gubrium, and David Silverman (eds), *Qualitative Research Practice* (London and Thousand Oaks: Sage, 2004), pp. 420–34.

[25]John Dewey, *The Public and Its Problems* (New York: Swallow Press, 1946).

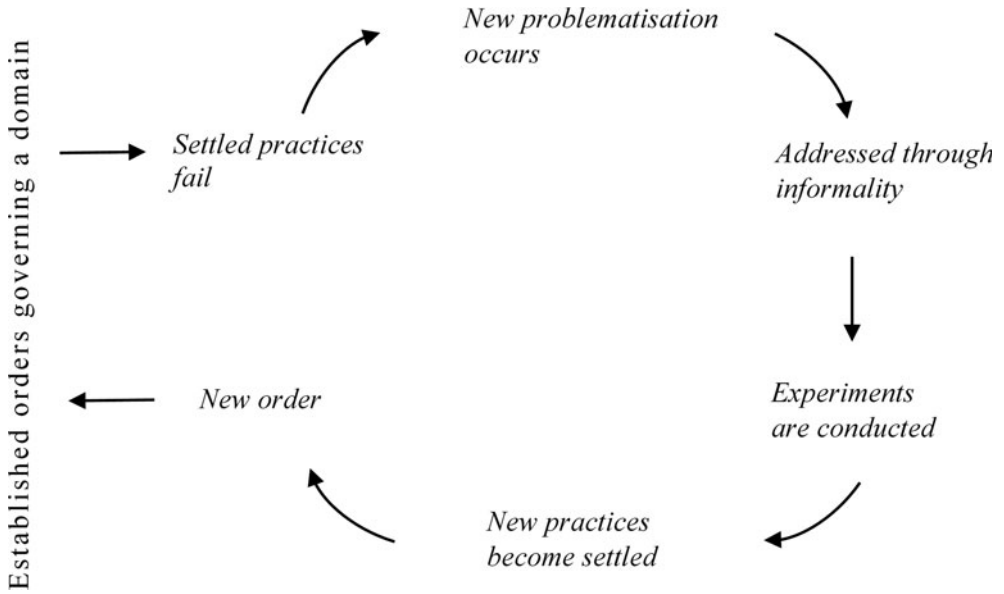

Figure 1. Pragmatic ordering and change.

process of major public adjustment is required.[26] For Dewey, such situations trigger a process of 'inquiry' geared at identifying the meaning of the problem and how it can be best addressed.[27]

With many parallels to Dewey, Foucault develops an understanding of politics that takes problematisation as the starting point.[28] With the concept of problematisation he referred to the practical conditions and institutional mechanisms under which something is turned into an object of knowledge in response to a dedicated situation.[29] For Foucault, problematisation implies 'the transformation of a group of obstacles and difficulties into problems to which the diverse solutions will attempt to produce a response'.[30] Problematisation refers to a process that starts out from the recognition that a common issue exists that requires political action. Uncertainty arises over how newly emerging issues should be dealt with and whether and how existing routines can be adjusted to do so. It evolves through attempts to connect issues, sort the problem dimensions, define its boundaries, and identify strategies and solutions to cope with it.

Both Dewey and Foucault hold that problematisation produces new practices.[31] As Foucault reasoned in *Discipline and Punish*[32] for instance, 'the problematization of discipline established a deep set of motivating constraints that facilitated the emergence of new practices of punishment in the eighteenth and nineteenth centuries. These concrete new practices then reinforced the more diffuse disciplinary problematic.'[33]

[26]Mark B. Brown, *Science in Democracy: Expertise, Institutions, and Representation* (Cambridge, MA: MIT Press, 2009), p. 141.

[27]Brown, *Science in Democracy*.

[28]Roger Deacon, 'Theory as practice: Foucault's concept of problematization', *Telos*, 118 (2000), pp. 127–42; Paul Rabinow, 'Dewey and Foucault: What's the problem?', *Foucault Studies*, 11 (2011), pp. 11–19.

[29]Deacon, 'Theory as practice', p. 131.

[30]Michel Foucault, *The Foucault Reader* (New York: Pantheon, 1984), p. 389.

[31]Rabinow, 'Dewey and Foucault'.

[32]Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Random House, 1977).

[33]Collin Koopman and Tomas Matza, 'Putting Foucault to work: Analytic and concept in Foucaultian inquiry', *Critical Inquiry*, 39:3 (2013), p. 827.

Problematisation has become a core theme in contemporary social research. In IR, a classic insight is John Ruggie's argument that international cooperation starts out from the negotiation of a collective situation whereby an agreement is reached between actors concerned about a particular problem.[34] For Ruggie such situations are inherently unstable in that they depend on available knowledge and the degree to which a given set of actors are concerned about it.[35]

Problematisation is also the core logic applied in securitisation as well as economisation research. Here research investigates particular types of problematisation, namely how particular issues are rendered problematic in terms of the extraordinary responses of security or the market solutions of the economy.[36] As is shown in both of these research programmes, the actors of problematisation can be quite varied, with emphasis on industry, state administrations, civil society, and activists, but also scientists and analysts taking a pivotal role.[37] On the one hand, new problematisation processes provide the opportunity for new actors to take the stage. On the other, contexts of problematisation are not free of power relations, which implies that voices from certain positions will exert greater influence in defining a problem than others.

Informalisation and experimentation

Problematisation occurs when existing rules and procedures struggle to cope with a particular problematic situation. While problematisation might imply that actors work within existing practices and institutions, it may also open the space for reconfigurations in the ways in which this situation is addressed, including the emergence of novel roles for actors, or the entry of new and different actors. Such situations are often characterised by 'informality'. Informalisation can be understood as the explicit attempt to develop responses outside of formal institutions and their rules.

As Friedrich Kratochwil notes, informal modes of world politics are increasingly important and widespread as the direct outcome of the proliferation of problems in quantitative terms, but also in consequence of their quality and complexity.[38] Substantial evidence supports this observation. The majority of post-Cold War political transformations are permeated by informal processes, such as soft law, contact groups, expert panels, or pragmatic networks.[39] Indeed, many recent global political innovations can be traced directly back to informal processes, often involving actors other than states.[40]

Informality is an important lens through which to observe practices that fall outside publicly recorded formal and legalised international organisations and to empirically scrutinise the de facto actors participating in ordering. The focus on informality also brings to the fore the wider range of practical agreements that actors develop and rely on, such as Memoranda of Understanding, Codes of Conduct, or Best Practices.

[34]John G. Ruggie, 'International responses to technology: Concepts and trends', *International Organization*, 29:3 (1975), pp. 557–83.

[35]Ibid.

[36]Thierry Balzacq, *Securitization Theory: How Security Problems Emerge and Dissolve* (Abingdon: Routledge, 2011); Donald MacKenzie, Fabian Muniesa, and Lucia Siu, *Do Economists Make Markets: On the Performativity of Economics* (Princeton: Princeton University Press, 2007).

[37]Trine V. Berling, 'Science and securitization: Objectivation, the authority of the speaker and mobilization of scientific facts', *Security Dialogue*, 42:4–5 (2011), pp. 385–97; MacKenzie, Muniesa, and Siu, *Do Economists Make Markets*.

[38]Friedrich Kratochwil, *The Status of Law in World Society: Meditations on the Role and Rule of Law* (Cambridge: Cambridge University Press, 2014), pp. 102–08.

[39]See, among others, Jochen Prantl, 'Informal groups of states and the UN Security Council', *International Organization*, 59:3 (2005), pp. 559–92; Vincent Pouliot and Jean-Philippe Therien, 'Global governance in practice', *Global Policy*, 9:2 (2018), pp. 163–72; Ramesh Thakur, Andrew F. Cooper, and John English, *International Commissions and the Power of Ideas* (Tokyo, New York, and Paris: United Nations University Press, 2005); Avant, 'Pragmatic networks and transnational governance of private military and security services'.

[40]An example is the Responsibility to Protect doctrine: proposed by a blue ribbon panel, it was discussed at a UN reform summit before it was embraced in the formal UN bodies. See Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington, DC: Brookings Institution Press, 2008).

Informality provides the basis for experimental politics and inquiry. It provides the space to try out new responses and include new and other actors in the process. As Dewey argued, problematisation is a spur to inquiry and experimentation.[41] In response to the uncertainty and novelty of a new problem, actors tinker, develop, and test new practices.[42] Recent research supports that theoretical argument. It shows how important the experimentalist logic is for many current global governance processes.[43] As Gráinne De Búrca, Robert O. Keohane, and Charles Sabel argue, experimentalist governance is driven by a logic of problem solving, probing, and testing.[44] While certainly involving diplomatic protocols, such processes tend to be more informal in nature and not focused on establishing rules and enforcing compliance. Experimentalism is hence a distinct mode of practice in international relations, characterised by tinkering, testing, and knowledge production.

Knowledgeable actors and epistemic practices are critical to understanding pragmatic ordering processes. Knowledge is needed not only to develop common understandings of the problem and new coping strategies, but also to record the success and failure of experimental solutions.[45] Knowledge production is thus a vital feature for understanding pragmatic ordering. Science and knowledge production should not be considered as falling outside an ordering process; they are an inherent part of it. Consider the importance of deterrence theory in shaping the rise of the nuclear order as a case in point,[46] or the rise of transnational terrorism as an international problem, which was, as Lisa Stampnitzky argues, closely linked to the emergence of the terrorism expert and the new discipline of terrorism studies.[47] Knowledge production is a core practice of ordering and of deriving and documenting the experiments conducted.

Codification and consolidation

The last stages in the model concern the processes through which the new practices become settled, start to become routine and are translated and adopted across local situations. Codification initially entails recording the results of experimental practice. These records are then stripped of histories of failures and condensed into documentations of what works.[48] Codification can take place through, for example, lessons learned exercises, the production of manuals, or the identification of best practices. Such texts then potentially start to be used in training, for instance in capacity building projects or in education. If widely adopted, such documents may come to function as customary or soft law. As Steven Bernstein and Hamish van der Veen note, best practices can become the de facto prevalent mode of governance in an issue domain.[49]

Consolidating and installing new practices in such a way, potentially implies contestation and resistance. Even if evidence for the success of the new practices is overwhelming, as proposals for new ways of handling things they are likely to be challenged by those vested in previous ways of

[41]Brown, *Science in Democracy*; Tanja Bogusz, *Experimentalismus und Soziologie: Von der Krisen- zur Erfahrungswissenschaft* (Frankfurt: Campus Verlag, 2018).

[42]Bogusz, *Experimentalismus und Soziologie*; Astrid Schwarz, *Experiments in Practice* (New York and London: Routledge, 2014).

[43]Gráinne De Búrca, Robert O. Keohane, and Charles Sabel, 'Global experimentalist governance', *British Journal of Political Science*, 44:3 (2014), pp. 477–86; Mark T. Nance and Patrick Cottrell, 'A turn toward experimentalism? Rethinking security and governance in the twenty-first century', *Review of International Studies*, 40:2 (2013), pp. 277–301; Schwarz, *Experiments in Practice*.

[44]De Búrca, Keohane, and Sabel, 'Global experimentalist governance'.

[45]Brown, *Science in Democracy*; Schwarz, *Experiments in Practice*.

[46]Ron Robin, *The Making of the Cold War Enemy: Culture and Politics in the Military-Intellectual Complex* (Princeton and Oxford: Princeton University Press, 2001).

[47]Lisa Stampnitzky, 'Disciplining an unruly field: Terrorism experts and theories of scientific/intellectual production', *Qualitative Sociology*, 34:1 (2010), pp. 1–19.

[48]Schwarz, *Experiments in Practice*.

[49]Steven Bernstein and Hamish van der Veen, 'Best practices in global governance', *Review of International Studies*, 43:1 (2017), pp. 1–23.

doing things. New practices will thus only settle and stabilise if they withstand such resistance and controversy, and this in turn is rarely a friction-free process. It is only then that the order fully consolidates. This might imply that a full settlement or consolidation is never reached if new practices meet ongoing resistance or refutation.

Summary

These five stages delineate the model of pragmatic ordering and outline an alternative for the study of emergence of orders on the basis of practice-theoretical and pragmatist assumptions.

As a model based on pragmatist and practice theoretical assumptions, it is not without limitations. Pragmatist approaches tend to be criticised for downplaying the importance of power.[50] As Deborah D. Avant stresses in responding to such critiques, while power does not necessarily feature as an explicit concept, the processes described in pragmatist analyses capture generative understandings of power and new forms of distributing power relations.[51]

Discussing the role of power in conceptualisations of ordering, Stefano Guzzini suggests that, 'even if power systematically refers to order, order does not need to be defined through power'.[52] In this sense, the model of pragmatic ordering evokes understandings of power, but does not define its core processes through it. In so far as the move to ordering implies a focus on process and change, it connects power not to domination and control, but to how the repositing through processes such as problematisation or informalisation generates new dispositions and forms of agency. The focus hence turns to forms of power that are generative in nature, and conceptualised through notions such as 'deontic', 'performative', 'protean', or 'productive' power.[53]

Pragmatic ordering is, to reiterate, a model, and as such it is an abstraction. While this allows, as shown above and below, the illumination of certain processes and the integration of important existing empirical results from global governance research, it will be less useful for understanding others. The model is particularly suited to understand those situations where novel problematisations are in play and where considerable uncertainty on how to proceed arises. It is likely that in more settled, less uncertain and fluid situations, other forms of ordering might prevail, which in turn are also shaped by other dispositions and power relations.

Moreover, the model posits a linear logic. In practical terms, at each of the stages of the model there is a risk that the process breaks down. In practice we cannot assume a frictionless process. A shared problematisation might become challenged, contested, and renegotiated, or the agreement to resort to informality, experimentation, and knowledge production might collapse and actors may resort to other modes of ordering. The model then invites us to explore why and how such breakdowns might occur.

In the next sections we substantiate the model of pragmatic ordering in the light of a paradigmatic case of the transformation of maritime order. We demonstrate the heuristic power of the model and refine its elements through the empirical case. To do so we show how, in the past decades, the new problematisation of maritime security gradually emerged. Briefly investigating some of the core features of this problematisation, we zoom in on the case of the Western Indian Ocean to provide concrete illustrations of informalisation, experimentation, and consolidation.

[50]See, for example, the discussion of Avant's 'Pragmatic Networks' in 'Can Networks Govern', International Studies Quarterly Online Symposium, 6 October 2017, available at: {http://www.dhnexon.net/wp-content/uploads/2020/06/ISQSymposiumAvant.pdf} accessed 30 November 2020.

[51]Avant, 'A Pragmatic Response', International Studies Quarterly Online Symposium, 6 October 2017, pp. 13–14, available at: {http://www.dhnexon.net/wp-content/uploads/2020/06/ISQSymposiumAvant.pdf} accessed 30 November 2020.

[52]Stefano Guzzini, 'Power in Communitarian Evolution', DIIS Working Paper No. 4 (Copenhagen: Danish Institute for International Studies, 2020), p. 3.

[53]Guzzini, 'Power in Communitarian Evolution'; Adler, 'World ordering', Peter Katzenstein, 'Protean power: A second look', *International Theory*, 12:3 (2020), pp. 481–99, Michael N. Barnett and Raymond Duvall, 'Power in international politics', *International Organization*, 59:2 (2005), pp. 39–75.

Reproblematising the maritime

Throughout the late 1980s and early 1990s the oceans were not understood to be a problematic space requiring major international political attention.[54] In other words, a particular order governing the oceans had become increasingly settled. The rules and principles governing the oceans were established and agreed. The period from the 1970s through the 1980s saw the consolidation of a series of international maritime regimes, the most important of which was the United Nations Convention on the Law of the Sea (UNCLOS). The development of these maritime regimes did much to embed commonly agreed norms and practices of political order at sea, whether in relation to the stewardship of marine resources or the free passage of commerce and the demarcation of territorial waters. At the same time, the end of the Cold War diffused the major naval confrontation of the period between the forces of NATO and the Warsaw Pact. Indeed, by the end of the Cold War, the sea appeared in many respects to have become an increasingly well-ordered space; characterised by legal regulation, normative agreement, and, generally speaking, pacific relations between states.[55]

With the new millennium, the advent of novel international security challenges at sea led to a new problematisation of the oceans captured in the 'maritime security agenda'. This problematisation has led to a wave of experimentation and practical innovation and with it new processes of ordering the sea. Below we provide a brief reconstruction of the maritime security problematisation, before zooming in on a paradigmatic region to discuss informalisation, experimentation, and codification in greater empirical detail. This is both to illustrate the core stages of pragmatic ordering, and to indicate how the model provides a heuristic for empirical research.

The rise of a maritime problem space

What can be described as the 'maritime security agenda', is a process through which the maritime space comes to be seen as inherently problematic. The emergence of transnational and substate maritime insecurities, as well as the re-emergence of geopolitical rivalries, contestation, and doubts over the legal regime at sea have created new uncertainties. These new insecurities disrupted the established maritime order of the immediate post-Cold War period. This in turn led to uncertainty over how newly emerging obstacles and difficulties should be dealt with and whether and how existing practices could be adjusted to cope with them. The new problematisation set in motion a complex ordering process at sea.

As several reconstructions have shown, maritime security as a concept and integrated set of problems has its roots in the rise of maritime piracy and incidents of maritime terrorism, beginning in the late 1990s.[56] More holistic thinking that conceives of the maritime as an interconnected security space develops from the mid-2000s. This was reflected in the growing attention given to maritime security issues both in the academic discourse and also in state administrations and international governance forums.[57]

A major indication of this new problematisation of the maritime are the considerable efforts that international actors have devoted to the drafting of national and regional maritime security strategies. The United States published the first exemplar, when in 2005 the Bush administration

[54]Although sporadically, international security concerns brought some attention to the oceans, such as the hijacking of the Achille Lauro in 1985, the 'tanker war' in the Persian Gulf in 1984–7, and the so-called 'Turbot War' between Canada and Spain in 1994–6.

[55]Yet, from the 1980s onwards there was a growing awareness for the health of the oceans and gave rise to an environmental problematisation. Our analysis focuses on security at sea.

[56]See Christian Bueger, 'What is maritime security?', *Marine Policy*, 53 (2015), pp. 159–64; Christian Bueger and Timothy Edmunds, 'Beyond seablindness: A new agenda for maritime security studies', *International Affairs*, 93:6 (2017), pp. 1293–311; Basil Germond, 'The geopolitical dimension of maritime security', *Marine Policy*, 54 (2015), pp. 137–42.

[57]Bueger, 'What is maritime security?'.

concluded its work on the National Strategy for Maritime Security.[58] This document was the first strategy of its kind to explicitly conceive of the maritime sphere as a differentiated security space in its own right, identifying proliferation, terrorism, transnational organised crime at sea, piracy, environmental destruction, and illegal seaborne immigration as core challenges.[59]

The US strategy has since been followed by a host of similar work by international actors. The UK, France, Spain, the European Union, the African Union, and the Group of 7 among others all completed such documents between 2014 and 2015. In common with the US strategy, these approaches endeavour to connect different maritime threats and to understand and engage with the maritime arena as an inter-linked security space rather than a series of discretely separated challenges. Security strategies function as mechanisms through which governments and other actors in the security sphere attempt to articulate and grapple with the problems in which they are engaged. Their recent proliferation is, at least in part, an indication of the extent of the new problematisation of the sea.

Features of the maritime security problematisation

As documented by the strategies, the maritime security problematisation contains at least four features. The first relates to an increasingly significant role of non-state actors in challenging maritime order. Non-state actors have always been prominent in the maritime arena, not least because of commercial interests in trade and resource exploitation. However, what is new – or at least newly resurgent – is the advent of non-state actors as security threats. Such threats fall into three main categories.

The first relates to extremist violence and terrorism. Such concerns were initially spurred by an al-Qaeda attack on a US warship in 2000. This raised fears of a rise in terrorist activity at sea, and led to a drive to secure ports and coastal areas from the incursion of terrorist groups and materials, including potentially weapons of mass destruction. Second, the rise of piracy in Southeast Asia, Western Indian Ocean, and Gulf of Guinea from the late 1990s onwards caused major concerns over the disruption of international shipping routes, the associated financial and human costs, and the need to formulate an effective response.[60] Finally, various organised criminal groups have utilised the sea to facilitate their activities, whether those be the trafficking of weapons and narcotics or the smuggling of people.[61] Such concerns have been heightened since the European migrant crisis in 2015 and the importance of maritime smuggling routes in facilitating these movements.

Another feature of the new problematisation relates to the expansion of the maritime stewardship agenda and an increasing tendency to link this to issues of economic and food security in coastal states and communities, as well as to the health of the global economy as a whole. At least 80 per cent of global trade by volume travels by sea, while marine resources such as fisheries and offshore oil are key economic assets.[62] Most obviously, piracy, criminality or other forces of maritime disruption threaten global commerce. More ambitiously, however, there is also a new recognition among coastal developing countries that the sustainable exploitation of marine resources offers a potential route to development, as captured by the concept of the blue

[58]U Government, 'The National Strategy for Maritime Security' (2005), p. 2, available at: {https://georgewbush-whitehouse.archives.gov/homeland/maritime-security.html} accessed 30 November 2020.

[59]Ibid., pp. 3–6.

[60]Philippe Leymarie, Philippe Rekacewicz, and Agnès Stienne, 'UNOSAT Global Report on Maritime Piracy: A Geospatial Analysis, 1995–2013', United Nations Institute for Training and Support', available at: {https://unitar.org/sites/default/files/media/publication/doc/UNITAR_UNOSAT_Piracy_1995-2013.pdf} accessed 30 November 2020.

[61]Paolo Campana, 'Out of Africa: The organisation of migrant smuggling across the Mediterranean', *European Journal of Criminology*, 15:4 (2018), pp. 481–502; United Nations Office on Drugs and Crime, *Combating Transnational Organized Crime Committed at Sea* (New York: United Nations, 2013).

[62]United Nations Conference on Trade and Development, *Review of Maritime Transport 2020* (New York: United Nations, 2020), p. 20

economy. Moreover, that past neglect of these areas has led to their predation by outside actors, whether by fishing vessels or other external interests. In consequence, there has been an explosion of interest both in the marine economy itself, and also in the structures required to protect, manage, and police it.

A third feature relates to issues of human security; in the sense of the insecurities experienced by individuals and local communities. Human security issues penetrate much of the maritime security agenda. Migration into the EU across the Mediterranean for example is driven by human insecurities at home, while the action and process of migration is itself a source of often-deep insecurity to those participating in it. Fisheries protection and sustainability underpins the livelihoods of millions of people living in coastal regions, while these same groups are often the most vulnerable to the adverse impacts of climate change or marine pollution. Such concerns relate both to the security of the individuals and coastal communities themselves, but also to the role of human insecurities in facilitating the emergence of activities such as piracy or criminality as alternative sources of employment in regions of significant economic deprivation or breakdown.[63]

The final feature concerns the rise of geopolitical challenges and new competition at sea, induced by the rapid increase in naval capacity of states such as India and China.[64] This rise of new naval powers has been accompanied by a proliferation of relatively cheap and easy to access maritime warfare technologies such as anti-ship missiles and submarine forces to a much wider range of state (and sometimes non-state) actors than was the case in the past. This in turn has challenged the competitive advantage enjoyed by the long dominant naval forces of the West, at least in certain specific geographic domains.[65] Concurrently, the period since 2001 has seen the emergence of new flashpoints of geopolitical tension and territorial competition at sea, including particularly the South China Sea, and nascently the Arctic.[66] These developments have gone along with the fundamental contestation of key norms governing the sea established by the UNCLOS, in particular through China's claims in the South China Sea.[67]

Taken together, these features give us a good grasp of the advancement of a new problematisation of the sea. We now turn to the second stage of the model and review the manner in which international actors are responding to this.

The paradigmatic case

In the following we zoom in on the paradigmatic case of the Western Indian Ocean – the maritime region reaching from South Africa in the West to India in the East, and Yemen and Pakistan in the North.

Paradigmatic cases are useful for rendering particular phenomena intelligible; akin to reasoning by analogy.[68] We here draw on the paradigmatic case of the Western Indian Ocean to illuminate the subsequent four stages of our model. While problematisation is a more overarching

[63]Justin V. Hastings, 'Geographies of state failure and sophistication in maritime piracy hijackings', *Political Geography*, 28:4 (2009), pp. 213–23; Sarah Percy and Anja Shortland, 'Contemporary maritime piracy: Five obstacles to ending Somali piracy', *Global Policy*, 4:1 (2013), pp. 65–72.

[64]Chang, 'China's naval rise and the South China Sea'; Walter C. Ladwig, 'Drivers of Indian naval expansion', in Harsh V. Pant (ed.), *The Rise of the Indian Navy: Internal Vulnerabilities, External Challenges* (Farnham, UK: Ashgate, 2012), pp. 19–40.

[65]Jonathan D. Caverley and Peter Dombrowski, 'Cruising for a bruising: Maritime competition in an anti-access age', *Security Studies*, 29:4 (2020, pp. 671–700.

[66]Margareth Blunden, 'Geopolitics and the northern sea route', *International Affairs*, 88:1 (2012), pp. 115–29; Ketian Zhang, 'Cautious bully: Reputation, resolve and Bejing's use of coercion in the South China Sea', *International Security*, 44:1 (2019), pp. 117–59.

[67]Jacques deLisle, 'Troubled waters: China's claims and the South China Sea', *Orbis*, 56:4 (2012), pp. 608–42; Guilfoyle, 'The rule of law and maritime security'.

[68]Pavlich, 'Paradigmatic cases'.

phenomenon and as shown above can be usefully reconstructed in a more abstract manner, understanding the later stages requires to zoom in closer on a situation in which problematisation spurs particular practical responses.

The Western Indian Ocean is a useful paradigmatic case since it functions as a microcosm of the global maritime space and has been a pivotal region for the new problematisation of the sea. The region is an area of critical global geostrategic significance and is internationally recognised as presenting a diverse and complex range of maritime security challenges that incorporate all the themes we identify above.[69] It is the location for major geopolitical and naval interactions between a diverse range of states; it has seen the most virulent outbreak of piracy in the modern period; it borders hotspots of terrorist activity in Somalia, Yemen, and the wider Middle East; it incorporates key trafficking routes for narcotics, humans, and arms; and has played host to rampant illegal fishing activities, and other forms of organised crime.

In addition, and in so far as a paradigmatic case 'simultaneously, if paradoxically, emerges from, and constitutes, the set to which it belongs',[70] the Western Indian Ocean is also host to significant processes of informalisation, experimentation, and codification processes. The case is hence ideally suited to further illuminate how these processes unfold and hang together. The Western Indian Ocean has been a crucible of innovation in maritime security with multiple experiments leading to practices that not only structure interactions in the region itself, but are increasingly indicative of a new global ordering process. The developments in the region hence give us a case of prototypical value both for understanding the specificities of the ordering implied by the broader maritime security problematisation, but also for the general model of pragmatic ordering.

Informality and experimentation in the Western Indian Ocean

What practical responses has the problematisation of maritime security triggered in the Western Indian Ocean?[71] In the following we show how problematisation gave rise to a host of informally derived experiments. We investigate three of the experiments that are observable in the region:[72] (1) the development of new coordination mechanisms for naval forces; (2) the creation of an experimental governance mechanism to coordinate actors and establish practical rules; and (3) the introduction of a new form of law enforcement structure. Each of these responses are informal in that they operate with a minimum of rules, and neither rely on formal legal agreements nor are organised in the frame of established institutional settings. They are experiments in that they test new means of responding to maritime insecurity. They draw on the reconfiguration and translation of practice from other fields, new actor configurations, and the introduction of new technologies to the maritime. Together they provide us with indications of what forms of informality and experimentation might be spurred by problematisation.

[69]James R. Holmes and Toshi Yoshihara, 'China's naval ambitions in the Indian Ocean', *Journal of Strategic Studies*, 31:3 (2008), pp. 367–94; James A. Russell, 'The Indian Ocean', in Daniel Moran and James A. Russell (eds), *Maritime Strategy and Global Order* (Washington, DC: Georgetown University Press, 2016), p. 185.

[70]Pavlich, 'Paradigmatic cases', p. 646.

[71]The following discussion draws on a long-term study of maritime security in the Western Indian Ocean and draws on document analysis, ethnographic interviews with over eighty practitioners, as well as short-term participant observation at the experimental sites described below. Details of this broader project and the methodological approach are discussed in Christian Bueger, 'Conducting field research when there is no "field": A note on the praxiographic challenge', in Sarah Biecker and Klaus Schlichte (eds), *The Political Anthropology of Internationalized Politics* (Lanham: Rowman & Littlefield, 2021), pp. 29–45 and Christian Bueger, 'Experimenting in global governance: Learning lessons with the contact group on piracy', in Richard Freeman and Jan-Peter Voß (eds), *Knowing Governance: The Epistemic Construction of Political Order* (Basingstoke: Palgrave MacMillan, 2015), pp. 87–104.

[72]Other experiments discussed in the literature, but not further investigated here, include the use of private security companies or best management practices; see, for example, Eugenio Cusumano and Stefano Ruzza, 'Contractors as a second best option: The Italian hybrid approach to maritime security', *Ocean Development and International Law*, 46:2 (2015), pp. 111–22; Christian Bueger, 'Territory, authority, expertise: Global governance and the counter-piracy assemblage', *European Journal of International Relations*, 24:3 (2018), pp. 614–37.

New means of military coordination

Naval responses to maritime insecurities in the region, in particular piracy off the coast of Somalia, have led to remarkable informal and experimental forms of military coordination. These work in the absence of any shared command structures or formal commitments of states. Instead, coordination is facilitated trough frequent information sharing meetings as well as information technology. As Sarah Percy notes, these novel mechanisms are not adequately grasped by any familiar notions such as alliances, coalitions, or partnership and are truly experimental.[73]

The first precedent for such a coordination structure was set when a multilateral naval operation was installed in the region in 2002 as a response to concerns over maritime terrorism. The so-called Combined Maritime Forces (CMF) was a new type of multi-naval arrangement.[74] At its launch five states were part of the arrangement, but the number grew quickly to 31 nations, including regional powers such as Pakistan, Iraq, and Saudi Arabia. The CMF has a flexible and informal structure. It works 'without long-term binding commitments' and 'rotates command among member states every couple of months'.[75] The flexible and informal character is well captured on the CMF website:

> Participation is purely voluntary. No nation is asked to carry out any duty that it is unwilling to conduct. The contribution from each country varies depending on its ability to contribute assets and the availability of those assets at any given time. The 31 nations that comprise CMF are not bound by either a political or military mandate. CMF is a flexible organisation.[76]

The main tasks of the CMF are carried out by a range of task forces commanded by member states in rotation, with the US naval headquarters in Bahrain providing the basic command infrastructure. The activities that navies engage in range from 'assisting mariners in distress, to undertaking interaction patrols, to conducting visiting, boarding, and search-and seizure operations, to engaging regional and coalition navies'.[77] The creation of the CMF represents an initial case for how the emerging maritime problem space led to experimentation with a new type of military operation and a standing multi-naval constabulary force in the Western Indian Ocean. CMF became one core element in the maritime security structure of the region, and when from 2008 piracy became a major issue it was one of the forces that reacted to it by creating a dedicated task force.

To respond to piracy two additional multilateral forces started to operate in the region. NATO launched Operation Ocean Shield and the EU created EUNAVFOR Atalanta.[78] Also a broad range of state actors, including China, India, Japan, South Korea, and Russia began to send naval vessels. The UN Security Council gave these navies a broad mandate to operate in the area and also in Somali territorial waters. Yet, counter-piracy was not a formal UN naval peacekeeping mission, and there were no proposed joint or integrated command structures. Instead,

[73]Sarah Percy, 'Maritime crime and naval response', *Survival*, 58:3 (2016), pp. 155–86.

[74]Andrew C. Winner, 'Combating transnational threats in the Indian Ocean: A focused US regional strategy', in Peter Dombrowski and Andrew C. Winner (eds), *The Indian Ocean and US Grand Strategy: Ensuring Access and Promoting Security* (Washington, DC: Georgetown University Press, 2014), p. 182; Percy, 'Maritime crime and naval response'.

[75]Justin V. Hastings, 'The fractured geopolitics of the United States in the Indian Ocean region', *Journal of the Indian Ocean Region*, 7:2 (2011), p. 187.

[76]US Naval Forces Central Command, 'Combined Maritime Forces', available at: {https://www.cusnc.navy.mil/Combined-Maritime-Forces/} accessed 30 November 2020.

[77]Russell, 'The Indian Ocean', p. 195.

[78]See James Kraska, *Contemporary Maritime Piracy: International Law, Strategy, and Diplomacy at Sea* (Santa Barbara, CA: Praeger Publishers, 2011); Basil Germond and Michael Smith, 'Re-thinking European security interests and the ESDP: Explaining the EU's anti-piracy operation', *Contemporary Security Policy*, 30:3 (2009), pp. 573–93; and Carmen Gebhard and Simon J. Smith, 'The two faces of EU-NATO cooperation: Counter-piracy operations off the Somali Coast', *Cooperation and Conflict*, 50:1 (2015), pp. 107–27 for a discussion of these operations.

drawing on experience with the CMF, naval actors developed an informal coordination mechanism.

The so-called Shared Awareness and Deconfliction Mechanism (SHADE) was established in 2008 to conduct informal discussion and de-conflict the activities of the diverse nations and organisations involved in counter-piracy operations off the Horn of Africa.[79] Initially, SHADE included only the CMF, EU NAVFOR, and NATO participants, but it rapidly expanded to incorporate all navies active in the area, including those of China, India, Japan, Russia, South Korea, and Ukraine. By 2012, 14 organisations and 27 countries were active SHADE participants.[80] The novelty of the SHADE arrangement, and the opportunities it offered for addressing common problems, was recognised by a representative of the US State Department, who described the organisation as:

> not … a coalition [which] implies [centralized] command and control. Instead [there are] three organized missions and a wide variety of national independent deployers who have simply chosen to collaborate. No one is in charge. No one has command. They deconflict and operate constructively, and that's a new model of operation. … many countries are voluntarily collaborating to secure the maritime space.[81]

One of the most successful measures developed by SHADE was the Internationally Recommended Transit Corridor (IRTC) – a demarcated patrol area in which the coverage by naval vessels was maximised through computer modelling.[82] The IRTC not only reduced the size of the area of operations, but also allowed 'more concerted task-sharing between the three multinational deployments'.[83] The basis for the Corridor's operation in practice is the IRTC Coordination Guide, 'a gentlemen's agreement to keep the number of ships per area within the IRTC to a minimum'.[84]

A second noteworthy initiative facilitated by SHADE was the creation of a new information-sharing platform called MERCURY. MERCURY allows various actors – including national navies, civil information sharing centres, and law enforcement agencies – to communicate with each other through synchronous text-based chat, with a live feed on naval operations and piracy incidents providing real time data to all participating actors.[85] 'This secure but unclassified internet-based communication system, … works as a neutral communications channel and allows all SHADE participants to coordinate together in real time.'[86]

The CMF force structure, the SHADE forum, the transit corridor optimised through modelling, and the information sharing system, are four novel ways of how to coordinate military activity between nations and to increase the success rate of responding to maritime security incidents. They were all launched in an informal setting, are experimental in character, and have endured over time.

[79]See Kraska, *Contemporary Maritime Piracy*, pp. 98–9.

[80]Jon Huggins and Jens Vestergaard Madsen, 'The CGPCS: The evolution of multilateralism to multi-stakeholder collaboration', in Thierry Tardy (ed.), *Fighting Piracy off the Coast of Somalia: Lessons Learned from the Contact Group* (Paris: EU Institute for Security Studies, 2014), p. 27.

[81]Piracy Daily, Maritime TV panel discussion with Donna Hopkins, US State Department Coordinator on Counter Piracy and Maritime, Security, 26 June 2013.

[82]Matthew Macleod and William M. Wardrop, Operational Analysis at Combined Maritime Forces, 32nd International Symposium of Military Operational Research, p. 3, available at: {http://www.lessonsfrompiracy.net/files/2015/12/32ismor_-macleod_wardrop_paper.pdf} accessed 30 November 2020.

[83]Gebhard and Smith, 'The two faces of EU-NATO cooperation', p. 12.

[84]Ibid.

[85]Rowan Watt Pringle, 'How to Catch a Pirate: Cooperation is Key', Naval-technology (2011), available at: {http://www.naval-technology.com/features/featurehow-to-catch-a-pirate-cooperation-is-key/} accessed 30 November 2020.

[86]Gebhard and Smith, 'The two faces of EU-NATO Cooperation', p. 12.

An experimental informal governance mechanism

By 2008, piracy in the region had become a problem of significant proportions – a threat to the delivery of aid to Somalia as well as to international shipping. The question arose as to which international governance body could oversee, coordinate and legitimise counter-piracy activities. It quickly became apparent that the existing institutional set up was struggling to address the problem. The UN Convention of the Law of the Sea defined piracy as a criminal activity taking place on the high seas. It gave any state the right to arrest and prosecute pirates but did not give anyone the obligation to do so. The IMO, the UN body in charge for regulating the shipping industry, discussed the issue, but lacked the means to authorise or organise any larger-scale multilateral response. The issue was transferred to the UN Security Council. A series of UN Security Council resolutions called upon states to protect shipping and to cooperate in doing so. But it remained unclear which body could develop a strategy and coordinate the increasing number of different actors involved, in particular flag states, regional states, as well as the shipping industry.

The response was the creation of a new informal governance mechanism, the Contact Group on Piracy off the Coast of Somalia (CGPCS). The group has been described by scholars variously as an 'international cooperation mechanism to act as a common point of contact', as a 'forum where a considerable number of States meet to discuss issues related to the effective repression coordination mechanism',[87] 'more as a transnational network than governance, as it lacks any direct regulatory power',[88] or as 'a voluntary mechanism for states to collectively address maritime piracy'.[89]

A former chairperson of the group described it as a 'diplomatic initiative' that grew into an 'expansive, elastic, multi-faceted mechanism' that 'has acted as a lynchpin in a loosely structured counter-piracy coalition' but that has 'no formal institutional existence'.[90] Another described it as 'an inclusive forum for debate without binding conclusions' without 'any real structural formality'.[91] And, indeed, the group has been described by the participants themselves as 'a laboratory for innovative multilateral governance to address complex international issues'.[92]

The group as such is a fascinating case of informality that evolved through a series of experiments and exerted significant structuring power over the counter-piracy response. Created as a coordination body by 15 states in 2009,[93] it was originally meant to be a limited contact group, following the templates of other state groupings regularly formed to address international crises.[94] But the group very quickly evolved into an entire new form. The CGPCS became a process-driven, informal organisation working on principles of inclusivity rather than representation. It grew in membership, with over eighty states and twenty-five international organisations participating. Also, non-governmental organisations started to attend, as did shipping industry associations. Despite its size, the CGPCS worked with a minimum of rules, which left many of its procedures to the discretion of a rotating chairmen, while the work was decentralised in a series of working groups.

[87]Robin Geiss and Anna Petrig, *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden* (Oxford: Oxford University Press, 2011), p. 26.

[88]Douglas Guilfoyle, 'Prosecuting pirates: The contact group on piracy off the Coast of Somalia, governance and international law', *Global Policy*, 4:1 (2013), p. 77.

[89]Danielle A. Zach, Conor Seyle, and Jens Vestergaard Madsen, *Burden-Sharing Multi-level Governance: A Study of the Contact Group on Piracy off the Coast of Somalia* (Colorado: Once Earth Future Foundation, 2013), p. 7.

[90]Henk Swarttouw and Donna L. Hopkins, 'The contact group on piracy off the coast of Somalia: Genesis, rationale and objectives', in Tardy (ed.), *Fighting Piracy*, pp. 11, 14, 17.

[91]Antonio Missiroli and Maciej Popowski, 'Foreword', in Tardy (ed.), *Fighting Piracy*, p. 4.

[92]European External Action Service (2014), 'Communiqué: Contact Group on Piracy off the Coast of Somalia 16th Plenary Session' (12 January 2015).

[93]See the contributions in Tardy (ed.), *Fighting Piracy*.

[94]See Prantl, 'Informal groups of states and the UN Security Council'.

The main objective of the group was to serve as fora for the exchange of information concerning ongoing operations, to develop a shared understanding of the problem of piracy, to discuss new proposals for responses, and to develop a concerted strategy. Although the decisions of the CGPCS are non-binding in nature, they exert a substantial orchestrating effect.[95] The group experimented with coordination mechanisms, such as a shared legal toolkit or a coordination matrix and database.[96] In particular it has facilitated the development of a legal system on the basis of memoranda of understanding by which piracy suspects could be arrested, transferred, prosecuted, and jailed across different jurisdictions.

A new legal infrastructure

The cross-jurisdictional legal structure developed to prosecute pirates is another noteworthy experiment in regional maritime security.[97] It arose from the practical problem that most of the states providing naval forces for counter-piracy operations were unwilling to prosecute detained piracy suspects in their own courts for legal, financial, or political reasons, despite being given the right to do so under UNCLOS. To avoid suspects simply being released, international actors debated various options for prosecuting pirates, including the proposal for establishing an international court in Tanzania.[98]

The majority of actors engaged in counter-piracy, however, preferred a more informal and less institutionalised system that would not set legal precedents or lead to a formal institution. This system was developed within the legal working group of the CGPCS. As a former chairman of the legal working group phrased it, the group developed

> a unique legal and practical framework for prosecuting pirates in the region, also known as the Post Trial Transfer system. The framework allows arresting states to transfer apprehended suspected pirates to littoral states, including Kenya and Seychelles, for prosecution, and, if convicted, to have the pirates transferred to Somalia (Somaliland) to serve their prison sentence.[99]

The bases of the system are bilateral Memoranda of Understandings. For international criminal lawyers the cross-jurisdictional coordination framework was a hallmark for inventing transnational law enforcement on the basis of informal understandings and practical coordination.[100]

Summary

The three processes detailed above are examples of experiments that have been engendered by the failure of existing practices. The provisions by UNCLOS and the mechanisms developed within the IMO were insufficient to address the situation. Rather than creating a formal organisation such as a new naval operation, an international court, or orchestrating a response through UN structures, a loose and informal set of multilateral activities were developed to respond to multiple maritime insecurities, but particularly the piracy problem.

[95]Tardy (ed.), *Fighting Piracy*; Guilfoyle, 'Prosecuting pirates'.

[96]Not all of these experiments were necessarily successful. See, for example, Huggins and Vestergaard Madsen, 'The CGPCS', pp. 31–2.

[97]See the detailed analysis of this system and the role of the CGPCS in Guilfoyle, 'Prosecuting pirates' and the contributions in Michael P. Scharf, Michael A. Newton, and Milena Sterio (eds), *Prosecuting Maritime Piracy: Domestic Solutions to International Crimes* (Cambridge: Cambridge University Press, 2015), pp. 1–12.

[98]UN Doc. S/2011/30, 2011.

[99]Jonas Bering Liisberg, 'The legal aspects of counter-piracy', in Thierry Tardy (ed.), *The Contact Group on Piracy off the Coast of Somalia (CGPCS): A Lessons Learnt Compendium* (Paris: EU Institute for Security Studies, 2014), p. 35.

[100]Michael P. Scharf, 'Introduction', in Michael P. Scharf, Michael A. Newton, and Milena Sterio (eds), *Prosecuting Maritime Piracy: Domestic Solutions to International Crimes* (Cambridge: Cambridge University Press, 2015).

The outcome has been the experiments discussed above. It is noteworthy that these experimental activities have not receded with the dissipation of the piracy problem in the region from 2012. Indeed, there are clear indications that they are beginning to consolidate into settled practices and become routine. In the next section, we show how these new practices have become codified through lessons learned and strategy documents, and how capacity building activities increasingly install and embed these into the littoral states of the region and elsewhere.

Codification, consolidation, and global translation

The last recorded major successful piracy attack in the Western Indian Ocean occurred in May 2012. Eight years later, the measures discussed above remain in place, and in many ways have consolidated. This is the outcome of increased explicit efforts to install these practices among the littoral states, and hence embed them in the region as a whole, but also to expand these practices to other maritime regions.

Codification, consolidation, and capacity building

Both SHADE and the CGPCS engage in ongoing monitoring and evaluation of the effects of their activities, recorded for instance in the frequent communiques of the groups. In addition, several actors began to devote significant attention to recording experience and conducting lessons learned exercises, indicating a substantive process of codification. In 2014 the CGPCS initiated a major 'lessons learned' exercise. Following its experimental spirit, the group commissioned a think tank and a university-based researcher to carry out the project. The objective was to record the experience of the group and distil lessons and best practices through a participatory approach. 'Lessons learned' has become a standing item on the agenda of the groups plenary meetings.[101] Several actors including various states, NATO, and the shipping industry either contributed to the CGPCS process or conducted their own lessons learned exercises.[102] The goal of these exercises has been to capture the practices installed, why they succeeded in containing piracy, how they could be maintained, and whether and how they could be replicated to address other maritime security problems and regions.

Consolidation occurred also through an effort to transfer the responsibility for maintaining the by now settled practices to regional actors in order to make them enduring and even permanent. In consequence, international actors continued to experiment, and, in so doing, shifted the focus of their activities towards the institutionalisation of the new practices in the region. In particular, new experiments have been conducted in capacity building.[103] These initiatives are meant to enable littoral states to take over key tasks from the international community. They also represent an effort to incorporate and address some of the broader issues raised by the maritime security agenda, addressing in particular the economic and human security dimension.

Capacity building is geared at training practitioners of countries in the new practices. Such activities have been part of counter-piracy operations in the region from the very beginning. Regional actors were trained in systems such as MERCURY, and increasingly given major roles in the CGPCS. Capacity building was notably important to enable littoral states to play a part in prosecuting piracy suspects as part of the legal transfer system.

[101]See Tardy (ed.), *Fighting Piracy*.

[102]See the documentation provided in Contact Group on Piracy off the Coast of Somalia (CGPCS), 'Lessons From Piracy' (2016), available at: {http://www.lessonsfrompiracy.net} accessed 30 November 2020.

[103]For a discussion of the experimental nature of these practices, see Christian Bueger and Simone Tholens, 'Theorizing capacity building', in Christian Bueger, Timothy Edmunds, and Robert McCabe (eds), *Capacity Building for Maritime Security: The Western Indian Ocean Experience* (Basingstoke: Palgrave, 2020), pp. 37–9; Timothy Edmunds and Ana E. Juncos, 'Constructing the capable state: Contested discourses and practices in EU capacity building', *Cooperation and Conflict*, 55:1 (2020), pp. 3–21.

The UN Office on Drugs and Crime (UNODC), for instance, created a new programme to undertake such capacity building for maritime security.[104] The focus soon became broader and programmes evolved into training regional diplomats and maritime security actors in order to allow them to take over the core tasks of maintaining the regional structures. The IMO and the EU, but also states such as the US and Japan invested substantially in capacity building operations. Yet, such capacity building efforts have not been without contestation and present and ongoing challenge, which suggests that the new practices are not fully consolidated.[105]

Translating the new practices to other situations

In what ways does this consolidation process also affect other regions? There are numerous indications that the results of the experiments in the Western Indian Ocean have also been translated to other regions and situations and hence have a wider, global ordering effect. Core practices from the Western Indian Ocean region have been adopted elsewhere, and many of the developments are paradigmatic of wider trends in the emergent maritime security agenda.

In the Gulf of Guinea, for example, a governance mechanism similar to the CGPCS, the so-called G7++ Friends of the Gulf of Guinea Group, was established in 2013. In 2018 a contact group was created to coordinate responses to piracy in the Sulu and Celeb Seas, which took the CGPCS as a template. The SHADE coordination model has been adopted in other regional contexts. A similar mechanism has been introduced in Southeast Asia, as well as in the Mediterranean as a means to coordinate the fight against human smuggling.[106] The flexible military operational structures that allow for the participation of non-member states is in use in various naval operations, such as NATO's Mediterranean naval counterterrorism operation Active Endeavour. Capacity building for maritime security has become a global enterprise. A good indicator is the evolution of the UNODC's programme: Starting out as the Counter-Piracy Programme operating in four countries (Kenya, Somalia, Seychelles, Tanzania), it has since has evolved into the Global Maritime Crime Programme active in capacity building around the world.

These are examples of how the practices developed and tested in the Western Indian Ocean became replicated across the globe. They form part of the new pragmatic ordering process at sea and signify an increasing consolidation of these activities and practices beyond the Western Indian Ocean region for which they were originally developed.

Conclusion: Ordering and the new pragmatic order at sea

The problematisation of the maritime security agenda has spurred a pragmatic ordering process through which the oceans are increasingly governed differently. It presents a forceful, *paradigmatic* case for how problematisation, informality, and experimentation lead to new orders through codification and consolidation. It is the power of paradigmatic cases to illuminate and elaborate,[107] and this was the primary intention of our empirical discussion; it was to show how the model of pragmatic ordering can shed new light on global ordering processes.

Informalisation and experimentation are observable master trends of world politics, and are increasingly recognised as such. The model of pragmatic ordering allows us to put these trends in context and relate them to the occurrence of ordering. The model hence gives us a new tool to

[104]Brittany Gilmer, *Political Geographies of Piracy: Constructing Threats and Containing Bodies in Somalia* (Basingstoke: Palgrave MacMillan, 2014).

[105]See, for example, Filip Ejdus, 'Local ownership as international governmentality: Evidence from the EU mission in the Horn of Africa', *Contemporary Security Policy*, 39:1 (2018), pp. 28–50.

[106]The Information Fusion Centre in Singapore hosts Shared Awareness Meetings (SAM), which discusses maritime security in the South East Asian region. The so-called SHADE Med was introduced in December 2015 by the European Union to coordinate activities with NATO forces but also other actors such as the shipping industry, the US Navy, and UN organisations addressing migration at sea.

[107]Flyvbjerg, 'Five misunderstandings'.

study change in international orders. It allows to translate the often-intricate philosophical ideas of pragmatism concerning the importance of problems, inquiry, and change, but also the insistence of practice theories to pay more attention to the mundane, practical, often informal activities into a concrete model useful for empirical research on ordering.

Problematisation processes are critical in this regard. The maritime security problematisation came along with the identification of new and inter-related security challenges at sea. Uncertainties over how to deal with these challenges opened space for informal and experimentational processes to occur. New kinds of military cooperation, the use of technology, experimental governance formats, and a complex law enforcement system were the outcome.

Nonetheless, it is likely that not every problematisation will favour or trigger the pragmatic ordering process induced by the model. Indeed, a case can be made that ocean space is particular prone to such a form of problematisation. Given the terra-centrism of much of world politics, there might be a case that the oceans operate differently. And indeed, navies historically have stronger inclinations to cooperate, not the least given the fluidity of ocean space and extreme weather conditions. The status of ocean space in world politics, without doubt, represents particular conditions, and as such it is an ideal paradigmatic case for advancing the pragmatic ordering model.

Yet, the core driver of the model is the rise of new problematisations induced by the failure of existing ways of handling things. In the case of counter-piracy off the coast of Somalia, this was not the lack of legal provisions, but the failure of existing institutions, centrally the UN system, to organise a practical response. Piracy is interesting in this regard, since it is also a case of an old international problem, which resurfaced, raised new uncertainty, and hence required a new and different response.[108] New uncertainty and the failure or absence of settled practices hence provides the core conditions for the model to set in motion.

Paradigmatic cases, like our discussion of the maritime security ordering process, are also meant to be of prototypical value and open up comparisons.[109] We expect the model to be a revealing heuristic tool if applied to other cases and compared to the maritime security case. We expect the model to provide valuable insights in how newly emerging issues and problems challenge existing orders and trigger new ordering process.

A range of contemporary issue areas will benefit from being researched through these lenses. State failure, transnational terrorism, cyber security, artificial intelligence, or autonomous weapons represent emerging global problematisations that induce significant ordering processes. Like the maritime security problematisation, these are recognised problems that are inherently complex, transnational, and cross-jurisdictional in the way in which they manifest, and in which pragmatic responses are engendered both as a function of their nature and as a consequence of the specific territories in which they take place.

Yet, the pragmatic ordering model will also be useful for historical research and investigations into how orders, such as the international humanitarian order have evolved through problematisation, informality, and experimentation and have become settled.

Comparing these instances with our paradigmatic case will contribute to refining the model and better identify its scoping conditions. Key questions relate to the situations and particularities of the problematisations required to trigger pragmatic ordering processes, and the circumstances under which the stages of the model could break down. These include when and how informality and experimentation fail due to controversies, how new practices fail to settle and the ways in which they may be contested or resisted and hence consolidation does not take place. Investigating such issues will also bring questions of power, in particular the power to shape

[108]Christian Bueger, 'Piracy studies: Academic responses to the return of an ancient menace', *Cooperation and Conflict*, 49:3 (2014), pp. 406–16.

[109]Flyvbjerg, 'Five misunderstandings', p. 427.

the outcomes of experiments, or to refuse or resist consolidation more strongly to the fore than it is currently captured in the model.

As James G. March and Johan P. Olson argued, 'the historical processes by which international political orders develop are complex enough to make any simple theory of them unsatisfactory'.[110] The model of pragmatic ordering developed in this article does not pretend to offer such a simple theory. As a model its goal is to organise, illuminate, and provide a heuristic for exploration, not a theory to be tested.[111] Likely, there are other mechanisms of change and ordering at play, within which (maritime) orders are nested, and that are nested within it; and other models and conceptual apparatuses are required to describe them. The model of pragmatic ordering is, however, an important addition to our repertoire of models how (global) ordering occurs. It is a model that brings problems, informality, and experimentation to the fore.

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[110]March and Olson, 'The institutional dynamics of international', p. 968.
[111]Clarke and Primo, *A Model Discipline*.

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