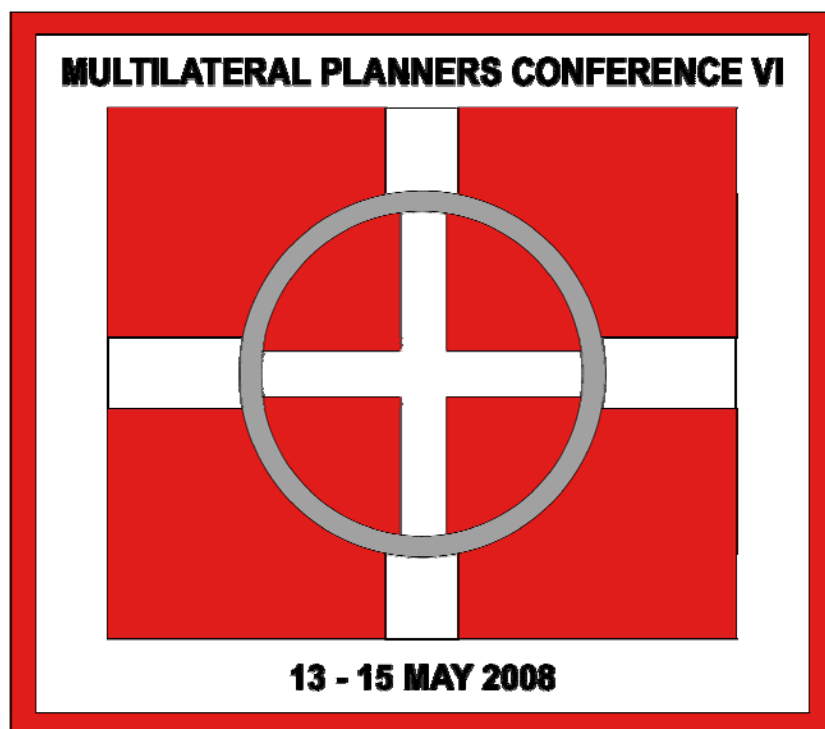




MARITIME SECURITY PRIMER



GLOBAL MARITIME SECURITY COOPERATION IN AN AGE OF TERRORISM AND TRANSNATIONAL THREATS AT SEA

COPENHAGEN, DENMARK



Multilateral Planners Conference VI

Copenhagen, Denmark ~ 13 - 15 May 2008

PREFACE

This primer describes some of the more important mechanisms for expanding international maritime security cooperation. We provided an earlier draft of this document to help to generate discussion at Multilateral Planners Conference (MPC) VI held in Denmark 13-15 May 2008. At MPC VI we solicited input from participants and have integrated those comments into this edition of this Primer, which we are distributing as a reference for interested parties globally.

MPC VI served as a mechanism for states to develop new ideas and enduring relationships that will increase state commitments to critical maritime security treaties, agreements and partnerships that expand the rule of law at sea. MPC VI also facilitated creative thinking on how international partners can work together more actively and effectively to strengthen collective security at sea in the face of emerging challenges. One of the principal ideas that emerged from MPC VI was to provide a template for states to use to conduct a self-assessment of the partnerships, treaties and other initiatives in which they participate. It can be found at Section VII.

We hope this Primer will be a useful tool to raise awareness and serve as a point of departure for achieving a regional approach to global maritime security. We continue to welcome new ideas on how we can work together—states, international organizations and industry—to strengthen global maritime security.

Sincerely,

J. M. PAXTON, Jr.
Lieutenant General, USMC
Director for Strategic Plans
and Policy

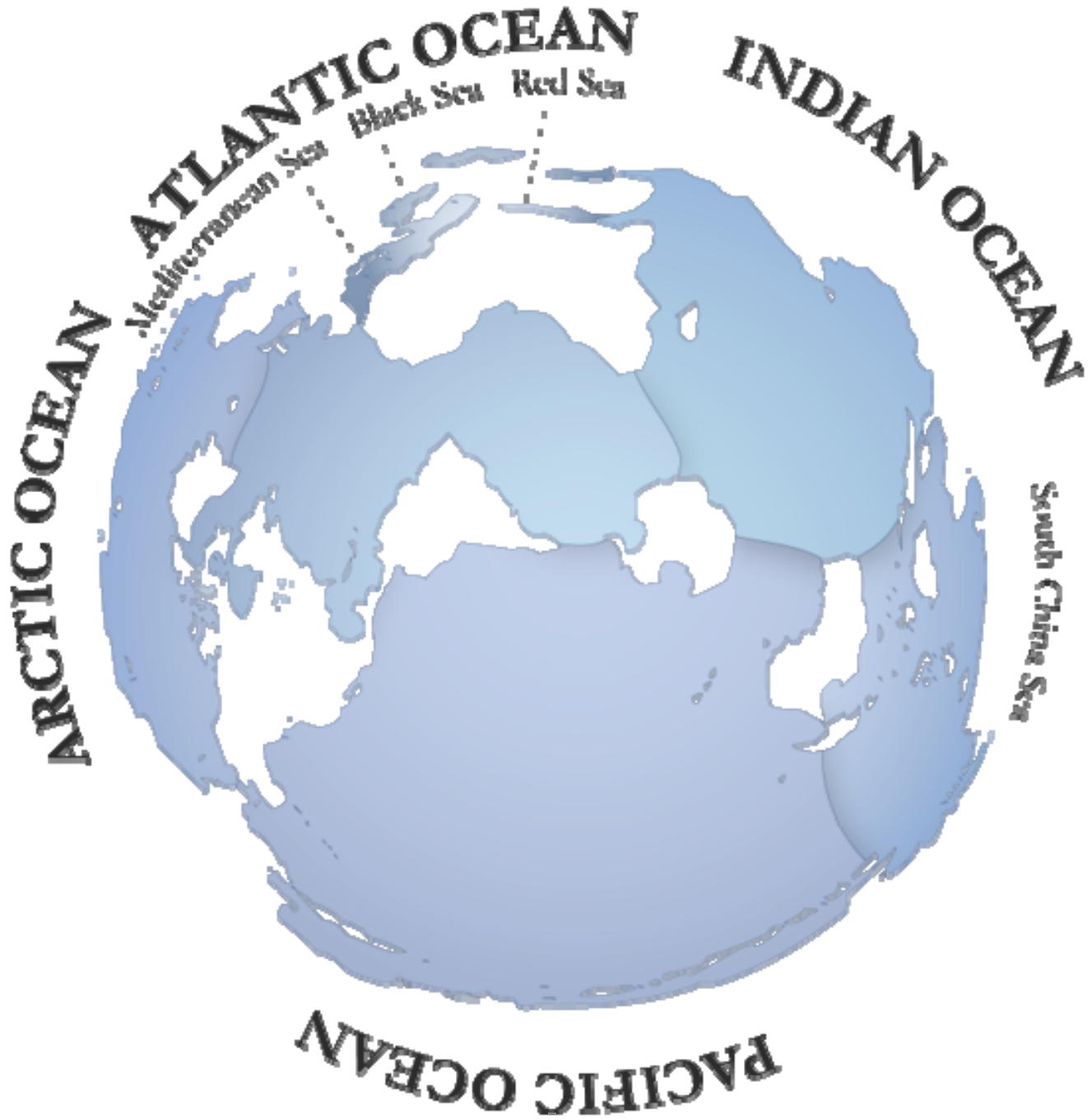
PETER KÜHNEL
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4 August 2008

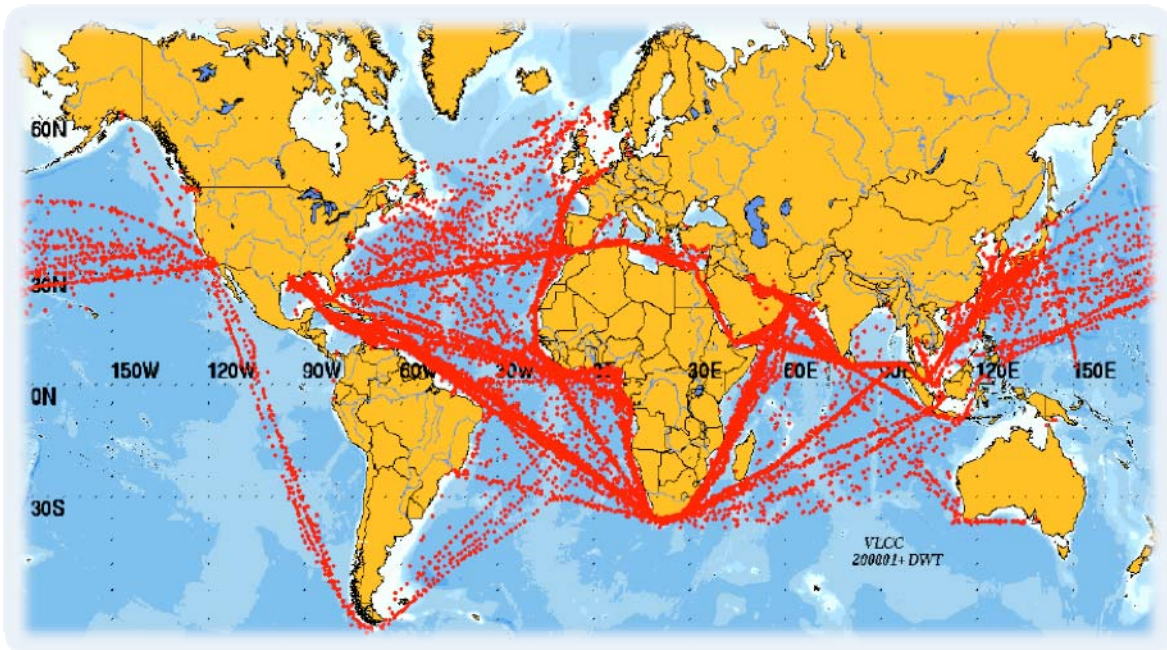
TABLE OF CONTENTS

I. Introduction	5
II. Rule of Law in the Oceans	9
A. The United Nations Convention on the Law of the Sea (UNCLOS).....	9
B. The International Maritime Organization (IMO).....	11
C. United Nations Peacekeeping Operations—UN Interim Force in Lebanon (UNIFIL)	12
D. Maritime Counterdrug Interdiction.....	13
III. Piracy and Armed Robbery at Sea	14
A. Global Instruments.....	14
1. IMO MSC Circulars 622/623 and Code of Practice	15
2. IMO Resolution A.1002(25), Piracy in waters off the coast of Somalia.....	16
3. United Nations Security Council Resolution 1816.....	17
B. Regional Agreements	18
1. Regional Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP).....	18
2. Sub-regional Meeting on Piracy and Armed Robbery against Ships in the Western Indian Ocean	18
IV. Expanding Cooperation and Building Partnership Capacity	21
A. The Cooperative Mechanism—Straits of Malacca and Singapore	21
B. Global Maritime Partnership (GMP)	22
C. North Pacific and North Atlantic Coast Guard Forums	24
V. Suppression of Terrorists and Weapons of Mass Destruction at Sea	25
A. United Nations Security Council Resolution 1540.....	25
B. Proliferation Security Initiative (PSI)	26
C. Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) (1988 Convention and 2005 Protocols).....	28
VI. Global Maritime Cargo Chain Security	31
A. International Ship and Port Facility Security (ISPS) Code.....	31
VII. Maritime Situational Awareness.....	32
A. Automatic Identification Systems (AIS).....	33
B. Long Range Identification & Tracking (LRIT).....	33
VIII. Maritime Security Country Self-Assessment.....	35
VIII. Status of Selected Maritime Security Treaties.....	41

THREE-QUARTERS OF THE GLOBE IS COVERED BY WATER



NINETY PERCENT OF THE WORLD'S COMMERCE TRAVELS BY SEA



I. Introduction

More than 90 percent of global trade is conducted over the sea lanes. With increasing reliance on just-in-time delivery of products, countries are closely bound together by maritime shipping. The oceans serve not only as a spatial resource for the international cargo chain, but also as an important source of food and other resources. Ensuring maritime security requires a concerted effort among littoral coastal states, landlocked states and flag states, international organizations and maritime industry partners. The smooth operation of the global economy depends on the free flow of shipping through straits used for international navigation. About one third of the world's trade and half its oil, for example, traverse the Straits of Malacca and Singapore. Many of the key international waterways are relatively narrow and could be closed to shipping, at least temporarily, by an accident or terrorist attack.

Threats emanating from the maritime domain affect all nations and require collective efforts to effectively counter them. All nations have an interest in the development and maintenance of global security, stability, and collective economic prosperity, and these depend on maintaining order throughout the vast ocean space. Partners can collaborate to better protect

sea lines of communication, facilitate and protect global commerce and global supply chain security, ensure the safety of commercial mariners and cruise ships, address illegal, unreported and unregulated (IUU) fishing, and maintain a lawful order of the oceans.

As the world's national economies become ever more closely integrated, it is critical that nations coordinate and, where appropriate, collectively integrate their activities to secure the seas. There exist a number of international agreements and partnerships that promote enhanced maritime security cooperation, and foremost among these are the United Nations Convention on the Law of the Sea (UNCLOS) and the Convention for the International Maritime Organization (IMO).



Ambassador Tommy T.B. Koh of Singapore and President of the Third UN Conference on the Law of the Sea, declared UNCLOS a “constitution” for the world’s oceans because it reflects the foundation for the rule of law at sea. The convention has contributed directly to international peace and security by replacing abundant conflicting claims with universally agreed limits on the territorial sea,

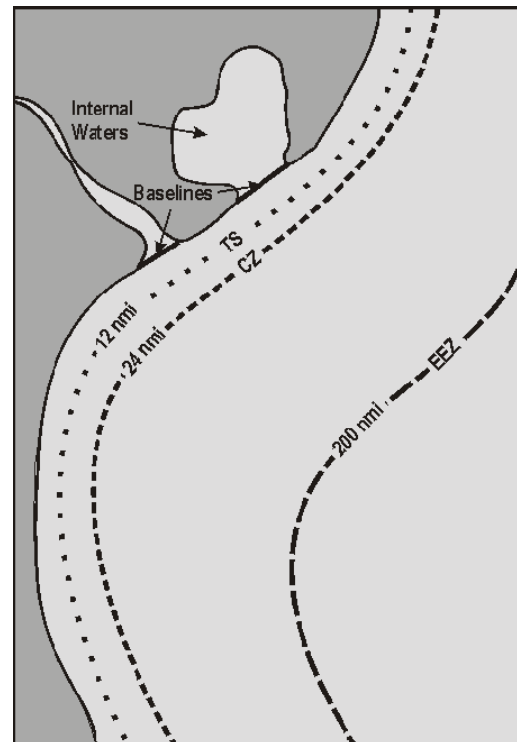
the contiguous zone, the exclusive economic zone and the continental shelf. The interest of the world community in freedom of navigation and overflight has been preserved by the delicate compromises contained in the convention on the status of the exclusive economic zone, the regime of innocent passage through the territorial sea, the regime of transit passage through straits used for international navigation and the regime of archipelagic sealanes passage. The convention also contributes to the peaceful settlement of disputes between states by offering a system of dispute settlement.¹ “Since the adoption of the convention in 1982, there has been no instance of a maritime dispute involving the interpretation of the convention which has led to the use of force. Instead, such disagreements have been referred to the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice (ICJ) or to conciliation or arbitration.”²

Some of the key features of the Convention include the following:

¹ http://www.un.org/Depts/los/convention_agreements/texts/koh_english.pdf.

² [http://app.mfa.gov.sg/pr/read_content.asp?View,1713,.](http://app.mfa.gov.sg/pr/read_content.asp?View,1713,)

- Coastal States exercise sovereignty over their territorial sea which they have the right to establish its breadth up to a limit not to exceed 12 nautical miles; foreign vessels are allowed "innocent passage" through those waters.
- Ships and aircraft of all countries are allowed "transit passage" through straits used for international navigation; states bordering the straits can regulate navigational and other aspects of passage so long as such laws are nondiscriminatory and do not have the practical effect of denying, hampering or impairing the right of transit passage. Transit passage may not be suspended.
- Archipelagic states, made up of a group or groups of closely related islands and interconnecting waters, have sovereignty over a sea area enclosed by straight lines drawn between the outermost points of the islands and through which the international community has the right of archipelagic sea lanes passage.
- Coastal States have sovereign rights in a 200-nautical mile exclusive economic zone (EEZ) with respect to natural resources and certain economic activities, and exercise jurisdiction over marine science research and environmental protection. All other states have freedom of navigation and overflight in the EEZ, as well as freedom to lay submarine cables and pipelines and the exercise of other lawful uses of the high seas.
- Coastal states have sovereign rights over the continental shelf (the national area of the seabed) for exploring and exploiting it; the shelf can extend at least 200 nautical miles from the shore, and more under specified circumstances.
- All states enjoy the traditional freedoms of navigation, overflight, scientific research and fishing on the high seas and states are obliged to cooperate with other states in adopting measures to manage and conserve living resources.
- States are bound to prevent and control marine pollution and are liable for damage caused by violation of their international obligations to combat such pollution.



- States Parties are obliged to settle by peaceful means their disputes concerning the interpretation or application of the Convention.
- Disputes can be submitted to the International Tribunal for the Law of the Sea established under the Convention, to the International Court of Justice, or to arbitration. Conciliation is also available and, in certain circumstances, submission to it would be compulsory.³

In recent years the IMO has facilitated bringing together member states to develop new initiatives to enhance maritime security and safety. These efforts include the 1974 International Convention for the Safety of Life at Sea (SOLAS) and its numerous amendments as well as the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) and the associated 2005 Protocols. The 2002 International Code for the Security of Ships and Port Facilities (ISPS), which amends the 1974 SOLAS agreement, establishes a new framework for states to implement extensive security standards for the commercial shipping industry.

Concerned states are engaged in productive maritime security diplomacy, and two efforts that emerged in Asia in recent years are particularly impressive. Japan initiated an effort to expand greater cooperation for piracy suppression in Asia, leading to the Regional Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). ReCAAP, which has sixteen state parties, is the first regional agreement in Asia focusing on counter-piracy cooperation. In a separate effort, the littoral states of the Straits of Malacca and Singapore, Indonesia, Malaysia and Singapore and nearly thirty states that are frequent users of the Straits, met in a series of meetings facilitated by the IMO to develop the Cooperative Mechanism, a framework understanding to promote safety and environmental protection in the Straits. The Cooperative Mechanism is the first time states situated along a strait and user states of the strait have come together under Article 43 of UNCLOS to cooperate in the maintenance and management of navigational and safety aids and to prevent, reduce and control pollution from ships.

What follows is a summary of some of the more important current initiatives and those under development that serve to enhance maritime security cooperation and partnerships. These regimes address issues such as promoting and preserving freedom of the seas, cooperative arrangements for sharing maritime situational awareness, repression of piracy and armed robbery

³ http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm.

at sea, disruption of the transport of terrorists and weapons of mass destruction at sea and strengthening international shipping and global cargo chain security. These treaties, agreements and protocols are worth consideration by all nations to improve collective global maritime security. In section VIII of this Primer we have included a brief country self- assessment to facilitate internal governmental deliberation on these important maritime security treaties and partnerships.

RULE OF LAW IN THE OCEANS

II. Rule of Law in the Oceans

A. *The United Nations Convention on the Law of the Sea (UNCLOS)*

- **Treaty:** The United Nations Convention on the Law of the Sea (UNCLOS) (1982).⁴
- **Purpose:** Establish a comprehensive multilateral regime governing ocean activities.
- **Benefits:** Provides a stable and widely accepted legal order of the oceans that effectively balances the rights of flag, port and coastal states, protects freedom of navigation and over flight and provides a basis for states to cooperate in enhancing maritime security.
- **State Parties:** 155 nations.

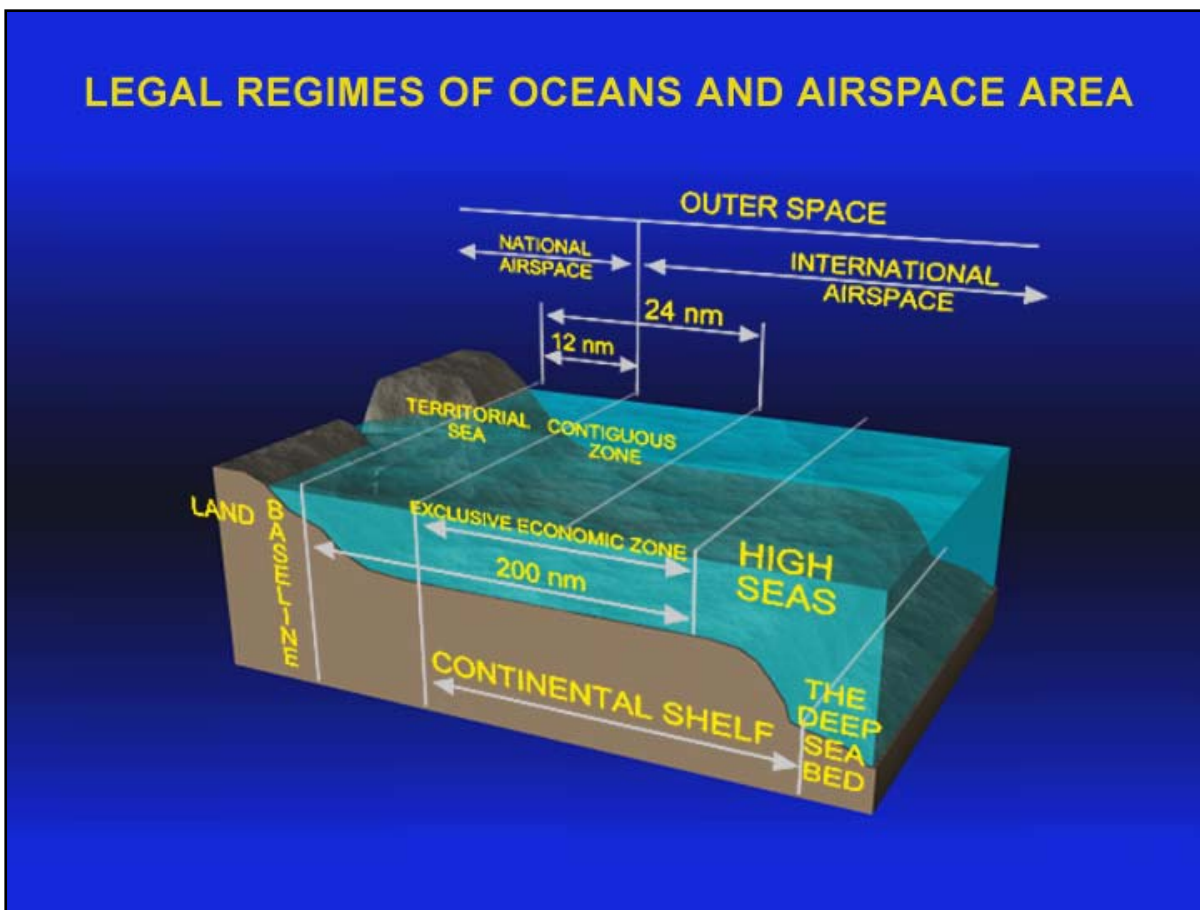
The United Nations Convention on the Law of the Sea (UNCLOS) serves as a cornerstone for peacetime maritime security, providing a stable and widely accepted legal order of the oceans. The Convention recognizes rules for the status of ships and their nationality, immunities of warships, prohibitions on universal crimes such as the transport of slaves and maritime piracy, control of the illicit traffic in narcotic drugs, provides for a right of visit in certain circumstances, and establishes a framework for the peaceful resolution of disputes arising from maritime matters.

Finally, Articles 58 and 87 of UNCLOS reflect the right of navigation and other high seas freedoms on the high seas and throughout the exclusive economic zone. Maritime operations and commerce are completely dependent upon strategic mobility in the global commons. While freedom of navigation is a community right critical to global mobility, security, and prosperity,

⁴ http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm.

that right is under constant pressure of encroachment by some coastal states claiming excessive coastal state jurisdiction for environmental regulation or homeland security.

No coastal state is entirely immune from the “territorial temptation” to impair the right of innocent passage of vessels in the territorial seas, the right of transit passage through straits used for international navigation and the exercise of high seas freedoms beyond the territorial seas, a problem particularly acute in the exclusive economic zone. There are more than one hundred illegal, excessive coastal state claims worldwide that purport to impair vital navigation and over flight rights and freedoms.⁵ By providing the principal point of departure for freedom of the seas and maritime security, UNCLOS brings parties together within a common nomenclature, state practice, and legal and policy reference point to facilitate greater cooperation and coordination.



⁵ See, e.g., the Limits in the Seas series (<http://www.state.gov/g/oes/ocns/c16065.htm>).

B. The International Maritime Organization (IMO)

- ***Treaty:*** Convention on the International Maritime Organization (1948).⁶
- ***Purpose:*** The United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. Member Governments use IMO to develop internationally agreed standards that can be applied to all ships.
- ***Benefits:*** Serve as a forum for developing internationally accepted treaties and standards for ensuring the safety and security of global shipping.
- ***State Parties:*** 167 nations.

The International Maritime Organization (IMO) is the “competent international organization” to facilitate the development of internationally accepted standards under UNCLOS. The IMO has 167 State parties as well as three associate members and intergovernmental and non-governmental organizations representing a wide variety of interests ranging from industry sectors to environmental groups, all promoting the goal of universal standards for safe, clean and efficient shipping. Since its inception, the IMO has adopted nearly fifty treaties and hundreds of codes, guidelines and recommendations that address nearly all aspects of shipping. By working through an effective consensus approach, the IMO has facilitated adoption by member states of the most important conventions covering maritime safety and the prevention of pollution. These regimes are now applicable to almost 100 percent of global tonnage.⁷

THE IMO DEVELOPS STANDARDS FOR SAFE, CLEAN AND EFFICIENT SHIPPING

The 1974 Safety of Life at Sea Convention (SOLAS), for example, which applies to 98.8 percent of world shipping, is generally considered to be the most important of all international treaties concerning the safety of merchant ships. Among the topics covered in its chapters are ship construction, subdivision and stability, fire protection, life saving appliances and

⁶ <http://www.imo.org/>.

⁷ The standard international measurement of a ship's size under the Universal Tonnage Measurement System (UMS), defined by the 1969 Tonnage Regulations, is the Gross Ton (GT). The “ton” in gross tonnage is not a measure of weight but of volume (2.78 cubic meters). Volume in GT is only a useful reference for certain types of vessels such as conventional cargo ships and passenger ships. Certain other ships, including tankers and bulk carriers, are measured by deadweight tonnage (dwt), which represents lifting capacity.

arrangements, radio communications, safety of navigation, carriage of cargoes and dangerous goods, safe management and maritime security.

C. United Nations Peacekeeping Operations—UN Interim Force in Lebanon (UNIFIL)

The United Nations Interim Force in Lebanon (UNIFIL) was the first maritime security operation ever conducted for the UN Department of Peacekeeping Operations (UNDPKO). Originally, UNIFIL was created by the Security Council in 1978 to confirm Israeli withdrawal from Lebanon, restore international peace and security and assist the Lebanese Government in restoring its effective authority in the area. Following the July/August 2006 crisis, the Council enhanced UNIFIL and decided that in addition to the original mandate, it would, among other



things, monitor the cessation of hostilities; accompany and support the Lebanese armed forces as they deploy throughout the south of Lebanon; and extend its assistance to help ensure humanitarian access to civilian populations and the voluntary and safe return of displaced persons.

In 1999, the UN General Assembly decided to establish the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea⁸ in order to facilitate the annual review by the UN General Assembly, in an effective and constructive manner, of developments in ocean affairs and the law of the sea. This review is conducted through close consideration of the report of the Secretary-General on oceans and the law of the sea and by suggesting particular issues to be considered by it, with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced (Resolution 54/33). The ninth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea was held at United Nations Headquarters from 23 to 27 June 2008, and focused on the topic "Maritime security and safety." Member states shared perspectives in maritime security capacity building, addressing IUU fishing, repression of piracy and armed robbery at sea and information sharing to enhance safety and security at sea.

⁸ http://www.un.org/Depts/los/consultative_process/consultative_process.htm.

D. Maritime Counterdrug Interdiction

International organized criminals operate illicit networks to conduct international drug trafficking. The international community has developed a broad approach to addressing maritime counterdrug interdiction because of the realization that illicit drug traffickers exploit ungoverned areas, illicit networks and vast maritime space to facilitate as money laundering, transnational corruption, human trafficking and terrorism.

There are three widely-accepted international treaties calling on states to cooperate in counterdrug activities and operations. Building greater coordination, political will and capability among states will enhance these efforts. The Single Convention on Narcotic Drugs (1961) has been in force since 1964 and has 180 States parties and the



Convention on Psychotropic Substances (1971) which entered into force in 1976 and has 175 States parties. The UN Convention on Illicit Traffic of Narcotics and Psychotropic Drugs (1988) has been in force since 1990 and has 170 States parties. These three major international drug control treaties are mutually supportive and complementary. An important purpose of the first two treaties is to codify internationally applicable control measures in order to ensure the availability of lawful narcotic drugs and psychotropic substances for medical and scientific purposes, and to prevent their diversion into illicit channels. They also include general provisions on illicit trafficking and drug abuse. The third treaty regulates precursor chemicals to drugs controlled by the Single Convention and the Convention on Psychotropic Substances, and strengthens provisions against money laundering and other drug-related crimes.

States cooperate in fulfilling their obligations under the multilateral counterdrug treaties, often through bilateral or regional maritime counterdrug agreements. When states conduct bilateral operations under these arrangements they may agree to permit other nations to operate within waters under their jurisdiction in accordance with pre-planned action. The agreement might define specific parameters such as geographical area, time period, frequency or potential targets or suspects. These operational activities may include information exchange or cooperative patrolling or enforcement actions. The agreements also aid states in developing more effective

and coordinated detection, monitoring and law enforcement response. Typically member states prescribe procedures to be used for designating on-scene coordinators and mutually acceptable rules on the use of force or rules of engagement that will be utilized in operations. States also may agree on when and how a boarding may take place. The agreements also may contain provisions for the sharing of information, including methods of communication. States also may agree to exchange shipriders and operational liaison officers with regional partners.

III. Piracy and Armed Robbery at Sea

A. Global Instruments

- **Agreements:** United Nations Security Council Resolution (UNSCR) 1816; United Nations Convention on the Law of the Sea and Regional Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) (2004)⁹ and International Maritime Organization MSC Circulars MSC 622/Rev.1 and 623/Rev.3 and Code of Practice Resolution A.922(22).
- **Purpose:** UNSCR 1816 focuses on piracy off the coast of Somalia. UNCLOS defines piracy and provides a basis for all states to cooperate in the repression of piracy on the high seas. ReCAAP provide the first treaty in Asia dedicated specifically to the problem of piracy and armed robbery at sea. IMO Circulars and Code of Practice provide recommendations to governments and industry.
- **Benefits:** UNCLOS provides global authority for states to cooperate in repression of piracy. ReCAAP represents a successful regional agreement focused on maritime piracy and robbery at sea in Asia.
- **State Parties:** 155 states are party to UNCLOS; ReCAAP has 16 state parties.

⁹ http://www.recaap.org/index_home.html. The sixteen countries of ReCAAP include the People's Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People's Republic of China, the Republic of India, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, and the Socialist Republic of Viet Nam.

1. IMO MSC Circulars 622/623 and Code of Practice

After a surge in piracy in the early 1990s, particularly in Southeast Asia, the IMO prepared two circulars, MSC/622 and MSC/623, which were issued by the 62nd session of the Maritime Safety Committee (MSC) in 1993. The first document contains detailed recommendations to governments for preventing and suppressing piracy, and the second focused on providing guidance to the maritime sector—ship owners, operators, shipmasters and crews. Subsequently, these circulars have been updated. The revision to MSC/622 recommends states work with seafarers and ship owners as part of the process of crafting action plans for preventing piracy and responding to piracy attacks. The document also set forth investigative protocols for use after a pirate attack. Finally, Circular MSC/622.Rev.1 contains a draft regional agreement on cooperation for preventing and suppressing acts of piracy and armed robbery against ships. The second revised circular, MSC/623.Rev.3, provides guidance on measures for the shipping industry to reduce vulnerability to piracy, such as enhanced lighting and detection, and provided additional steps that states can take during and after an attack, such as enhanced alarm procedures and reporting.



Finally, the IMO adopted the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships, Resolution A.922(22) on November 29, 2001. The Code of Practice contains an *aide-mémoire* to facilitate the investigation of the crimes of piracy and armed robbery against ships. States are recommended to take measures necessary to establish jurisdiction over the offences of piracy and armed robbery against ships, including adjustment of their legislation, if necessary, to enable those States to apprehend and prosecute persons committing such offences. Coastal states are encouraged, where appropriate, to enter into bilateral or multilateral agreements to facilitate the investigation of piracy and armed robbery against ships. The Code of Practice also contains guidelines for approaching the investigation of piracy and armed robbery against ships, including security of evidence, recording witness accounts, conducting forensic examination, searching applicable databases and distribution of information and intelligence to appropriate agencies. In May 2008, Denmark

proposed at the IMO Marine Safety Committee that Circulars 622/623 and the Code of Practice be updated, and a Correspondence group was established for that purpose.

AFRICA HAS THE HIGHEST INCIDENCE OF MARITIME PIRACY IN THE WORLD

2. IMO Resolution A.1002(25), Piracy in waters off the coast of Somalia

In November 2007 the IMO Assembly adopted Resolution A.1002(25), a comprehensive resolution on piracy and armed robbery against ships in waters off the coast of Somalia. The resolution calls for action by IMO member states, the Somalia Transitional Federal Government (TFG) and regional partners to address the problem of piracy off coast of East Africa. The resolution also strongly urges IMO member governments to increase their efforts to suppress piracy worldwide; develop capacity by taking all necessary legislative, judicial and law enforcement action to receive and prosecute or extradite pirates arrested by warships or other government vessels and continue consultations by which technical assistance can be brought to Somalia and regional states to enhance their capacity for repressing piracy.

Resolution A.1002(25) requests action from the Somali TFG, specifically to take to prevent and suppress piracy originating from Somalia and thereby deny the use of the coastline as a safe haven for pirates; take action to ensure that any vessels hijacked by pirates and taken



into Somalia's territorial waters are released promptly; advise the UN Security Council that it consents to the operation of warships operating in its territorial waters for the purpose of suppressing piracy and armed robbery at sea and to advise the Security Council that it is prepared to conclude agreements for such operations inside its territorial seas.

3. United Nations Security Council Resolution 1816

On June 2, 2008, the UN Security Council adopted UN Security Council Resolution (UNSCR) 1816 which provides authority for states to take action under Chapter VII of the UN Charter for the purpose of deterring, preventing and suppressing acts of piracy or armed robbery at sea within the territorial seas and high seas and airspace off the coast of Somalia. Because UNSCR 1816 was decided under Chapter VII, it is legally binding on all states. UNSCR 1816 encourages states to increase and coordinate their efforts to deter acts of piracy in conjunction with the Somali TFG; calls on states, the International Maritime Organization (IMO) and other international organizations to build partnership capacity (BPC) to ensure coastal and maritime security in the region and provides a 6-month window for states to enter the territorial seas (12 nm) of Somalia for the purpose of repressing piracy and armed robbery at sea and use “all necessary means” to repress piracy and armed robbery inside Somalia’s territorial seas, consistent actions lawful on the high seas. The Somali TFG must provide notification to UN Secretary General of states that will be exercising this authority. UN Security Council Resolution 1816 also calls on all states, and in particular, flag, port and coastal states of the nationality of victims or perpetrators of piracy, and other states with jurisdiction under national and international law to cooperate in determining criminal jurisdiction for acts of piracy, investigation and prosecution of piracy, rendering disposition and logistics assistance “with respect to persons under their jurisdiction and control, such as victims, witnesses and persons detained ...”



Although decided under Chapter VII, the UNSCR does not compel any state to take persons under control (PUCs) from warships patrolling in the Western Indian Ocean, but it does provide a valuable umbrella of political legitimacy to states operating in the area and that are inclined toward assisting with PUC disposition and logistics. The Resolution calls on states to coordinate actions with other states and the TFG, particularly with regard to disposition and repatriation of PUCs as a result of counter-piracy operations, including suspected

pirates, as well as victims and witnesses. These actions include cooperation by flag, port and coastal states of the nationality of victims and perpetrators of piracy and armed robbery in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, and to render disposition and logistics assistance to persons under their jurisdiction and control as a result of counter-piracy operations.

B. Regional Agreements

1. Regional Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)

In Asia, the Regional Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) of 2004 emerged from an effort sponsored by Japan to develop a regional approach to combating piracy in Asia. The treaty entered into force in September 2006 and establishes the ReCAAP Information Sharing Centre (ISC) in Singapore to share piracy-related information among 16 member Asian nations.

ReCAAP is especially significant because it is the first multilateral treaty under UNCLOS exclusively relating to repressing maritime piracy and armed robbery against ships. The treaty is a model for other regions to broaden cooperation in the repression of piracy and armed robbery at sea. For example, the regional states of East Africa seek to replicate the success of ReCAAP in the Western Indian Ocean.



2. Sub-regional Meeting on Piracy and Armed Robbery against Ships in the Western Indian Ocean

The IMO sponsored a sub-regional meeting to consider a regional agreement for address piracy off the East Coast of Africa and Western Indian Ocean in Dar es Salaam, Tanzania in April 2008. The meeting of 13 regional States and several observer delegations (including the Baltic and International Maritime Council—BIMCO) produced a draft non-binding regional Memorandum of Understanding (MOU) which would facilitate greater coordination and maritime security in the region. The draft represents significant progress toward developing a regional international agreement focused on increasing cooperation against maritime piracy in

the Western Indian Ocean. The MOU elements promote state action to prevent and suppress piracy and armed robbery against ships, ensure perpetrators are arrested, that governments are prepared to seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and under the control of pirates or persons who have committed armed robbery against ships, and to seize the property on board such ships; and to rescue victim ships and victims of piracy or armed robbery against ships. Additionally, the draft MOU includes provisions for:

- The exchange of liaison officers among states to facilitate counter-piracy action;
- Cooperate to the fullest possible extent in the repression of piracy and armed robbery against ships with a view towards interdicting vessels suspected of engaging in acts of piracy or armed robbery against ships.
- Ensure persons committing or attempting to commit such acts are successfully apprehended, prosecuted, and, as appropriate, repatriated.
- Ensure victims and witnesses, particularly those who have been subjected to violence, are properly cared for, treated, and repatriated.
- Respond to requests from other Governments for assistance pursuant to the agreement as expeditiously as possible.
- Protocols for authorization to board and to take appropriate measures with regard to ships, which may include stopping, boarding and search of a vessel or its cargo and persons on board, and questioning the persons on board in order to determine if an offence has occurred.
- Provisions that the requesting participant should not board the ship or take other measures without the express authorization of the flag State unless the flag State has not expressly declined to authorize a boarding and there are reasonable grounds to believe that boarding is necessary to prevent or respond to the imminent threat of death or serious physical injury to persons aboard the suspect vessel,
- Ensure in case of armed robbery against ships, pirate ships, or ships taken by piracy found in the waters of a participant, or in cases armed robbery against ships concerning the flag vessel of a participant found seaward of any nation's territorial sea, that participant should have the primary right to exercise jurisdiction over a detained vessel and/or persons on board (including seizure, forfeiture, arrest, and prosecution).

- Ensure participants should, to the fullest extent practicable, conduct and support the conduct of investigations in cases of piracy and armed robbery against ships in a manner consistent with the Code of Practice.
- Cooperate to the fullest possible extent in medical and decedent affairs arising from operations in furtherance of the repression of piracy and armed robbery against ships.
- Express an intention to share information concerning specific instances of piracy and armed robbery against ships, and the results of boardings, searches, investigations and status of prosecutions arising from such instances.
- Ensure that participant Governments, upon prior notification by and request of any other Participant, to facilitate, should facilitate, without undue or unreasonable delay, the repatriation of persons interdicted aboard suspect vessels, regardless of their nationality or country of origin.
- Ensure participant should ensure that its security force officials, when conducting activities in accordance with its applicable national laws and policies and with international law and accepted international practices, including the Code of Practice.
- Delineate rules for disposition of assets seized in consequence of operations, and
- Contain provisions on consultations, claims and dispute resolution.



A multi-layered regional approach to piracy in the Straits of Malacca and Singapore has led to a dramatic reduction in the incident of maritime piracy throughout the Straits. These efforts include coordinated patrols by the three littoral states of Singapore, Malaysia and Indonesia, an IMO-sponsored “Cooperative Mechanism” that includes the littoral states and 25 states that use the Straits of Malacca and Singapore and ReCAAP’s Information-Sharing Centre (ISC) in Singapore. Just as the ReCAAP agreement served as a model for other regions, the Tanzania process and MOU could serve as a framework for regions affected by piracy but are struggling to develop the capacity to address the problem, including the Gulf of Guinea and the Caribbean. Building partnership capacity is a prerequisite for developing greater cooperation and coordination for maritime security.

IV. Expanding Cooperation and Building Partnership Capacity

A. The Cooperative Mechanism—Straits of Malacca and Singapore

- **Authorities:** The Cooperative Mechanism Between the littoral States and the user States on Safety of Navigation and Environmental Protection in the Straits of Malacca and Singapore (“Cooperative Mechanism”).¹⁰
 - **Purpose:** Provide a cooperative structure for littoral Straits states and interested stakeholders on safety of navigation and environmental protection in the Straits of Malacca and Singapore under Article 43 of UNCLOS.
 - **Benefits:** Littoral states can articulate needs and interests and user States and other stakeholders can volunteer to give support and provide capacity and functional cooperation.
- **State Parties:** The States bordering the Straits of Malacca and Singapore, the user States and other stakeholders.



One of the most prominent IMO-sponsored efforts to improve international cooperation to enhance maritime security capacity and cooperation is the “Jakarta Initiative” for safety, security and environmental protection in the Straits of Malacca and Singapore. The “Jakarta Initiative” began in 2005 to increase cooperation and capacity to ensure the safety, security and environmental protection in the Straits, with participation from the littoral states, user states, the international shipping industry and non-governmental organizations. The meetings have been effective in facilitating an increase in maritime patrols by the littoral states and toward focusing user states on assisting with capacity building. A follow-up meeting to the Jakarta session was held in Kuala Lumpur in 2006 and a third meeting was held in Singapore in 2007.

At the 2007 meeting in Singapore, the littoral states of the Straits of Malacca and user states reached an agreement for dialogue and increased cooperation among the littoral States and user States. Called the “Cooperative Mechanism,” the effort represents the first time that states have come together in fulfillment of Article 43 of UNCLOS to cooperatively manage safety and environmental protection in a strait used for international navigation. The Cooperative Mechanism has three components: the Cooperation Forum, the Project Coordination Committee

¹⁰ <http://www.mpa.gov.sg/infocentre/pdfs/spore-mtg-co-op-mechan-070904.pdf>.

and the Aids to Navigation Fund. The littoral and user states have a forum for regular dialogue to exchange views, a committee to coordinate and manage specific projects and a new fund to receive and manage financial contributions to build greater capacity to maintain aids to navigation.

B. Global Maritime Partnership (GMP)

The maritime relief effort in December 2004 to the tsunami off the coast of Sumatra was a spontaneous and effective coordinated response among international naval and coast guard forces, the civil shipping industry and non-governmental organizations (NGO). The response underscored that no single nation can accomplish the complex missions of ensuring safety, security and environmental protection within the maritime domain.



The concept of a “Thousand Ship Navy” was introduced in 2004 and represents a figurative rather than a literal fleet comprised of a thousand vessels. Navy chiefs from over thirty nations endorsed the concept as a way for the sea services to coordinate to meet common maritime challenges. Over the past four years, the original concept of a “Thousand Ship Navy”



has broadened into a “Global Maritime Partnership” (GMP) that includes not just naval forces, but the capabilities and cooperation of civilian, law enforcement and regulatory agencies, industry and organizations that can help to forge enduring maritime security partnerships.

As an activity-based approach to cooperation among maritime nations with a shared stake in international commerce, safety, security, and freedom of the seas, GMP provides a forum for building greater consensus on policy principles and for undertaking common activities to address maritime challenges by improving collective capabilities. This goal can be achieved through partnering states with greater capacity with those with less capacity in order to

address common objectives, such as port security, IUU fisheries, maritime proliferation security, maritime safety and aids to navigation and the range of maritime security operations (MSOs), including law enforcement at sea.

GMP is not a formal organization or agreement led by any country and it does not have a structure requiring formal membership. Instead, GMP is a collective effort driven by partner requirements and encouraged by mutual international outreach and coordination. Voluntary participation can foster partnership capacity building through the promotion and sharing of “best practices” in sharing maritime situational awareness and developing greater maritime security. These are conducted consistent with existing national legal authorities and obligations and relevant international law. Partners are bound together by their common dependence on the seas and the corresponding need for security in the



vast maritime domain. The partnership is extending to the private sector, non-governmental organizations, international organizations, regional initiatives and national governments. Making the oceans safer and more secure reduces the expectation that states will have to respond to a crisis, and it promotes stability and economic prosperity by reducing the risks associated with operating the global supply chain.

International organizations have a vital role in maritime security issues, including the International Maritime Organization (IMO), the World Customs Organization (WCO), and the International Labor Organization (ILO). More effective implementation of international and national security standards and programs, such as those embodied in the International Ship and Port Facility Security Code (ISPS), WCO’s Framework of Standards and the IMO’s Long Range Identification and Tracking (LRIT) program, also play an important role in building maritime security.

C. North Pacific and North Atlantic Coast Guard Forums

The North Pacific Coast Guard Forum (NPCGF) is a cooperative venue to foster multilateral cooperation through the sharing of information on matters related to combined operations, exchange of information, illegal drug trafficking, maritime security, fisheries enforcement, and illegal migration. The current membership includes agencies from Canada, China, Japan, Korea, Russia, and the United States. The first Forum was held in Tokyo in 2000. Since its inception the NPCGF has followed an alternating semi-annual cycle of technical experts meetings and principal’s summits. The NPCGF has achieved successes in the areas of combined operations and fisheries law enforcement.



The Forum construct has proved to be a successful model for maritime partnership. Building on the achievements of the NPCGF, the North Atlantic Coast Guard Forum (NACGF) was initiated in 2007 as a cooperative venue to foster multilateral maritime cooperation among member nations in the Atlantic Ocean. The NACGF’s membership includes Coast Guards and service

equivalents from 18 countries.¹¹ No single party dominates and each is structured around shared interests. Each member state is self-reliant and directly contributes assets and other resources in support of regional objectives. Moreover, because the NACGF’s mission areas are non-confrontational, the parties are willing to share experiences and best practices and information, allowing the partners to transition quickly to actual operations. The baseline of interoperability achieved through each of the Forums is broadly applicable to real-world scenarios.

¹¹ Belgium, Canada, Denmark (the 2008 host nation), Estonia, Finland, France, Germany, Iceland, Ireland, Latvia, Lithuania, the Netherlands, Norway, Poland, Russia, Sweden, the United States and the United Kingdom. Spain and Portugal participated in the 2008 in the North Atlantic Coast Guard Forum.

V. Suppression of Terrorists and Weapons of Mass Destruction at Sea

- **Initiatives:** Proliferation Security Initiative (PSI) and the 2005 Protocols to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA).
- **Purpose:** The Proliferation Security Initiative of 4 September 2003 is a global initiative aimed at stopping shipments of weapons of mass destruction (WMD), their delivery systems and related materials worldwide.¹² The 1988 SUA treaty is a multilateral anti-terrorism criminal law treaty. The 2005 SUA Protocols amend SUA by providing a comprehensive framework for cooperation against the transport of terrorists and WMD at sea.¹³
- **Benefits:** PSI creates a more dynamic, creative, and proactive approach to preventing proliferation to or from nation states and non-state actors of proliferation concern. The 2005 Amendments to the SUA Convention establish a treaty basis for states to cooperate in criminalizing the transport of terrorists and WMD at sea and provides comprehensive provisions for states that may be used in cases of consensual boarding.
- **State Parties:** There are more than 90 States who participate in PSI activities. The 1988 SUA treaty has 135 States parties; the 2005 SUA Protocols have 18 signatories and 5 states parties as of 24 June 2008 and it enters into force when it has 12 states parties.



A. United Nations Security Council Resolution 1540

United Nations Security Council Resolution (UNSCR) 1540¹⁴ of 2004 was an historic event marking the Security Council resolution to address the threat to international peace and security posed by the proliferation of WMD to non-state actors. As a foundation for proliferation

¹² <http://www.proliferationsecurity.info/introduction.html>.

¹³ http://www.imo.org/Conventions/mainframe.asp?topic_id=259&doc_id=686#review.

¹⁴ <http://daccessdds.un.org/doc/UNDOC/GEN/N04/328/43/PDF/N0432843.pdf?OpenElement>.

security and counter-proliferation, UNSCR 1540 calls on all states to take cooperative action to prevent trafficking in WMD.

The resolution has served as a basis for national action and provision of assistance, where appropriate, to ensure global implementation. UNSCR 1540 complements national and international treaties and initiatives to control WMD proliferation. For example, the European Union began to establish effective policies in the Thessaloniki European Council in June 2003 and the Nonproliferation Treaty (NPT) provides additional impetus for controlling the proliferation of WMD.



Applying particularly to non-state actors, UNSCR 1540 creates a binding legal obligation on all UN member states to take a number of steps to prevent the proliferation of WMD and their delivery systems. States are called on to refrain from “providing any form of support to non-State actors that attempt to develop, acquire or manufacture, possess or transport, transfer or use” nuclear, chemical and biological weapons and their means of delivery. States also should adopt and enforce “appropriate and effective” laws criminalizing the proliferation of WMD to non-state actors, control the physical security and accounting for WMD, their means of delivery and relation materials, border controls and law enforcement to stop illicit trafficking and export and transshipment control. These obligations are not limited to the parties to the Non-proliferation Treaty (NPT) and apply to all UN member states. UNSCR 1540 provides one of the broadest authorities in international law for States to develop closer cooperation and coordination to prevent the proliferation of WMD.

B. Proliferation Security Initiative (PSI)

The Proliferation Security Initiative (PSI) is another positive way to take such cooperative action. The PSI recognized the need for more robust tools to defeat the proliferation of WMD around the world. In September 2003, 11 countries agreed to and published the PSI Statement of Interdiction Principles. Since then a total of more than 80 nations have endorsed the principles. The goal of PSI is to create a more dynamic, creative, and proactive approach to preventing proliferation to or from nation states and non-state actors of proliferation concern.

Actions will be taken in support of the PSI consistent with national legal authorities and relevant international law and frameworks.

This set of principles identifies specific steps for effectively interdicting WMD shipments and preventing proliferation facilitators from engaging in this deadly trade. Participation in the PSI is voluntary. PSI partners encourage all states to publicly support the PSI, and to take the steps outlined in the principles, including steps in support of PSI operational activities.

In addition to the increasingly sophisticated and aggressive measures taken by proliferators and their facilitators to circumvent export controls, the world faces a relatively new dynamic where proliferators are shipping to proliferators. This trend further limits opportunity to stop shipments before they are en route. The PSI builds on our interdiction experience to date and uses the full range of counter-proliferation tools—from diplomacy to intelligence to operations—to stop WMD and missile-related proliferation at sea, in the air, and on land.

The PSI is a set of activities, not a formal treaty-based organization. It is best understood as a set of partnerships that establishes the basis for cooperation on specific activities when the need arises. It does not create formal "obligations" for participating states, but does represent a political commitment to establish "best practices" to stop proliferation-related shipments. PSI interdiction training exercises and other operational efforts will help states work together in a more cooperative, coordinated, and effective manner to stop, search, and seize shipments.

The focus of PSI is on establishing greater coordination among its partner states and a readiness to act effectively when a particular action is needed. Actual interdictions will likely involve only a few PSI participants with geographic and operational access to a particular PSI target of opportunity. By working together, PSI partners will combine their capabilities in a way that adds up to more than their individual efforts.

There are many countries that can play a helpful role in building global counter-proliferation capabilities. There are also countries—such as flagship, coastal, or transshipment states, or states along major air shipment corridors—whose cooperation is essential to counter-proliferation efforts involving cargoes in transit. Since the Statement of Interdiction Principles was agreed and published in early September 2003, many states worldwide have indicated their strong support for these principles and their interest in cooperating actively on PSI efforts. States are becoming involved in PSI in varying ways. Some states, for example, have attended interdiction training exercises or informational meetings to help build the basis for effective

cooperation. Participation in the PSI will continue to expand based on countries' responses to the initiative. There are also concrete steps that states can take to establish the basis for their participation in the PSI:

- Formally commit to and publicly endorse the PSI and the Statement of Interdiction Principles and indicate willingness to take all steps available to support PSI efforts.
- Undertake a review and provide information on current national legal authorities to undertake interdictions at sea, in the air, or on land. Indicate willingness to strengthen authorities, where appropriate.
- Identify specific national "assets" that might contribute to PSI efforts (e.g., information sharing, military and/or law enforcement assets).
- Provide points of contact for PSI assistance requests and other operational activities. Establish appropriate internal government processes to coordinate PSI response efforts.
- Be willing to actively participate in PSI interdiction training exercises and actual operations as opportunities arise.
- Be willing to conclude relevant agreements (e.g., boarding arrangements) or otherwise to establish a concrete basis for cooperation with PSI efforts.



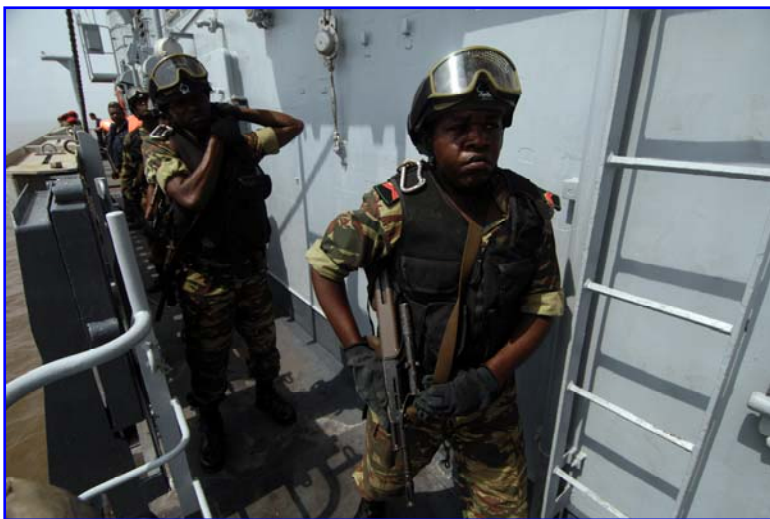
C. Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) (1988 Convention and 2005 Protocols)

In response to the 1985 hijacking of the Italian-flag cruise ship *Achille Lauro* and the murder of an American passenger, Austria, Egypt and Italy proposed in 1986 that the IMO prepare a convention on the subject of unlawful acts against the safety of maritime navigation. The goal of the convention was to provide for a comprehensive suppression of unlawful acts committed against the safety of maritime navigation which endanger innocent human life, jeopardize the safety of persons and property, seriously affect the operation of maritime services and thus are of grave concern to the international community as a whole. The proposal was

supported, and in 1988 a conference was held in Rome that adopted the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA).

The main purpose of the convention is to ensure that appropriate action is taken against persons committing unlawful acts against ships. These include the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship that are likely to destroy or damage the vessel. The convention obliges Contracting Governments either to extradite or prosecute alleged offenders.

At a Diplomatic Conference in 2005 the IMO adopted two Protocols to the SUA Convention, with one focusing on the safety of vessels and the other on the safety of fixed platforms on the continental shelf. Among the unlawful acts covered by the SUA Convention in Article 3 are the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it. The 2005 Protocol to the SUA Convention adds a new provision providing that a person commits an offence within the meaning of the Convention if a person unlawfully and intentionally commits an act that attempts to intimidate a population or compel a Government or an international organization. Specifically, the 2005 Protocols criminalize activities such as:



- Uses any explosive, radioactive material or BCN (biological, chemical, nuclear) weapon on or against a ship.
- Discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance that would cause death or serious injury or damage.
- Uses a ship in a manner that causes death or serious injury or damage.
- Transports on board a ship any

explosive or radioactive material with the knowledge that it would cause death or serious injury or damage for the purpose of intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act.

- Transports on board a ship any BCN weapon or source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or

production of special fissionable material, when the material is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an International Atomic Energy Agency (IAEA) comprehensive safeguards agreement, and

- Transports on board a ship any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the



intention that it will be used for such purpose. Furthermore, the 2005 Protocols identify responsibilities and roles of the master of the ship, flag State and receiving State in delivering to the authorities of any state party any person believed to have committed an offence under the Convention, including the furnishing of

evidence pertaining to the alleged offence. An article in the 2005 Protocol covers cooperation and procedures to be followed if a state party desires to board a ship flying the flag of a state party when the requesting party has reasonable grounds to suspect that the ship or a person on board the ship is, has been, or is about to be involved in, the commission of an offence under the 2005 Convention.

The authorization and co-operation of the flag State is required before such a boarding. A state party may notify the IMO Secretary-General that it would allow authorization to board and search a ship flying its flag, its cargo and persons on board if there is no response from the flag State within four hours. A state party can also notify that it authorizes a requesting Party to board and search the ship, its cargo and persons on board, and to question the persons on board to establish if an offence has been, or is about to be, committed. The use of force is to be avoided except when necessary to ensure the safety of officials and persons on board, or where the officials are obstructed to the execution of authorized actions. The Protocols include important safeguards when a state party takes measures against a ship, including not endangering the safety of life at sea; ensuring that all persons on board are treated in a manner which preserves human dignity and in keeping with human rights law; taking due account of safety and security of the ship and its cargo; ensuring that measures taken are environmentally sound; and taking reasonable efforts to avoid a ship being unduly detained or delayed. The Convention and Protocol also contain provisions for extradition and important safeguards on mutual legal assistance.



V. Global Maritime Cargo Chain Security

A. International Ship and Port Facility Security (ISPS) Code

After the attacks of 9/11, the member states of the IMO convened a diplomatic conference in 2002 to adopt amendments to Chapter XI of the Safety of Life at Sea (SOLAS) Convention¹⁵ and the International Ship and Port Facility Code (ISPS Code). Chapter XI of SOLAS is divided into two parts. Chapter XI-1 is “Special Measures to Enhance Maritime Safety” and Chapter XI-2 is a new chapter titled “Special Measures to Enhance Maritime Security.” Chapter XI-2 applies to passenger ships and cargo ships of 500 gross tons or greater, including high speed craft, mobile offshore drilling units and port facilities serving such ships engaged on international voyages.

The requirements of Chapter XI-2 and the ISPS Code stipulate a range of mandatory measures to enhance the security of ships engaged on international voyages and to port facilities. The provisions are focused on preventive action and do not extend to actual response to attack or consequence management. Combined, these measures are directed at protecting ships from being a target or using a ship as a weapon or as a means for transporting either persons intending to cause a security incident or their means for such an incident.

The ISPS Code contains security-related requirements for governments, port authorities and shipping companies set forth in a mandatory section (Part A). Guidelines on how to achieve the requirements are set forth in a second, non-mandatory section (Part B). The requirements contained in the ISPS Code are presently in force for 158 States, which together constitute just over 99 percent of the gross tonnage of the world’s merchant fleet. The ISPS Code reflects that security is a risk management exercise and that in order to determine appropriate security measures, an assessment of the risk must be made in each specific case. The purpose of the ISPS Code is to set forth a standardized and consistent framework for evaluating risk to ships and port facilities, and to assist governments in calibrating changes in the threat level with

¹⁵ http://www.imo.org/Conventions/contents.asp?topic_id=257&doc_id=647.

changes in security to reduce the vulnerability of ships and port facilities.

Each government conducts port facility assessments that identify and evaluate important shipping infrastructure that, if damaged, could cause significant loss of life or damage to the economy or the environment. Second, governments identify actual threats to the critical infrastructure and prioritize security measures. Finally, vulnerability assessments are conducted to accurately evaluate risk. These assessments include the areas of physical security, structural integrity, utilities, communications, and port procedures.

Similarly, ships are required to have designated ship security officers, ships security plans and certain onboard equipment related to security. Shipping companies must identify company security officers. Both ships and port facilities must have controlled access and monitoring and ensure security communications are available. Because each class of vessel and type of port facility presents different risks, contracting governments determine and ultimately approve implementation of the Code.

VI. Maritime Situational Awareness

Maritime situational awareness, sometimes called “maritime domain awareness” is the effective understanding of anything in the oceans that could affect the safety, security economy or environment at sea. Maritime situational awareness is a key component of maritime defense in depth and a critical factor for ensuring the security of commercial shipping, fishing and other lawful uses of the sea. Maritime situational awareness may rely on information exchange that encompasses both public and private sector entities with maritime interests. The goal of developing maritime situational awareness is to create an environment where partners can embrace and achieve the common objective to conduct lawful activities on the oceans. Obtaining and sharing information is a mechanism to increase transparency, safety, security and economic prosperity in the maritime domain. Toward that end, states should cooperate to develop the supporting architecture to do so, and two of the primary tools are the automatic identification system (AIS) and the Long Range Identification & Tracking (LRIT) system.

Maritime situational awareness serves to simplify the complex and ambiguous maritime security environment by meeting the following strategic goals: (1) Enhance transparency in the maritime domain to detect, deter and defeat threats as early and distant from U.S. interests as possible; (2) Enable accurate, dynamic, and confident decisions and responses to the full

spectrum of maritime threats; and (3) Sustain the full application of the law to ensure freedom of navigation and the efficient flow of commerce.

Achieving maritime security situational awareness depends on the ability to monitor activities so that trends can be identified and anomalies differentiated. Data must be collected, fused, and analyzed, and computer data integration and analysis algorithms can assist in handling disparate data streams. This aids operational decision makers in anticipating threats and countering them. Furthermore, developing greater maritime awareness should not be used by coastal states to impair or diminish freedom of navigation and other high seas freedoms on the high seas and throughout exclusive economic zones, the right of innocent passage in territorial seas or the right of transit passage in international straits and archipelagos.

A. Automatic Identification Systems (AIS)

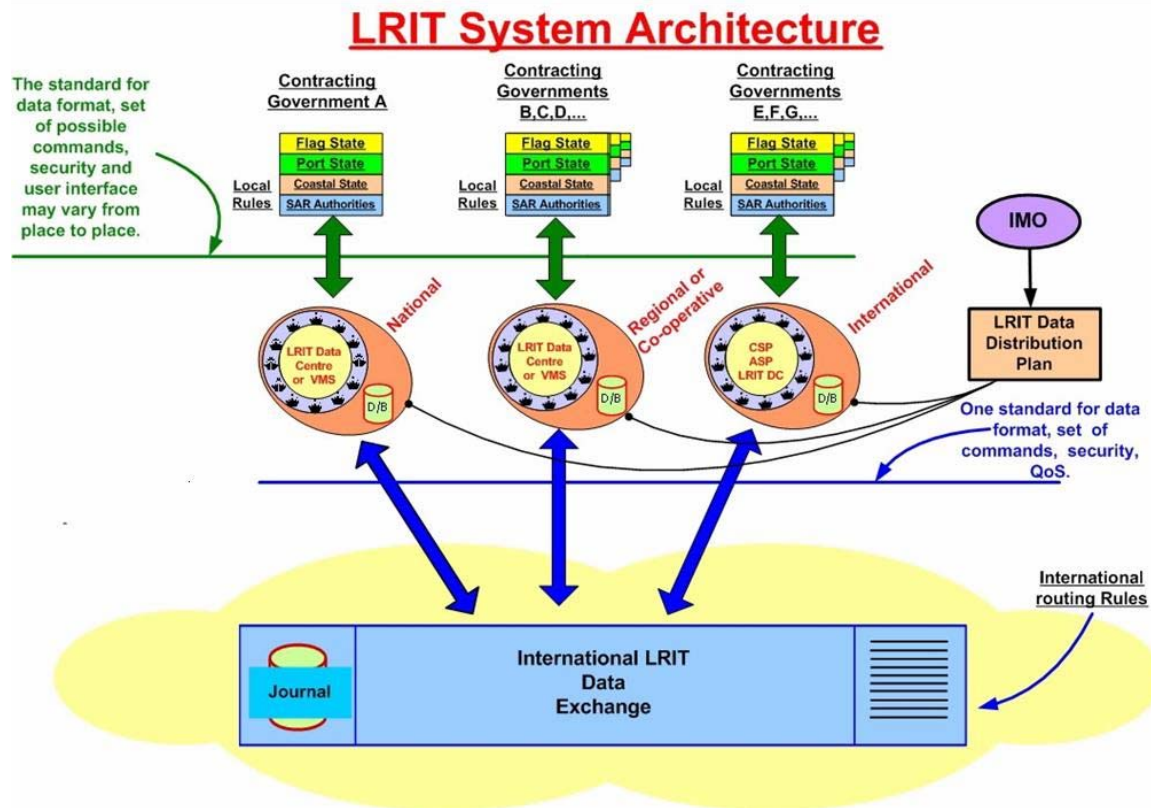
Chapter V of SOLAS (Safety of Navigation) was revised to require all ships over 300 gross tons or that carried 12 or more passengers on international voyages, to install an automatic identification system (AIS). AIS is a local system based on VHF maritime band, so the range is restricted to approximately 60 km. The AIS signal is transmitted effectively on a continuous basis, but when vessel stations are transiting in the oceanic spaces it cannot be picked up readily and utilised by shore-based security centers. A ship with AIS is able to display to similarly equipped vessels or shore receivers information such as vessels size, heading and speed.

Operation of AIS in some areas may cause a security concern because information is broadcast and made available to anyone, including pirates or terrorists. For this reason, in November 2003 the IMO Assembly adopted resolution A.956(23), “Amendments to the guidelines for the onboard operational use of shipboard automatic identification systems (AIS),” which permits ship masters to switch off AIS in areas where the master believes the ship may be in imminent threat of attack from pirates or terrorists.¹⁶ Some maritime and coast guard agencies permit masters to turn off AIS when they believe the vessel is placed under threat by broadcasting AIS. For many areas, however, particularly near entrances to congested ports and harbors, AIS presents a critical part of strengthening maritime situational awareness.

B. Long Range Identification & Tracking (LRIT)

¹⁶ Amending resolution A.917(22), Guidelines for the onboard operational use of shipborne automatic identification systems (AIS).

In May 2006, an amendment to SOLAS Chapter V introduced Long Range Identification and Tracking (LRIT) as mandatory for ships 300 gross tons or greater automatically on international voyages, including passenger ships, cargo ships, high-speed craft and mobile offshore drilling units. LRIT is a global satellite-based system vessel identification system that is more secure than AIS.



Once fully operational in December 2008, LRIT will make vessel location and identity information available to a government for ships flying its flag, entering its ports, and also for those ships passing within 1,000 nautical miles of its coastline but not entering a port. Vessels send position reports periodically to cooperating national, regional or international LRIT data centers. LRIT data centers will deliver data to SOLAS contracting governments entitled to receive the data for official use only. An international data exchange will serve as a “router” of the data among data centers. LRIT provides reliable and persistent global surveillance of maritime traffic for the purposes of detecting, identifying and classifying vessels. LRIT is a closed system designed with security solely in mind.

VII. Maritime Security Country Self-Assessment

National Strategy for Maritime Security

- Does the state have a national strategy for maritime security that articulates all of the nation's interests and equities in safety, security and natural resource conservation and environmental protection in the oceans?
- Does the national strategy include a plan to conduct domestic outreach to involve key local, tribal and commercial stakeholders in maritime security and the rule of law at sea?
- Does the national strategy set forth priorities and a plan to enhance the safety and security of commercial shipping?
- Does the national strategy articulate standards for maintaining the security and safety of the maritime transportation system, including ports, harbors and waterways?
- Does the national strategy set forth a consequence management plan for recovery of critical maritime security infrastructure?
- Does the national strategy set forth the requirements for international outreach and engagement with other states, international organizations and commercial fishing and shipping industries?
- Does the national strategy include on collection and dissemination of maritime intelligence information?
- Does the national strategy include a plan to develop maritime situational awareness in the waters under the jurisdiction of the coastal state?
- Does the national strategy include a plan for all elements of the government to coordinate a response to operational, time sensitive real-time maritime security issues, such as hostage taking at sea?

The United Nations Convention on the Law of the Sea

- Is the state a party to the United Nations Convention on the Law of the Sea?

- Are the state's maritime claims for territorial sea, contiguous zone, exclusive economic zone and extended continental shelf consistent with the Law of the Sea Convention?
- Does the state exercise appropriate sovereignty and sovereign rights and jurisdiction throughout each of the coastal state zones recognized in accordance with the Law of the Sea Convention?
- Does the state have laws protecting the marine environment?
- Is the appropriate balance between regulation for claims of sovereignty, homeland security and environmental protection consistent with the Law of the Sea Convention?
- Do neighboring states and other states accept the maritime claims of the coastal state with regard to maritime boundaries and assertion of sovereignty, sovereign rights and jurisdiction adjacent to the coastline?
- Has the state accepted any of the maritime dispute resolution options contained in the Law of the Sea Convention?

International Maritime Organization

- Is the state a member of the IMO?
- Within the government, are all departments and ministries, including those with a maritime security mission, participating in that state's delegation to the IMO?
- Is the state a party to the Safety of Life at Sea Convention and its amendments?
- Is the state a party to the 1988 Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention)? If not, has the state signed the treaty to become a party?
- If a party, is the state executing all of its obligations under the Convention?
- Is the state a party to MARPOL 73/78?
- Is the state a party to the COLREG Convention 1972?
- Is the state a party to the London Convention 1972?
- Is the state a party to the 1996 Protocol to the London Convention?

United Nations

- Does the state participate in the annual meeting of State's parties to the United Nation Convention on the Law of the Sea?
- If a Security Council state: Are there opportunities for the Security Council to better promote the maintenance of international peace and security in maritime matters?
- Is the state executing its responsibilities for applicable UN Security Council resolutions?
- Is the state discharging its binding legal obligations under UN Security Council Resolution 1373, decided under Chapter VII, regarding controls to disrupt terrorist financing, active or passive support to groups involved in terrorist acts and deny safe havens to those who plan, finance, facilitate or commit terrorist acts?
- Is the state discharging its binding legal obligations under UNSCR 351, decided under Chapter VII, to cooperate with other states and the IMO and other international organizations to share information about acts of piracy and armed robbery against ships in waters off the coast of Somalia, render assistance to vessels threatened by or under attack from pirates in those waters, to provide technical assistance to Somalia and nearby coastal states to address the problem, and, upon the request of regional states, to enhance the capacity of these states?
- If the state is a flag, port or coastal state of nationality of the victims and perpetrators of piracy, or another state with relevant jurisdiction, is it cooperating in the investigation and prosecution of piracy off the coast of Somalia?

Piracy and Armed Robbery at Sea

- Does the state's law include a piracy offence defined by or drawn from article 101 of UNCLOS?¹⁷

¹⁷ (Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or air-craft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

- If the state's law includes a piracy offence, is it applicable seaward of the country's territorial sea to:
 - Vessels flagged in the country
 - Vessels flying no flag
 - Vessels assimilated to without nationality
- If the state's law includes a piracy offence, is it applicable to:
 - Citizens of the country
 - Permanent resident aliens
- Does the state's law include any of the following offences if they occur to or aboard vessels seaward of the country's territorial sea:
 - Theft
 - Murder
 - Robbery
 - Assault
 - Destruction of property hostage taking
- Does the state's law include any or all of the offences above if they are committed in the country's territorial sea or internal waters?
- What penalties are available under the national law for acts of piracy and related offences?
- Which of the state's courts are competent to hear a piracy prosecution?
- Does national law provide for prosecution or extradition in piracy cases?
- Does national law permit the movement of undocumented aliens (e.g., pirates interdicted at sea) through the territory en route the territory of another for prosecution?

Illegal, Unreported and Unregulated (IUU) Fishing

- Does the state have the capacity to conduct IUU maritime security patrols throughout the EEZ?
- Is the state a party to the Torremolinos Protocol?

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).)

- Does the state have the ability to monitor contact between ISPS vessels and non-ISPS vessels through mechanisms such as a Declaration of Security as part of a port entry requirement?
- Does the state participate in a Regional Fisheries Management Organization (RFMO)?

Proliferation Security

- Is the state executing its responsibilities for applicable UN Security Council resolutions?
- Is the state discharging its binding legal obligations under UNSCR 1540, decided under Chapter VII, to put in place appropriate effective laws criminalizing non-state proliferation of weapons of mass destruction, security measures for weapons of mass destruction and their means of delivery, physical protection of weapons of mass destruction and border controls to block illicit trafficking?
- Is the state a party to the 2005 Protocol to the Suppression of Unlawful Acts against the Safety of Maritime Navigation?
- If a party, is the state executing all of its obligations under the Protocol?
- Has the state considered the “Statement of Interdiction Principles” and determined whether it could join more than 90 other states in the Proliferation Security Initiative (PSI)?

Local, Bilateral and Regional Approaches

- Does the state have developed technical capabilities for maritime situational awareness using Automatic Identification System (AIS) and other systems? Is there a system for sharing maritime situational awareness information with neighboring states?
- Does the state have a single point of contact for resolving time-sensitive maritime security issues with neighboring states?
- Is there an established mechanism to share information about maritime security with neighboring states?
- Are there outstanding maritime boundary disputes with neighboring states? Is there a process underway to peacefully resolve or

adjudicate those competing claims?

- Are there bilateral and regional agreements in place to coordinate maritime security operations to safeguard against maritime smuggling and trafficking and criminal organizations exploiting the maritime domain? These agreements may include human trafficking and migrant smuggling, illicit drug trafficking, fuel smuggling, fishery poaching and national and international organized crime.

Interagency Approaches

- Do all of the relevant agencies and ministries within the government regularly meet to discuss maritime security issues (e.g. port authority, navy and coast guard forces, national police, shipping registry, foreign affairs and other agencies)?
- Has each agency or ministry conducted a survey of the resources and capacity required to develop appropriate programs and measures for maritime security? If capacity is lacking, is there a plan in place to partner with other nations, international organizations, the shipping industry and counterpart foreign naval, coast guard and security forces to develop that capacity?

VIII. Status of Selected Maritime Security Treaties

The section that follows contains three pages listing selected treaties related to maritime security, and identifies states that are parties to those agreements.



**FIVE COUNTRIES ARE PARTY TO THE 2005 SUA PROTOCOLS;
18 STATES HAVE SIGNED THE TREATIES**

Status of Selected Maritime Treaties as of 1 July 2008

	UNCLOS	ReCAAP	IMO Convention 48	IMO amendments 91	IMO amendments 93	SOLAS Convention 74	SOLAS Protocol 78	SOLAS Protocol 88	COLREG Convention 72	MARPOL 73/78 (Annex I/II)	MARPOL 73/78 (Annex III)	MARPOL 73/78 (Annex IV)	MARPOL 73/78 (Annex V)	MARPOL Protocol 97 (Annex 1)	London Convention 72	London Convention Protocol	SUA Convention 88	SUA Protocol 88	SUA Convention 2005	SUA Protocol 2005
Afghanistan															X					
Albania	X		X	X		X	X		X	X	X	X	X				X	X		
Algeria	X		X	X	X	X	X		X	X	X	X	X				X	X		
Andorra																	X	X		
Angola	X		X			X	X		X	X	X	X	X			X				
Antigua & Barbuda	X		X	X	X	X	X	X	X	X	X	X	X	X						
Argentina	X		X	X	X	X	X	X	X	X	X	X	X		X		X	X		
Armenia	X																			
Australia	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Austria	X		X			X	X		X	X	X	X	X				X	X		
Azerbaijan				X	X		X	X	X	X	X	X	X	X	X					
Bahamas	X		X	X	X	X	X	X	X	X	X	X	X	X			X	X		
Bahrain	X		X	X	X	X	X	X	X	X	X	X	X				X	X		
Bangladesh	X	X	X	X	X		X	X	X	X	X	X	X	X			X	X		
Barbados	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Belarus	X					X			X	X	X	X	X		X		X	X		
Belgium	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Belize	X		X	X	X	X	X	X	X	X	X	X	X	X						
Benin	X		X	X		X	X		X	X	X	X	X	X			X	X		
Bhutan																				
Bolivia	X		X	X		X	X		X	X	X	X	X		X		X	X		
Bosnia & Herzegovina	X		X														X	X		
Botswana	X																X	X		
Brazil	X		X	X	X	X	X	X	X	X	X	X	X		X		X	X		
Brunei Darussalam	X	X	X	X	X	X	X	X	X	X	X	X	X				X	X		
Bulgaria	X		X	X	X	X	X	X	X	X	X	X	X	X		X	X	X		
Burkina Faso	X																X	X		
Burundi																				
Cambodia		X	X			X	X	X	X	X	X	X	X				X	X		
Cameroon	X		X	X		X	X	X	X	X	X	X	X							
Canada	X		X	X	X	X			X	X	X	X	X		X	X	X	X		
Cape Verde	X		X		X	X			X	X	X	X	X		X		X	X		
Central African Republic																				
Chad																				
Chile	X		X	X	X	X	X	X	X	X	X	X	X	X	X		X	X		
China	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Colombia			X	X	X	X	X	X	X	X	X	X	X							
Comoros	X		X	X	X	X	X	X	X	X	X	X	X							
Congo			X	X	X	X			X	X	X	X	X							
Cook Islands	X					X		X	X	X				X			X		X	X
Costa Rica	X		X												X		X	X		
Cote d'Ivoire	X		X	X	X	X	X	X	X	X	X	X	X		X					
Croatia	X		X			X	X	X	X	X	X	X	X	X	X		X	X		
Cuba	X		X	X	X	X	X	X	X	X	X	X	X		X		X	X		
Cyprus	X		X	X	X	X	X	X	X	X	X	X	X	X	X		X	X		
Czech Republic	X		X	X		X	X	X	X	X	X	X	X				X	X		
Dem. People's Rep. Korea			X	X	X	X	X	X	X	X	X	X	X							
Dem. Rep. of the Congo	X		X			X			X	X	X	X	X		X					
Denmark	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X				
Djibouti	X		X	X		X			X	X	X	X	X				X	X		
Dominica	X		X		X	X	X	X	X	X	X	X	X				X	X		
Dominican Republic			X			X			X	X	X	X	X		X					
Ecuador			X	X	X	X			X	X	X	X	X				X	X		
Egypt	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X		
El Salvador			X						X	X	X	X	X				X	X		
Equatorial Guinea	X					X	X	X	X	X	X	X	X		X		X	X		
Eritrea			X	X	X	X		X	X	X	X	X	X							
Estonia	X		X	X	X	X	X	X	X	X	X	X	X	X			X	X		
Ethiopia			X			X	X		X											
Fiji	X		X	X	X	X	X	X	X	X	X	X	X						X	X
Finland	X		X	X	X	X	X	X	X	X	X	X	X	X	X		X	X		
France	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Gabon	X		X	X	X	X			X	X	X	X	X		X					
Gambia	X		X	X	X	X			X	X	X	X	X				X			
Georgia	X		X	X	X	X			X	X	X	X	X			X	X	X		
Germany	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Ghana	X		X	X	X	X	X	X	X	X	X	X	X				X	X		
Greece	X		X	X	X	X	X	X	X	X	X	X	X	X	X		X	X		
Grenada	X		X			X	X		X	X	X	X	X				X	X		
Guatemala	X		X	X	X	X	X	X	X	X	X	X	X		X					
Guinea	X		X			X	X		X	X	X	X	X				X	X		
Guinea-Bissau	X		X						X	X	X	X	X							

Status of Selected Maritime Treaties as of 1 July 2008

	UNCLOS	ReCAAP	IMO Convention 48	IMO amendments 91	IMO amendments 93	SOLAS Convention 74	SOLAS Protocol 78	SOLAS Protocol 88	COLREG Convention 72	MARPOL 73/78 (Annex I/II)	MARPOL 73/78 (Annex III)	MARPOL 73/78 (Annex IV)	MARPOL 73/78 (Annex V)	MARPOL Protocol 97 (Annex 97)	London Convention 72	London Convention Protocol	SUA Convention 88	SUA Protocol 88	SUA Convention 2005	SUA Protocol 2005
Saint Kitts and Nevis	X		X	X	X	X	X	X	X	X	X	X	X	X		X	X		X	X
Saint Lucia	X		X	X	X	X	X	X	X	X	X	X	X		X		X	X		
St. Vincent & Grenadines	X		X	X	X	X	X	X	X	X	X	X	X		X		X	X		
Samoa	X		X	X		X	X	X	X	X	X	X	X	X			X			
San Marino			X	X																
Sao Tome & Principe	X				X	X	X		X	X	X	X	X				X	X		
Saudi Arabia	X		X	X	X	X	X		X	X	X	X	X	X		X	X	X		
Senegal	X		X	X	X	X	X		X	X	X	X	X				X	X		
Serbia	X		X	X	X	X	X		X	X	X	X	X		X		X	X		
Seychelles	X		X	X	X	X	X		X	X	X	X	X		X		X	X		
Sierra Leone	X		X	X	X	X	X		X	X	X	X	X				X	X		
Singapore	X	X	X	X	X	X	X	X	X	X	X	X	X	X			X			
Slovakia	X		X	X	X	X	X	X	X	X	X	X	X				X	X		
Slovenia	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Solomon Islands	X		X			X			X						X	X	X	X		
Somalia	X		X																	
South Africa	X		X		X	X	X		X	X	X	X	X		X	X	X	X		
Spain	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Sri Lanka	X	X			X	X			X	X	X	X	X				X		X	X
Sudan	X		X		X	X			X								X	X		
Suriname	X		X			X				X	X	X	X		X	X				
Swaziland										X	X	X	X		X	X	X	X		
Sweden	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Switzerland			X	X	X	X			X	X	X	X	X		X	X	X	X		
Syrian Arab Republic			X	X	X	X	X	X	X	X	X	X	X				X	X		
Tajikistan																	X	X		
Thailand		X	X	X	X	X			X	X										
the former Yugoslav Republic of Macedonia	X		X														X	X		
Togo	X		X	X		X	X		X	X	X	X	X				X	X		
Timor-Leste		X																		
Tonga	X		X	X	X	X	X	X	X	X	X	X	X		X	X	X	X		
Trinidad & Tobago	X		X	X	X	X			X	X	X	X	X		X	X	X	X		
Tunisia	X		X	X	X	X	X	X	X	X	X	X	X		X		X	X		
Turkey			X		X	X			X	X							X	X		
Turkmenistan			X														X	X		
Tuvalu	X		X			X	X	X	X	X	X	X	X	X			X	X		
Uganda	X																X			
Ukraine	X		X			X	X	X	X	X	X	X	X		X		X	X		
United Arab Emirates			X		X	X	X	X	X	X	X	X	X		X		X	X		
United Kingdom	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
United Rep. of Tanzania	X		X	X	X	X	X	X	X	X	X	X	X				X	X		
United States			X	X	X	X	X	X	X	X	X	X	X		X		X	X		
Uruguay	X		X	X		X	X	X	X	X	X	X	X				X	X		
Uzbekistan																	X	X		
Vanuatu	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Venezuela			X	X	X	X	X	X	X	X	X	X	X							
Viet Nam	X	X			X	X	X	X	X								X	X		
Yemen	X		X	X		X			X								X	X		
Zambia	X																			
Zimbabwe	X		X																	
Associate Member																				
Hong Kong, China			X			X	X	X	X	X	X	X	X		X					
Macao, China			X			X	X	X	X	X	X	X	X		X					
Faroe Islands			X			X	X	X	X	X	X	X	X		X					