Maritime Security and Piracy

Common Challenges and Responses from Europe and Asia

Konrad Adenauer Stiftung

EAI
EAST ASIAN INSTITUTE
NATIONAL UNIVERSITY OF SINGAPORE

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Maritime Security and Piracy

EU-ASIA DIALOGUE

Shaping a Common Future for Europe and Asia –
Sharing Policy Innovation and Best Practices in Addressing Common Challenges

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Preface

Over the past decade, security of the oceans has evolved into one of the key challenges to international security in Asia. While some of the threats to maritime security are not present in Europe geographically and are not as severe as they are in Asia, security of the oceans is of utmost concern to the European Union and the countries in the region.

Europe and Asia's economic development is highly dependent on the security of the sea lanes of communication (SLOC). If the safety and security of the SLOCs cannot be guaranteed, it will affect intra- and interregional trade and provide pirates as well as terrorists with additional financial resources.

The security challenges on the high sea and within the respective exclusive economic zones (EEZ) are highly diverse. They range from piracy in the Strait of Malacca, the Indonesian waters and the Gulf of Aden to armed robbery attacks and hijacking attempts in ports. There are also small standoffs and fights over resources. The current disputes over islands in the South and East China Sea are among the most prominent examples of such threats to maritime security. At the same time, most Asian countries have entered a new era of armament, thus aggravating the existing mistrust in a geographical area lacking regional institutions and mutual confidence. The absence of regional organizations that can function as intermediaries and confidence-builders is a key challenge. While such an organization does exist for Southeast Asia in the form of ASEAN, Northeast Asia is lacking an equivalent institution. However, the current tensions in the South China Sea also reveal the different positions among the ASEAN members.

Another regional organization in Southeast Asia is the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). While more and more countries from outside the initial geographic area—such as the UK and Australia—have become part of ReCAAP, two major countries from the region are still resistant to joining— Malaysia and Indonesia. Furthermore, the mandate of ReCAAP is strictly limited to piracy. Based on the positive experience with ReCAAP so far, it might be worth considering an expansion of its mandate. In addition, an increase in transnational organized crime at sea can be observed in Asian waters. These include trafficking in human beings, arms smuggling— including weapons of mass destruction—and drug smuggling, all of which posse a threat to good order at sea. These challenges are accompanied by environmental concerns which need to be balanced with economic interests.

A rather new area of discussion which is of utmost importance to the Europe-Asia relations is the Arctic Sea. As a consequence of climate change, the ice in parts of the Arctic Sea is decreasing and becoming thinner. This offers new opportunities for the shipping industry, but also obstacles for international cooperation. The advantages include a decrease in travel

times and distances and the avoidance of pirate attacks in the choke points mentioned above. While this sounds positive from an economic perspective, challenges remain. These include possible issues with the Russian administration, as ships will have to partially use the Russian EEZ, the danger of sudden freezing, the still necessary use of icebreakers and possible tensions between the littoral states over rights and resources. The example of the Norwegian-Russian cooperation shows that agreements are possible, but the long duration of the negotiations and difficulties in reaching an agreement have to be kept in mind.

Besides these challenges, there are also problems concerning legal issues and division of competencies. While the United Nations Convention on the Law of the Sea (UNCLOS) has been widely accepted, different countries interpret it in different ways, resulting in a situation where two conflict parties may refer to different parts of UNCLOS to underpin their respective arguments. This is, in particular, the case in the disputes in the South China Sea, where the People's Republic of China is using the EEZ articles and historical claims to buttress their case, while other countries are referring to the status quo and applicable law. Since the interpretations differ, all countries may claim to be following UNCLOS, with some justification. These kinds of definitional questions also apply to the fight against piracy. The discussion on where armed robbery ends and piracy begins results in problems of law enforcement and a clash of competences. This has an influence on whether coast guards (armed robbery) or navies (piracy) are responsible for law enforcement and prosecution. Several countries also have a large number of agencies dealing with particular areas of maritime security, thus reinforcing the overlapping of competences. This has been recognized and recent developments in Malaysia and China to centralize the competences and decisions in one agency are good attempts to rectify the situation.

As shown, the challenges are diverse and range from practical issues to the interpretation of laws. Despite these problems, all countries in the region know that the security of the SLOCs is in their own national interest as they are blue water economies which are highly dependent on the good performance of the coastal cities.

As the conferences and meetings of the EU-Asia Dialogue project have shown, there are good opportunities for closer cooperation between the European Union and the countries in Asia. Collaboration with ASEAN and ReCAAP would clearly be mutual beneficial. While cooperation with ReCAAP will focus mainly on information-sharing and capacity-building, given ReCAAP's mandate, developments in ASEAN over the past years also offer great possibilities for a partnership. The ASEAN Regional Forum (ARF) on Maritime Security, the ASEAN Maritime Forum (AMF) and Expanded ASEAN Maritime Forum (EAMF) provide such opportunities. The ASEAN Information-Sharing Portal for member states' navies and ASEAN Defence Ministers' Meeting-Plus Expert Working Group Maritime Security Field Training Exercise illustrate the growing activities among Southeast Asian countries on this issue. However, cooperation should not be limited to Southeast Asia. General topics for a partnership include confidence-building, capacity-building, information sharing, cooperation on the Arctic and, particularly in times of budgetary cuts, joint patrols and exercises. Such cooperation will not be a matter of course, but also faces severe challenges which the

countries have to be aware of. These include mistrust, which hinders information-sharing, differences concerning the different navy sizes and capacities as well as financial issues.

In order to contribute to the understanding of the current challenges and implemented solutions, this publication includes papers with perspectives from Europe and Asia. What are the initiatives and present challenges in the various countries? What can they learn from each other? How do they try to fight piracy and ensure maritime security? These and other questions have been addressed by this publication.

The first paper by **Howard Loewen** discusses current security regimes existing in Southeast Asia. It analyzes the recent movements towards more regional cooperation, mainly on piracy and human trafficking, in the sub-region. Loewen argues that the regimes contribute to confidence-building, but that the effectiveness depends on the member states' interests and the availability of global norms.

The second paper by **Lutz Feldt, Peter Roell and Ralph Thiele** provides insights into a comprehensive approach. It is argued that threats to maritime security are diverse but interdependent, which makes them difficult to manage. The authors analyze operational requirements for such a comprehensive approach and opportunities for maritime collaboration.

In his article, **Hans-Georg Ehrhart** takes a close look at the European Union, examining the maritime threats it is facing and the current efforts to ensure the security of the sea lanes of communication. He argues that the European Union and Asian countries should enhance the level of cooperation and provides suggestions for concrete fields of collaboration.

Sam Bateman and **Jane Chan** examine the situation of good order at sea in Southeast Asia. They argue that such good order does not exist given the many security threats in the regional waters. The situation could be improved significantly through enhanced intra-regional cooperation, coordination between agencies and more efficient risk assessment.

In her paper, **Hui-Yi Katherine Tseng** looks at the regional and extra-regional stakeholders in Southeast Asia. While security strategies have undergone periodic adjustments, cooperation with extra-regional stakeholders has been limited, which resulted in the current complex situation. She argues that technical and financial assistance under the lead of certain regional countries would be a welcomed approach, but it requires strong political will and regional leadership.

Tetsuo Kotani provides a Northeast Asian perspective on the fight against piracy in the Strait of Malacca and discusses challenges in the East China Sea, including the island disputes. He shows how the differences in the interpretation of UNCLOS and the strategies of the countries influence the current situation.

Vijay Sakhuja analyzes the challenges and threats in the Indian Ocean, which is the connecting SLOC between the choke points at the Gulf of Aden and the Strait of Malacca. Sakhuja then provides insights into the existing multilateral approaches in South Asia and offers recommendations for possible future cooperation between the European Union and the countries in the region.

The last two papers of this publication examine the situation in two of the key countries in Southeast Asia which are both not members of ReCAAP, but nevertheless cooperate closely with their neighbour Singapore.

Shafiah Muhibat looks at the situation in the region's biggest maritime state—Indonesia. She points out the key reasons for maritime insecurity, including lack of resources and capabilities for law enforcement. The paper analyzes the diverse security threats and existing problems, highlighting that a stronger inclusion in the regional security architecture will be beneficial.

In the final paper, **Sumathy Permal** discusses the situation in Malaysia. While the country has bilateral and trilateral cooperation mechanisms in place, practical cooperation with the EU and other countries can be improved. She argues that the establishment of a comprehensive security framework is in Malaysia's interest and will benefit the countries in the region and Europe.

This book is part of the "EU-Asia Dialogue" project, which is co-funded by the European Union and Konrad-Adenauer Stiftung Germany. In the context of this project, the implementing consortium will have seven publications. More information on the "EU-Asia Dialogue" can be found on the website www.eu-asia.eu.

Dr. Wilhelm Hofmeister
Director
Konrad-Adenauer Stiftung Singapore

Patrick Rueppel
Program Manager "EU-Asia Dialogue"
Konrad-Adenauer Stiftung Singapore

Security Regimes in Southeast Asia – Confidence Building and the Global Nexus

Howard Loewen
University of Nottingham, Malaysia Campus

EXECUTIVE SUMMARY

Regional security issues such as piracy and human trafficking have spurred regional coopera-tion initiatives in Southeast Asia, all of which perform mainly confidence building measures. Against this background, this paper tries to answer four questions: What kind of regional regimes emerged in the issue areas of piracy and trafficking?; How do they contribute to confidence building in these issue areas?; How do respective global regimes relate to these re-gimes?; What could be done to enhance synergies between these two levels? It is argued here that confidence building effectiveness in the Association of Southeast Asian Nations is firstly a function of its member states' interest to manage the mentioned issue areas and secondly also dependent on the availability of respective global norms and institutional mechanisms that could be applied.

1   INTRODUCTION

Maritime piracy and trafficking in persons are currently among the most pressing transna-tional and thus, regional security issues in Southeast Asia. The former is significant as pirate attacks on commercial vessels pertain to important trade routes like, for instance, the Straits of Malacca and also to the internal security situation of nation-states such as Indonesia. The latter is a form of exploitation which involves thousands of people every year who, instead of improving their economic opportunities, are subjected to force, fraud and deception as they cross borders from underdeveloped to economically advantaged Southeast Asian countries.

As piracy and trafficking in persons are cross-border phenomena, a number of regional regimes—bilateral, multilateral, official and unofficial—have emerged to manage these cooperation problems, all of which are quite informal without any binding qualities. As a consequence, regional governance structures in Southeast Asia are often regarded as mainly performing *confidence building* functions.

With the notable exception of the European Union, potentially binding governance fea-tures and formalities are more likely to be found on the global level of cooperation. Regimes,

such as the International Court of Justice, the United Nations Law of the Sea (UNCLOS) and the United Nations Regimes to combat trafficking, are cases in point. Regional and global regimes at times form entities that may be conceived of as *regime complexes* which are loosely coupled sets of elemental regimes dealing with the same or similar issue areas.

Against this background, four questions arise: (1) What kind of regional regimes emerged in the issue areas of piracy and trafficking?; (2) How do they contribute to confidence building in these issue areas?; (3) How do respective global regimes relate to these regimes?; and (4) What could be done to enhance synergies between these two levels?

The main argument of this paper is that the effectiveness of confidence building measures in ASEAN varies with the national interest of the member states in the management of specific issue areas and the global-regional nexus which provides regional regimes with established norms and mechanisms to deal with cooperation problems.

2   CONCEPTUAL FOUNDATIONS: REGIMES, GLOBAL-REGIONAL NEXUS AND CONFIDENCE BUILDING

International regimes, defined as "negotiated systems of norms and related decision-making processes" (Gehring and Oberthuer 2006a: 23), increasingly influence each other's development, maintenance and effectiveness. The increasing density of institutions also gives rise to nested and overlapping relations between international agreements in different issue areas. East Asia is a highly interesting region regarding regime interaction, especially since regional institutions or fora are steadily and at times spontaneously evolving in different issue areas such as trade, finance, and security. Moreover, emergent regional institutions overlap with their respective global counterparts. Overlapping regimes exist when multiple institutions have authority over an issue, where each regime can create authoritative rules and interpretations. These clusters of overlapping institutions form specific governance systems in which its elements influence and feed back on each other over time (Oberthür and Gehring 2006b: 29-30). Kal Raustalia and David Victor call these clusters *regime complexes* and define them as an "array of partially overlapping institutions governing a particular issue area. Regime complexes are marked by the existence of several agreements that are created and maintained in distinct fora with participation of different sets of actors. The rules in these elemental regimes functionally overlap, yet there is no agreed upon hierarchy for resolving conflicts between rules. We contend that regime complexes evolve in ways that are distinct from decomposable single regimes" (Raustiala and Victor 2004: 7). They propose four ways how the existence and the dynamics of a regime complex matter for institutional interaction within its systemic boundaries (ibid: 8-10): the lack of a clean slate, forum shopping, legal inconsistencies and the politics of implementation.

Regimes in Southeast Asia are cases in point. Governance structures, such as the East Asian financial regime "Chiang Mai Initiative", or anti-piracy regimes, such as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), interact and overlap with the principles as well as rules of the International Monetary Fund (IMF) and the United Nations Convention on the Law of the Sea (UNCLOS)

respectively. The question whether these linkages enhance or even obstruct an effective policy response is of relevance here.

Southeast Asian governance beyond the nation-state is fundamentally influenced by the "ASEAN Way". Thus, regional regimes in Southeast Asia are rather informal, process-based structures without any binding qualities. This specific form of cooperation allows nation-states to further their interests collectively without surrendering parts of their national sovereignty. As effective cooperation cannot be measured through formal patterns or traditional output scores, informal mechanisms such as *confidence building measures (CBM)* gain importance. From this perspective ASEAN can be understood as a regional confidence building mechanism that enhances peace and security through reducing uncertainty among its members.

Against this background, this paper understands confidence building as *confidence and security building measures* (CSBM). These measures may be unilateral, bilateral or multilateral. Their main function is to address, prevent or resolve uncertainties among states, thus building trust. They may encompass military, economic, socio-cultural and political elements (Council for Security Cooperation 1995; Baviera 2001).

As the following table shows, CBMs may vary due to their institutional forms (unilateral, bilateral, multilateral) but also due to the issue areas involved.

Forms of Confidence Building Measures

	Unilateral	Bilateral	Multilateral
Military CBMs			
Communications		Hotlines, regular bilateral dialogue	Track two dialogues (examples)
Transparency	Defence white paper, arms registry, notification measures	Observance at military exercises, intelligence exchange	Common outline for defence publications
Consultation		Joint commission	ASEAN Regional Forum (ARF), ASEAN Defence Minister's Meeting (ADMM),
Goodwill	Policy of non-interference in internal affairs	Visits, cross-training, code of conduct	Code of Conduct
Constraints	Rules of engagement, no first-strike declaration; troop reduction	Non-aggression agreement, troop reduction agreement	Disarmament and demilitarisation agreements
Economic CBMs	Aid, investment	Preferential terms of trade	ASEAN Economic Community
Socio-Cultural CBMs		Increased people-to-people links	ASEAN Socio-Cultural Community
Political CBMs	Curbing propaganda	Contacts between political parties, parliaments, judiciary	ASEAN Political-Security Community

3 SECURITY REGIMES IN SOUTHEAST ASIA

In the following chapter the issue areas of piracy, the South China Sea and the arms race have been selected as case studies. The question is whether regimes have evolved and which role we can ascribe to the principle of Confidence Building Measures and the effects of the global-regional nexus.

3.1 Piracy

3.1.1 Problem

Southeast Asia's seas and straits, such as the South China Sea, the Straits of Malacca, the Gulf of Thailand, the Java Sea, the Andaman Sea, the Celebs Sea, the Molucca Sea, the Sunda Strait, the Ombai Wetar Straits, and the Makassar Strait are among the world's most important shipping routes. The Straits of Malacca, located between Malaysia, Singapore, and Indonesia is a case in point. Every year, roughly one-third of the world's trade and half of the earth's energy supplies is being shipped by 65000 vessels through the straits. Moreover,

East Asia's big powers depend heavily on this trade route: 60 percent of Chinese oil and 80 percent of Japanese oil imports are delivered on this route (Story 2009, Moeller 2006). Yet, insular Southeast Asia and especially the Straits of Malacca are prone to piracy attacks. The International Maritime Bureau Piracy Reporting Centre states that during the 1990s, attacks on ships in the Straits of Malacca have risen significantly. Fortunately, the number started to drop in 2004 from 38 attacks to twelve in 2005, eleven in 2006, seven in 2007, two in 2009 and 2010, and only one incident in 2011. Yet, in Southeast Asia as a whole, four ships were hijacked in 2012 and Indonesia reported 81 cases of petty theft with a maximum of thirty attacked vessels in the last quarter of 2012. These cases show that despite improvements, piracy is still a serious maritime security phenomenon with a regional dimension.

The causes of piracy in the Straits of Malacca are dire economic and social conditions as well as poor security, fragile states and the effects of political transformation. The social and economic situation in the riparian states is a strong factor that accounts for the increase of piracy incidents. A study of Indonesian fisherman shows that their low average earnings serve as a strong incentive to mount attacks on ships. It also shows that the effects of economic crises, such as the one in 1997-98, on piracy are significant and time-lagged (Frecon 2010). A weak security situation in sea waters and blurred state sovereignty also contribute to the likelihood of piracy. Whereas strong states such as Malaysia and Singapore may be better equipped to fight criminal acts in the Straits of Malacca, other states such as Indonesia have seen a transformation-related increase in piracy. In particular, the initial years of the transformation process from illiberal to democratic structures in Indonesia were marked by significant levels of corruption and instability.

3.1.2   Regional Regimes and Confidence Building

For the longest time, Southeast Asian states conceived piracy as a negligible security issue. Other trans-border security concerns such as terrorism, illegal fishing, and trafficking were considered more relevant. This began to change when international pressure to fight piracy more effectively in the region increased. The first manifestation of this trend was the proposal by the United States for a Regional Maritime Security Initiative (RMSI), which triggered controversy among the Southeast Asian countries. Although the plan did not materialize owing to the unwillingness of Singapore, Malaysia and Indonesia to involve an external power, the piracy issue evolved as a priority on the home and foreign policy agenda of the littoral states.

Since 2004, regional cooperation against piracy encompasses unilateral, trilateral and multilateral initiatives. *Unilateral initiatives* are primarily influenced by the national interests of the three riparian states, Singapore, Malaysia and Indonesia. *Singapore*'s great trade dependency and the notion of a link between transnational terrorism and piracy results in its emphasis on the security of commercial shipping. This goal manifests itself in the initiation of the Accompanying Sea Security Teams (ASSeTs). Their function is to deter attacks on merchant ships by deploying special trained security personnel. Moreover, Singapore established the Changi Command and Control Centre which is aimed at assisting security cooperation even beyond the strait. It performs command, communication, and training functions.

Malaysia's anti-piracy policy is strongly determined by the interest of self-determination and sovereignty. Against this background, then Prime Minister Badawi merged the previously fragmented maritime security agencies into one single entity, the Malaysian Maritime Enforcement Agency (MMEA). *Indonesia* also puts emphasis on its own sovereign interests. The reason for this is that until 2007, Indonesia's territorial waters were the world's most dangerous, topping the piracy statistics every year. Here, piracy is so wide-spread that the government had to adopt a two-fold strategy. On the one hand, since 2004, the Yudhoyono government has invested significantly into coastguard training, maritime radar systems and new patrol boats. Moreover, in the same year, the navy had been ordered to step up its patrols in the Straits of Malacca. Well aware of the broader causes of piracy in Indonesia, the government tries to fight the land-based causes of piracy, such as socio-economic insecurity, corruption and weak statehood.

Trilateral Cooperation between Singapore, Malaysia and Indonesia has been, as mentioned above, mainly fostered by fear that external actors such as the US would interfere in regional maritime security affairs. The main regime that binds the interests of the three littoral states to the Straits of Malacca is called MALSINDO. Under this program, patrols in the strait are being coordinated. Yet, each patrol ship remains under the command of its own country. In 2006, the program was renamed to Malacca Straits Patrols (MSP). It encompasses the Malacca Straits Sea Patrol (MSSP), the Eyes in the Sky air patrols (EIS), and the Intelligence Exchange Group (IEG). Thailand, the fourth littoral state, joined MSP in 2008. The Malacca Straits Patrols provide military forces for the coordinated naval and air patrols, the exchange of information between vessels and the Action Agency (MAA). Linked to this, rules of conduct and standard procedures for cross-border action were agreed on to improve the effectiveness of sea patrols. As a result, Lloyd's joint War Risk Committee dropped the classification of the Malacca Strait as a highly risky area. The anti-piracy strategy as a whole has proven to be effective and is now regarded as one of the most successful counter-piracy initiatives.

On the regional level of cooperation, anti-piracy norms have been widely discussed and eventually established in the institutional frameworks of institutions such as the ASEAN Regional Forum (ARF), the ASEAN Defence Minister's Meeting (ADMM), and the ASEAN Political Security Community blueprint. It is striking that the most comprehensive regional anti-piracy institution so far, the Regional Cooperation Agreement on Combating Piracy an Armed Robbery against Ships in Asia (ReCAAP), had been initiated outside the confines of ASEAN.

The ASEAN Regional Forum has issued the Statement on Cooperation against Piracy and other Threats to Security in 2003. The main aim of this document was to encourage bilateral and multilateral cooperation among ARF members to combat piracy by holding respective anti-piracy exercises on the basis of respecting fundamental ASEAN norms, such as the non-intervention into each other's affairs and the principle of voluntary participation (ARF 2003).

A specific hint at cooperation between Southeast Asian states on the fight against terrorism is given in the blueprint for the ASEAN political security community. Here, emphasis

is put on regional initiatives against sea piracy, armed robbery against ships, hijacking and smuggling (ASEAN Secretariat 2009).

The most sophisticated and elaborated form of regional cooperation against piracy has emerged outside of ASEAN's institutional umbrella. The Regional Cooperation Agreement on Combating Piracy on Armed Robbery against Ships in Asia, established in 2006, is the first regional intergovernmental agreement to promote and enhance cooperation against piracy and robbery. It has 19 members, yet Malaysia and Indonesia decided not to participate. The specific functions of this institution are to manage and maintain the exchange of information in relation to incidents of piracy and armed robbery against ships of member states. In addition, Contracting Parties prepare and disseminate statistics and reports on incidents to the shipping community and the International Maritime Organisation. The last function includes the provision of an alert when a threat of piracy and armed robbery is imminent (ReCAPP 2006).

In sum, there is no regional or joint anti-piracy strategy that all Southeast Asian states adhere to. Instead, the issue has been taken up over the course of the last ten years in various declarations and agreements on transnational criminality and terrorism. It is remarkable that each of these norms and documents at least formally relates to global documents on the fight against piracy.

3.1.3 Global-Regional Nexus

There are a number of regimes at the global level of cooperation that contain norms on the fight against piracy. The most important elemental regimes of the regime complex on maritime piracy are the UN Convention on the Law of the Sea (UNCLOS), the International Maritime Organisation (IMO), the International Maritime Bureau (IMB) and the Convention for the Suppression of Unlawful acts against the Safety of Maritime Navigation. The question is how these global regimes interact with the ARF, ADMM, ReCAAP and the envisioned ASEAN political and security community at the regional level in Southeast Asia.

The members of the ARF are encouraged to effectively implement relevant international mechanisms and norms for the suppression of piracy and armed-robbery against ships. Those are provided by the United Nations Convention on the Law of the Sea, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 and its Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, the International Maritime Organization's recommendations and guidelines for preventing and suppressing piracy and armed-robbery against ships at sea, the International Convention for the Safety of Life at Sea 1974, particularly the new Chapter XI-2 and the International Ship and Port Facilities Security (ISPS Code). They shall also enhance their coordination and cooperation to that end. Furthermore, AFR members committed to become parties to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988 and its Protocol for the Suppression of Unlawful Acts (ARF 2003). ReCAAP recognizes the importance of safety of ships and exercises the right of navigation provided for in the United Nations Convention on the Law of the Sea of 1982. Moreover, this regional regime reaffirms the duty of states to cooperate in the prevention and

suppression of piracy under the UNCLOS. Moreover ReCAAP adopts relevant anti-piracy resolutions by the United Nations General Assembly and those of the International Maritime Organization.

In 2005, the defence ministers from seventeen countries, including the United States, China, India, Japan, and the ASEAN members, attended the fourth Shangri-La dialogue in Singapore and agreed to apply the following principles for multilateral cooperation in the Straits of Malacca: (a) the main responsibility for the security of the strait remains with the littoral states, (b) the international community and the user states perform a supporting function but not the application of external actors' security measures, (c) multilateral anti-piracy cooperation must be compatible with the Law of the Sea and also the sovereign interest of the littoral states.

The ASEAN blueprint for the Political and Security Community makes a general statement regarding the global links of regional piracy conventions insofar as they need to be embedded in the respective global governance structures that were mentioned above.

All in all, this chapter clearly shows that bilateral and trilateral cooperation beneath regional governance efforts has proven to be the most effective way of building confidence and trust, thus, enabling effective cooperation. While regional anti-piracy norms and regimes have been functionally linked to global counterparts, their practical effect on national policies that are the heart of bilateral and trilateral cooperation remains weak and at best unclear.

3.2 Trafficking in Persons

3.2.1 Problem

Southeast Asia is a region with great social and economic disparities. Significant economic growth in some countries primarily contributed to labour migration from poorer states to the former. While Brunei, Malaysia, Singapore, and Thailand are largely destination countries, Laos, Burma, Cambodia, the Philippines, Indonesia, and Vietnam are mostly sources of migration. The demand by people to leave their home countries in order to improve their social situation and enhance economic opportunities abroad is often criminally exploited by traffickers. Human Trafficking or Trafficking in Person is defined as

> the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other force of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs (United Nations 2000).

Officially, only a few thousand persons per annum are being subjected to trafficking in Southeast Asia. Yet, due to the large scale of land and sea borders that can hardly be governed by national authorities, the actual number of trafficked persons is estimated to be significantly higher.

3.2.2 Regional Regimes and Confidence Building

Trafficking in Persons has already been identified as a serious transnational crime in 1997. In that year, the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) was established to foster regional activities against trafficking, especially in women and children. On this matter AMMTC collaborates closely with the ASEAN Chiefs of National Police and the ASEAN Sub-Committee on Women. In 1999, the first AMMTC meeting adopted the ASEAN declaration on transnational crime which underlined ASEAN's strategy to apply a comprehensive approach towards trafficking. The ASEAN Plan of Action to Combat Transnational Crime was adopted at the 2nd AMMTC meeting in June 1999.

On this basis the most comprehensive regional approach to prevent and fight trafficking in persons is the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children. The declaration was adopted at the 10th ASEAN Summit in Vientiane in 2004. This declaration reaffirmed the Ha Noi Declaration of 1998 and Ha Noi Action Plan which committed to intensify collective efforts to address transnational crimes, including the trafficking of persons.

The defining trademark of the ASEAN declaration is its comprehensive regional approach to combating trafficking by strengthening legislative, law enforcement and judicial responses. This aims to ensure that deterrent action is taken against persons involved in individual or syndicated activities or trafficking in person. Specifically, the ASEAN states decided on the following measures: establish a regional network to combat trafficking, adopt measures to protect the integrity of travel documents, undertake regular exchange of views, intensify cooperation among immigration and other law enforcement authorities, adopt efforts to distinguish victims of trafficking from the perpetrators, undertake actions to ensure the human rights of the victims, undertake coercive actions against individuals or criminal groups engaged in trafficking and take measures to enhance regional and international cooperation to prevent trafficking (ASEAN 2004).

This cooperation has been enhanced by other legal mechanisms, such as the Treaty on Mutual Legal Assistance in Criminal Matters (2006) and an array of Practitioner Guidelines on Trafficking in Persons (2007), which provide specific information to criminal justice practitioners on international cooperation against international trafficking in persons. All of these declarations on transnational crime in general and trafficking in persons in particular have been incorporated into the ASEAN Socio-Cultural Community (ASSC) Blueprint.

3.2.3 Regional-Global Nexus

While the ASEAN declaration reflected the commitment of the member states to "embrace the spirit behind the United Nations against Transnational Organised Crime and its relevant protocols" (ASEAN 2004), cooperation between the United Nations and ASEAN has intensified since the turn of the century. A very fruitful manifestation of the close link between both institutions is the ASEAN Workshop on International Legal Cooperation in Trafficking in Persons Cases that was held in November 2009, in Thailand. It was organised by the Asia

Regional Trafficking in Person Project, ASEAN and the United Nations Office on Drugs and Crime (UNODC). The European Union provided the funding.

In order to bridge the gap between the reality of transnational crime and the limits of states to persecute trafficking, the workshop aimed at discussing respective international legal cooperation possibilities. The specific function of this gathering was to discuss the draft Handbook on International Cooperation in Trafficking in Persons Cases, which was designed as a scheme for reciprocal legal assistance and extradition among the members of the Association of Southeast Asian Nations (ASEAN). The Handbook has been written to "both encourage and enable criminal justice officials within the ASEAN region to initiate and engage in the processes of mutual assistance and extradition where this would facilitate an investigation or prosecution of the crime of trafficking in persons or related crime" (ASEAN 2010). It has been published in 2010, and is now in the process of being applied to other world regions and their specific jurisdictions. The ASEAN-UN cooperation on trafficking clearly represents a successful regional-global link.

Summing up, regional cooperation on trafficking in persons has generated relatively more trust and confidence than the issue area of piracy. The willingness of the ASEAN states to do so also extends to global institutions, which resulted in the publication of a useful and unique document on the international management of trafficking.

4   CONCLUSIONS AND POLICY RECOMMENDATIONS

This paper has shown that the effectiveness of confidence building measures or the level of trust in the Association of Southeast Asian Nations varies considerably with its member states' interest to manage specific issue areas. This first correlation seems to be the precondition for the intensity with which the regional level links with global norms and regimes. In the case of sub-regional institutions outside of ASEAN, ReCAAP can be considered more significant in fleshing out confidence building measures and enhancing trust than the regional governance structures. CBMs have also emanated from the trilateral cooperation between the riparian states in the Malacca Strait. As the interaction between global and regional norms has been supported by all ASEAN states in the case of trafficking in persons, a close link between ASEAN and the United Nations could emerge. Moreover, the UN made its global toolkit available for dealing with the issue of trafficking in persons. That link is slightly weaker between piracy-related norms (UNCLOS) and the regional regimes in the ASEAN region. This variation can be explained by the willingness of states to cooperate more intensively on soft security, such as trafficking rather than on hard security issues such as piracy.

Based on this analysis, the following recommendations for European and Asian policy can be identified: (a) The possibility of confidence building and trust between ASEAN states varies considerably in different policy areas. Policy makers should therefore consider the impact of the specific nature of the issue area in question; (b) All levels of cooperation—uni-lateral, bilateral and multilateral—should be considered as relevant to issue management. An indicator might be the different approaches to hard and soft security issue in the ASEAN region; (c) The global-regional connection should be strengthened as it not only helps to deepen regional cooperation but also the system of global governance.

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Maritime Security—Perspectives for a Comprehensive Approach

Lutz Feldt, Dr. Peter Roell, Ralph Thiele

EXECUTIVE SUMMARY

Challenges to "Maritime Security" have many faces—piracy and armed robbery, maritime terrorism, illicit trafficking by sea, i.e., narcotics trafficking, small arms and light weapons trafficking, human trafficking, global climate change, cargo theft etc. These challenges keep evolving and may be hybrid in nature: an interconnected and unpredictable mix of traditional and irregular warfare, terrorism, and/or organized crime.

In our study, we focus on piracy, armed robbery and maritime terrorism. Starting with observations regarding maritime security and the threat situation, we look at operational requirements and maritime collaboration featuring Maritime Domain Awareness. Finally, we give recommendations for political, military and business decision makers.

1   MARITIME SECURITY

To many observers, *maritime security* appears to be a large and sometimes nebulous concept. In fact, it has become a large area involving many entities from the international, public and private sectors aiming at:

- preserving the freedom of the seas,

- facilitating and defending commerce, and

- maintaining good governance at sea.

Transnational forces and irregular challenges continue to be the primary threat today and in the foreseeable future, especially in the maritime domain. *Maritime security* has to be distinguished from *maritime safety*. Maritime Security is "the combination of preventive and responsive measures to protect the maritime domain against threats and intentional unlawful acts"[1]. The key words are: preventive and responsive measures, aiming at both law enforcement as a civilian and military requirement and defense operations as a military, in this case, naval, requirement. Maritime Safety is "the combination of preventive and responsive

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[1]   http://www.realinstitutoelcano.org/wps/wcm/connect/44d0718042982ce1bb66bb24ab1546e8/The_wise_pen_team_final_report_april_2010.pdf?MOD=AJPERES&CACHEID=44d0718042982ce1bb66bb24ab1546e8

measures intended to protect the maritime domain against, and limit the effect of, accidental or natural danger, harm, and damage to environment, risks or loss."[2]

Maritime security is a responsibility that has no clear definitions when it comes to maritime security operations: it is a governmental responsibility, but the authority to act on behalf of a state is a sovereign decision with different options. This has a strong influence on maritime collaboration. It has no universal legal or agreed definition due to the fact that it is a broad topic, covering many policy sectors. Elements that are part of maritime security are:

- International and national peace and security
- Sovereignty, territorial integrity and political independence
- Security of Sea Lines of Communications
- Security protection from crimes at sea
- Resource security, access to resources at sea and to the seabed
- Environmental protection
- Security of all seafarers and fishermen

Referring to the responsibility for maritime security, all nations have a responsibility by signing the United Nations Convention on the Law of the Sea (UNCLOS)[3] or by being compliant with this broad set of articles and regulations, which offer a foundation for "Good Governance at Sea". All maritime regimes must ensure or, in critical situations, enforce compliance with this globally accepted document.

Knowing that a sectoral approach has only limited success to guarantee maritime security, the term *Comprehensive Approach* means that more than one authority is engaged to contribute to maritime security. Collaboration between different national and international authorities is of equal importance. This paper will focus on operational requirements, ignoring technical ones, and then concentrate on so-called "enablers". These are maritime skills developed through a combination of long experience, common exercise, common operations and a common set of rules that are provided by the military and civil community. Rules of Engagement[4] are available for both maritime security and defense.

2   PIRACY AND ARMED ROBBERY

2.1   Definitions

In article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), piracy is defined as follows:

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[2] http://www.realinstitutoelcano.org/wps/wcm/connect/44d0718042982ce1bb66bb24ab1546e8/The_wise_pen_team_final_report_april_2010.pdf?MOD=AJPERES&CACHEID=44d0718042982ce1bb66bb24ab1546e8

[3] http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf

[4] http://www.usnwc.edu/getattachment/7b0d0f70-bb07-48f2-af0a-7474e92d0bb0/San-Remo-ROE-Handbook

- 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:

  - on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

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

- 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;

- any act of inciting or of intentionally facilitating an act described before.[5]

The International Maritime Organization (IMO) in its 26th Assembly session defines armed robbery in Resolution A.1025 "Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships" as follows:

"Armed robbery against ships," means any of the following acts:

- any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against a person or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea;

- any act of inciting or of intentionally facilitating an act described above.[6]

2.2 Threat Situation

Looking at the global threat situation generated by piracy, we can observe two different developments. In the last couple of years, the cooperation between Singapore, Malaysia and Indonesia has successfully combated piracy in their region. Piracy, once rampant, has been largely exterminated because the littoral states in the region have stepped up their anti-piracy efforts. These efforts include the operation "Eye in the Sky" and Malacca Strait Patrols, involving coordinated and sometimes joint Indonesian, Malaysian, Singaporean as well as Thai air and sea surveillance operations, including considerable information exchange. They have also invited cooperation from outside powers such as India, the United States and Japan.[7]

Causes for concern are the recorded 51 incidents in Indonesia in the first nine months of 2012, up from the 2011 total of 46. Thefts mainly carried out onboard vessels at anchor were the main objectives of the attackers. Some ships have also been hijacked this year in the

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[5] United Nations Convention on the Law of the Sea, 10 December 1982, 60-1. http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm.

[6] International Maritime Organization (IMO), Assembly 26th session, Resolution A.1025, 18 January 2010, 4.

[7] Mark J. Valencia and Nazery Khalid, "The Somalia Multilateral Anti-Piracy Approach: Caveats on Vigilantism", The Asia-Pacific Journal: Japan Focus, http://www.japanfocus.org/-Mark_J_-Valencia/3052# (accessed 9 September 2012).

Malacca Straits, South China Sea and around Malaysia. The International Maritime Bureau (IMB) warned that these waters are still not entirely free of piracy and armed robbery and vessels should remain vigilant and alert.[8]

The situation off the coast of Somalia is just opposite to this. The International Chamber of Commerce (ICC) and the International Maritime Bureau (IMB) reported on October 22, 2012 that, despite a decrease in the number of ships signalling attacks by Somali pirates to its lowest level since 2009, the greatest threat for international shipping still comes from activities by Somali pirates.[9]

Updated on December 3, 2012, the IMB reported for Somalia the following figures:

- Total incidents: 71
- Total hijackings: 13
- Total hostages: 212

Current vessels held by Somali pirates:

- Vessels: 9
- Hostages: 147[10]

Total worldwide incidents in 2012:

- Total attacks worldwide: 278
- Total hijackings worldwide: 27[11]

However, not a single case has been reported yet where a ship carrying armed contractors was hijacked. This, combined with the naval activities of the multinational task force has made life very difficult for the Somali pirates. Pirate activities decreased considerably along the Indian coast in 2012 as the Indian navy increased their patrols, enhanced surveillance and cooperated with NATO forces in joint patrols. Analysts also believe that the increased use of private security guards on ships, international naval patrols, bad weather and growing efforts by local authorities in the Puntland region of Northern Somalia to arrest pirates have helped to disrupt piracy, but have pushed criminals onshore.[12]

The threat caused by Somali piracy off the coast of Somalia and in the Indian Ocean is and will remain of significance for international shipping in the foreseeable future and will continue to cause high economic costs. The US think tank Oceans beyond Piracy published

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[8] Ibid.

[9] ICC International Chamber of Commerce, "IMB reports drop in Somali piracy, but warns against complacency", http://www.icc-ccs.org/news/811-imb-reports-drop-in-somali-piracy-but-warns-against-complacency (accessed 8 December 2012).

[10] ICC International Chamber of Commerce, "Piracy & Armed Robbery News & Figures", http://www.icc-ccs.org/piracy-reporting-centre/piracynewsafigures (accessed 8 December 2012).

[11] ICC International Chamber of Commerce, "Piracy & Armed Robbery News & Figures", http://www.icc-ccs.org/piracy-reporting-centre/piracynewsafigures (accessed 8 December 2012).

[12] Emily Alpert, "Pirate attacks down off Somalia, reducing worldwide numbers", *Los Angeles Times*, World Now, 16 July 2012, http://latimesblogs.latimes.com/world_now/2012/07/pirate-attacks-down-off-somalia-driving-down-worldwide-numbers.html.

the report "The Economic Cost of Somali Piracy 2011"[13] in February 2012. In this report the authors conclude that:

- Somali piracy has resulted in economic costs of between 6.6 and 6.9 billion US dollars.

- The average ransom increased from four million US dollars in 2010 to five million dollars in 2011. Although the total ransom paid by 2011 amounted to 160 million dollars, it only represents two percent of the total economic costs caused by Somali piracy.[14]

- Organizations donated around 20 million US dollars in order to improve the situation in Somalia and other regions affected by piracy. This sum represents a fraction of the funds spent on fighting piracy at sea.

Looking at piracy in the Gulf of Guinea, the threat situation is becoming increasingly dangerous—34 incidents from January to September 2012, up from 30 in 2011—and has shifted westward from Benin to neighbouring Togo. The attacks are often violent, planned and aimed at stealing refined oil products that can be easily sold on the open market. Togo reported more attacks this year than in the previous five years combined, with three vessels hijacked, two boarded and six reporting attempted attacks. Off Benin, one ship was hijacked and one boarded. Nigeria accounted for 21 attacks with nine vessels boarded, four hijacked, seven fired upon and one attempted attack. Not all navies in the Gulf of Guinea have the resources to fight piracy far out at sea, so criminal gangs shift to these areas. The Nigerian navy, however, reacted to a number of incidents where their presence was instrumental in rescuing vessels.[15]

3 MARITIME TERRORISM

3.1 Definition

There is no universally accepted definition of maritime terrorism but the Council for Security Cooperation in the Asia Pacific (CSCAP) Working Group has offered an extensive definition for maritime terrorism: "the undertaking of terrorist acts and activities within the maritime environment, using or against vessels or fixed platforms at sea or in port, or against any one of their passengers or personnel, against coastal facilities or settlements, including tourist resorts, port areas and port towns or cities."[16]

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[13] http://www.oceansbeyondpiracy.org.

[14] "Out of sight, Somali piracy fight gets rougher", Reuters, London, 21 February 2012, http://www.reuters.com/article/2012/02/21/us-somalia-pirates-idUSTRE81K0XT20120221 (accessed on 1 March 2012).

[15] ICC International Chamber of Commerce, "IMB reports drop in Somali piracy, but warns against complacency", http://www.icc-ccs.org/news/811-imb-reports-drop-in-somali-piracy-but-warns-against-complacency (accessed 8 December 2012).

[16] http://www.maritimeterrorism.com//definitions/.

3.2 Threat Situation

Maritime terrorism, like all forms of terrorism, has mostly a political, ideological or religious background. Terrorists will attack targets that affect the infrastructure of the industrialized world most effectively. They may focus their attention on so-called choke points and mega-harbours, with 75 percent of all international sea transport activities carried out by around 50,000 ships using 2,800 ports. The strategically important Strait of Malacca is one of the critical choke points. It connects the Indian Ocean with the South China Sea and the Pacific. It is the most significant trade route between the Far East, the Gulf States and Europe. 90,000 ships use the strait every year and one-third of the world trade, 80 percent of oil exports to East Asia and two-thirds of LNG exports pass through the Strait of Malacca.

The disabling of a super tanker in the Strait of Malacca would block all traffic and ships would have to use the Indonesian Sunda and Flores passage. This would result in a detour of at least 1,000 km and two extra days at sea. The resulting costs would increase to approximately 8 billion U.S. dollars per year.[17] As the largest ports in the world are in South and East Asia, terrorists will focus their planning on ports such as Kobe, Tokyo, Yokohama, Pusan, Shanghai, Kaohsiung, Hong Kong and Singapore. But. mega-ports in the US and Europe, such as Los Angeles and Rotterdam, could also be the focus of terrorists.[18]

A number of successful maritime attacks demonstrate the intentions of terrorists:

- October 2000: A successful attack was carried out against the US destroyer *USS Cole* in Yemen. 17 US sailors were killed, and 39 wounded.[19]

- October 2002: The French oil tanker *Limburg* was attacked off Ash Shahir by a terrorist group with connections to Al Qaeda. One member of the crew was killed and 90,000 tons of oil spilled into the Gulf of Aden. The monthly container traffic in Yemen shrank from 43,000 to 3,000. The economy of the country declined by one per cent of its GDP and 3,000 dockworkers lost their job.[20]

- February 2004: The Abu Sayyaf Group attacked a ferry in the Philippines, and 116 people lost their lives.[21]

- November 2008: Mumbai attacks. Terrorists travelled by sea from Karachi, Pakistan, across the Arabian Sea, hijacked the Indian fishing trawler *Kuber*, killed the crew of four, and then forced the captain to sail to Mumbai. After murdering the captain,

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[17] Dr. Peter Roell, "Maritime Terrorism – A Threat to World Trade?", in: International Relations and Security Network (ISN), Center for Security Studies (CSS).

7 December 2009, ETH Zurich,http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?id=110282

[18] Dr. Peter Roell, "Seepiraterie in Südostasien", Federal College for Security Studies, Berlin, May 2004, 27-44.

[19] "Attack on the USS Cole", http://www.al-bab.com (accessed 8 December 2012).

[20] "Yemen says tanker blast was terrorism", BBC News World Edition, 16 October 2002, http//news.bbc.co.uk/2 /hi/ middle_east/2334865.stm (accessed 8 December 2012).

[21] Wikipedia, the free encyclopedia: 2004 SuperFerry 14 bombing, http://en.wikipedia.org/wiki/2004_ SuperFerry_14_bombing (accessed 8 December 2012).

the attackers entered Mumbai on a rubber dinghy. 164 people were killed and at least 308 wounded.[22]

- July 2010: A suicide attack was carried out by the Abdullah Azzam Brigade against the Japanese oil tanker *M. Star* in the Strait of Hormuz. They were a militant group with connections to Al Qaeda. One member of the crew was injured and the hull severely damaged.[23]

Blown-up container ships could block harbours for weeks—not to mention an attack in one of the mega-harbours with a so-called dirty bomb. A closure of the Singapore harbour for example would cost more than 200 billion US dollars per year. Also, a terrorist attack of a fully loaded gas tanker in one of the mega-harbours would have a devastating effect on world trade and provide terrorists with an event comparable to 9/11—one of their stated goals.[24]

To address the threat of maritime terrorism, excellent intelligence is a necessity. The groups of greatest concern in the Gulf of Aden, the Red Sea, off the coast of Somalia are Al-Qaeda in the Arabian Peninsula (AQ-AP), the Abdullah Azzam Brigades and to a reduced extent Al-Shabaab.[25] To combat maritime terrorism, the Container Security Initiative (CSI), initiated by the United States in 2002, is very helpful. The aim of this program is to identify—out of the 230 million containers transported by sea every year—those containers with weapons of mass destruction or dangerous nuclear substances, which could be used by terrorists for their attacks.[26]

In cooperation with state organizations and industry, technical means are used for protection against potential terror attacks. Scanning systems for large-size containers, the use of Long-Range Acoustic Devices (LRAD), special anti-boarding systems, such as 9,000-Volt protective fences for merchant ships making the boarding for pirates or terrorists more difficult, are just a few examples. Unmanned "inventus systems" with their cameras are capable of searching large ocean areas and transmit data to a ship or a ground station.[27]

World trade in Europe and Asia is potentially threatened by maritime terrorism and piracy. Any kind of cooperation in this field would be well-founded and could be the basis for anti-terrorism measures and also for joint anti-piracy missions. There are many reasons to

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[22] Wikipedia, http://en.wikipedia.org/wiki/2008_Mumbai_attacks (accessed 8 December 2012).

[23] "UAE confirms oil tanker attack", Al Jazeera, http://www.aljazeera.com/ news/,middleea st/2010/09/20108683953783853.html (accessed 8 December 2012).

[24] Dr. Peter Roell, "Maritime Security: New Challenges for Asia and Europe", Institute for Strategic, Political, Security and Economic Consultancy (ISPSW) Berlin, ISPSW Strategic Series, Issue No. 167, November 2011, 7, http://www.isn.ethz.ch/ isn/Digital-Library/Publications /Detail/?id=134578.

[25] Rupert Herbert-Burns, "Countering Piracy, Trafficking, and Terrorism: Ensuring Maritime Security in the Indian Ocean", in *Indian Ocean Rising: Maritime Security and Policy Challenges*, ed. David Michel and Russell Sticklor (Washington: STIMSON, July 2012), 23-39.

[26] http://en.wikipedia.org/wiki/Container_Security_Initiative.

[27] Dr. Peter Roell, "Maritime Security: New Challenges for Asia and Europe", Institute for Strategic, Political, Security and Economic Consultancy (ISPSW) Berlin, ISPSW Strategic Series, Issue No. 167, November 2011, 7, http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?id=134578.

believe that maritime attacks of this kind have to be expected in the future, not just limited to special regions but on a worldwide scale. There is no reliable information, however, that Islamist terror groups, structured and institutionalized, cooperate with pirates in Somalia, although occasionally a few indications for such cooperation seem to pop up.

Decision makers need to understand that fighting piracy and maritime terrorism at sea will not remove the threat. Suitable measures need to be taken on shore in order to achieve success.[28]

4 OPERATIONAL REQUIREMENTS AND MARITIME COLLABORATION

4.1 Who are the Global and Regional Stakeholders of Maritime Security?

In the previous chapters threats to maritime security have been described and evaluated. In this part, the intention is to inform about operational requirements and successful maritime collaboration.

A brief look at the global maritime community shows stakeholders of different influence and power to enforce compliance in the maritime domain. Consensus has been achieved between all stakeholders about national territorial waters: 12 nautical miles (nm) from the shore towards the sea, although some nations are claiming up to 24 nm. UNCLOS offers this as a "contiguous zone"[29] with limited rights and responsibilities in comparison with the TTW.

More important today is the Exclusive Economic Zone (EEZ) up to 200 nm, but also with the possibility to extend this zone for economic interests in relation to the continental shelf to up to 350 nm[30]. Here, some of the elements of maritime security are touched, and the existing and expected disputes about claims are risks and dangers to global maritime security.

International bodies have attempted to minimize, stop, or otherwise control threats to security in the maritime domain. This includes actions from international organizations such as the International Maritime Organization (IMO), public agencies/organizations such as law enforcement, and naval forces, private industry such as shipping companies, ports, privately contracted armed security personnel and entities from all nations to achieve maritime security. This also includes safety regulations such as the International Ship and Port Facility Security Code (ISPS Code), shipping protection practices, and naval patrols. Who are the actors on this scene to develop the existing maritime regime in the future, able and willing to implement it by all means, including the use of maritime and naval forces?

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[28] Regarding the engagement of the European Union to combat piracy and indirectly maritime terrorism, see also Lutz Feldt, "Operation Atalanta – Europe's Contribution", Institute for Strategic, Political, Security and Economic Consultancy (ISPSW) Berlin, ISPSW Strategic Series, Issue No. 185, April 2012, http://www.isn.ethz. ch/isn/Digital-Library/Publications/ Detail/?id=140842.

[29] http://www.eoearth.org/article/Exclusive_economic_zone_(EEZ)

[30] http://en.wikipedia.org/wiki/Exclusive_economic_zonehttp://en.wikipedia.org/wiki/International_Seabed_Authority

4.1.1   United Nations (UN)

First, we have the United Nations with its International Maritime Organization (IMO).[31] The IMO has long experience in negotiating local, regional and global agreements and treaties and has adopted a number of resolutions and conventions to this end. For example, Resolution A.545—Measures To Prevent Acts Of Piracy And Armed Robbery Against Ships was signed in 1983. In 1985, came IMO Resolution A.584—Measures To Prevent Unlawful Acts Which Threaten Safety Of Ships And Security Of Passengers (this was later reviewed in November 2001 with IMO Resolution A.924). In 1986, the IMO approved MSC/Circ.443—Measures To Prevent Unlawful Acts Against Passengers And Crew On Board Ships. In 1988, there was the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) treaties, aimed at ensuring that appropriate judicial action was taken against persons committing unlawful acts against ships. Unlawful acts would include the seizure of vessels by force, acts of violence against persons on board vessels, and placing of devices onboard of a vessel that are likely to destroy or damage it. The convention obliges contracting governments either to extradite or prosecute alleged offenders. The SUA came into effect on March 1, 1992. Following the tragic events of September 11, 2001, the twenty-second session of the IMO, in November 2001, unanimously agreed to incorporate security regulations and approved the development of new measures relating to the security of vessels and of port facilities for adoption by a Conference of Contracting Governments to the International Convention for the Safety of Life at Sea in December of 2002 (the Diplomatic Conference).

This administrative capacity is of great importance and the IMO will remain the "Guardian of Good Governance at Sea". On the other hand, the UN and IMO have only very little operational and tactical experience when it comes to the implementation and enforcement of the law of the sea. Operation UNIFIL in the Mediterranean Sea is a successful but rare exception and no further maritime operation has been led by the UN so far.[32]

4.1.2   NATO

The second stakeholder is NATO[33]. NATO has a Maritime Strategy[34] and is acting in several maritime security operations with great endurance and success due to its long- standing experience at the operational and tactical levels. The member states of the Alliance own all naval and maritime operational capabilities that are needed to achieve and endure maritime security[35]. The roles are providing a spectrum of strategic options:

- Deterrence and collective defense

- Crisis management

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[31]   http://www.imo.org/Pages/home.aspx

[32]   http://reliefweb.int/report/lebanon/lebanon-unifil-maritime-task-force-transfer-authority-1

[33]   http://www.nato-pa.int/Default.asp?SHORTCUT=2087

[34]   http://www.nato.int/cps/en/natolive/official_texts_75615.htm

[35]   http://www.nato.int/docu/review/2010/maritime_security/end_of_naval_era/en/index.htm

- ▪ Cooperative security: outreach through partnership, dialogue and cooperation

- ▪ Maritime Security

The operational requirements are optimized for serving the whole spectrum of tasks: ranging from humanitarian assistance to training to capabilities to fight wars at sea. All these capabilities are operational and inherent in naval vessels that are frigate-size and above. The operational art is a mixture of experience, intellect, judgment, creativity, intuition and education, and it is necessary to find the right balance, time and patience to be successful.

NATO's experience consists of its expertise gained from the build-up of its Standing Naval Forces[36] and its corresponding technical and procedural standards, which are implemented with a common understanding. The most important operational requirements for international collaboration are communications, and information and knowledge sharing, which are needed to ensure an effective execution of operations. NATO, through its Partnership for Peace program[37], has "exported" these basic requirements, since the end of the Cold War, to non-NATO navies, which are partners in, and contributors to, international naval and maritime exercises. Restricting operational requirements either to military-technical or to naval aspects only would be ignoring the actual situation at sea. This is the reason why NATO has expanded its roles and tasks into the area of maritime security,[38] focusing in particular on "conducting surveillance and sharing information".[39] In conclusion, NATO has all the necessary operational assets and the appropriate training and education to fulfil all maritime task requirements, together with other governmental and non-governmental organizations.

4.1.3 European Union

The third stakeholder in the maritime domain is the European Union (EU). It is a Union of states with a political mandate, with its own maritime interests: trade and resources are the key words in this context. The "Highways of the Sea" and the newly explored seabed resources are of vital interest for the European Union and its member states.

With the European Security Strategy[40], the EU has declared a framework and its ambition to assume its responsibility in Europe and beyond. But this strategy is lacking security aspects, especially maritime security aspects. The military staff of the EU and the European Defense Agency are taking care of security and defense issues. Up to now, almost all maritime initiatives of the EU deal with a broad spectrum of the maritime domain; however, they are not including security and defense into their very well-developed policies, such as the Integrated Maritime Policy.[41] The program of work includes, for example, maritime transport

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[36] http://www.manp.nato.int/NAVSOUTH/STANAVFORMED.htm

[37] http://www.nato.int/cps/en/natolive/topics_50349.htm

[38] http://www.nato.int/cps/en/natolive/official_texts_75615.htm

[39] http://www.nato.int/cps/en/natolive/official_texts_75615.htm, para 15.

[40] http://www.consilium.europa.eu/eeas/security-defence/european-security-strategy?lang=de

[41] http://ec.europa.eu/maritimeaffairs/policy/index_en.htm

without borders, national integrated maritime policies, a strategy for maritime research, a maritime surveillance network, a network of maritime clusters and a strategy to mitigate the effects of climate change. The EU is a strong contributor to all maritime aspects in the EU's maritime domain and beyond, but its operational capabilities are limited.

The European naval operation Operation Atalanta[42] is an important step forward. The positive experience with all aspects of the operation, including the fast process of implementing this first European naval operation, should encourage the European Parliament, the Council, the Commission and the military staff to take more responsibility at sea in order to achieve "Good Governance at Sea" through maritime security.

The IMP and its subsequent documents are examples of an excellent contribution to maritime affairs, but they are still limited in scope and lacking comprehensiveness. Member states have recognized this and have, through multilateral agreements, tried to compensate the situation. EuroMarFor[43] is one example for this approach.

As an interim conclusion, it seems appropriate to focus on maritime surveillance. Maritime surveillance is an important topic in the NATO Maritime Strategy and the EU Integrated Maritime Policy. The EU Commission has developed a process to achieve a Common Information Sharing Environment (CISE)[44] in the European maritime domain and beyond. This is a great success, and it should be used as a blueprint for other maritime domains as well. There are other initiatives that are focused on other specific purposes, but are urgently dependent on a common picture of the maritime domain and on information sharing based on the principle of the need to share and the responsibility to share information. One example is EUROSUR[45], a maritime surveillance system owned by Frontex[46], the European Agency for Management of Operational Cooperation at the External Borders of the Member States of the European Union. In this context, the second example is MARSUR[47], a Maritime Surveillance Network developed by the European Defence Agency and focused on the defense community, but with the idea to be integrated into the CISE process.

4.1.4   Non-Aligned Nations

Last but not least, it seems of great importance to draw attention to some non-aligned nations and their growing maritime ambitions: Russia has been involved in different kinds of maritime security operations in the Baltic, in the Mediterranean Sea, in the Norwegian Sea and in the Indian Ocean, as an independent contributor in the fight against piracy.[48] India has an ambitious naval and maritime program, with the aim to become and remain

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[42]   http://www.consilium.europa.eu/eeas/security-defence/eu-operations/eunavfor-somalia?lang=en

[43]   http://www.euromarfor.org/

[44]   http://ec.europa.eu/maritimeaffairs/maritimeday/2012/20120521_15_programme_en.pdf

[45]   http://www.frontex.europa.eu/eurosur

[46]   http://www.frontex.europa.eu/about/origin

[47]   http://www.eda.europa.eu/docs/eda-factsheets/marsur-factsheet-v2_09102012_cs5_bleu

[48]   http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=28536:russian-navy-anti-piracy-flotilla-on-the-way-to-africa&catid=51:Sea&Itemid=106

a regional maritime power. India will have its own voice in maritime security issues in the international arena. China's naval and maritime ambitions have been visible for several years and its operational capabilities are already of a high professional standard. By being an independent participant in the maritime security operations in the Gulf of Aden and Indian Ocean, China[49], for the first time in centuries, is engaged in an international effort to achieve maritime security; even though this does not mean collaboration yet, it is certainly a form of coordinating operational capabilities in a very pragmatic way.

4.2   Examples for successful collaboration

The agreement between India, Japan and China aiming at coordinating maritime security efforts in the Gulf of Aden in order to avoid duplications of effort and to act more professionally is one side of the coin, the encouraging one. It is the result of the SHADE process, a successful series of meetings in Bahrain to achieve Shared Awareness and Deconfliction.[50] The SHADE process is an example of building mutual trust and confidence and one way to achieve a real deconfliction. It allows for more opportunities in other maritime regions as well. What has been achieved by Indonesia, Malaysia, Singapore and Thailand is of a different, higher quality. Under the sponsorship of the IMO, it took the littoral states some courage, patience and time to carry out three joint operations to safeguard the international shipping in the Strait of Malacca and Singapore.[51]

MALSINDO, an agreement concluded in 2004, deals with permanent sea surveillance and advanced information sharing and is the air equivalent to the "Eyes in the Sky" program with the same task and agreed Terms of Reference and Standing Operational Procedures. It was extended by an Intelligence Exchange Group and, together with Thailand, is an open arrangement for other partners since 2008, and can be used as a blueprint for other regions. Another example of further collaboration is the Djibouti Code of Conduct[52]. This agreement concerning the repression of piracy and armed robbery against ships lays the ground for cooperation in line with international law. Regarding its ambition and development under the umbrella of the IMO, it is similar to the agreements between the Asian nations, but, until today, it has not reached the same pragmatic degree of implementation. The implementation is supported by a resolution offering technical cooperation and general assistance. A training center in Djibouti, an information-sharing center in Sanaà, Yemen, a regional Maritime Rescue Coordination Centre in Mombasa, Kenya and a Sub Centre in Dar es Salaam, Tanzania, are already functioning.

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[49] http://thediplomat.com/2012/03/06/india-china-and-the-pirates/

[50] http://combinedmaritimeforces.com/2011/09/27/cmf-hosts-21st-shade-meeting/http://oceansbeyondpiracy.org/matrix/activity/shared-awareness-and-deconfliction-shade

[51] http://www.navy.mil.my/wpns2012/images/stories/dokumen/WPNS%202012%20PRESENTATION%20FOLDER/PRESENTATION%20BY%20COUNTRIES/1628%20MALAYSIA/ENHANCING%20INTEROPERABILITY%20COOPERATION.pdf

[52] http://www.imo.org/ourwork/security/piu/pages/dcoc.aspx

Some of these initiatives by the IMO, supported by other UN organizations like UNDP and UNODC, together with the EU and the maritime industry, are very encouraging. The basic idea follows the good experience achieved in Asia. There, the ReCAAP–ISC[53] is setting a high standard and ReCAAP, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery in Asia, and the Information Sharing Centre are another proof of a successful maritime collaboration in order to improve maritime security through a comprehensive approach.

The global maritime domain offers two very different perspectives. On one hand, it is still an open space where freedom is the rule, with limited maritime regimes in force; on the other hand, there are increasing examples of collaboration and regional maritime security initiatives and pragmatic processes. The first steps for comprehensive approaches are encouraging.

5   COMPREHENSIVENESS—PRINCIPAL AND TECHNICAL ASPECTS

Operations within the context of maritime security are those measures that are performed by the appropriate civilian or military authorities and agencies in order to counter the threat and mitigate the risks of illegal or threatening activities in the maritime domain. They are aimed at enforcing the law, protecting citizens and safeguarding national and international interests. A center of gravity analysis shows that critical vulnerabilities, requirements and capabilities need to be addressed in cooperation with national/multinational partners, agencies and organizations to co-operate effectively to deter, protect against and counter hostile and illegal threats to safety and security in the maritime domain.

Naval services need to provide maritime security by focusing on managing maritime security threats directly or indirectly. They do this by providing security patrols, intercepting suspect vessels, providing data for Maritime Domain Awareness, and building partner capacity. Fine law-enforcement skills, such as minimal use of force in order to reduce disruption to society, knowing how to conduct effective and legal searches, the knowledge to piece together case packages, and knowing the difference between evidence and intelligence, have become incredibly important in maritime interception operations.

5.1   Operational Experiences

Military, first responder, and law enforcement personnel need to cooperate with a comprehensive understanding of the unique circumstances and operational conditions that prevail in the meantime arena. They also need to understand how security can be enhanced in this context. This will enable them to better perform their duties and responsibilities in the port, maritime, and intermodal context, which may include:

- inspecting vessels, terminals, and other facilities;
- responding to crises involving threats of terrorism or actual attacks;
- monitoring and controlling access to facilities and vessels;

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[53]   http://www.recaap.org/AboutReCAAPISC.aspx

- interviewing, examining, and credentialing transportation workers and facility personnel;

- conducting surveillance operations and participating in undercover assignments;

- tracking and interdicting suspicious cargo, persons, vessels, or vehicles;

- recognizing and detecting the presence of bombs, explosives, and Weapons of Mass Destruction;

- interacting on security matters with vessel security officers, company security officers, facility security officers, and relevant federal, state, and local agencies; and

- performing threat, risk, and vulnerability assessments; security planning; and contingency planning.

Unfortunately, up to now, there is a lack of overarching frameworks to bring the respective nations' civilian and military elements together in order to address threats to maritime security efficiently, coherently and collectively. National actors are conducting maritime security as part of routine, peacetime duties in response to the threats mentioned above. These operations are generally either conducted independently by the armed forces and/or civilian agencies in order to enforce legal powers and safeguard sovereignty or as part of multi-national military operations, which aim to safeguard common defense and security interests. Yet, there are a number of promising developments that highlight the benefits of providing multinational, multiagency capacities and capabilities among those nations that participate in NATO's Operation Ocean Shield and the European Union's Operation Atalanta.

5.1.1   Operation Ocean Shield

In late 2008, when growing piracy in the Gulf of Aden and off the Horn of Africa started undermining international humanitarian efforts in Africa and the safety of one of the busiest and most important maritime routes in the world—the gateway in and out of the Suez Canal—NATO started to provide escorts to UN World Food Program (WFP) vessels transiting through these dangerous waters under Operation Allied Provider.

In addition, NATO conducted deterrence patrols and prevented, for instance, vessels from being hijacked and their crews being taken hostage during pirate attacks. This initial operation was succeeded in early 2009 by Operation Allied Protector, which continued to contribute to the safety of commercial maritime routes and international navigation. It also conducted surveillance and fulfilled the tasks previously undertaken by Operation Allied Provider. This operation evolved in August 2009 into Operation Ocean Shield[54], an operation approved by the North Atlantic Council on 17 August 2009 and recently extended until the end of 2014.

Principally, Operation Ocean Shield has been focusing on at-sea counter-piracy operations. NATO's role has been to provide naval escorts and deterrence, while increasing

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[54]   NATO, Operation Ocean Shield Current News. http://www.manw.nato.int/page_operation_ocean_shield.aspx . (Accessed 2 January 2013).

cooperation with other counter-piracy operations in the area in order to optimize efforts and tackle the evolving pirate trends and tactics. NATO vessels conduct, for instance, helicopter surveillance missions to trace and identify ships in the area. They help to prevent and disrupt hijackings and to suppress armed robbery.

In order to respond to new piracy tactics, NATO has created greater synergies with other initiatives, recognized the continued need for regional capacity-building, within its means and capabilities, and focused on areas where it provides added value. It has broadened its approach to combating piracy by offering those states assistance in developing their own capacity to combat piracy activities. More recently, NATO has also taken on measures aimed at eroding the pirates' logistics and support base by, among other things, disabling pirate vessels or skiffs, attaching tracking beacons to mother ships and allowing the use of force to disable or destroy suspected pirate or armed robber vessels.[55]

5.1.2   Operation Atalanta

Operation Atalanta is part of the European Union Comprehensive Approach in the Horn of Africa. The political objectives of the EU are to prevent and deter pirates from interrupting global maritime trade, but also to contribute to a sustainable and long-term solution to piracy through building up the capacity of the states in the region, including Somalia, to take ownership of the fight against piracy. In December 2008 the EU launched European Naval Force Somalia—Operation Atalanta (EU NAVFOR—ATALANTA) within the framework of the European Common Security and Defense Policy in accordance with relevant UN Security Council Resolutions (UNSCR) and International Law.[56]

The UNSC mandate has been providing for

- protection of vessels of the World Food Programme (WFP) delivering food aid to displaced persons in Somalia; the protection of African Union Mission in Somalia (AMISOM) shipping;

- deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast;

- protection of vulnerable shipping off the Somali coast on a case by case basis.

In addition, Operation Atalanta has been contributing to the monitoring of fishing activities off the coast of Somalia.

To this end, EU NAVFOR—ATALANTA has been operating in a mission area covering an area from the southern Red Sea to the Gulf of Aden and the Western part of the Indian Ocean including the Seychelles. Since its launch, Operation Atalanta has

- had a 100 percent success rate providing escorts to WFP vessels delivering humanitarian aid to Somali people

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[55]   NATO, counter-piracy operations. http://www.nato.int/cps/en/natolive/topics_48815.htm. (Accessed 2 January 2013).

[56]   The Council of the European Union. Council Decision 20107/766/CFSP of 7 December 2010 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:327:0049:0050:EN:PDF. (Accessed 2 January 2013).

- provided protection to AMISOM shipments, which are critical to the success of the AU operation in Somalia

- ensured the protection of other vulnerable shipping within the Internationally Recommended Transit Corridor (IRTC) and other assistance.

In order to address the root causes of piracy, the European Union has also been contributing to the social and economic development of Somalia, concentrating on three sectors of cooperation: governance, education, and the productive sectors, particularly rural development. The EU actively works towards improving security on the ground in Somalia through the empowerment of Somali capacities, with the EU Training Mission training Somali soldiers in Uganda to contribute to strengthening the Transitional Federal Government and the institutions of Somalia. In addition, the EU offers substantial financial and technical support to the African Union's military mission to Somalia (AMISOM). The EU has been funding, amongst others, mission allowances, medical care, accommodation, fuel, and communication equipment in order to support dialogue and reconciliation and to provide protection to key infrastructures, e.g. government buildings and the Mogadishu International Airport.

5.2 Focus Area: Situational Awareness

With regard to national/multinational cooperation in such complex operations with many different actors involved, maritime domain awareness is needed in order to create a comprehensive picture of maritime activity based on accessible information—situational awareness covering the deployment of layered maritime security from the high seas to territorial waters, including littoral areas and port facilities. The promotion of national inter-ministry, intergovernmental and multinational cooperation with other actors involved is important for maritime security. This has to take full advantage of existing frameworks in order to

- create the appropriate environment to promote the civilian-military aspects of cooperation, information sharing and maritime surveillance;

- coordinate the participation and actions of all organizations and partners. This includes collaboration suites and integration of existing communication networks to an unified, interoperable network;

- enable maritime security within commercial practices; providing for a better situational awareness and understanding of how the commercial shipping sector might contribute to and benefit from maritime security, most notably in the energy sector.

The availability and management of information, data and spatial planning is vital to understanding the maritime environment, the compilation of a threat analysis and the implementation of a comprehensive approach to maritime security. There are many sources of information, from open source "white shipping" such as AIS, commercially available databases such as Lloyds, to comprehensive "fused" intelligence pictures, representing national, EU, NATO and coalition interests only.

The latter also applies to dealing successfully with maritime cyber risks, as global information exchanges for maritime cyber security-related incidents are badly needed. Like

many other critical infrastructures, maritime transport depends on information and communicational technology (ICT). Without ICT, harbours, automatic identification systems, navigation, logistics systems, and vessels do not operate. With the exception of dedicated naval communication systems,[57] maritime cyber infrastructures have so far not been at the center of cyber villains. This could rapidly change. Coordinated cyber attacks against infrastructure operators such as PSA International, Hutchinson Port Holding, and Cosco, three of the world's biggest container port operators in the Asia-Pacific, would have rippling effects far beyond the region. The main challenge for maritime cyber risks stems from the fact that the International Shipping and Port Security Code (ISPS Code) is focusing on physical, rather than digital security risks. By taking up this concern, nations and regions could help advance global security for critical maritime infrastructures.

Numerous governmental, military and business organizations already possess valuable inputs. However, no source captures all of the maritime information needed or currently available. Information exchange between government agencies and private industry, in particular, sharing common databases, is the real power behind Maritime Domain Awareness. The challenge is to effectively integrate and fuse the various inputs to achieve the synergies offered by a comprehensive situational awareness picture, while being responsive to the information needs of participating agencies. This also includes ports, as these are particularly exposed to insecurity, terrorism, emergency and operational events, which are related to national government's supply chain. Government agencies, port authorities and associated organizations must identify, collaborate, prioritize and respond to these events across organizational boundaries and disparate business processes.

Related capabilities will be enhanced by the use of operational force multipliers such as

- platforms, sensors, links, data and sensor fusion, change detection, decision support tools,
- open sources intelligence capabilities,
- knowledge development, and
- C4ISTAR[58] facilities in order to deliver an optimized operational contribution to maritime security.

Of course, security aspects need to be embedded into commercial practices. With most of world trade conducted by sea, the maritime environment delivers many goods and services that are essential for society's needs. As the need for hydrocarbon-based energy grows, the need to safeguard maritime-related traffic is becoming more acute. Cooperation and partnership with commercial shipping agencies are vital in order to achieve a holistic approach to maritime security that meets mutually agreed objectives of all parties involved.

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[57] "China hackers enter Navy computers, plant bug to extract sensitive data". *The Indian Express*. 1 July 2012. <http://www.indianexpress.com/news/china-hackers-enter-navy-computers-plant-bug-to-extract-sensitive-data/968897/0> (Accessed 18 October 2012).

[58] C4ISTAR is the British acronym used to represent the group of the military functions designated by C^4 (command, control, communications, computers), I (military intelligence), and STAR (surveillance, target acquisition, and reconnaissance) in order to enable the coordination of operations.

5.3 European Blueprint?

The European approach to situational awareness may serve as a reference on how to approach this complex issue. The EU maritime domain faces different and mounting threats and challenges in all regional sea basins, such as human or drug trafficking, marine pollution, depletion of fish stocks and piracy. The integration of maritime surveillance as one of the important strands of the Integrated Maritime Policy will provide for combating threats, detecting vulnerabilities and illegal activities, and increasing knowledge. It will ensure safer, more secure and cleaner seas and boost sustainable economic growth through efficiency gains.

In its Maritime Policy, the European Union aims at approaching all aspects of the oceans and seas in a holistic and dynamic manner. The vision is to infuse cohesion and commonality into offshore functions and provide interoperability in the surveillance systems. It aims to safeguard Europeans' lives and interests by enhancing maritime security through the integration of activities and systems associated with it. As regards offshore activities, there is much room for the rationalization of the cross-border and cross-sector functions that the member states deploy on coastal waters.

In October 2009, the European Commission set guiding principles on how to achieve integration of maritime surveillance—a C*ommon Information Sharing Environment for the surveillance of the European Union domain* (CISE)[59]. It aims at creating a political, cultural, legal and technical environment to enable sharing of existing and future surveillance systems and networks. Such interoperability will be established in a decentralized way, using modern technologies. It will provide all concerned authorities with access to the information they need for their missions at sea, based on the "need-to-know" and "responsibility-to-share" principles.

Within this context, the objective of integrated maritime surveillance is to share information across borders and sectors routinely and systematically throughout the EU. It is supposed to provide public authorities, which are interested or active in maritime surveillance at European Union (EU), regional and national level, with the means to exchange information and data across borders and across sectors to understand effectively activities and events at sea.

Currently, EU and national public authorities responsible for different aspects of maritime surveillance and security, fisheries control, customs, environment, general law enforcement or defense, collect information and data mostly separately and do not share them systematically. Cross-border sharing of data within a sector has been advancing in the past years, often with the help of European Agencies, but sharing information across sectors is still in its infancy. Sharing relevant cross-sectoral and cross-border information and data would enhance the sectoral maritime situational awareness of the public authorities and facilitate

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[59] European Defence Agency, European Environment Agency, European Fisheries Control Agency, European Maritime Safety Agency, European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union and European Law Enforcement Agency.

sound decision-making. Therefore, it would increase the effectiveness and the cost-efficiency of maritime surveillance activities.

A roadmap with a step-by-step approach has been adopted in October 2010[60]. Since then, through the close cooperation between the Commission, the Member States expert sub-group on integrated maritime surveillance and the CISE Technical Advisory Group that includes the representatives of all user communities and European Agencies, substantial progress has been made. Seven user communities including border control, maritime safety and security, fisheries control, customs, marine environment, general law enforcement and defense have been identified involving roughly 400 national public authorities. More than 500 existing maritime-related surveillance data sets have been mapped. "Gap" analysis for the data exchanges has shown that 40 to 90 percent have not been made systematically available up to now.

The CISE Technical Advisory Group is currently investigating the relevance of structuring data elements into "purpose oriented information service packages" including corresponding pre-defined "access rights" based on predefined maritime missions of the seven user communities. A technical supporting framework is under development, using common interoperability language permitting secure and seamless data exchanges in a decentralized and flexible manner. A preliminary study is in progress, essentially with a view to mapping the various information technologies tools used by the existing and forthcoming sectoral and regional systems. Requirements for necessary legal provisions have been mapped to allow lawful data exchanges to take into account personal data protection as well as data confidentiality and ownership in accordance with international, European or national regulations.

The next steps for CISE include further studies to feed into assessing the impact and the added-value of CISE, an Impact Assessment to include the results from two recent pilot projects to be finalized in the course of 2013, and a White Paper on maritime data sharing is scheduled to be issued by the end of 2013 as a forerunner to a potential framework legislation establishing CISE.

6   RECOMMENDATIONS

A comprehensive approach to maritime security is indispensable to safeguarding common prosperity and security interests as it effectively protects and supports legitimate activities, while countering the threat of current and emerging terrorist, hostile, illegal or dangerous acts within the maritime domain. By ensuring freedom of navigation and commerce, it also has the capacity to promote regional and economic stability and to protect maritime trade as the heart of global economies.

Ensuring maritime security requires strong and enduring partnerships between civilian and military authorities. This partnership can build on separate initiatives already in place

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[60] Commisson of the European Communities: Communication from the Commission to the Council and the European Parliament on a Draft Roadmap towards Establishing the Common Information Sharing Environment for the Surveillance of the EU Maritime Domain COM/2010/0584 final. Brussels. (Accessed 2 January 2013).

and the respective strengths of relevant actors in the domain of maritime security. Enhanced cooperation concerning the maritime domain is in the immediate interest of any actor involved in maritime trade and security. Capabilities are either already existent or can be built up in an international co-operative manner. Criminal activities and terrorism could be deterred significantly by concerted action that improves the presence of maritime security forces, enables the boarding of suspicious vessels according to internationally agreed legal rules and provides maritime security by Maritime Domain Awareness and integrated civil-military capacities.

In particular, the timely fusing of maritime information is an initial priority. Incremental improvements in information sharing could allow operational cooperation to develop, as mutual confidence grows correspondingly. For an inter-agency approach to work, the strengths of the relevant organizations involved in addressing maritime security must be combined. A better use of the limited resources to address the omnipresent, multi-national threat in the maritime domain would produce a most valuable result for governments, international organizations and the commercial sector as well.

Situational awareness systems have the capability of integrating a wide range of emerging disruptive technologies that include: low cost sensors, IT architecture, video, robotic vision, gaming, 3D/geospatial modelling, physical and virtual augmentation, autonomous systems, simulation software, location-based service, social web life streams, and expert software learning systems. Of course, situational awareness platforms will require significant integration to make it useful for users in a networked world. But eventually, it will cultivate our capacity for increased awareness, mindfulness, and focus. It will force learners to expand their collection of inputs, selectively identify their filters used in synthesizing and sense-making, and help to mainstream systems thinking and underline the imperative of understanding structure, relationships and feedback loops in a globally interdependent world.

The principles of situational awareness based on perception, comprehensiveness and projection might soon support a wide range of applications that reach far beyond military operations and crisis response. It is a user and outcomes-centric systems approach that could integrate anticipated advances in mobility, "smart" infrastructure, learning systems, policy-making and business intelligence.

Maritime trade is key to the prosperity of not only the Asia-Pacific region, but of the European Union as well. Risks posed by pirates and robberies have already prompted several countries to join forces and pool resources to address the respective consequences. Pooling and sharing between public and private stakeholders could also help address issues that are of growing concern. With regard to combating piracy and armed robbery we propose the following:

- A first step should be a new look at the maritime laws governing the use of force on the high seas and within the territorial coastal areas. These laws need to be taken into the 21st century and adopted to the threats of today.

- The Rules of Engagement of naval units tasked with protecting the trade routes need to be coordinated and agreed on. Furthermore, a close look needs to be taken at the kind of naval vessels that might be required to combat piracy more cost effectively.

- The use of Private Security Companies (PSCs) should be regulated and agreed.

- Shipping companies need to conform to the basic security requirements when operating in danger areas and should at all times comply with due care for their crew and cargo. They will need to invest in superior passive defense measures and adopt active measures, if required.

- Police and security services should actively combat those international crime groups involved in piracy at the earliest possible point in time in order to reduce the attractiveness of piracy. They should also prevent piracy from being used by terrorist organizations to advance their aims.

- The banking community should take a much closer look at money laundering and report all suspicious transactions to the authorities.

- Long-term plans to bring the beginning of stability to Somalia, and the establishment of an effective Coast Guard needs to be drawn up and funding made available. This could be a public-private partnership involving suitably qualified private security companies.

Regarding maritime terrorism, we provide the following recommendations:

- The security and intelligence services need to concentrate both on infiltrating the non-Islamist terrorist groups in their relevant countries (HUMINT) and also step up Open Source Information (OSINT) research, requiring relevant linguistic and intercultural skills.

- Governments should consider establishing a National Security Council in their countries, if they have not yet done so, in order to further improve inter-ministerial cooperation and provide a comprehensive security approach.

- Governments should also consider the harmonized use of armed forces within the European Union in the event of major terrorist attacks.

- Governments should carefully consider their communications policy with the public. Frequent warnings of impending terrorist attacks, which eventually do not materialize, are not helpful in sensitizing the public.

- Academia can contribute significantly to the activities of the security and intelligence services by helping to analyze the motivation behind fringe terrorist groups and separatist organizations. Such information would be helpful in building up profiles and identifying potential targets of such groups.

- Businesses should realize that certain terrorist groups present a threat to their business continuity. They should also realize that it is impossible for the state to provide adequate levels of security at all times. Reliable private security organizations are in a

position to provide businesses with risk assessment and business continuity plans as well as armed and unarmed close protection.

With regard to operational requirements and maritime collaboration, from a European perspective, three recommendations come to mind:

- A Common Information Sharing Environment offers national and international collaboration challenges and opportunities and facilitates maritime domain situational awareness.

- Civilian-military cooperation should be enforced following the regional and step-by step approach, using ongoing and future maritime operations like UNIFIL and anti-piracy operations and the components of maritime capacity building ashore and at sea as another challenge and opportunity.

- Change the mentality of information sharing from "Need to Know" to "Need to Share" and finally to "Responsibility to Share".

  ◦ We know what we know: we have to disseminate what we know to all stakeholders. (Push)

  ◦ We know what we do not know: we have to ask for information and we can do this. (Pull)

  ◦ We do not know what we do not know: it is vital to be part of a comprehensive information-sharing network. (Pull and Push)

The mentality shift required clearly constitutes an enormous challenge and can only be achieved by small steps and through an enduring process of building trust and confidence.

ABOUT THE AUTHORS

Admiral (rtd.) Feldt was engaged in sea duty assignments for thirteen years, including leadership functions on all command levels and duty assignments in different naval staffs. Since retirement, Admiral Feldt has occupied several posts of honour. He was president of the German Maritime Institute until June 2012 and is now a member of its board. From 2008 until 2009, he was working for the European Commission as advisor for the Instrument for Stability. From July 2009 to December 2010, he served the European Defence Agency as a member of the Wise Pens Team, working on topics of maritime surveillance and maritime security. Since August 2011, Admiral Feldt, in his position as the Director of the Wise Pens International, and his team are working on a study dealing with the future maritime capabilities of the European navies.

Since January 2006, Dr. Peter Roell has been President of the Institute for Strategic, Political, Security and Economic Consultancy (ISPSW) in Berlin. Prior to this, he served as senior advisor for foreign and security policy at the Permanent Representation of the Federal Republic of Germany to the EU in Brussels. In Germany, Dr. Roell also served as director of the Asia-Pacific, Latin America and Africa (Sub-Sahara) branch and at German embassies in the Near and Middle East and in Asia. Dr. Roell is an ancien of the NATO Defence College in Rome and the Federal College for Security Policy Studies (BAKS) in Berlin.

Ralph D. Thiele is Chairman of the Political-Military Society in Berlin. In forty years of politico-military service, he has gained broad political, technological, academic and military expertise. He has been directly involved in numerous national and NATO strategic issues while serving as executive officer to the Bundeswehr Vice Chief of Defence Staff, Military Assistant to the Supreme Allied Commander Europe, in the Planning and Policy Staff of the German Ministry of Defence, as Chief of Staff of the NATO Defence College, as Commander of the Bundeswehr Transformation Centre and as Director of Faculty at the German General Staff and Command College in Hamburg. He is a member of the German Atlantic Association and a member of the Defence Science Board of the Austrian Ministry of Defence.

Maritime Security and Piracy as Challenges for the EU

Hans-Georg Ehrhart[1]
Institute for Peace Research and Security Policy at the University of Hamburg/IFSH

EXECUTIVE SUMMARY

Globalisation is changing the world and the strategic environment in the 21st century. In this process the relevance of the maritime domain is increasing because it connects people, economies and cultures more than ever, providing for opportunities and security challenges. The threat assessments of the EU and its main member states converge to a high degree. Albeit maritime security is not a topic of special attention, the risks and challenges identified in the various strategy papers may assume a maritime dimension. The EU and its member states have started to come to grips with maritime security challenges such as piracy. They have implemented a variety of policies to tackle the piracy threat off the coast of Somalia. Although the performance has been mixed so far, the EU's efforts have contributed to improving the security of the SLOC in the Indian Ocean. Maintaining good order at sea is in the interest of the European trading nations if they want to prevent and counter possibly increasing negative impacts of piracy and other security challenges to the SLOC. Hence, the EU and its Asian partners should increase their dialogue on and practical cooperation in maritime security issues such as piracy, organised crime, and terrorism, and their root causes.

INTRODUCTION[2]

Globalisation is changing the world and the strategic environment in the 21st century. In this process the relevance of the maritime domain is increasing because it connects people, economies and cultures more than ever. It provides for opportunities and challenges. Since the end of the Cold War and after a brief episode of an unipolar system led by the US during the 1990s, a multipolar world has been emerging that could lead to a cooperative multilateral system in the best-case scenario, and to a confrontational multipolar system in the worst case, or something in between that could be called "coopetition". Be this as it may, Asia and especially China and India will be major players in this century whereas the European Union (EU) is set to evolve as an international actor and security provider. For Asia and Europe, the sea lanes are objectively of huge importance; so is maritime security. The question, however, is whether and how this importance is displayed in the actual EU policy and what kind of security we are talking about?

The EU has been described as the first potential post-modern superpower (Guérot 2004). While in the modern age international relations were state-centric and security was defined primarily by national military capabilities, the post-modern understanding of security is much more differentiated in terms of the multiplicity of actors (international organisations, regional organisations, states, private actors, non-governmental organisations/NGO etc.) and security relevant sectors (diplomacy, economy, humanitarian aid, military, police, development etc.) as well as possible risks and threats ranging from soft to hard security challenges (human security, economic security, environmental security, energy security, military security etc.). This approach is a reaction to the fact that with globalisation the nature of politics is changing too, not least due to the empowerment of individuals and groups by modern technologies. Nevertheless, it remains true that "seapower is at the heart of the globalisation process in a way in which land power and airpower are not, simply because the system is based essentially on sea transportation" (Till 2009: 6).

Therefore, the security of the Sea Lines of Communication (SLOC) is in the interest of all trading nations. Securing the national littorals of the 12-miles zone and the exclusive economic zone (EEZ) is the task of the state whereas the security on the high seas is both an international and a transnational task. The United Nations play an important role as promoter of internationally accepted norms and regimes regulating the maritime space—be it via the International Maritime Organisation (IMO) regarding questions of safety[3], the UN Convention on the Law of the Seas (UNCLOS) regarding questions of the constitution of the oceans[4] or the UN Security Council (UNSC) regarding questions of security[5]. Regional organisations such as the North Atlantic Treaty Organisation (NATO) and mechanisms such

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[2] I am very grateful to Howard Löwen and Torsten Geise for valuable comments.

[3] For more information see http://www.imo.org/Pages/home.aspx

[4] For more information see http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm

[5] For more information see http://www.un.org/en/sc/documents/resolutions/index.shtml

as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP) also have an important role when it comes to the security of the SLOCs. Against this background, this article deals with the EU's approach to maritime security in general and more extensively with the EU's comprehensive approach to piracy off the coast of Somalia. It proceeds along the guiding questions suggested by the organiser.

WHAT ARE CURRENT CHALLENGES WITH REGARD TO MARITIME SECURITY AND PIRACY IN THE REGION?

The question pertaining to what kind of challenges with regard to maritime security and piracy are perceived as important by the EU will be approached by looking into official documents and statements, and putting them in the context of the EU's complex institutional landscape and the role of important member states. In contrast to NATO (NATO 2011), the EU does not yet have an official maritime strategy based on current security challenges. The European Security Strategy from 2003 is still the most authoritative document dealing with security challenges (Council 2003). After touching briefly upon global challenges such as underdevelopment, global warming and interconnected infrastructures, it identifies five key threats: terrorism, proliferation of weapons of mass destruction, regional conflicts, state failure, and organised crime. It emphasizes the link between global and local dynamics and the resulting necessity of being able to deal with security challenges far away via supporting an international order based on a more effective multilateralism. Five years later, the report on the implementation of the ESS basically confirmed the initial threat analysis but added climate change and energy security as additional key threats. While maritime security is not mentioned explicitly, the challenge of piracy is briefly touched upon as "a new dimension of organised crime" and as a consideration for EU activities to create stability beyond its own borders (Solana 2008: 8).

The identified key threats implicitly include the maritime dimension of these threats. That is why the report mentions maritime surveillance as one of the key crisis management capabilities (Solana 2008: 10). The proliferation of weapons of mass destruction may be implemented via maritime transport; terrorists use the maritime environment and attack maritime targets; organised crime is engaged in maritime trafficking of drugs, human beings and weapons. Piracy is seen as driven by organised crime. While not being a security problem in European territorial waters and the EEZs of the EU-Member States (EUMS), piracy off the coast of Somalia has been identified as a security challenge since 2008. It is neither a vital threat nor does it get much attention in the European public. Nevertheless, piracy is threatening the SLOC and the international order of the high sea as well as the lives of human beings and the property of individuals and companies. The fact that piracy off the coast of Somalia has triggered the first EU military naval operation is due to initiative by countries directly concerned by acts of piracy, the relative regional proximity of region which is sometimes referred to as the "wider Mediterranean" (Germond 2010: 47), and the economic relevance of the sea route along the Gulf of Aden for the European-Asiatic trade.

The EU's understanding of security challenges is less state-centred and more societal oriented. Starting from a complex and multi-dimensional concept of security, it has developed different strands of maritime activities. It is a strong proponent of a comprehensive approach to security albeit the struggle to translate this concept into reality. On the one hand, the EU has a fairly well-established maritime dimension in its overall policy; on the other hand, this is often obscured by the complexity of its institutional setting. As to the latter, there is the traditional cleavage between the two main institutional "tribes": the European Commission with its civilian competencies in maritime affairs such as safety, spatial planning and surveillances, and the Council (as the intergovernmental organ of the member states) who is responsible for security in the context of the Common European Foreign and Security Policy (CFSP) and the Common European Security and Defence Policy (CSDP). The ongoing build-up of the European External Action Service (EEAS) is an additional institution led by the High Representative for Foreign Affairs and Security Policy based on the Treaty of Lisbon (2009) with the task to exercise foreign affairs functions in a more comprehensive way[6]. Hence, besides the security challenges mentioned above, one major challenge with regard to maritime security is to bring together the many loose ends of the diverse institutions and their maritime activities in a comprehensive approach, ideally based on a joint maritime strategy.

The above-mentioned threat assessment and the EU structures and policies to deal with these threats are the result of an unanimous political decision of EUMS who of course, also have their national agendas. More interventionist countries like France and the UK, possessing overseas territories, being nuclear powers and permanent members of the UNSC, think and sometimes act in more global terms, while others such as Germany or Poland see themselves more as land powers who are more focused on Europe and its neighbourhood. Hence, the former invest more in naval power than the latter (IISS 2012: 112f. 118f., 170). However, the reproach that the Europeans "have become increasingly 'sea blind'" (Rogers 2010: 5) is somewhat reflected in the strategic defence reviews of the EU's "big three": UK, France and Germany. Genuine maritime threats are hardly mentioned. In the German Defence White Book, the term "maritime security" is not mentioned at all, but all the risks and threats enshrined in the ESS are covered (Bundesminister der Verteidigung 2006: 19-23). Regarding the German navy, it states that it is in a transformation process towards a "Expeditionary Navy" whose tasks include inter alia to secure the SLOC and to counter conventional and asymmetric threats (ibid: 122). The British Strategic and Defence Review mentions "maritime security" twice and elaborates more on the tasks of British naval power: "tackling drug trafficking, piracy and counter-terrorism" and potentially the projection of power inter alia "to keep the sea lanes open, protect the nuclear deterrent and feed strategic intelligence back to the UK" (HM Government 2010: 8). The French White Book ranks the threats of terrorism, cyber attack and ballistic threats as highest followed by pandemics, natural disasters and organised crime (Livre blanc 2008: 59). While maritime security in not covered as a

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[6] From an organisational point of view the EEAS is a third "tribe", although a very young one. Other main players within the EU system of governance are the European Parliament, the European Court of Justice, and the European Court of Auditors.

special topic and piracy is only mentioned once, the White Book displays a more geostrategic approach by underlining among others, the rising importance of the Indian Ocean, which led to the construction of a naval station in the United Arab Emirates. Like the UK, France wants to retain a global power projection capability in order to "preserve our strategic interests and to live up to our international responsibilities" (Livre blanc 2008: 71).[7]

In a nutshell, the threat assessments of the EU and its main member states converge to a high degree. Maritime security is not a topic of special attention but the risks and challenges identified in the various strategy papers may assume a maritime dimension. Since membership in EU and in NATO overlap considerably, NATO's maritime strategy[8] and threat assessment can be read as being in line with the national maritime security interests of its 21 EU members. The maritime strategy specifies: "The maintenance of the freedom of navigation, sea-based trade routes, critical infrastructure, energy flows, protection of marine resources and environmental safety are in Allies' security interests" (NATO 2011: 2). In addition to the tasks of deterrence, collective defence, and crisis management, NATO sees maritime security as "a suitable area for cooperation with partners" in order to contribute to "the maintenance of a secure and safe maritime environment" (NATO 2011; 5) which is challenged by transnational crime such as piracy, illegal trafficking of humans, weapons and narcotics, and terrorists activities (NATO 2011: 2).

WHAT IMPACT DO THESE PROBLEMS HAVE ON EUROPE?

Before dwelling on the impact of piracy in particular, I start with the broader picture of the general relevance of the maritime domain for the EU because it is a major argument for policing the maritime global commons. After several enlargement rounds the EU-27 seem to have shifted more towards the continent. In fact, it broadened its access to the surrounding seas. According to data from the European Maritime Safety Agency, the EUMS have 100,000 km of coastline and 1.200 commercial ports which "handle around 90% of EU external trade and 40 percent of trade between EU countries" (EMSA 2009: 1). 15 percent of the seaborne trade "passes through a few, vulnerable, canals and international straits" (NATO 2011: 2). Given that the EU is a major global trading bloc which accounted for 15.1 percent of world exports (imports: 16.5 percent) in 2010, the importance of secure SLOCs becomes evident[9] (Bundeszentrale für politische Bildung 2012). This is especially valid for the trade between the EU and Asia. Five of the ten non-European major trading partners are from Asia (China, Japan, South Korea, Singapore, India) and the Asian markets are becoming increasingly important and vice versa. Add the geopolitical importance of the Eurasian coastal zone from Shanghai to Hamburg with its strategic choke points such as the Straits of Singapore, Malacca, Hormuz, Bab-el-Mandeb, Suez Canal, and the Strait of Gibraltar (Emmerson/Stevens 2012) and the political instability in various countries bordering this coastal zone

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[7] Translation by the author.

[8] It is NATO's first maritime strategy since 1984.

[9] US: 10.8 (16.3); China: 16.7 (15.1).

(Foreign Policy 2012), the international community should have some reasons to become engaged in securing SLOCs.

The precise impact of these challenges on the EU is very difficult to assess though. Fortunately, worst-case scenarios such as the blockage of the Suez Canal by a terrorist attack have not happened yet. Although the threat of terrorism in Europe is real (Europol 2012), acts of maritime terrorism have been relatively rare in general so far, and Europeans have been targeted only a few times (Chalk 2008). There is an abundance of scenarios with regard to transnational risks such as cyber crime, illegal migration, or drug trafficking. Organised crime in Europe is regularly assed by Europol (Europol 2012). However, resilient analyses dealing with non-traditional threats in the maritime domain and their impact on the EU do rarely exist. That is somewhat different in the case of piracy on which this study concentrates on mainly.

The "Oceans beyond Piracy" project has calculated that piracy costs between 7 and 12 billion US dollars a year until 2009 and 4.9 to 8.3 billion in 2010 with the expectation to increase to 13-15 billion by 2015 (One Earth Future 2010: 25; Geopolicity 2011: IV). There have been direct costs such as for ransoms (176 million USD), insurance premiums (up to 3.2 billion), re-routing of ships (2.4-3 billion), security equipment (up to 2.5 billion), naval forces (2 billion), prosecutions (31 million), piracy deterrent organizations (19.5 million), and cost to regional economies such as trade, inflation and reduced foreign revenue (1.25 billion) (One Earth Future 2010: 25). Regarding piracy off the coast of Somalia, another report states that the cost for 2011 was between 6.6 and 6.9 billion USD (One Earth Future 2012: 1). This study also shows the negative impact that piracy in the Indian Ocean may have on countries like India and Kenya, and it detects worrying trends with regard to increasing seafarer deaths, increasing risk of piracy in West Africa, and increasing impact of piracy on oil trade (One Earth Foundation 2012: 31-38).

Although the figures are broad estimates and do not explicitly analyse the cost for the EU and European stakeholders, they give an indication of the economic impact of piracy on Europe, bearing in mind the economic role of the EU as indicated above and the sizable merchant fleets of the EU members totalling over 6000 ships of 1000 GRT and more (CIA Factbook 2012)[10]. As the EU and its member states are strongly engaged in coping with piracy off the coast of Somalia and its vessels are relatively exposed, it can be roughly estimated that its share of cost is about 15-20 percent of the overall cost (or about one billion USD per year). The annual IMB Piracy Report 2011 shows that vessels from EUMS bore 320 (16 percent) out of 1,850 of attacks between 2007 and 2011 (IMB 2011: 15-16). Among the 11 countries whose vessels were attacked 12 times or more in 2011, were four EUMS: Germany (64), Greece (58), UK (12), and Denmark (12) (IMB 2011: 19).[11]

Regarding the human cost off the coast of Somalia from 2008 to May 2012, 3,356 crew members were taken hostages, and 35 died in 2011. The hostages taken in 2011 came from

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[10]   Panama: 6,413, Liberia 2,771, China 2,030.

[11]   Seven are from Asia: Singapore (65), Hong Kong (27), Japan (19), Malaysia (17), India (14), UAE (12), China (12).

the Philippines (17 percent), China (9 percent) and India (8 percent). With the exception of Italy, only seafarers from non-OECD countries were taken hostage between 2008 and 2012 (ICC-IMB and One Earth Future 2012: 4, 18). In a cynical interpretation, one could conclude that the human cost for the EU is rather low. From a humanitarian point of view, it is absolutely not. If one thinks in economic terms of human capital, seafarers from the traditional labour-providing nations are absolutely vital for the EU merchant fleet.

Seen from a narrow macro-economic point of view, the impact of piracy on the EU is not so dramatic. Two-thirds of the EU trade is intra-EU trade. The most important external trading partners are North America and the Mediterranean countries. Hence, a great part of trade takes place in regions hardly affected by piracy (Engerer 2011: 16). On the one hand, the importance of China as a trading partner has grown considerably and trade relations with other Asian countries might also improve in future. On the other hand, the relevance of sea trade for EU countries has to be qualified: measured by EU's GDP, sea trade is responsible only for 4.5 percent of exports and 6 percent of imports. However, the more EUMS trade takes place at sea, the more they are affected by maritime security challenges. The countries most involved in sea trade are the UK, the Netherlands, Italy, Spain, France and Germany (Engerer 2011: 18). Germany, as the European economic powerhouse, trades 30 percent of its exports and imports with non-European countries, with Asia being the most important region with 15 percent of the exports and 20 percent of the imports. About one-sixth is traded via the sea, and China is the most important recipient of German exports. Thus, German sea trade on less secure sea lanes is increasing (Engerer 2011: 27).

Concluding this section, one can state that Europe is indeed affected by transnational threats and risks, including piracy; however, the concrete impact is difficult to measure. As to piracy, it does harm the EU countries but only in a limited way if one considers the human and economic cost so far. However, given the growing socio-economic inequalities and political instability in countries situated at the coastal zone from Europe to Asia, this may change. If one looks at the broader picture of political order and future world trade in a globalised world, maintaining good order at sea will be a must for the European trading nations if they want to avoid possibly increasing negative impacts of piracy and other maritime security challenges.

WHICH POLICIES DO THE EU AND ITS MEMBER STATES APPLY TO RESOLVE THE CHALLENGE OF PIRACY AND HOW DO THEY COOPERATE?

Since the signing of the Treaty of Maastricht in 1991, the EU has been trying to develop the CFSP and to combine it with its overall external action. This policy is guided by the basic principles of the Union such as democracy, the rule of law, human rights and by common objectives such as to safeguard the Union's values, fundamental interests and security. Eight years later, the CSDP was launched as an additional policy within the CFSP in order "to give the European Union the necessary means and capabilities to assume its responsibilities regarding a common European policy on security and defence" (European Council 1999). If

the EU "wants to play its full role on the international stage" it has to have "the capacity for autonomous action…" (ibidem). The violent crisis in the Balkans during the 1990s and the EU's incapacity to solve it paved the way to the insight that an autonomous European capacity for crisis management is necessary. EU Crisis management comprises the so-called Petersberg tasks, initially defined in 1992 and later on enshrined in Article 43 of the EU Treaty. These tasks span humanitarian and rescue operations, conflict prevention and peacekeeping, peace enforcement, disarmament operations, military advice and assistance tasks, and post-conflict stabilisation tasks (Official Journal 2010).

In the context of the Petersberg tasks, EUMS have forged bi- and multilateral military structures such as the Sea Lift Coordination centre in Eindhoven by the Netherlands and the UK, the European Amphibious Initiative by France, Italy, Netherlands, Spain and the UK or the European Maritime Force EUROMARFOR by France, Italy, Portugal, and Spain (Armedforces 2011). In the framework of the CSDP, so-called civilian and military Headline Goals—including appropriate naval elements such as strategic sea lift capabilities—were decided. The EU Military Committee adopted a Maritime Rapid Response Concept in 2007 and established a Maritime Rapid Response Database of potentially available assets and capabilities. The gradual implementation of the stated goals is supervised by the European Defence Agency (EDA). Yet, the whole process is bottom-up, that is, the member states are the driving forces. This is one reason why the process of developing capabilities has been running so sluggishly and the recent idea of pooling and sharing of assets has come up in 2010, but without much success so far (Biscop and Coelmont 2011). Due to financial constraints, the EU tries to improve civil-military synergies, for example, the cooperation between the EDA and the Commission in the field of maritime surveillance. These policies also serve as the declared political goal of combating piracy off the coast of Somalia.

The EU counter-piracy policy is embedded in its overall approach to Africa, and focused on Somalia and the Horn of Africa. With regard to Africa, in 2004, the EUMS agreed to a "[c]ommon position on conflict prevention, conflict management and conflict resolution in Africa" which defined among others, not only the objective to strengthen African crisis management capabilities but also to become engaged in crisis management in Africa whenever necessary (Council 2004: 25). In 2005, the European Council adopted an Africa strategy covering inter alia topics such as peace and security, human rights, good governance, and development cooperation. In this document the EU confirmed its intent to cooperate with its African partners in questions of crisis prevention and management, and to directly support them in the framework of CSDP. Two years later, the EU and the AU approved a joint strategy (JAES) which defines under the heading "promoting a safer world" concrete steps of cooperation in peace and security issues such as supporting the built-up of the African Peace and Security Architecture and capacity-building (Council 2007: 5). The JAES builds the fundament for the Action Plan 2011-2013, which details the various initiatives within the eight partnerships among them and the issue of peace and security. The latter includes an initiative to exert "coordinated and concerted efforts to combat piracy, including in the framework of the UN, and consider the elaboration of legal instruments which may be deemed appropriate to enhance cooperation on all piracy related issues" (Joint Africa EU Strategy 2010: 18).

The EU's engagement of combating piracy off the coast of Somalia is part of its political approach towards the Horn of Africa region. The Somalia issue is integrated into an overall approach towards the region. In December 2009, the Council adopted "An EU Policy on the Horn of Africa—Towards a Comprehensive EU Strategy". It was supposed to provide for "strategic guidance" and to help "articulate EU action in response to regional challenges on the Horn" (Council 2009: 2). In an effort to drive the process further, the Council adopted a "Strategic Framework for the Horn of Africa" in November 2011 (Council 2011a), which identifies five focal areas of EU engagement: building democratic and accountable state structures; contributing to peace, security, conflict prevention and resolution; mitigating the effects of insecurity in the region; reducing poverty and promoting economic growth; and fostering regional cooperation. While the drafting and implementation of concrete policies is left to the Commission, the Council and the Member States, the framework aims to help create synergies between the various strands of action and to increase the EU's overall impact in the region. The appointment of a Special Representative for the Horn of Africa is intended to support this. The framework regards Somalia and the issue of piracy as major impediments to regional peace and security and they are one of the priorities of the Special Representative. This approach is based on the EU's earlier assessment of "the strategic importance of peace, stability and prosperity in Somalia" (Council 2006: 7) and its commitment to following "a comprehensive strategic framework" (Council 2006: 8). In particular, this involves supporting the overall reconstruction of the country, creating structures of governance, encouraging reconciliation, and restoring the rule of law (Council 2011b: 15-18).

HOW DO THE EUROPEAN COUNTRIES AND THE EU TRY TO COOPERATE WITH EACH OTHER AND WITH EXTERNAL ACTORS?

The main framework for cooperation to cope with maritime security challenges in general and the anti-piracy policy in particular comprises two systems of governance. The first one deals with internal coordination and cooperation within the EU and its complex set of actors, policies and institutions (internal security governance). The second relates to multilateral cooperation on the regional and international level (external security governance) (Ehrhart 2011).

With regard to *internal governance*, the EU has tried to improve its civil-military coordination under the heading of CMCO within the CSDP. Since 2009, the main institutional framework for dealing with external, security and defence issues has been the European External Action Service (EEAS)[12], which includes bodies responsible for civil and military crisis management and for regional and global issues. One of the actual tasks of the EEAS is to support the EUMS in the fight against piracy off the Horn of Africa (EEAS 2012).

The Commission has launched its programmatic idea to build up an Integrated Maritime Policy (IMP) in 2007 (European Commission 2012a). The IMP is an effort to bring together already existing activities in the maritime domain in an overarching framework. The

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[12]   The personnel of the EEAS have been recruited from the Council, the Commission and EU Member States.

question behind it is how offshore government activities by EUMS could be rationalised. One important aspect was the acknowledgement of the responsible Ministers for Maritime Affairs of the necessity to reinforce maritime governance in general and the development of a maritime surveillance network in particular. Since then, efforts have been undertaken to identify and network national, regional and sectoral projects and activities in areas such as customs, pollution response, search and rescue, border surveillance, non-proliferation, and maritime security operations (Council 2008). Yet, being a primarily economically driven project, the security dimensions in IMP "are fairly limited and the military dimension quasi non-existent" (NATO Parliamentary Assembly 2010: 9).

The Council wants to go further and pleads for the elaboration of a maritime security strategy in order to tackle "the threats identified in the European Security Strategy, while ensuring coherence with EU internal policies, including the EU Integrated Maritime Policy". (Council 2010: 1) A task force with specialists from the EEAS, the Commission and EUMS has started to work on this. The idea is to link the civilian and military capabilities of the EU and Member States. A concrete project is the "Common Information Sharing Environment for the surveillance of the EU maritime domain" (CISE) which aims "to generate a situational awareness of activities at sea, impacting on maritime safety and security" (European Commission 2010: 2).

Piracy has been identified as a case in point by the EEAS and the Commission who's former Commissioner for Fisheries and Maritime Affairs, Joe Borg, stated: "The EU is committed to doing all it can to play its part in deterring and stamping out acts of piracy. We need an integrated civilian-military approach where all concerned work together. The European Commission contributes to this through improving maritime surveillance and by helping to set up a firm international legal framework for ensuring security at sea" (European Commission 2009). However, creating joint maritime awareness is still a work in progress. A Wise Pen Panel mandated by the European Defence Agency (EDA) to compile a report on the EU efforts to integrate mechanisms to maritime surveillance within CSDP stated for instance that "[c]onfusion and competition continue because of a lack of agreed definitions of even basic terms like safety and security. People are talking past each other." (The Wise Pen Panel 2010:3) Thus, the project to improve maritime surveillance has not yet been able to significantly contribute to the comprehensive approach that the EU is pursuing with regard to Somalia, and of which, Operation Atalanta is supposed to be a part of. However, if realised, the project could be a major asset for dealing with the piracy issue.

The *external governance* of coping with maritime security in the case of piracy is embedded in a multilateral context (Ehrhart and Petretto 2012). On the global level, two informal contact groups are of special relevance: The International Somalia Contact Group (ICG) installed in 2006 and the Contact Group on Piracy off the Coast of Somalia (CGPCS) created in 2009. The former is headed by the Special Representative of the UN Secretary General and comprises more then 40 participants and observers, including the EU and many of its member states. The ICG has the task to coordinate and calibrate the positions of its international, regional and Somali members pertaining to the political problems in Somalia. The CGPCS counts over 60 state and non-state members. Its main working bodies consist of five

working groups dealing with military issues (WG 1), judicial issues (WG 2), Best management Practices (WG 3), Information (WG 4) and Financial Networks (WG 5). The goal of the CGSCS is to tackle the challenge of piracy in a comprehensive manner (International Contact Group on Piracy off the Coast of Somalia 2012).

Other relevant players and EU partners on the UN level are the United Nations Office on Drugs and Crime (UNODC), the United Nations Development Programme (UNDP) und the International Maritime Organisation (IMO). UNODC manages a trust fund established in 2010 to support notably law enforcement projects via capacity building in Somalia and—jointly with the EU—in the region. The IMO is also engaged in this field especially by initiating the "Code of Conduct on the Suppression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden" (Djibouti Code of Conduct). This mechanism aims at furthering the regional cooperation of the littoral states of the Indian Ocean and the Gulf of Aden. The UNDP is among others engaged in supporting civilian police programmes.

The most important regional partners of the EU are the AU and the Intergovernmental Authority on Development (IGAD). The EU has been supporting the African Union Mission in Somalia (AMISOM) with more than 400 million Euros since 2007. The IGAD is the major sub-regional organisation dealing with the Horn of Africa region and an important political partner for the EU. Other cooperation partners are the USA, NATO and other states who are militarily engaged in anti-piracy operations off the coast of Somalia. Besides the European Naval Force's Operation Atalanta, there are the US-led Combined Task Force (CTF 151) and the NATO-led operation "Ocean Shield" plus ships from more then a dozen other states, such as India, China and Russia. These activities are being coordinated by various informal bodies such as the "Shared Awareness and Deconfliction" mechanism chaired by the EU, NATO and the US, the EU's "Maritime Security Centre Horn of Africa (MSCHOA)" and the United Kingdom Maritime Trade Operations (UKMTO). The complex web of EU partners in the fight against piracy off the coast of Somalia is complemented by non-state actors like shipping companies, vessel operators, industry associations, and seafarers associations.

Prevention	Disruption	Prosecution	Political Dialogue
Shipping Companies	Atalanta	National Courts (bilateral agreements)	TFG
Vessels Operators	NATO Ocean Shield	National Courts	UN
Seafarers	CTF 151	UNODC	AU
Industry Associations	National Deployers	UNDP	IGAD
Flag States	PSCs	IMO	Arab League
IMO	MSCHOA	Europol/Interpol	States (US, Japan...)
Int. Contact Group on Piracy (WG3+4)	UKMTO	Int. Contact Group on Piracy (WG2+5)	Int. Contact Group for Somalia
	SHADE		
	Int. Contact Group on Piracy (WG1)		

Civil-Military	(Maritime) Industry
Public – Private	National
Informal	Multilateral

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WHICH POLITICAL INITIATIVES ARE IMPLEMENTED TO SECURE THE SLOCS?

The EU is engaged in dealing with state fragility because of its potential negative impacts on regional and international security. Somalia is a case in point that has become more prominent on the political agenda since the rise of piracy off the coast of Somalia. While the EU is currently trying to forge a comprehensive approach in its Somalia policy (European Action External Action Service 2011), it started with a piecemeal course of action. Following the collapse of Somali state structures in the early 1990s, the EU initially resumed its engagement solely in the area of humanitarian aid. The other two focal points of EU engagement have been development cooperation and political dialogue.

The EU became a major donor in the field of development assistance: the aid budget of 215.4 million Euro originally planned for 2008 to 2013 was augmented by 175 million in August 2011 (European Commission 2011). Key areas have been governance and security, education, economic development and food security. The EU has also become a firm supporter of peace initiatives held under the auspices of IGAD. This process finally led to the establishment of Somalia's Transitional Federal Institutions (TFI), including a Federal Transitional Charter, the Transitional Federal Government (TFG) and a Transitional Parliament, in 2004. Since then the TFI have been the official representatives of the Somali state in the international arena, despite the fact that they have hardly resided within the country, have never controlled it and were repeatedly accused of massive fraud and corruption, as well as the fact that parts of the country have either claimed their independence or autonomy within the state of Somalia.

From 2004 onwards, the future of Somali statehood was further negotiated in international conferences with the ultimate aim of ending the transitional period. This was finally achieved in August 2012 when, in an initial stage, a new constitution was drafted and accepted by a National Constituent Assembly as envisaged by the EU- and UN-sponsored Roadmap for the End of Transition in Somalia in September 2011. In the second stage, a new parliament was appointed by a group of traditional Somali Elders, advised by a Technical Selection Committee, which then elected a speaker and a president. In addition to ending the violent conflicts in diverse parts of the country, particularly in south-central Somalia, the next steps will then be to set up permanent democratic structures, resolve the status of the various regions and adopt the provisional constitution in a national referendum (Ehrhart and Petretto 2012).

EU policies towards Somalia have become more securitized since 2007 as a result of several components: the provision of security onshore, including the rebuilding of the Somali security sector, and the countering of pirates' activities. With regard to the first component, major support has been provided for AMISOM. Its primary task is to assist the TFI in facilitating the provision of humanitarian assistance and in creating conditions for reconstruction, reconciliation and the sustainable development of Somalia (European Commission 2012b). Moreover, the EU has put some effort into enhancing security in the country via the European Union Training Mission (EUTM) for Somalia, which was established in 2010, in Uganda. The objective of this military mission is to contribute to the reform of the Somali security sector by providing training for several thousand recruits to be integrated into the Somali National Security Force and by funding them and paying their salaries. The entire undertaking is being executed in close co-ordination with the UN, AMISOM, Uganda and the US.

The maritime component was set up in 2008, when the increasing challenge of piracy off the Somali coast impinged upon the EU's agenda. The Council therefore decided to launch its first military naval mission, EU Naval Force Somalia—Operation Atalanta (EUNAVFOR) (Council 2008). EUNAVFOR's mandate is based on the direct request by the TFG for the international community's support in tackling the problem of piracy. Accordingly, the mission works towards four objectives: the protection of vessels from the World Food Programme (WFP) delivering food aid to Somalia and the protection of AMISOM shipping; the protection of vulnerable vessels cruising off the Somali coast; the deterrence, prevention and repression of acts of piracy and armed robbers; and the monitoring of fishing activities off the coast of Somalia (European Union 2012a). The operation's overall political objective is to improve maritime security in the region, while its politico-military objective is to deter piracy and to strengthen the security of main maritime routes.

Via the Instrument for Stability, the EU has also focused on improving the regional response towards piracy by means of its Critical Maritimes Routes Programme. Finally, the EU initiated the mission "Regional Maritime Capacity Building for the Horn of Africa and the Western Indian Ocean" (EUCAP NESTOR) in 2012: this civilian operation is a regional training mission that is also aimed at strengthening the maritime capacities of selected countries in the region, including Somalia (European Union 2012b).

The EU's comprehensive approach to Somalia and the piracy issue is still a work in progress with mixed results so far. On the one hand, there has never been such a high degree of inclusion and co-ordination embracing state and non-state, sovereign and private, and civilian and military actors as in the fight against Somali piracy. On the other, the scourge of piracy is still a reality. The objective of protecting WFP and AMISOM shipping has been successful because none of these vessels has been hijacked since 2008. With regard to the task of protecting other vulnerable vessels, the establishment of the IRTC has led to a significant reduction in attacks within the Gulf of Aden but also to the ballooning of piracy in the Indian Ocean; moreover, the success rate of Somali pirates in general has been reduced considerably, especially in 2012, after years of rising attacks. For instance, the number of hijackings in the Gulf of Aden has decreased from 31 to 4 so far (ICC-IMB 2012: 8).[13] Nevertheless, given that this year, 57 attacks off the coast of Somalia were reported between January and September 2012, it can be stated that the objective of the deterrence, prevention and repression of acts of piracy has been achieved only partially so far. A crucial reason for this is the insufficient land-based support dealing with the structural causes of the phenomenon. Another one is the fact that large numbers of suspected pirates arrested by naval forces have to be released immediately due to the lack of capacities for prosecution, and the unwillingness of many states to prosecute pirates in their own courts (UNSC 2012, p. 208).

The EUTM's co-operation with key partners has been applauded (ICG 2011). However, the EUTM faces major problems. First, Somalia needs a totally new set of security structures to properly command and control its security forces. Second, the security forces are selected by and trained for the TFG, reinforcing the perception that they are there only to support the TFG and not to serve the general population. Third, as the EUTM is not present within Somalia, it is hardly possible to oversee the mission.[14] Regarding their performance in delivering humanitarian aid, the 2011 famine demonstrated the difficulties faced by the TFI and its major partners in dealing with this catastrophe in a co-ordinated fashion. As far as development assistance is concerned, the situation is similar. In particular, the management of projects via remote control from Nairobi has not delivered the desired results, both with regard to aligning priorities to local needs and in terms of oversight.

So, the EU has implemented a variety of policies to tackle the Somalia challenge as the main reason for the piracy threat in the Indian Ocean. Although the performance has been mixed so far, it has contributed to improving the security of the SLOC in the Indian Ocean, albeit without being able to eliminate the root causes of piracy so far. This is mainly due to the fact that until now, the main emphasis has been on a naval-based containment approach.

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[13]   The reasons for this are manifold, such as: the adaptation of the navies' tactics, improved operational coordination, refined Best Management Practices complied with by many of the ship owners, and the growing use of private security companies on merchant vessels and also the interventions by regional players in Somalia. However, there is also some suspicion that a considerable amount of attacks is not reported for financial and practical reasons. See Bruxelles2 (2012).

[14]   This could change in 2013 because the EU is considering the option of transferring the training mission to Mogadishu

WHAT WOULD BE THE OPPORTUNITIES FOR AND BENEFITS FROM A CLOSER COOPERATION BETWEEN EUROPE AND ASIA?

The world's oceans are vital global commons that are central to life. The SLOCs are crucial for the proper functioning of trade in a globalised world. From this follows that Asian and European states have common interest in securing SLOCs. The main international framework for dealing with the high sea is the UN. The basic legal documents are UNCLOS (especially article 100, 101 and 105) in general and the UNSR resolutions related to piracy in particular (UNSC Res. 816, 838, 846, 851, 897, 19918, 1950, 1976, 2015, 2020). Moreover, the UN offers a framework for launching new initiatives and a concerted approach to tackling the problem more successfully. Good examples are the International Contact Group on Somalia and the CGPCS.

The latter comprises Asian states such as China, Japan, India, Republic of Korea, Malaysia, The Philippines, Singapore, and Thailand. The differentiated structure of the CGPCS dealing with the major problems of piracy offers a unique environment for political and practical exchange of ideas, and lessons learnt on practices, coordination and action. The framework is not only relevant for the issue of Somali piracy but in principle, also for dealing with the piracy problem worldwide. Asian partners are engaged in policing the Indian Ocean—be it independently or as part of the Combined Maritime Forces such as CTF 151. In doing so, they contribute to fight piracy, to enforce international law, and to secure the SLOCs. Reciprocally, EU Member States such as the UK, Denmark and the Netherlands participate in ReCAAP.

Fighting against piracy on land and policing the sea is the primary task of the littoral states of cause. In the Horn of Africa region however, states are either fragile and/or lacking maritime capacities to do the job. In the first case, Asia and Europe could learn from each other's experience with their engagement in fragile states. As to maritime capacity-building, stakeholders from both regions can draw on recent experiences, which could be exchanged or even jointly assessed in order to speed up the learning cycle. On the one hand, it is clear that each case is different due to the special local and historical circumstance. On the other hand, the mutual knowledge-base could be widened and improved.

The example of ReCAAP serves as a reminder that regional cooperation is decisive for successfully coping with maritime threats. Regional cooperation starts with building trust and concrete projects. The aim is to cope more effectively with a common security challenge; hence, the need for increased security governance. This is not merely a military task but first and foremost a political endeavour which has to be implemented in a comprehensive way by dealing with various assets on the basis of a sound regional and country strategy. Again, an Asian-EU exchange on these policies and strategies could be beneficial in terms of learning from each other but also for opening avenues for future cooperation in dealing with maritime security issues.

The EU's comprehensive approach to Somalia demonstrates that such an approach is difficult to implement because there are many challenges and stumbling blocks. This is especially true on the local level. If the state concerned has no functioning government but is

a deeply divided, partially war-torn country with a clan-based society resting on traditional values, international state-building and blueprints are hardly helpful. Direct intervention on land is not the primary choice, whereas indirect intervention by remote control is difficult to steer. Since the root causes of piracy can only be tackled by political reforms on land, the question to be debated is what kind of policies by external actors is conductive to an acceptable situation.

Another opportunity for cooperation is threat analysis, which can improve mutual understanding and lead to practical cooperation. Looking for synergies in the provision of maritime security is not the worst approach in times of economic hardship. On the one hand, policing the sea should be based on the principle of subsidiarity, that is, the states of the region have the primary responsibility for security. On the other hand, sharing tasks and supporting partners alleviates the respective burdens and strengthens global maritime security. However, the EU has still a long way to go to become an autonomous maritime security actor with global outreach. After the (ongoing) experience with its first maritime operation, Operation Atalanta, the next steps are to create a common information-sharing environment and to forge a comprehensive maritime strategy.

WHICH LESSONS CAN BE LEARNT FROM THE EUROPEAN EXPERIENCE WITH REGARD TO ISSUES OF MARITIME SECURITY SUCH AS PIRACY OFF THE COAST OF SOMALIA?

Maintaining good order at sea is in the very interest of the European trading nations if they want to prevent and counter possibly increasing negative impacts of piracy and other security challenges to the SLOCs. Given the maritime and colonial history of some European states and their ability to rule the waves by naval power, one can state today that times have changed significantly (Cozens 2009). The reason for this are manifold, including the loss of great power status, the end of colonialism, the revolutionised construction of merchant ships, and the deliberate decision to invest less in national navies. Parallel to this maritime decline of Europe, Asian states emerged or re-emerged as maritime nations that were more competitive in economic terms and more capable in naval terms. At the same time, the strategic importance of the sea grew considerably for Asian states as mirrored by the increasing investment in naval power (Rogers 2009: 42). The EU and its member states have recently started to come to grips with maritime security challenges such as piracy. Although there is still a lot to do, practices in combating piracy so far lead to the following recommendations:

EU

1. Improve internal governance

The process of European political integration must be continued. The development of Common Foreign and Security Policy and a Common European Security and Defence Policy has to be accelerated and combined with an increased effort to create an integrated and com-

prehensive maritime policy. Effective internal governance calls for less bureaucratic turf wars and more preparedness of EUMS to renounce on national egoisms.

2. Build joint maritime surveillance

The EU should strive for a common understanding of risks and threats to security emanating from the maritime environment. For this, the ongoing project of networking existing national, regional and global EU assets in order to create a "Common Information Sharing Environment for the Surveillance of the EU Maritime Domain" should be accelerated.

3. Improve external governance

Cooperation with external actors in a crisis environment is essential for dealing with security challenges. Building reliable stakeholder partnerships with international and regional, state and private, civil and military actors may alleviate the burden and could make success more probable.

4. A comprehensive approach is needed but is no guarantee for success

The EU should improve its nascent comprehensive approach towards Somalia, while at the same time bear in mind that even a perfect comprehensive approach cannot guarantee success given the manifold local, regional and international intricacies of the Somalia and piracy issue.

5. Towards a maritime strategy

The EU should develop a maritime strategy, including the maritime aspects of piracy and other threats to security in the maritime environment.

6. Speak with one voice

The EU should speak with one voice—represented for example by the EU Special Representative for the Horn of Africa—in the informal international Contact Groups based on both a joint EU policy and the intensive coordination of Member States prior to each meeting.

EU and Horn of Africa region

7. Support regional organisations

The EU should continue its effort to support the build-up and functioning of the AU's strategic planning, command and control structures. It should also support the reform process of IGAD and contribute to the organisation's efforts to develop programmes for Security Sector Reform.

8. Build regional capacities

In addition to the civilian Regional Maritime Capacity-Building mission EUCAP Nestor, the EU should coordinate all Member States' programmes and activities related to maritime

capacity-building in the region in order to empower the states with access to the sea to protect their coastal and their exclusive economic zone.

EU and Somalia

9. Follow a "Somalia first" approach

It is common sense that the solution for the piracy challenge is to be found on land. Therefore, the EU should follow an explicit "Somalia first" approach—in contrast to a possible "piracy first" departure—because piracy off the coast of Somalia is primarily rooted in the country's political and socio-economic conditions. Piracy as a general phenomenon calls for a different strategy.

10. Engage with a variety of local partners

The EU should become more engaged with local partners and strengthen its multi-track approach in Somalia by furthering cooperation with other political players than the central government, that is notably with local civil society actors, clans and local and regional administrations. Support has to be pegged to clear criteria and transparent benchmarks

11. Support the emergence of a Somali legal system

The EU should support the emergence of a Somali judicial system while at the same time respecting and cultivating traditional ways of legal practices. In the end, laws based on the Islamic, traditional and modern laws will coexist and influence each other.

12. Towards a decentralised political system

The EU should support reforms of the new Somali government provided they are based on an inclusive political process with a more decentralized political system in which significant sections of power and resources are channelled to local administrations.

EU Operation Atalanta

13. Operation Atalanta should be enhanced and supported in order to have a better effect on the cost-benefit-calculus of the pirates. This could be done inter alia by forgoing the catch and release practice, putting more emphasis on tracking financial flows, prosecuting the investors in Somalia and elsewhere, especially by supporting the judicial capacities of local administrations, and by disabling the pirates' capacities on shore provided that no person is harmed.

14. Prolong Atalanta's mandate

The mandate of Operation Atalanta should be prolonged beyond 2014 and widened by the inclusion of other security-related tasks.

EU and Asia

15. Strengthen EU-ASEAN cooperation in maritime security

The EU and ASEAN+3 should increase their dialogue on and practical cooperation in maritime security issues such as piracy, organised crime, and terrorism and its root causes, building on the Plan of Action to Strengthen ASEAN-EU Enhanced Partnership (2013-2017).

16. Create a common information-sharing environment

The EU and Asian partner should explore opportunities for working together in the crucial field of maritime surveillance by building a common information-sharing environment.

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Good Order at Sea in Southeast Asia

Sam Bateman and Jane Chan[1]
S. Rajaratnam School of International Studies (RSIS),
Nanyang Technological University

EXECUTIVE SUMMARY

Good order at sea ensures the safety and security of shipping and permits countries to pursue their maritime interests and develop their marine resources in an ecologically sustainable and peaceful manner in accordance with international law. A lack of good order at sea is evident if there is illegal activity at sea or inadequate arrangements for the safety and security of shipping.

At present we lack good order at sea in Southeast Asia. Problems in regional waters include piracy and armed robbery against ships, the threat of maritime terrorism, illicit trafficking in drugs and arms, people-smuggling, pollution, illegal fishing and marine natural hazards, such as tsunamis and cyclones. Managing these problems requires regional cooperation, as well as cooperation between agencies at a national level. While much progress has been made, particularly in the Malacca and Singapore Straits, present levels of cooperation elsewhere fall short of what is desirable.

The recommendations in the paper are grouped according to the following key outcomes:

- **Enhanced Regional Cooperation.** More might be done to institutionalize the process of regional cooperation for good order at sea, including the development, where appropriate, of institutional arrangements and capacity-building.

- **Improved Risk Assessment and Reduction.** A more effective and cooperative approach is required to the analysis of threats and contingency planning for major maritime security incidents that might occur in the region.

- **Wider Information Sharing.** A higher level of good order at sea in Southeast Asia requires that regional countries takes steps to enhance the sharing of information between them relevant to the detection, prevention and suppression of threats to good order at sea.

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[1]   Sam Bateman is Advisor to the Maritime Security Programme at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University. He is a former Australian naval commodore. Jane Chan is Research Fellow and Coordinator of the Maritime Security Programme at RSIS.

INTRODUCTION

Sitting astride key sea lines of communication (SLOC) between the Indian and Pacific Oceans, Southeast Asia is a distinctive maritime region, hosting major straits such as the Straits of Malacca and Singapore (SOMs), the Lombok/Makassar Straits, the Sunda Strait and the Philippines Straits. Its strategic location coupled with the high volume of seaborne trade passing through regional waters are both economically and strategically important to the wider Indo-pacific region. Maritime related issues and concerns have a major influence in interstates dynamics between regional countries and in relations between these countries and the rest of the world. These issues include concerns over safety and security of SLOCs with a focus on seaborne trade and energy supply, increasing emphasis on maritime platforms in defence capability, and the attention given to offshore sovereignty and maritime jurisdiction.

Much is happening in the maritime domain. Most Southeast Asian navies and maritime enforcement agencies are on the path of modernizing their capabilities and are growing at a rapid pace. The volume of shipping traffic passing through the region increases year on year, even though the ratio of these vessels calling on regional ports remains roughly unchanged. The region is also experiencing a massive expansion of offshore oil and gas exploration and exploitation activities within its waters. Illegal activities at sea are still prevalent, and in the last few years, there has been a resurgence of piracy in Indonesian waters and in the southern part of the South China Sea. Competing sovereignty and jurisdictional claims persist in the South China Sea and elsewhere in the region. These inhibit the introduction of effective arrangements for maritime safety and security, and marine environmental protection.

All ten Southeast Asia countries are members of the Association of Southeast Asian Nations (ASEAN).[2] In recent years, maritime security matters have been high on the agenda of both ASEAN and the ASEAN Regional Forum (ARF). ASEAN held a Workshop in Batam in September 2007 on the establishment of an ASEAN Maritime Forum that would exchange ideas not only on maritime security issues but also on other broad, cross-cutting issues, such as the protection of the marine environment, illegal fishing, smuggling and maritime transportation.

The 15th Meeting of the ARF in Singapore in July 2008 agreed to establish an ARF Inter-Sessional Meeting (ISM) on Maritime Security to provide an annual platform for discussion of maritime security issues, including increasing cooperation and capacity-building, as well as specific concerns such as piracy and armed robbery against ships and the smuggling of goods and persons. Indonesia, Japan and New Zealand have since co-hosted three ISMs on maritime security; the fourth ISM was co-hosted by the US, Indonesia and the Republic of Korea in June 2012 at San Francisco.

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[2] ASEAN was established in Bangkok in August 1967. The original members were Indonesia, Malaysia, the Philippines, Singapore and Thailand. Brunei joined in 1984, Vietnam in 1995, Laos and Myanmar in 1997, and Cambodia in 1999.

GEOGRAPHICAL SETTING

The map in Figure 1 shows the maritime geography of Southeast Asia. This is arguably one of the most complex areas of maritime geography in the world. As a consequence of extended maritime jurisdiction under the 1982 UN Convention on the Law of the Sea (UNCLOS), virtually all sea areas of Southeast Asia are enclosed as territorial sea, exclusive economic zone (EEZ) or archipelagic waters. This puts a premium on the international law of the sea in the region, particularly with regard to navigational regimes and the rights and duties of states in the various maritime zones.

Figure 1 – Southeast Asia

Major straits and booming ports are important features of the Southeast Asian maritime environment. The archipelagic nature of the region and its relative lack of land-based transport infrastructure mean that shipping is extremely important in the region. The region sits astride key access routes between the Indian and Pacific Oceans that are economically and strategically important to the economies of Northeast Asia, the United States and the emerging naval powers of Asia.

The maritime geography of Southeast Asia creates numerous straits, as well as other "choke points" for shipping. These straits occur both along the coast of mainland Asia where the island chain presses close into the coast (e.g., the Straits of Malacca and Singapore), and through the off-lying islands and archipelagos (e.g., the San Bernadino Strait in the Philippines, the Balabac Strait North of Borneo, and the Sunda and Lombok Straits through the Indonesian archipelago).

The marine environment of Southeast Asia is extremely complex and rich in marine resources, both living and non-living. It has an abundance of coral reefs, mangroves and sea

grass beds, which supports a rich array of marine animals and plants—probably the most diverse marine flora and fauna in the world. However, the preservation and protection of this environment, the conservation of species, and the exploitation of its resources is seriously complicated by conflicting and overlapping claims to maritime jurisdiction and the lack of agreed maritime boundaries.

The lack of agreed maritime jurisdiction in the South China Sea is an important factor that explains slow progress towards a cooperative management regime. This is partly a consequence of the problematic nature of maritime boundary-making. The geography of the region, with its concave areas of coast and numerous offshore islands subject to conflicting sovereignty claims, means that straight line maritime boundaries of a conventional nature are quite unlikely in many parts of the area. Many boundaries, or at least their end points or turning points ("tripoints"), will require the agreement of three, or even more, countries.[3]

Unresolved boundary disputes have in many instances perpetuated some of these issues. The lack of maritime boundaries clearly complicated the matter of identifying maritime jurisdiction and has its implication on effective enforcement, including against both IUU fishing and piracy and armed attacks against ship, which remain significant non-traditional security threats in the South China Sea. Regional countries must recognise that cooperation is imperative and states will need to deal with these illegal activities in a collective manner. In the absence of agreed maritime boundaries, bilateral and multilateral agreements should be negotiated to provide the necessary cooperation for good order at sea.

THREATS TO GOOD ORDER AT SEA

Good order at sea ensures the safety and security of shipping and permits countries to pursue their maritime interests and develop their marine resources in an ecologically sustainable and peaceful manner in accordance with international law. A lack of good order at sea is evident if there is illegal activity at sea or inadequate arrangements for the safety and security of shipping.

At present we lack good order at sea in Southeast Asia. Problems in regional waters include sovereignty disputes, piracy and armed robbery against ships, the threat of maritime terrorism, illicit trafficking in drugs and arms, people smuggling, pollution, illegal fishing and marine natural hazards, such as tsunamis and cyclones. Managing these problems requires regional cooperation, as well as cooperation between agencies at a national level. While much progress has been made, particularly in the Malacca and Singapore Straits, present levels of cooperation elsewhere fall short of what is necessary. Effective cooperation in the South China Sea, the maritime heart of Southeast Asia, is becoming even more difficult as tensions escalate over the sovereignty disputes in the sea.

Any lack of good order at sea is due to several factors. Difficulties arise in combating illegal activity at sea due to inadequate resources, ineffective national legislation, poor

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[3] Sam Bateman and Ralf Emmers, eds, *Security and International Politics in the South China Sea: Towards a Cooperative Management Regime* (Abingdon: Routledge, 2008), p 236.

coordination between national agencies and a shortage of trained personnel. The lack of maritime boundaries in parts of the region further complicates the situation.

Piracy and Armed Robbery against Ships

Table 1 shows the number of piracy and armed robbery incidents in Southeast Asia. Data from the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) Information Sharing Centre shows that the situation with piracy and armed robbery against ships in Southeast Asian region has improved in 2012 compared to 2011.[4] In large part, this has been due to the improved situation in the South China Sea and the Straits of Malacca and Singapore.[5] However, there was a marked increase in attacks in Indonesian waters in comparison with the previous four years, from 21 actual incidents in 2008, 14 in 2009, 37 in 2010, 47 in 2011, and 65 in 2012.[6]

Most attacks in the region are on vessels at anchor, in port or entering or leaving a harbour. This is especially prevalent in Indonesian ports and anchorages such as Belawan, Dumai, Taboneo, and off Pulau Karimun/Batam and Bintan, many of which are oil and chemical facilities usually crowded with product tankers awaiting cargoes. These attacks are usually of a minor nature and are best countered by more effective policing by port authorities, including active patrolling of ports and anchorages.

Table 1: Piracy in Southeast Asia −2008-2012

Location	2008	2009	2010	2011	2012
Gulf of Thailand			1		
Indonesia	22	19	47	49	71
Malaysia	13	15	18	17	11
Myanmar		1		1	
Philippines	8	5	5	6	3
Singapore			2	3	2
South China Sea	7	13	25	18	7
Straits of Malacca and Singapore	11	9	8	26	13
Thailand		2	1		
Vietnam	12	8	13	8	4
TOTAL	73	72	120	128	111

Source: ReCAAP ISC, Piracy and armed robbery against ships in Asia – Annual Report, 2012.

The southern area of the South China Sea is one area where attacks are still occurring on vessels underway. Although the number of incidents reported is trending downwards, there has

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4   ReCAAP Information Sharing Centre, *Piracy and Armed Robbery against ships in Asia – Annual report for 2012*.

5   Ibid, p.13.

6   Ibid, p.12.

been seven hijacking incidents report in the last five years. All but one of the hijacked vessels have been recovered by the authorities. [7]

With the exception of security in some ports and anchorages and in some limited areas of open sea, the situation with piracy and sea robbery in the region appears to be under control. The measures taken by regional countries both at sea and onshore have largely been effective. There are no grounds for the operational involvement of non-regional countries in providing security at sea against piracy and sea robbery in Southeast Asia. Nevertheless, contributions from non-regional countries would still assist in building the capacity of regional countries to provide security in ports, anchorages, and littoral waters.

ReCAAP ISC, which was formally launched in 2006, is a very significant achievement that provides the basis for regional cooperation to counter piracy and armed robbery against ships. To date, it involves all ASEAN nations (except Indonesia and Malaysia) and ten other extra-regional countries. It includes an information network and a cooperation regime to prevent piracy and armed robbery against ships in Asian waters. ReCAAP has thus far been successful in formally bringing together most of the regional countries and stakeholders countries to come together to create an information sharing and capacity building platform amongst the relevant maritime agencies (e.g., port authorities and enforcement agencies) to combat piracy and armed robbery against ships. Although both Indonesia and Malaysia are not members of ReCAAP, both countries have demonstrated good operational partnership. Similar platforms and arrangements may be useful in dealing with other illegal activities in the region.

Maritime Terrorism

In Southeast Asia, the vulnerability of the maritime sector to attack by terrorists has been of concern. This is due to the economic importance of the sector; the incidence of piracy and sea robbery in the region; and the presence of terrorist groups that might attack maritime targets. The risks include terrorist attacks at sea and the use of the sea by terrorist groups for movement of personnel, arms and other materials.

Possible scenarios in Southeast Asia range from highly speculative and most unlikely to credible. Ferries, and potentially cruise liners, are vulnerable to attack. Passenger ferries are numerous in the region and have been involved in recent years in some major disasters with large loss of life. Cruise liners are also becoming more common in the region.

With passenger ships and ferries, it is not so much the bomb that might do the damage but rather the fire and panic that can follow an explosion with so many people in a relatively confined area. Measures to defeat attacks against ferries are a national responsibility involving for example, better screening of passengers and their luggage and enhanced security onboard. However, regional dialogue is required to develop "best practice" solutions and cooperative management of incidents.

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[7] ReCAAP Annual Report 2012, p. 22.

Trafficking at Sea

The sea is the preferred medium for the illegal movement of goods and people. Larger quantities of cargo can be shipped at sea generally with less risk of detection. Illicit shipments can also be transshipped at sea and brought into a country in a vessel, such as a local fishing boat, without raising the suspicions of local authorities.

Drugs

Trafficking in drugs by sea remains a major source of income for transnational organized criminal groups. Opiates (principally heroin) and cannabis are trafficked in the region. There is also an increasing problem with the manufacture and trafficking in methamphetamines ("ice") and other amphetamine type stimulants (ATS). "Ice" has replaced heroin as the most lethal drug in the region, and its manufacture and use is increasing. This is a concern because the physiological impact of "ice" is more serious than that of heroin, cocaine, cannabis, ecstasy or other ATS. Ephedrine and pseudoephedrine, which are major precursor chemicals for the manufacture of methamphetamines and other ATS, are moved mostly by sea.

People

Southeast Asia is an important hub for people smuggling from Afghanistan, Pakistan and the Middle East countries to the United States, Canada, Australia, New Zealand and a number of South Pacific states. There is also evidence of human trafficking of women and children for sex or forced labour purposes. The Bali Plan of Action has been developed to build regional cooperation to combat people smuggling and trafficking in persons.

Illegal people movement in the region may be either short-term for family reunions or other social visits, or long-term to seek work. Malaysia is particularly concerned about illegal migration by sea across the Malacca Strait from Indonesia or down the Strait from Thailand, Myanmar or Bangladesh.[8] There is much traditional movement of people by sea between the southern Philippines and Sabah, Kalimantan and North Sulawesi, as well as the movement of people between Sumatra, Malaysia and southern Thailand.

Arms

Small arms and light weapons are widely available in the region and trafficking by sea is the preferred means of movement. The proliferation of small arms and light weapons is a major factor underpinning the incidence of maritime crime in Southeast Asia. Past conflicts in Indochina have provided a major source of these weapons. Thefts of weapons from military bases and police stations have also occurred. The military defeat of the LTTE insurgency in Sri Lanka in 2010 brought to an end a large-scale and highly organised maritime arm

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[8] Sumathy Permal, "Trafficking in the Strait of Malacca", *Maritime Studies 156*, September/October 2007, p. 6. Also, "Navy arrests boat carrying 72 illegal Muslims from Burma" (*Bangkok Post*, 4 Jan 08).

smuggling operation extending to South and Southeast Asia.[9] However, internal conflicts in southern Thailand and Myanmar still have the potential to draw in illegal arms.[10]

Illegal Fishing

Fisheries are in crisis in most areas of the world, and Southeast Asia is seriously affected by the depletion of fish stocks. Southeast Asia is not only a major producer of fish products but is also a major consumer of these products, which constitute about half of the region's protein intake.

While over-fishing is the major problem, this problem has been exacerbated by the serious degradation of coastal habitats. Fish stocks are affected by harmful practices such as the clearing of mangroves, the exploitation of coral reefs and the destruction of sea grass beds. Other problems include sedimentation of estuaries, land-based pollution, saw-milling, dynamiting, the use of very fine mesh nets, and other forms of illegal fishing. Aquaculture was initially seen as a solution to the problem of depleted fish stocks but many aquaculture programs have been disappointing and have caused problems of pollution and natural habitat destruction.

Illegal, unregulated and unreported (IUU) fishing has become a serious problem in the region, especially for Indonesia. With the depleted fish stocks in the region, many coastal villagers have lost their basic means of livelihood, and are tempted into illegal activity.

Problems with fisheries enforcement arise due to the lack of EEZ boundaries in parts of the region, e.g., in the northern Malacca Strait. Incidents, including in the South China Sea, sometimes involve attacks on fishing vessels of one country by the fishers of another, or between the law enforcement agencies of different countries. The Regional Plan of Action was agreed in 2007, to promote responsible fishing practices and combat illegal fishing in SE Asia.[11]

Marine Pollution

Coastal states in the region, particularly Indonesia and Malaysia, are very concerned about protecting the marine environment, particularly from illegal dumping at sea and ship-sourced marine pollution. These are threats to the fishing industry, coastal tourism and fragile marine environments generally. Ship-sourced marine pollution may be either accidental arising from a marine accident, such as a collision or grounding, or intentional as a consequence of normal ship operations, such as tank cleaning or pumping bilges. International conventions are in place to control intentional pollution but costs are involved in using waste reception facilities onshore and some ship masters will still pollute if they think they can get away with it.

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[9] Pau Khan Khup Hangzo, "Non-Traditional Security Challenges in the Indian Ocean Region", in Sam Bateman, Jane Chan and Euan Graham (eds), " Asian and the Indian Ocean: The Key Maritime Links", *RSIS Policy Paper*, 2011, p.30.

[10] Ibid.

[11] The Regional Plan of Action was endorsed by Australia, Indonesia, Brunei, Malaysia, the Philippines, East Timor, Vietnam, Papua New Guinea, Singapore and Thailand.

There are occasional reports of a high level of ship-sourced marine pollution both in the Malacca Strait and the South China Sea. Factors leading to this situation would include the extent of shipping traffic in the region, and the lack of effective monitoring and surveillance systems, although the technology for detecting oil spills has advanced in recent years. Synthetic Aperture Radar imaging is now available to identify and trace oil spills.

Maritime Accidents

Good order at sea requires contingency plans in place to deal with a major maritime accident, such as one involving a cruise liner or a terrorist attack, or even the crash of an airliner at sea.[12] Regional search and rescue exercises (SAREX) are conducted under an agreement between ASEAN countries and ASEAN and China have also talked about SAR cooperation but so far this has been limited to "table top" exercises.

With current search and rescue regions (SRR), Singapore has accepted SAR responsibility for a large part of the South China Sea,[13] and has promulgated the Singapore Plan for SAR Services and Passenger Ships. However, SRR boundaries do not accord with national maritime boundaries, and this, along with the current low level of ratification of the SAR Convention by littoral countries, suggests that there could still be problems with mounting a large-scale maritime SAR operation in the region.

Seafarers and Maritime Security

Southeast Asian countries are both leading ship-owning and seafarer-providing nations, with Indonesia, Myanmar and the Philippines three of the most important sources of international seafarers in the world. In 2011, the global deployment of Philippine seafarers rose to over 369,000—constituting about one-fifth of total global seafaring employment, and an increase of more than 30 percent from 2007.[14]

It is ultimately seafarers who ensure that ships are safe and securely operated but new security and safety measures have placed additional burdens upon them. The implementation of the International Ship and Port Facility Security (ISPS) Code has placed additional responsibilities, workload, and training and certification requirements upon seafarers without any commensurate increase in pay or conditions of service.

The maritime administrations of individual countries face a demanding task in putting in place management arrangements for the new security measures. As well as the ISPS Code, implementing the 2003 International Labour Organizations' Seafarers' Identity Documents

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[12] The loss of the Adam Air B737 aircraft in January 2007 is an example. Although the incident involved an aircraft, it occurred over the sea off the West coast of Sulawesi. The initial SAR operation appears to have been less than effective. "Fate of Adam Air plane carrying 102 remains mystery", Indanesia.com, 5 January 2007. (http://news.indahnesia.com/item/200701053/fate_of_adam_air_plane_carrying_102_remains_mystery.php)

[13] See map in Sam Bateman, Catherine Zara Raymond and Joshua Ho, *Safety and Security in the Malacca and Singapore Straits – An Agenda for Action*. Singapore: Institute of Defence and Strategic Studies, May 2006, Fig. 11, p. 28.

[14] Philippines Overseas Employment Administration, 2011 Report.

Convention places an additional burden. This convention came into force in 2005, creating the first globally applicable system of biometric identification for secure identity documents for international seafarers.

Particular Areas of Concern

In the light of the preceding discussion, the following regional sea areas are identified as ones where there is a relatively high level of illegal activity at sea and problematic maritime enforcement, due mainly to the lack of maritime boundaries in the area:

- ▪ The Sulu Archipelago between Sabah and Mindanao and separating the Sulu and Celebes Seas. The Sibutu Passage through this area is a major international shipping route.

- ▪ The southern part of the South China Sea between Pulau Tioman and the Anambas islands, and including the Riau Archipelago.

- ▪ The Northern Malacca Strait between Sumatra and the West coast of Malaysia. Although the strait here is wide, no EEZ boundary has been agreed between the two countries.

Some recent measures to enhance good order at sea in Southeast Asia have already been discussed. They include ReCAAP, the Cooperative Mechanism for the Malacca and Singapore Straits and the Regional Plan of Action for Responsible Fishing. However, there are other measures that have been developed at a global level to enhance maritime security and provide good order at sea that so far have not been fully implemented in the regional level—at least not on a region-wide, cooperative basis.

International Instruments

Despite frequent enjoiners from both ASEAN and the ARF to ratify these conventions, there remain major gaps in the level of ratifications of key international conventions that help establish good order at sea. Thailand accession leaves Cambodia as the only Southeast Asia state that is not party to UNCLOS. Only three regional countries (Singapore, Vietnam and Indonesia) are parties to the SAR Convention. The 1988 SUA Convention has not been ratified by Cambodia, Indonesia, Laos, Malaysia, Myanmar and Thailand. No country has yet ratified SUA 2005. The SOLAS and MARPOL Conventions have been ratified by most regional countries although some of their key protocols and annexes have not been.

   To ensure good order at sea in the region, there is a need for greater attention to these conventions, enhanced legal education and better domestic legislation. Greater awareness of the benefits of the conventions is required, as well as acceptance of the principle that the sum of mutual benefits outweighs any perceived individual costs. The articulation and enactment of sound and effective legislation is extremely important. These conventions are not self-executing and require domestic legislation to put them into force.

Maritime Situational Awareness

In order to maintain good order at sea and combat transnational threats in regional waters, countries must first be aware of what is occurring in their maritime environment and have in place a responsive enforcement capacity. Currently, the weight of surveillance is borne by sea-based patrols or air patrols. An example is the Malacca Straits Patrols (MSP) comprising the Malacca Straits Sea Patrols (MSSP) and the "Eye in the Sky" (EiS) air patrols. These patrols are complemented by shore-based radar surveillance in some cases, like the network of coastal radars to provide vessel traffic services (VTS) in the Straits of Malacca and Singapore.

Although coastal radar surveillance is not widespread due to cost, some regional countries are enhancing their radar surveillance capability. Indonesia, with the support of the United States, is establishing 12 radar stations to provide surveillance for the Malacca Straits and 7 radars for surveillance of the Makassar Straits.

Maritime situational awareness can be improved dramatically if regional countries use the information provided by existing ship safety systems mandated by the International Maritime Organisation (IMO) and share such information. Examples of such identification systems include the Automatic Identification System (AIS)[15] and Long Range Identification and Tracking (LRIT)[16]. The US had developed the Regional Maritime Awareness Capability (RMAC), which is a coastal surveillance programme utilising AIS and ground-based radars and sensors to provide users with situational awareness in their maritime domain. Not forgetting that the requirement for merchant ships to be equipped with Ship Security Alert Systems (SSAS)[17] is among recent amendments to the 1974 SOLAS Convention.

CONCLUSION AND RECOMMENDATIONS

The 2008 Report of the UN Secretary-General to the UN General Assembly on Oceans and the Law of the Sea noted how all countries share in both the benefits of safe and secure oceans, and the responsibility for addressing major threats and the challenges to maritime

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[15]   The Automatic Identification System (AIS) is an automatic tracking system used on ships and by vessel traffic services (VTS) for identifying and locating vessels. It automatically supplies information, such as name of ship, position, course and speed, and assists in collision avoidance and safety management. IMO's SOLAS Convention requires AIS to be fitted onboard all ships on international voyages with gross tonnage (GT) of 300 or more tons, and all passenger ships regardless of size.

[16]   Long Range Identification and Tracking (LRIT) is primarily a security system mandated by the IMO that requires all passenger ships, cargo ships over 300 gross tonnage and mobile offshore drilling units to report their position to their flag administration (e.g., a national LRIT data centre) at least four times a day. Most vessels set their existing satellite communications systems to automatically make these reports.

[17]   All ships covered by the 1974 SOLAS are required to have a Ship Security Alert Systems (SSAS). When activated, the SSAS shall initiate and transmit a ship-to-shore security alert to a competent authority designated by the ship's Administration, or Flag State, including only three details; the identity of the ship, the ship's location, and an indication that the ship is under threat or that its security has been compromised.

security.[18] Most maritime issues are trans-boundary in nature, and give rise to shared interests between regional countries that should facilitate cooperation.

Regional cooperation is fundamental to the maintenance of good order at sea in Southeast Asia. To achieve this, effective multilateral institutions are required through which the requisite cooperation can be developed. There have been some achievements in this regard, notably in the Malacca and Singapore Straits and to some extent in the Gulf of Thailand, but much more might still be done to develop and maintain good order at sea in Southeast Asia. For instance, in order to overcome negotiation deadlocks over maritime boundaries, the states within the Gulf of Thailand have repeatedly opted to create maritime joint development zones in order to exploit hydrocarbon resources to be located in areas of overlapping claims. During the PEMSEA (Programme on Building Partnership in Environmental Management for the Seas of East Asia) 4th Sub-regional meeting on the Gulf of Thailand in 2005, states also agreed to build capacity in combating sea-based sources of marine pollution, especially in response to oil spills. The "triborder sea area" between Indonesia, Malaysia, and the Philippines in the Sulu and Celebes seas is a particular area requiring a more institutionalized approach to maritime cooperation.

It is important that the benefits of cooperation are recognized and accepted. However, there are often factors that inhibit cooperation. There can be concern that cooperation may involve a loss of sovereignty and independence, or could prejudice claims to sovereignty or a negotiating position in maritime boundary discussions. To overcome this concern, any bilateral or multilateral instrument providing for cooperation should make clear, where necessary, that agreement is without prejudice to any claim to territorial sovereignty, sovereign rights over resources, or jurisdiction over territory or maritime zones.

Key Outcomes

The recommendations in this paper are grouped according to the following three key outcomes:

- further institutionalization of the process of regional cooperation for good order at sea, including the development, where appropriate, of institutional arrangements and capacity-building;

- enhancement of processes for risk assessment and reduction; and

- development of more effective arrangements for information sharing and data collection.

Regional Cooperation

The first desirable outcome is to do more to institutionalize the process of regional cooperation for good order at sea. ASEAN and the ARF have made some first steps in this regard but the process should be speeded up, including both "top-down" initiatives that might come out of the ARF and ASEAN and "bottom-up" steps using existing processes as "building blocks"

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[18] Oceans and the Law of the Sea – Report of the Secretary-General, UN doc. A/63/63, 10 March 2008, para. 35, p. 14.

to further the process of cooperation. To facilitate this process, it is important that regional countries move quickly to ratify relevant international conventions rather than just pay "lip service" to their existence. Outstanding maritime boundaries should also be resolved as soon as possible.

At a "top-down" level, the ASEAN Maritime Forum, the ARF ISM on Maritime Security, and the ASEAN Defence Ministers Meeting Plus (ADMM Plus) Expert Working Group on Maritime Security offer possible frameworks under which regional cooperation for good order at sea might be developed. The ASEAN Maritime Forum (AMF) was first mooted at the ASEAN Foreign Ministers' meeting in Jakarta in June 2004. The 3rd AMF meeting in Manila in 2012 was held back-to-back with the 1st Expanded ASEAN Maritime Forum (EAMF), an offshoot of the AMF initiative, convened in response to the statement of the ASEAN Leaders, as well as the Leaders of the East Asia Summit (EAS), in Bali, Indonesia in November 2011, who encouraged a "dialogue involving EAS participating countries to utilize opportunities and address common challenges on maritime issues building upon the existing ASEAN Maritime Forum (AMF)."[19] The EAMF is also seen as an avenue for Track 1.5 diplomacy on cross-cutting maritime issues that are of common concern to the EAS participating countries. The ARF ISM on Maritime Security on the other hand, involves only government officials and has had four meetings thus far, currently co-chaired by Indonesia, South Korea and United States. The ARF Work Plan on Maritime Security contains three priorities for 2011-2013, i.e., (i) exchange of information, intelligence, and best practice, (ii) confidence building-measures and (iii) capacity-building of law enforcement agencies. ASEAN Defence Ministers agreed at the very 1st ADMM-Plus convened in Hanoi, in October 2010, to establish Experts' Working Groups (EWGs) to promote cooperation in five identified areas including maritime security.[20] Australia and Malaysia are co-chairs of the EWG on maritime security.

The Batam Workshop in September 2007 recognised that the ASEAN Maritime Forum might consider maritime issues involving enclosed and semi-enclosed seas. This is a reflection of the fact that several such seas are located within Southeast Asia, notably the South China Sea, Celebes Sea, Sulu Sea, Gulf of Thailand, Andaman Sea, and the Timor Sea. Under Part IX of UNCLOS, countries bordering a semi-enclosed sea have a strong obligation to cooperate with regard to the management of marine living resources, the protection of the marine environment and marine scientific research. However, the opening sentence of UNCLOS Article 123 sets a more general obligation to cooperate, and that responsibility might be interpreted as including the maintenance of good order at sea.

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[19] Chairman's Statement, 1st Expanded ASEAN Maritime Forum Manila, 9 October 2012. (The full statement is available at: http://www.asean.org/news/asean-statement-communiques/item/1st-expanded-asean-maritime-forum-manila)

[20] Chairman's Statement of the First ASEAN Defence Ministers' Meeting-Plus: "ADMM-Plus: Strategic Cooperation for Peace, Stability, and Development in the Region" Ha Noi, 12 October 2010. (The full statement is available at: http://www.asean.org/communities/asean-political-security-community/item/chairman-s-statement-of-the-first-asean-defence-ministers-meeting-plus-admm-plus-strategic-cooperation-for-peace-stability-and-development-in-the-region-ha-noi-12-october-2010)

In 2008, the Council for Security Cooperation in Asia Pacific (CSCAP) promulgated CSCAP Memorandum No. 13—*Guidelines for Maritime Cooperation in Enclosed and Semi-Enclosed Seas and Similar Sea Areas of the Asia Pacific.*[21] These are a set of fundamental, non-binding principles to guide maritime cooperation in enclosed and semi-enclosed seas, and to help develop a common understanding and approach to maritime issues. They provide a useful guide to the further development of regional maritime cooperation.

At a "bottom-up" level, the Information Fusion Centre (IFC), inaugurated in April 2009, aims to provide actionable information on maritime security threats in the wider Southeast Asian waters, in order to cue early warning by its partners, to contribute to the regional knowledge repository on MARSEC, and to enhance the collective maritime awareness, info-sharing and sense-making capabilities in the region. One of the key propositions of the IFC is the International Liaison Officers (ILO) initiative, where various agencies and countries that have established linkages with the IFC are represented. Both the ASEAN and non-ASEAN ILOs play key roles at the IFC, and both groups are cognizant of their purpose and the value they bring to the table. The ILOs are thus able to serve both their national and the wider regional interest in the same breath. IFC is also host to the ASEAN Information-Sharing Portal (AIP), launched in July 2012, to facilitate real-time exchange of information between various operation centres and operational commanders in the ASEAN region.[22]

ReCAAP and existing ASEAN regional associations offer potential for the development of initiatives that would promote good order at sea. ReCAAP has many strengths, including its identification of focal points in participating countries and its capacity-building programme. Despite the limitation that Indonesia and Malaysia are not parties to ReCAAP at present, it provides a useful "building block" for a more integrated approach to good order at sea.

The ASEAN Ports Association (APA) is another existing organization with potential to contribute to processes for good order at sea, particularly as most incidents of armed robbery against ships in the region occur in ports and anchorage. However, a perusal of the association's *Best Practices Manual on Safety, Health, Environment and Security,* issued in November 2005, suggests that its security focus at present is entirely on the land side of a port with consideration of issues such as access control and the prevention of pilferage with no reference to security on the waterside of a port or to the ISPS Code.[23]

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[21] Council for Security Cooperation in the Asia Pacific, "Guidelines for Maritime Cooperation in Enclosed and Semi-Enclosed Seas and Similar Sea Areas of the Asia Pacific", *CSCAP Memorandum No. 13*, July 2008, p. 2 (CSCAP memos are available on the website at: http://www.cscap.org/index.php?page=cscap-memoranda)

[22] Spearheaded by the Republic of Singapore Navy (RSN) and the Indonesian Navy (TNI AL), the ASEAN Information-Sharing Portal (AIP) features two notable functions: a real-time chat module with a translation function and a downloadable mobile application.

[23] The manual is available at: http://www.aseanports.com/papers/Best_Safety_files/BP%20(PSHES).htm

Recommendations

- The ASEAN Maritime Forum, the ARF ISM on Maritime Security and the ADMM Plus EWG on Maritime Security should be supported as frameworks for developing an integrated and institutionalized approach to good order at sea.

- All regional countries should ratify relevant international Conventions related to the provision of good order at sea.

- Agreements on regional maritime boundaries should be reached as soon as possible.

- Regional countries bordering a semi-enclosed sea should fulfil their obligations under UNCLOS Article IX, noting that CSCAP Memorandum No. 13 provides a useful guide to the fulfilment of these obligations.

- The capability and role of ReCAAP should be expanded so that it becomes an effective "clearing house" for regional maritime security information through its focal points.

- Port administrations should be assisted, possibly through the APA, to build their capacity to suppress armed robbery against ships and other forms of maritime crime within anchorages and port approaches.

Risk Assessment and Reduction

There are numerous threats to good order at sea in Southeast Asia. These range from low-level threats with little impact on the region generally to the major and catastrophic ones that would have serious implications for regional stability and prosperity. Generally there is a correlation between the low likelihood of a particular threat and its consequences with the more improbable threats having the greatest impact.

Minor threats include piracy and armed robbery (as currently conducted in the region), ship-sourced marine pollution, illegal fishing, a limited terrorist attack on a ferry, and smuggling. Major threats include a marine natural disaster arising from a cyclone or tsunami, a more serious terrorist attack, or a clash between maritime security forces in an area of conflicting claims to sovereignty. The mitigation of the risks of these threats requires more attention to preventive diplomacy and maritime confidence and security building measures, including bilateral or multilateral agreements in areas of disputed sovereignty or where maritime boundaries have not been agreed.

The region's ability to deal with these threats requires a cooperative approach to the analysis of the threats and contingency planning. Piracy and armed robbery at sea are an example of a common threat in the region that would benefit from more detailed analysis of the incidents that do occur. For example, the vulnerability of a ship to an attack while underway depends on factors such as the type of ship, its speed, location and the nature of is voyage, but no regional organization is conducting detailed research into these factors.

Search and rescue (SAR) and marine natural disaster relief are associated tasks that offer possible "useful building block" for regional cooperation. An incident on a passenger ferry,

cruise ship, or offshore oil and gas installation are the types of incidents for which cooperative regional contingency planning would be useful.

Recommendations

- Effective bilateral (or trilateral) agreements should be developed to manage an incident in areas where there are conflicting claims to sovereignty or where maritime boundaries have not been agreed.

- More accurate analysis and assessments should be developed of the risks of piracy and armed robbery against ships.

- Regional cooperation for maritime search and rescue (SAR) should be strengthened.

- Cooperative contingency arrangements should be developed to manage a major incident involving a cruise liner or passenger ferry or offshore oil and gas installation in the region.

Information Sharing

A higher level of good order at sea in Southeast Asia requires that regional countries takes steps to enhance the sharing of information between them relevant to the detection, prevention and suppression of threats to good order at sea. Arrangements should be in place to ensure that incidents of piracy and armed robbery at sea are promptly reported to the relevant authorities. This information sharing and prompt reporting should also help to ensure that offenders are prosecuted according to national legislation.

Several current measures are already available to provide for information sharing and prompt reporting of incidents, but for a number of reasons these are not well adhered to in the region. As has been noted, Indonesia and Malaysia are not parties to ReCAAP, and IMO measures, notably AIS, LRIT and SSAS, are not effectively implemented in the region at present.

Recommendations

- The Automatic Identification System (AIS) should be implemented on vessels below 300 gross tons and on vessels that are on local voyage.

- Regional countries should share AIS data via the Maritime Safety and Security Information System (MSSIS).

- A regional approach should be developed to the long-range identification and tracking of ships. Regional National LRIT Data Centres should be integrated with the International LRIT Data Exchange.

- Regional protocols should be established for handling alerts from the Ship Security Alert System (SSAS). Alerts should be sent to the coastal states as well as to nearby ships in addition to being sent to the flag state.

- ▪ Regional navies should send liaison officers to participate in information sharing activities at the Information Fusion Centre (IFC) of the Changi Command and Control (C2) Centre.

Maritime Security in Southeast Asia: Interfacing Regional and Extra-Regional Stakeholder

Hui-Yi Katherine Tseng
East-Asian Institue (EAI), Singapore

EXECUTIVE SUMMARY

The Strait of Malacca connects the Indian and the Pacific Ocean, seeing huge volume of seaborne trade which marks the significant importance of this slim, shallow-watered passage. Naturally, the security environment is complicated by a complex of different factors.

Throughout the decades, security strategies at national and sub-national level have gone through periodic adjustments. By changing their dependence on great powers to withstand maritime invasion during the Cold War to self-reliant efforts of maintaining maritime stability, regional countries have developed a clear consciousness of protecting their maritime rights, and cultivating safety and security for these sea lanes of communication. Despite the increasing trade volumes, maritime security in this area has been overshadowed by a weakly-construed regional consensus, which leads to not only unsatisfactory management outcomes, but also vexing issues, like the role of extra-regional states in regional security regimes building, and a confluence of territorial and resource claims over both the narrow marine passage of the Straits of Malacca and more influentially, the South China Sea.

One major concern in regional maritime security order is the piracy acts taking place in the form of small-scale hit-and-run robberies. They are less-organized, opportunistic raids closer to shore. The causes are predominantly related to poor domestic governance in coastal areas, where dire economic conditions have largely driven the population to this dangerous game. Besides, endemic corruptions in local governments, prevailing transactions of small arms, and the deficiencies of coastal countries in terms of marine policing, all burden the anti-piracy efforts in this region.

Regional responses have yielded patchy, at best, outcomes, as regional countries appear cautious when issues such as compromising their sovereignty are necessary for more integrated management frameworks. In sum, up to the present, technical and financial assistance under the lead of certain regional countries would be a welcomed approach. For a more satisfactory outcome, strong political wills and regional leadership would be a *sine qua non*.

INTRODUCTION

The Strait of Malacca connects the Indian and the Pacific Ocean, where more than half of the world's merchant fleets travel through and upward to the East and Northeast Asian areas, and the rest of the globe. The huge volume of seaborne trade marks the significant importance of this slim, shallow-watered passage, where the security environment is further complicated by a complex of different factors.

The maritime security strategies of ASEAN countries have gone through periodic adjustments. Changes were largely discernible after the end of Cold War, and the 911 terrorist attack in early 2000s. By changing their dependence on great powers to withstand maritime invasion during the Cold War to self-reliant efforts of maintaining maritime stability, regional countries have developed a clear consciousness of protecting their maritime rights, and cultivating safety and security for these sea lanes of communication.

Despite the increasing trade volumes, maritime security in this area have been overshadowed by a weakly-construed regional consensus, which leads to not only unsatisfactory management outcomes, but also vexing issues, like the role of extra-regional states in regional security regimes building, and a confluence of territorial and resource claims over both the narrow marine passage of the Straits of Malacca and more influentially, the South China Sea. Yet, the efforts continue, while the accomplishments wax and wane. The unsatisfactory results also indicate the yearning for strong political wills that would draw comparative technical supports, a *sine qua non* to push though regional, as well as international piracy-curbing efforts.

This paper will first address the definitional dimensions of different types of maritime violent activities, among which piracy attacks rank as one that has the most unravelling effect on regional maritime order. Annual figures, from 2007 to June 2012, of piracy activities and armed robbery against ships will be laid out, to illustrate the intractableness of this issue. In the third section, regional responses will be discussed, while the dilemma and hindrance that slows cooperation and implementation progress will be identified. International and extra-regional efforts will be touched upon in section IV, to depict the obstacles prohibiting more advanced international cooperation. The last section will discuss the possible roles of the European Union and its future involvement in tackling piracy in Southeast Asia.

I.   DEFINITION AND TYPES OF MARITIME THREATS

Among those concerns overshadowing maritime security and smooth flows of international seaborne trade, piracy attacks, as some phrased in a broader term of maritime violence, is atop the list in several locales like offshore Somalia, the Red Sea and the Straits of Malacca. Despite piracy, other activities also roil up the regional maritime security environment. Yet, littoral and stakeholder countries attach various degrees of emphases and priorities therewith: illegal immigration, human trafficking, smuggling of human and goods, illegal fishing, trafficking of arms and weapons of massive destruction, environmental degradation caused by maritime

traffic and accidents, maritime terrorist attacks, and disputes over territorial demarcation and the ensuing rights to use marine resources.

In Southeast Asia, factors undermining maritime security are generally featured with an undertone of resource relevancy. A good point to start is that a general classification can be established to further distinguish between those staking out territorial claims and those eyeing mainly economic gains. Despite the distinction, their entanglement seems inevitable, since the relevant international legal system prioritizes and preconditions territorial rights to utilization rights and the interests of marine resources which are legitimised mainly through exclusive economic zone claims (EEZ).

In Southeast Asia, where maritime spaces abound with islands, archipelago, slim straits and small land features that sink during high tides, EEZ claims by littoral states tend to crush and overlap with those made by neighbouring or opposite countries. Overlapping claims on territorial waters and EEZ are largely staked out on affluent marine resources. The zoning of oceanic spaces not only defines various types of marine resource rights, but also leads to categorization of types of maritime violent activities, which inflict upon the region varying degrees of security threats. In Southeast Asia, generally speaking, these maritime violent attacks are committed by money-chasing villagers-perpetrators, driven largely by their dire economic conditions. Among different types of maritime violent attacks, piracy attacks remains atop the list, as a major menace to regional maritime order and stability.

That said, a brief discussion of the definition and the types of maritime violent attacks currently haunting the Southeast Asia will help clarify the picture.

Piracy and Armed Robbery against Ships

Among various definitions, the United Nations Convention on the Law of the Sea (UNCLOS) provides a sketch of piracy attacks. Piracy is confined to illegal acts committed for private ends, against another ship, and on the high seas or places outside the jurisdiction of any state[1]. Yet, while falling outside the aegis of UNCLOS, other types of maritime violent attacks should also be factored into discussions. Violent attacks that take place within national territorial waters, and onboard ships berthed at harbours, are not covered in the UNCLOS definition. In this aspect, deliberations made by the International Maritime Organization help complete the picture. Violence occurring within national territorial waters are considered as armed robberies against ships, as defined by the International Maritime Organization in its 26th Assembly Resolution A. 1025[2], which is also dubbed as "Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships" (IMO definition). The wording thus clearly identifies the distinction between an act of piracy and of armed robbery against ships, when the former largely follows the definitions laid down in UNCLOS. The spatial difference is tellingly significant in a place like the Straits of Malacca, where its narrowness and shallowness not only inflict serious constrains upon navigation safety, but also

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[1] Article 101, United Nations Convention on the Law of the Sea, http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf, accessed 18 February, 2013.

[2] The International Maritime Organization (IMO) 26th Assembly Resolution A. 1025 (26).

remains a root cause for overlapping territorial and EEZ claims that continuingly endanger regional maritime order and stability. With the definitions outlined above, violent attacks in Southeast Asia, usually pursued with a "hit-and-run" style and against ships that need to slow down in areas like the Straits of Malacca, will not fall into a legal vacuum which further ties the hands of littoral and stakeholder countries.

A relevant point worth mentioning is that piracy is defined as attacks driven mainly for economic gains. Armed robbery against ships, as occurring in territorial waters or onboard ships berthed at harbours, does not entail such economic motivations. This is regarded as a major distinctive factor that leads some to depict piracy as "a crime motivated by greed and thus predicated by immediate financial gains"[3] (Young/Valencia 2003). This differentiation earns specific momentum when identifying committed violent acts, as the outcome will entail different applications of legal provisions, sentence measurements and counter measures.

Maritime Terrorism

A trend emerging after the 911 attack in 2001 is an expansion of the scope of terrorist attacks. Absent an authoritative definition of terrorism, or terrorist attacks, its characteristics nevertheless are very much different from piratical ones that target another ship on high seas for private gains. A definition of maritime terrorism is terrorist attacks "executed within, or with the intent of compromising the features of the maritime domain" (Graf 2011:14; also, Herbert-Burns/Zucker 2004:31; Nincic 2005:620-623, Richardson 2005:2). Another definition of referential value is elaborated by the Council for Security Cooperation in the Asia Pacific (CSCAP) Working Group, which defines maritime terrorism as "the undertaking of terrorist acts and activities within the maritime environment, using or against vessels or fixed platforms at sea or in port, or against any one of their passengers or personnel, against coastal facilities or settlement, including tourist resorts, port areas and port towns or cities" (Prakash 2002:1).

That said, definitional maritime terrorist attacks are distinguished from piratical ones because of the lack of *animus furandi* for private gains. Terrorist attacks, against or from the sea and dubbed as maritime violence, prey on the civilian for political, religious or higher cause. At times, they can be mere tactics, or strategies with which actors can choose, alternating between or combining such with non-violent political struggles. The idiosyncrasy is thus polarizingly different from piracy attacks, which are mainly for private earning.

Another trend is an expansion of the concept of maritime terrorism to include organized crimes taken place at sea, such as smuggling or trafficking of human beings and goods. Some regards the conflation of various crimes taking place at sea and maritime terrorism as the tendency in the aftermath of the 9/11 event, and an alternative to classify the burgeoning violent attacks by Southeast Asian pirates. Interfacing these crimes so as to broaden the concept of maritime violence and terrorist activities indeed brings along high visibility and pervasive public attentions on criminal activities in this area. However, the drawback is that

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[3] Adam Young and Mark Valencia, "Piracy and Terrorism Threats Overlap", *The Washington Times*, July 6, 2003, http://m.washingtontimes.com/news/2003/jul/6/20030706-104801-9949r/?page=all, accessed January 31, 2013.

the confluence also blurs the boundaries delineating conventional piracy attacks, organized crimes, and maritime terrorism. The imbroglio hence makes the determination of adequate countermeasures more challenging.

Thus mentioned, a comparison can be illustrated between piracy, armed robbery against ships and maritime terrorism, on the basis of definitions provided in UNCLOS, the IMO elaborations of armed robbery against ships, and of those concerning maritime terrorism.

Chart I: Piracy, Armed Robbery against Ships, Maritime Terrorism

	Piracy	**Armed Robbery against Ships**	**Maritime Terrorism**
Authoritative Source	The 1982 United Nations Conventions on the Law of the Sea, Article 101.	The IMO decision – Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships.	Absent of authoritative definitions; The one elaborated by the Council for Security Cooperation in the Asia Pacific (CSCAP) Working Group is much referred to.
Characteristics	- For private ends; - Against another ship; - On the high seas.	- For private ends; - Against another ship; - Within a State's internal waters, archipelagic waters and territorial sea.	- Forms of terrorist acts and activities; - Within the marine environment.
Legal Status	Codified Int'l Law	With weighing referential values	A working definition by CSCAP

Compiled by the author with reference to UNCLOS, the IMO Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships in Resolution A.1025 (26), Council for Security Cooperation in the Asia-Pacific (CSCAP) Memorandum 5 – Cooperation for law and order at sea in February 2001, and relevant international conventions, like Convention for the Suppression of Unlawful Acts Against the Safety of Navigation 1988, and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988.

II.   WHAT'S HAPPENING IN SOUTHEAST ASIA

Figures

Piracy emerged as a threat to seaborne trade and transportation in the early 1990s. In Southeast Asia, the number of piracy attacks grew exponentially after the Cold War, from an annual amount of 6-7 attacks before 1989, to 50 in 1991, and surged even higher to 469 in 2000[4]. There has been a downtick in the total number of attacks in the middle of the

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[4]   Jo. Bekkevold and Robert Ross (eds), "Anti-Piracy and Humanitarian Operations", Norwegian Institute for Defense Studies, Workshop Series, Autumn 2011 at Oslo, Norway, at p. 69.

first decade of the 21st century, when the ICC-IMB (International Chamber of Commerce – International Maritime Bureau) data indicates a decline from 185 attacks in 2003, to 77 in 2007[5]. However, the area then experienced a waxing and waning of attacks, as the number fell to 45 cases in 2009, and rose to 80 in 2011.

Eyeing the capriciousness of these developments, a prevailing consensus is that the data recording actual and attempted piracy attacks are far from satisfactory, as ship owners are generally reluctant to report the attacks due to concerns of the following in-port detention of the ships for further investigations. Moreover, a large number of these attacks occur in ships berthed or anchored in harbours, where ships and crews are "targets of opportunity" and fall prey to small-scale robbery and petty theft that involve a modest level of violence. With a slim chance to rein in the attackers and to retrieve stolen goods, ship owners tend not to report these events, thus enlarging the hidden figure of actual attacks well beyond the official reach of the ICC-IMB.

In Southeast Asia, where the Straits of Malacca is qualified certainly as a flashpoint, pre-planned and well-organized attacks, with considerable violence engaged in, can rarely be spotted. There have only been a few really major attacks and none at all against VLCCs (very large crude carriers), ULCCs (ultra-large crude carriers), LNGs (liquefied natural gas carriers) and LPGs (liquefied petroleum gas carriers)[6]. Attacks in the latter two scenarios clearly entail serious outcomes with immense environmental degradation. Moreover, piracy attacks against large carriers appear more demanding, due to the higher freeboards and better safety precautions thereon.

Despite the under-estimated volume of attacks, it is also observed that the degree of violence differentiates the perpetrators' motivations and types of attacks. Off the Somalia coast, pirates do not want to harm captives because they are primarily motivated to obtain ransom. Pirates in other parts of the world are more likely to kill the hostages, partly because the original robbery turns sour or because pirates lack the sanctuaries. However, pirates in Southeast Asia, in contrast to their Somalian counterparts, are less organized and tend to conduct opportunistic raids closer to shore.

Causes

Southeast Asia has a long history of piracy activities, which have long remained a cultural sanctioning in various local communities, where it is viewed as a ritual or a test of manhood[7]. As an area quite hospitable to piracy, multiple considerations need to be taken into account to decipher the root causes.

Geographically, waterways in this region are narrow in width and shallow in depth, with huge volume of traffics travelling through daily. The congested traffic lowers the ships' speeds, making them easy targets for pirates. The pirates tend to hide within a huge group of

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[5] Bjorn Moller, "Piracy, Maritime Terrorism and Naval Strategies", Danish Institute for International Studies Report, 16 November, 2008, at p. 22.

[6] Ibid, note 5, Moller, at p. 27.

[7] Supra, note 5, Bjorn Moller, at p. 26.

common vessels, and hijack one as the mother ship. Further, the greater swathes of Southeast Asian waters also contain straits, archipelagos, islets, rocks, shoals and small land features. The archipelagic waters that entail immense coastlines also provide pirates plentiful shelters and make patrol missions extra-challenging for littoral states. In this sense, certain littoral states are confronted with a deficient capacity in naval forces, coast guard and maritime surveillance capabilities to implement coastal and port-side security. Yet, they remain suspicious and appears unreceptive to the participation of extra-regional states in maritime safety regime building in Southeast Asia[8].

Social and economic reasons further complicate the issue. The explosive increase of seaborne transportation due to enhanced economic interdependence and globalized production chains has increased the burden of these anti-piracy efforts. The deficiency of certain littoral states in terms of adequate policing forces also inflicts structural flaws upon these efforts, thus making solutions tantalizingly out of reach. Besides, a proliferation of small arms also makes it easier for opportunistic hit-and-run piracy attacks in Southeast Asia. To make matters worse, the weakness of governance capability of certain littoral states, in terms of the connection between corrupt local officials and pirates and emergent void of judicial prerogatives, also provide a fertile ground for the rise and activities of various criminal groups that might be involved in piracy and terrorism.

ICC-IMB data show that roughly 70% of piratical attacks and armed robbery against ships take place in Indonesian waters (ICC-IMB Report 2007). Further, major attentions in circumventing Southeast Asian piracy attacks are directed to capacity building and improvement of Indonesian local administrative capabilities. In the study of Failed State Index 2008, Indonesia was spotted on the list, albeit a bit better off than its ASEAN fellows like the Philippines, Cambodia and Laos[9]. Poor performance in economic development, public service provision, and prevailing grievance among different ethnic groups further led to delegitimization of the state, while records of human rights protection are merely patchy at best. These uncertainties would further unnerve the country, as the chaos rumble on with an increased possibility of external intervention, thus making the neighbouring waters more vulnerable to piracy attacks, armed robbery against ships and other maritime violent activities.

Nevertheless, Indonesia has been making progress in recent years; in the latest issued 2012 report, it is no longer regarded as a failed state[10]. Its economy is doing well and improvements of public infrastructures continues. Jakarta, indeed, is confronted with thorny

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[8] Among the three littoral states, Malaysia and Indonesia are relatively under-equipped concerning the implementation of patrolling missions. However, their attitudes to the participation of extra-regional countries in anti-piracy patrol missions in the Straits of Malacca remains conservative. Singapore, on the contrary, appears more receptive, and has been active in promoting international assistance and cooperation.

[9] The Failed State Index 2008, July/August 2008, available at http://www.redri.org/new/images/archivos/failed_states_2008.pdf, accessed 18 February, 2013.

[10] Krista Hendry, "the Failed State Index 2012", *The Fund for Peace Analysis*, 2012, available at http://reliefweb.int/sites/reliefweb.int/files/resources/cfsir1210-failedstatesindex2012-06p.pdf, accessed 15 February, 2013. Krista Hendry, "Why Indonesia is not a failed state", *The Fund for Peace Commentary*, 3 August, 2012, at http://www.fundforpeace.org/global/?q=node/256, accessed 15 January, 2013.

challenges in multiple dimensions; to name just a few: corruption, a wide income disparity, uneven regional developments, and religious persecution that plague different ethnic groups. Yet, as a democratic system tinged with unique cultural, religious and local characteristics, Indonesian efforts in improving its systemic and local governance are worth praising, which in turn is also a reflection of a positive outcome of transnational efforts devoted to curbing piracy activities in this area. That said, a gamut of causes catalyzing piracy attacks in Southeast Asia could be realized as a combination of weak policing capacities, corrupt local governmental management, economic despair and as a minor factor, ideology and political grievances.

Chart II: Figures of Piracy Attacks and Armed Robbery against Ships in Southeast Asia

Locations	2007	2008	2009	2010	2011	2012 Jan-Jun
SE Asia						
Indonesia	43	28	15	40	46	32
Malacca Straits	7	2	2	2	1	1
Malaysia	9	10	16	18	16	4
Myanmar (Burma)		1	1		1	0
Philippines	6	7	1	5	5	3
Singapore Straits	3	6	9	3	11	3
Thailand	2		2	2		
Far East						
China			1	1	2	
South China Sea	3		13	31	13	1
Vietnam	5	11	9	12	8	4
Total	**78**	**65**	**69**	**114**	**103**	**48**

Compiled by the author with a reference to the ICC-IMB Piracy and Armed Robbery against Ships Annual Report, 2007-2011, and ICC-IMB Piracy and Armed Robbery against Ships Annual Report, January-June 2012.

III.   REGIONAL RESPONSES

Regional Security Context

As indicated in the ICC-IMB data, piracy attacks and armed robbery against ships had surged after the end of Cold War, when the region was confronted with ambivalent outcomes brought by magnificent economic developments. Despite the increasing seaborne trade via the narrow waterways of the Straits of Malacca and Singapore, the security environment has also undergone structural changes, driving the ASEAN countries to readjust their security priorities and policies.

It was not until the end of Cold War that ASEAN realized the importance of a stable regional maritime security. Due to the colonial legacies, great-powers tussling and decades-long ideological confrontations, ASEAN, during the Cold War, was pretty much occupied with the suppression of domestic insurgence in return for a stable political situation. After the withdrawal of the US (the United States) and USSR (the Union of Soviet Socialist Republics) forces from the region, there emerged a security vacuum, as ASEAN used to depend on the great powers to withstand invasions mainly from the sea. Meanwhile, the continuing globalization of production models and the advancing integration of world and regional economics further drove regional countries to revamp their security premises and policy choices. The mushrooming regional and international trade also foretold the miniscule threat of major military conflicts, while the menace from non-traditional security issues quickly gained momentum.

Summing up, the security concept has been transformed, with the following characteristics: military security has given way to economic security, collective security is replaced by a more panoramic perspective dubbed as "comprehensive security", and the concept has further shifted its traditional focus from land to maritime spheres, and countries to cross-border scenarios. Nevertheless, countries, in particular those bordering the Straits of Malacca and Singapore, uphold different perceptions of root causes, effects and the ensuing counter-measures in maintaining maritime security, which thus leads to a disharmony of security priorities among them.

The threat and devastating effects of maritime violence on sea trade is perhaps most clearly felt in Singapore, where the Minister of Defense has consistently stressed maritime terrorism as a "clear and present danger".[11] Realizing the seriousness, the city state established the interagency Maritime and Port Security Working Group, acting to coordinate different ministries and authorities in charge of the relevant areas to form a coalition policing force. The group implemented multiple measures, such as a vessel traffic information system which tracks up to 5,000 thousands vessels. The tracking function can be further refined when integrated with electronic navigation chart display and synchronized voice and data recording, thus allowing the revelation of historical and real-time traffic analyses (Huang 2008: 90). These measures are nevertheless aimed at deterrence and suppression of piracy attacks and armed robbery against ships, when structural means to facilitate total elimination require broader regional cooperation.

Malaysia focused more on navigation safety and environmental protection, in addition to measures to counter piracy attacks and other forms of maritime violence. Malaysian interests in circumventing terrorist activities on the sea and piracy attacks have recently been revived, due to its large share of seaborne trade travelling through the Strait of Malacca, and possible threats to its maritime biology from maritime violence like ships collisions. It took major steps to reorganize its five maritime agencies to form the Malaysian Maritime Enforcement

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[11] Victor Huang, "Building Maritime Security Regime in Southeast Asia: Outsiders Not Welcome", *Naval War College Review*, winter 2008, vol. 61 no. 1, pp.87-105, at 87.

Agency, which is aimed at modernizing current equipments and reinforcing patrolling and policing capabilities (Huang 2008: 90).

Indonesia has, relatively, smaller economic stakes in the counter-piracy activities in the Strait of Malacca. Rather, it focuses more on deterring illegal maritime activities in the great swathes of its eastern waters. Trafficking of human, drugs, and weapons, illegal fishing and poaching of other maritime resources, remain Jakarta's priority issues, with which territorial integrity and domestic political stability would be easily inflicted by their repercussions.

Indonesian concerns of issues over its maritime resource management have multiple root causes. Inter alia, of particular importance are the stringency of maritime enforcement capability and resentment to international intervention, which further dilutes the efforts in promoting the awareness of managing maritime interests from a holistic and regional perspective. Through 2003, Indonesian waters was the location of the most piracy attacks in the Southeast Asian region. The ICC-IMB data indicates that the number peaked in 2003, as 121 piracy attacks and armed robbery took place in Indonesian waters[12]. While the number plummeted in subsequent years due to joint efforts by littoral states, the attacks surged again in 2010 and continued in 2011, featuring 70 to 80 attacks annually[13]. Yet, the Indonesian navy, and maritime enforcement agency as well, have not developed comparable capacities to circumscribe the hard-to-defeat piracy activities.

In 2004, an estimated 302 warships and 170 aircraft were required to effectively monitor the seas around the 17,000 islands in Indonesian waters[14]. Despite being aware of the deficiency of its patrolling capability, Indonesian navy acquires new weaponries at a pace far too slower to keep up with the mushrooming piratical threats. In 2008, the Defense Minister, Juwono Sudarsono, estimated that only 60 percent of the fleet of 124 ships was operational. Further, due to the global recession plaguing the Southeast Asian and Indonesian economics, its defense budget dwindled to merely US $3.2 billion, leaving the navy with insufficient fuel for effective patrols in the Strait of Malacca[15]. The enforcement capabilities deficiency aside, Indonesia also suffers from poor coordination, despite the establishment of the Maritime Security Coordinating Board, which is aimed at coordinating the activities of no fewer than 12 national agencies of maritime security affairs[16]. Nevertheless, these efforts so far have seen merely minimal progress, as agencies tend to pursue the multifaceted institutional interests which make the idea of a coordinating board very novel.

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[12]   Table 1 – Locations of Actual and Attempted Attacks, January to December from 2003-2008, *ICC-International Maritime Bureau, Piracy and Armed Robbery against Ships Report - Annual Report 2008*, at p. 5.

[13]   Chart C – Total Incidents as per region of the world January-December 2010, *ICC-International Maritime Bureau, Piracy and Armed Robbery against Ships Report - Annual Report 2010*, at p. 7.

[14]   Sheldon Simon, "Safety and Security in the Malacca Straits: The Limits of Collaboration", *Asian Security*, vol.7 no. 1, 2011, pp. 27-43, at p. 31.

[15]   Ibid, note 14, Simon, at p.31.

[16]   R.A. Supriyanto and S. Rusdi, "Maritime Security Agencies in Indonesia: More not Merrier", Commentaries, S. Rajaratnam School of International Studies, no. 1, January 2013, available at http://www.rsis.edu.sg/publications/Perspective/RSIS0012013.pdf, accessed 18 January, 2013.

The stringent capacity aside, there is a lack of awareness in maritime interests management, casting a pessimistic outlook toward further improvement of Indonesian maritime enforcement capacity. Fishermen in financial hardship due to bleak economics, and insurgent turbulence caused by nationalistic and regional separatist movements, are more likely to be driven to take risks in committing piracy. Corrupt local officials, not surprisingly, are also involved, illustrating the structural flaw devastating local governance of these pirated regions and also, the intractableness of the governance deficit. Nevertheless, Jakarta has prioritized territorial integrity, domestic political reform and stability, and insurgent militant Islamism, well ahead of maritime security in the Strait of Malacca.

Regional responses

Up to now, partnerships addressing maritime security issue in this region remain mostly trust and confidence building measures, which emphasize information sharing more than implementation of joint measures. Described to mirror Asian characteristics of cooperation and integration, these partnerships reflect the status quo of regional efforts to curb maritime violence: almost all activities can be classified as confidence building, illustrating the absence of defined rights and responsibilities, well-organized hierarchies and the pecking order among participant members.

Nevertheless, some current measures have kicked in, fighting against the piracy attacks and armed robbery against ships while improving and maintaining safety and freedom of navigation, and maritime security at the same time.

The regionally indigenous effort is the Malacca Straits Patrol (the MSP), initiated and organized by three littoral states, and, since 2008, Thailand as well. The Patrol was established within the framework of the Malacca Straits Security Initiative, launched as early as in 1992 and strengthened in 2004 when patrols were formally implemented. Yet, the patrol remains within the domestic domain of the respective littoral states. Coordinated rather than joint, the sea patrols were further complemented by the Eyes in the Sky operations in 2005.

The Eyes in the Sky operations, as a component of the MSP, and of which Thailand is a member, introduced joint patrols in national and international airspaces over the Straits of Malacca and Singapore. The operation was initiated in 2005, to allow joint air patrols across territorial boundaries for better effectiveness in monitoring and maintaining maritime security and for operational cooperation. The operational tasks are carefully programmed to assuage concerns of invasion of the sovereignty of participating states. A foreign liaison is placed on aboard each aircraft to control actions over the waters of that officer's state. This is to circumvent the sovereignty concerns, and more importantly, to prevent air patrols from abusive uses for other purposes, such as information gathering. The air patrol also appears less intrusive, in terms of less physical presence by using air assets and carries no weapons, since the main task is to conduct surveillance, but not enforcement. These air patrols represent the bottom-up efforts by littoral states to facilitate multilateral cooperation without the presence of extra-regional countries via initiatives with limited scopes and mutual respects (Huang 2008: 97).

An inter-state cooperation between Singapore and Indonesia is worth mentioning: a joint radar surveillance system in the Singapore Strait, Project SURPIC. It is a technical system that facilitates information sharing, communication and enforcement between Singapore and Indonesia, to achieve a common operating picture in the Strait of Singapore.

A broader based initiative, the Regional Cooperation on Anti-Piracy (ReCAAP), which includes ASEAN countries, plus Bangladesh, China, India, Japan, South Korea, and Sri Lanka, was launched in 2004. The initiative was the first anti-piracy partnership implemented on a government-to-government level, which managed to push through its aim of piracy prevention via information sharing, capacity building, legal assistance and extradition. The initiative also led to the establishment of an Information Sharing Centre in Singapore (Huang 2008: 98; Graf 2011: 36).

The ReCAAP was a breakthrough. It is a formal institution to combat piracy, not a mere compilation of agreements and declarations that live on words but stop short of real actions. Further, the project is centered on the information sharing centre which is located in one littoral state, Singapore. Eying its broad membership that runs the gamut of almost all countries with stakes in the Strait of Malacca, the centrality of littoral states indicates that neutrality and inclusiveness of the initiative is a *sine qua non*, to justify an ambitious initiative that is open to extra-regional powers. However, neither Indonesia nor Malaysia has signed up for membership, despite their actual participation going on for years. Their hesitation is engrained mostly in the rivalry among littoral states, and concerns over the information sharing centre in Singapore, from which data thus published would cause repercussions to other littoral states (Huang: 2008, 98).

IV. THE DILEMMA OF INTERNATIONAL RESPONSES

While regional efforts in addressing piracy threats present a promising story, multilateral efforts initiated by extra regional powers remain relatively dismal. As indicated, the bleakness of international participation in maritime security regime building in Southeast Asia has multiple root causes. Among them, littoral states' hesitation over possible circumscription upon their sovereignty, and the tussle between littoral states, user states and shippers, rank as two major reasons that further shape the route for efficacious international anti-piracy cooperation.

As indicated, regional responses often take place on a bilateral basis between littoral states in the form of coordinated coastal and air patrols. Regional countries other than littoral states, such as Thailand and the Philippines, have also been involved in some collaboration with Malaysia and Indonesia[17]. The trend demonstrates a strong tendency of resistance to disproportional intervention by extra regional countries. The trend also shows that Southeast Asia remains a battlefield for multi-layered influences between rival extra regional countries. Attempts, in forms like security regime building, may be rebuffed by other stakeholders as upsetting regional balances that were originally preferable.

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[17] Supra, note 5, Moller, at p. 47.

Among extra regional countries that stake their interests in curbing maritime violence in Southeast Asian waters, Japan remains one of the most active players. Largely dependent on seaborne trade that travels through the Southeast Asian waters for energy supplies, Japan started building relations with the ASEAN community throughout the 1990s, to improve and enhance navigation safety by providing much-needed training and financial assistance to littoral states. The Japanese Coast Guard invited Southeast Asian maritime police for training in Japan, and even participated in creating a Traffic Separation Scheme for the Strait of Malacca as early as 1997[18].

Throughout the Japanese efforts in the 1990s, the 1999 proposal of formatting a regional coast guard to combat piracy was dissuaded by another key regional player, China, which suspected that Tokyo's real intent was to poke its nose into maritime security issues in Southeast Asian waters, and to contain Chinese maritime influences in this region. The original plan was to include forces from littoral states, plus those of Japan, South Korea and China, to form a joint marine patrol safeguarding mainly the Malacca Strait. Despite this initial failure, Japan proposed again in 2005, with a framework more limited in scope and less intrusive in operations. This later proposal then hit the target, and successfully launched a regional cooperative initiative that stresses more on voluntary information submission, and funded by volitional contributions (Huang 2008: 8; Graf 2011: 36).

Washington also holds great economic stakes in Southeast Asian waters. Yet, security regime building with a foreign initiative easily gets frustrated due to the possible circumscription of littoral states' sovereignty. The Regional Maritime Security Initiative (RMSI) led by the US in 2004 serves as a good example.

While originally intended as a voluntary partnership of regional states for information sharing and early warning to counter transnational threats, premature and mis-reporting by the media which depicted US deployment of American Special Forces and Marines to patrol the Malacca Straits raised condemnation from littoral states (Huang 2008:8). Seen as egregious affronts to littoral states' sovereignty, the RMSI then lapsed into dormancy, while the initial actor, Commander and Admiral in the US Pacific Command, no longer mentioned it in later communications.

Despite the failed attempt of a US-led security apparatus, Washington has continued providing aids to coastal states for the improvement of maritime security and counterterrorism. US aids in capacity building has its legitimacy rooted in the National Defense Authorization Act, under which the Global Train and Equip Program has dispersed $47.1 million to Indonesia, and $16.3 million to Malaysia[19]. Hardware aside, such as coastal radars mostly along the Indonesian side in the Malacca Strait, the Makassar Strait and Celebes Sea and patrol boats, the US navy and coast guards also conduct training with littoral states' maritime law enforcement agencies through Cooperation Afloat and Readiness Training (CARAT) and Southeast Asian Cooperation for Anti-Terrorism (SEACAT)[20].

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[18] Supra, note 14, Simon, at p. 32.

[19] Supra, note 14, Simon at p. 32.

[20] Supra, note 14, Simon at p. 32 and p. 36.

V. LESSONS AND PROSPECTS FOR A GREATER ROLE FOR THE EU IN SOUTHEAST ASIAN MARITIME SECURITY BUILDING

Lessons from Maritime Security Regime Building

Ever since the end of the Cold War when a resurging tide of piracy attacks resumed, littoral, regional and extra regional countries had pushed through piracy-curbing efforts. The outcomes, up to now, remain patchy at best. The region is still overwhelmed by lingering piracy and maritime violence events, ebbing and flowing due to regional and global financial, economic and security dynamism. Despite the dismal outcome of these multifaceted attempts of security regime building, it is quite illustrating that initiatives led by foreign, or extra regional countries tend to wither away relatively sooner. The US-led RMSI serves as an example. A Japanese proposal for an Ocean Peace Keeping force had a similar outcome. Extra regional countries are more than welcome to provide financial, technology and human capital resources. Yet, the region seems far from prepared and less receptive to proposals for security regimes and frameworks that are led or structurally built by extra regional powers.

Besides prevailing resistance to international intervention, regional countries are also far from prepared to deal with certain deep root causes which might risk domestic political and social stability.

Piracy, or armed robbery against ships, has its causes rooted in multiple dimensions. Suppression and deterrence remain types of counter measure at a more superficial level. A panoramic view is hence required to efficaciously tackle root causes, with a mixture of measures addressing weak local governance, bleak financial situations for villager-pirates, and radical groups driven by extremism that committed violence in return of political goals. That said, the region, or littoral states more specifically, seems quite hesitant to make this linkage between counter piracy and domestic political instability. While recognizing the importance of navigational freedom and safety of seaborne trade and communication lanes, regional countries, in particular, littoral states bordering the Strait of Malacca, appear quite resistant to advanced foreign intervention in regional security regime building at this moment. The reasons for this are multi-faceted.

The first thing worth mentioning is that sovereignty remains a sensitive issue that littoral states and stakeholder countries have been tussling with harshly. The resistance is largely informed by territorial considerations and has multiple dimensions: the territorial claims that overlap and may fragment regional maritime legal order, littoral states' attitudes that keep a wary eye on foreign forces that bring helps, while inflicting encroachments upon national sovereignty at the same time, and the concerns over un-welcomed upshots of could-be confrontation and rivalry among stakeholder countries.

Territorial considerations have two folds in this region. Attention needs to be drawn first to disputes over islets and maritime resources utilization rights in certain areas in the South China Sea, which would have roiled up the region with looming, yet destructive conflicts. Tensions were brought back to the forefront after 2009 when three major countries, China, Vietnam and the Philippines, strengthened their claims, along with provoking gestures and hawkish diplomacy. Ever since, this region has been consistently plagued by the dread of

potential conflicts which could spark confrontations that involve national navies, civilian vessels, and in a possible scenario, foreign intervening militaries.

Another dimension of territorial considerations is to be deciphered via a larger contextual setting. Territorial entitlement entails utilization rights and interests of marine resources, which insightfully explains littoral states' concerns and the race to stake territorial claims with muscle-flexing behaviours. Littoral states' wariness about too much encroachment upon their sovereign control of adjacent waters, and the ensuing compromise of marine resource utilization rights have been further strengthened by the latest rounds of tensions in the South China Sea. While the grandstanding is principally among regional stakeholders, China, the Philippines and Vietnam *tout court*, the concept of sovereignty has bewildered most players, especially regional littoral countries, by its ostensibly universal application and the seemingly absolute interests.

Sovereignty aside, hurdles to greater cooperation can be aggravated if concerns over strategic deployment were taken into considerations. Concerns of such kind are mirroring an actuality in this region, which is informed by prolonged political tussles among multiple stakeholders, including regional giants and extra-regional powerful countries. In this sense, the concept, sovereignty, could be regarded as tactics available for littoral states as a shield to filter away political calculations and intervention by powerful extra-regional stakeholders. Apparently, Malaysia and Indonesia are prone to this defensive attitude by elevating sovereignty as a paramount factor, while contrarily, Singapore is open to attract and solidify international aids and cooperation. However, defensiveness seems to win the game of one-upmanship. In a nutshell, current cooperation frameworks remain at a more preliminary or technical level, in which capability building, technical aids and financial assistance are mostly welcome.

In this context, how can the European Union exert influences on this seemingly stiff regional model of maritime security schemes?

Bringing in the European Union

Till now, the EU has kept a relatively low profile in maritime tensions in Southeast Asia. Yet, the trade and investment volumes between EU and East/Southeast Asia are far from negligible. In 2011, Asian partners in Asia-Europe Meeting (ASEM) provided 33.4% of EU imports and 38.2% of exports, making Asia the largest trading partner of the EU[21]. Breaking down the data, it shows that China remains the largest source of imports, and the second best client, while Japan ranks in both categories as the number six, India number eight, and South Korea in slot 10 and 11 respectively[22]. China has the biggest trade exposure to the EU, while trade re-bounces by a growth of 21% regarding EU exports to China, and a 5% growth of EU

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[21] "2012-the EU in Asia Year: The EU's engagement in the Asia-Pacific", 16 November 2012, European External Action Service file, available at eeas.europa.eu/asia/docs/2012_eu_in_asia_year_facts_figures_en.pdf, accessed 29 January, 2013.

[22] Ibid, "2012-the EU in Asia Year: The EU's engagement in the Asia-Pacific".

imports therefrom[23]. While experiencing a decline in trades with Japan due to the financial crisis in 2008, EU foreign direct investment to Japan recovered in 2011 with an estimated volume of 3.6 billion euro[24]. The EU-ASEAN trade remains booming despite declines in 2009. EU foreign direct investment to ASEAN reached 22 billion euro in 2010[25].

The growing trade between EU and Asia indicates that the two has been closely connected via the developing economic interdependence, despite occasional global economic recessions and financial crises. EU has been working on forging efforts for better maritime affairs management since 2007, when an integrated maritime policy for the European Union was then announced[26]. The Union's efforts lay in establishing and improving international governance of maritime affairs, which ran the gamut from climate change, degradation of marine environment, maritime safety and security, and energy security and sustainability[27]. In the Action Plan of this integrated policy, there are certain areas of particular importance that require coherent policy framework, cross-sectoral tools and the consciousness and political wills for good governance of maritime affairs among member states: maritime transport, marine research, national integrated maritime policies and spatial planning of member states, effects of climate change on coastal regions, reduction of $CO2$ emission and pollution by shipping, and eliminations of pirate activities and illegal fishing[28]. In 2009, the Commission again stressed the importance of international governance for maritime affairs based on the rule of law, among which UNCLOS remains a key reference[29]. Maritime affairs will also become a regular topic in discussions with EU's partners, with the hope that a high-level dialogue can be established with key partners by mutual consents and interests[30].

In recent years, EU's attention has been drawn much more to the brewing South China Sea disputes, and the possible impact on navigations freedom and safety. As the issue foretells immediate threats, the Union has been calling upon ASEAN, and stakeholder countries like China, to build constructive channels to solve the territorial spats in South China Sea. A joint statement on the Asia Pacific region issued by the High Representative of the European Union, Catherine Ashton, and Secretary of State Hilary Clinton of the US, emphasized that the EU and the US pledged to support cooperative solutions for resolving territorial

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[23] Anne Pollet-Fort, "EU-Asia Trade Relations: Getting through the Crisis", 29 June, 2012, EU Centre in Singapore documents, www.eurocham.org.sg/index.php?option=com_docman, accessed 29 January, 2013.

[24] Ibid, Pollet-Fort.

[25] Supra, note 23, Pollet-Fort.

[26] "An Integrated Maritime Policy for the European Union", Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission document COM(2007)575, 10 October, 2007.

[27] Ibid, "An Integrated Maritime Policy for the European Union".

[28] Supra, note 26, "An Integrated Maritime Policy for the European Union".

[29] International dimension of the EU's Integrated Maritime Policy: questions and answers, the Commission document, MEMO/09/453, 15 October 2009, http://europa.eu/rapid/press-release_MEMO-09-453_en.htm, accessed 29 January, 2013.

[30] Ibid, International dimension of the EU's Integrated Maritime Policy: questions and answers.

disputes in the South China Sea according to international law, while also urging ASEAN and China to conclude a Code of Conduct to this end[31]. In a recent update of the Union's 2007 Guidelines on the EU's Foreign and Security Policy in East Asia, the South China Sea was taken into account as a new hotspot, in which all parties are encouraged to adopt measures conducive to peaceful and mutually beneficial resolutions, surely in accordance with international law[32]. Other issues are also mentioned, although briefly, including joint efforts between the European Union and ASEAN in combating piracy and maintaining maritime security.

While the EU has been making progress in developing more solid cross-continental cooperation, difficulties remain in whether the Union can deliver effective multilateralism by presenting itself as a unitary actor and urging its counterpart, the ASEAN, to evolve further. For now, the EU's overall political engagement in this region remains negligible. It is believed that this miniscule involvement can be largely attributed to divisions between member states, especially over policy towards China that fall within a comprehensive compass of trans-continental exchanges: from more neutral subjects like trade and cultural ones, to controversial issues like currency rates, environmental and health standards, and human rights.

That said, challenges do not stop merely at a divided European Union, in particular in whether a unified China policy can be considered. What hobbles the Union's movement further is a lack of a comprehensive strategy, which, if promulgated, would significantly enhance the European's deployment of hard muscles on one hand, and of soft power, on the other. In this context, suggestions like the EU placing special emphasis on its interaction with certain great powers in this geopolitical zone are not uncommon. Regional powers like China and India are top on the list, while the significance of the EU's relations with the US and Japan remains inferior to none. It is argued that only by maintaining constant presences in this region, and by taking a geo-strategic perspective of "effective multilateralism", will the EU be valued as a credible and effective multilateral partner, with its efforts being fruitful[33]. Nevertheless, when taking into consideration what overshadows multilateral efforts from previous discussions, the EU will need to craft the measures with delicacy. A sovereignty-neutral, strategically-balanced, and resource-oriented measure will address the shortcomings of governance capacities, while calming littoral states' nerves strung up by territorial disputes.

Yet, before all these can be done, visibility of the EU in this region remains a *sine qua non*. The EU must more actively participate in Asian forums like the ASEAN Regional Forum in the near future, while aiming ambitiously at East Asian Summit membership. Regular visits by top officials can also be institutionalized. In a nutshell, the EU needs to begin thinking more in line with maritime points and lines of control, from which its influences could be further extended to immense territories far beyond mere trade routes. A series of littoral spaces, created and connected, would then place the EU in a better position to spread its geopolitical

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[31] Supra, note 21, "2012-the EU in Asia Year: The EU's engagement in the Asia-Pacific".

[32] Supra, note 21, "2012-the EU in Asia Year: The EU's engagement in the Asia-Pacific".

[33] James Rogers, "From Suez to Shanghai: the European Union and Eurasian maritime security", European Union Institute for Security Studies Occasional Paper, No. 77 March 2009, at p. 33.

influence, project political determination, diffuse soft values, quash piracy, and to help the recipient world, Southeast Asia, better realize the fruits of effective multilateralism.

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Maintaining Good Order at Sea in Asia: Opportunities and Challenges

Tetsuo Kotani[1]
Japan Institute of International Affairs (JIIA)

INTRODUCTION

The 1982 UN Convention on the Law of the Sea (UNCLOS) is often referred to as the "constitution for the world's oceans." By defining states' rights and obligations in the maritime domain, it maintains a balance between the rights of maritime powers that seek unimpeded navigation in world waters and the interests of coastal states that demand broader jurisdiction over their waters.[2] In other words, UNCLOS provides the foundation of good order at sea.

Maintenance of good order at sea has become a primary role of sea power. Good order at sea ensures the legitimate use of the seas for shipping and resource exploitation so that nations can promote their maritime interests in accordance with agreed principles of international law. Primary threats to good order at sea include piracy and armed robbery against ships, maritime terrorism, illegal fishing, marine natural hazards, and excessive/overlapping maritime claims.

This paper discusses the opportunities and challenges for maintenance of good order at sea in Asia and implications to other parts of the world, especially Europe. Asia contains the world's busiest and richest waters. The maintenance of good order at sea is the foundation of the dynamic economic growth in the region and the world. A key enabler to good order at sea in Asia is maritime law enforcement, which is conducted by regional navies, coast guards, and maritime law enforcement agencies. They not only enforce law domestically but also coordinate, and train bilaterally and multilaterally in accordance with international law.

The first part of this paper discusses opportunities by reviewing how Asia developed a regional counter-piracy cooperation model. Threat from piracy was the major driving force for international cooperation to maintain good order at sea in Asia. The Strait of Malacca has been one of the traditional piracy hot spots throughout history, but joint efforts by coastal and user states to fight piracy in the Strait have reduced the number of piracy incidents

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[1]   Tetsuo Kotani is a research fellow at the Japan Institute of International Affairs (JIIA).

[2]   James Kraska, "The Law of the Sea Convention: A National Security Success: Global Strategic Mobility through the Rule of Law," *George Washington International Law Review* 39 (2007), p. 572.

greatly. Counter-piracy efforts in Asia can be called a "Malacca model" and it is being applied for counter-piracy efforts in other parts of the world, including the Horn of Africa.

The second part of this paper discusses the challenges posed by arbitrary use of maritime law enforcement. Tensions are rising between the Asian littoral states. Some coastal states often strive to expand their jurisdiction beyond their territorial waters as part of a sea denial strategy. These states wage a form of persistent and patient "legal warfare" to renegotiate the very essence of good order at sea.[3] In both the East and South China Seas, claimants overlap their claims over ownership of land features and adjunct waters. China does not hesitate to take unilateral assertiveness to claim large parts of the Asian littoral. China utilizes law enforcement to create a *fait accompli* by dispatching maritime enforcement ships—rather than warships—to contested waters to enforce its domestic law.

A MALACCA MODEL FOR COMBATING PIRACY

Traditionally, piracy has posed a constant threat to shipping through the Strait of Malacca. The situation became worse in the 1990s and the International Maritime Bureau established a 24-hour Piracy Reporting Center (IMB-PRC) in Kuala Lumpur, Malaysia, in 1992 to provide the first point of contact for shipmasters to report any incident of piracy.[4] Piracy attacks in the Strait of Malacca reached a peak in 2000 with 80 attacks (See Figure 1). Piracy attacks in Southeast Asia in general, and the Strait of Malacca in particular, reduced after 2004, when the affected countries intensified counter-piracy measures. Piracy attacks in the Strait continue to be low today, although attacks in Southeast Asia are on the rise.

Figure 1: Piracy Attacks

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
World	202	300	469	335	370	445	329	276	239	263	293	410	445	439
Southeast Asia	99	167	262	170	160	184	160	115	86	75	65	55	82	88
Malacca Strait	2	16	80	24	21	30	46	19	16	10	8	11	5	12
Horn of Africa	9	12	22	19	17	21	10	45	20	44	111	217	219	237

Source: IMB-PRC Annual Reports 2007 and 2011

The Strait of Malacca is critically important for the world's shipping. It is the shortest sea route between Gulf oil suppliers and the Asian markets, with an estimated 15 million bbl/d flow. If shipping through the Strait is impeded, nearly half of the world's fleet would be required to reroute around the Indonesian archipelago through Lombok Strait, located between the islands of Bali and Lombok.[5] The waters in the Strait of Malacca are territorial waters of

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[3] Ibid., p. 544.

[4] See IMB Piracy Reporting Center website, http://www.icc-ccs.org/piracy-reporting-centre.

[5] Energy Information Administration, U.S. Department of Energy, "World Oil Transit Chokepoints," http://www.eia.doe.gov/cabs/World_Oil_Transit_Chokepoints/wotc.pdf, pp. 3- 4.

either Indonesia or Malaysia, and the Strait is designated as a route used for international navigation, although Indonesia and Malaysia still possess jurisdictions over the waters.

Under international law, piracy is defined as any illegal acts of violence or detention on the high seas.[6] Similar acts within state's territorial waters are classified as an "armed robbery" by the International Maritime Organization (IMO) and fall into the jurisdiction of each individual state. Accordingly, violence against ships in the Strait of Malacca is an armed robbery, not a pirate act, and only Malaysia or Indonesia have jurisdiction. In other words, the security of international shipping rests on the Malaysian and Indonesian capacity to suppress armed robbery in their territorial seas.

In the late 1990s, piracy in Southeast Asia was becoming a serious threat to the shipping business. About 10 hijackings had been reported in the Far East and Southeast Asia in 1998 and 1999. In September 1998, a Japanese freighter, MV Tenyu, went missing with 14 crew members. In October 1999, another Japanese cargo ship, MV Alondora Rainbow, was hijacked in the Strait of Malacca. The vessel and its cargo were worth about $20 million. The hunt for the missing ship, repainted and operating under a new name, was coordinated by the IMB-PRC and Indian coast guard and navy, which showed how cooperation between shipping industry and law enforcement agencies could work.[7]

The Tenyu and Arondra Rainbow incidents became a wakeup call for Japan, which, thus, initiated counter-piracy cooperation in the Strait of Malacca. Japan, as a major user state of the Strait, hosted a series of international counter-piracy conferences involving relevant countries' law enforcement agencies, IMO, and ship owners.[8] The conferences produced two outcomes. One is the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), the first intergovernmental anti-piracy agreement adopted by 16 regional countries, including Japan, South Korea, China, India, Bangladesh, Sri Lanka, and ASEAN member countries, in 2004. The other is the inauguration of annual Head of Asian Coast Guard Agencies Meeting (HACGAM) in 2004, involving 17 Asian

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[6] According to Article 101 of UNCLOS, 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 aircraft;(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;(c) any act inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b).

[7] Michael Richardson, "Challenging Marauders' Spread, Navy Recovers a Hijacked Ship: India and China Set Sights on Piracy," *New York Times*, November 23, 1999, http://www.nytimes.com/1999/11/23/news/23iht-pirates.2.t.html.

[8] Those conferences included Regional Conference on Combating Piracy and Armed Robbery against Ships (2000), Mission for Combating Piracy and Armed Robbery against Ships (2000), Asian Cooperation Conference on Combating Piracy and Armed Robbery against Ships (2001). Those were financially supported by the Nippon Foundation, a Japanese private philanthropic organization.

countries, including Japan, China, South Korea, Bangladesh, Pakistan, Sri Lanka, Hong Kong, and ASEAN member countries to enhance response capabilities for anti-piracy.[9]

ReCAAP provides a useful model for regional counter-piracy cooperation. ReCAAP went into force in 2006 and an Information Sharing Center (ISC) was established in Singapore. ReCAAP ISC has a status of an international organization with local and overseas staff. Funding for the ISC comes from voluntary contributions from the contracting parties. Its operations are supervised by the Governing Council with one representative per contracting party. ReCAAP requires each member state to have a focal point, and each focal point acts as a point of information exchange with the ISC. These focal points coordinate surveillance and enforcement with neighbouring focal points within its jurisdiction, while promoting in-teragency cooperation within each member state. ReCAAP ISC also conducts research and analysis, and holds capacity-building seminars to share best practices with focal points and shipping industries.[10]

The "ReCAAP model" had implications for other parts of the world. Following the ReCAAP ISC, the Djibouti Code of Conduct, concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, signed in January 2009, called for the establishment of three information-sharing centers at the Horn of Africa.[11] ReCAAP is also open to non-Asian countries. Norway joined ReCAAP as the 15th contracting and first non-Asian party in 2009, followed by the Netherlands, Denmark, and the United Kingdom.

HACGAM turns out to be an effective mechanism for confidence- and capacity-building among regional coast guards. The first HACGAM was conducted at Tokyo, Japan in 2004 and adopted the Asia Maritime Security Initiative 2004 (AMARSECTIVE2004), which provided common platforms for cooperation among coast guard agencies, in order to combat unlawful acts at sea such as piracy, armed robbery and terrorism. At the 3rd Meeting held in Singapore in 2007, the Joint Statement was agreed which set capacity building as a matter of priority for future meetings in order to enhance cooperation between and among the coast guard agencies, and to promote working-level discussions. In 2010, at the 6th HACGAM held in China, the scope of discussions was expanded to include other law enforcement activities, such as marine environmental protection, maritime safety, search and rescue, and maritime security.[12] At the 7th HACGAM held in Vietnam in 2011, following the Great

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[9] Japan Coast Guard, *Kaijo Hoan Repoto 2006* [Japan Coast Guard Annual Report 2006], http://www.kaiho.mlit. go.jp/info/books/report2006/top.html.

[10] See ReCAAP ISC website, http://www.recaap.org/.

[11] ReCAAP Press Release, November 11, 2011, http://www.recaap.org/Portals/0/docs/News%20and%20Press%20 Releases/2011-11-11%20Press%20Release.pdf.

[12] Japan Coast Guard Press Release on the 6th HACGAM, October 15, 2010, http://www.kaiho.mlit.go.jp/info/ kouhou/h22/k20101015/k101015-2.pdf.

Easter Japan Disaster early that year, large-scale disaster preparation and relief became a new area of cooperation.[13]

HACGAM can be modelled after the annual North Pacific Coast Guard Forum (NPCGF). NPCGF started in December 2000, as a conference among the heads of coast guard and equivalent entities of Japan, Russia, the United States, and South Korea. China and Canada joined this group later. The NPCGF includes commandant-level and working-level meetings. NPCGF has become a useful confidence-building mechanism, producing practical outcomes such as joint operational guidelines, combined training for counter-smuggling and fishery enforcement patrol.[14] HACGAM is still a venue for discussion, but it can be expanded as a venue for joint actions in the future so that it can contribute to the maintenance of good order at sea.

In addition to those multilateral efforts, the littoral states of Indonesia, Malaysia, and Singapore have all taken independent and coordinated steps to address piracy and armed robbery. All three of them increased naval presence, patrol and maritime domain awareness in the Strait of Malacca. Indonesia and Malaysia introduced a string of radar stations along the Strait, while Singapore established sophisticated surveillance and information networks to monitor sea traffic. The three states also started to conduct the Malacca Strait Patrols (MSP) with Thailand after 2004. The MSP comprises sea and air patrols under the Joint Coordinating Committee. The three littoral countries have also developed the Malacca Strait Patrol Information System, a data-sharing system that allows users to share information about shipping to enhance security in the Malacca Strait.[15]

When piracy is ignored in a particular region, it tends to proliferate; conversely, when it is addressed by coastal states and the international community, it tends to decline. Any political commitment to repressing piracy and safeguarding a region's waters must, for lasting effectiveness, come from coastal and affected states. The multi-layered regional approach has led to a dramatic decline in the maritime piracy in the Strait of Malacca. Respect for sovereignty of coastal states, information sharing, regional capacity building, and coordination among maritime law enforcement agencies are the key enablers for success.

LEGAL WARFARE IN THE ASIAN LITTORAL

After the Japanese government's purchase of three islets that are part of the Senkaku Islands in September 2012, the Chinese government announced baselines for territorial sea from those islands and filed an application to the UN Commission on the Limits of the Continental

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[13] Japan Coast Guard Press Release on the 7th HACGAM, October 28, 2011, http://www.kaiho.mlit.go.jp/info/kouhou/h23/k20111028/k111028-2.pdf.

[14] Tetsuo Kotani, "Japan's Maritime Challenges and Priorities," in Joshu Ho and Sam Bateman ed., *Maritime Challenges and Priorities in Asia: Implications for Regional Security* (Milton Park: Routledge, 2012), p. 206.

[15] Joshua Ho, "Piracy in the Gulf of Aden: Lessons from the Malacca Strait," *RSIS Commentaries*, January 22, 2009, pp. 1-3.

Shelf to extend its continental shelf to include the Senkaku Islands.[16] China also bolstered its maritime and aerial "patrol" of the islands, frequently violating Japanese territorial seas and even airspace, to challenge the Japanese claim. Both history and international law clearly establish that the Senkakus are an inherent part of Japan's territory. China's assertions lack consistency or legal grounding.[17] As its claim lacks legal foundation, China is attempting to challenge the territorial status quo by the arbitrary interpretation of international law and threat of force.

China persists in a series of excessive maritime claims, or a legal warfare. China claims jurisdiction over the entire East China Sea on the grounds that the continental shelf extends from the Chinese coast through to the Okinawa Trough, while Japan insists on a demarcation based on the median line between the Chinese and Japanese coasts. In the South China Sea, which includes crucial international shipping lanes through which more than a third of global trade is carried, China claims jurisdiction within a "nine-dotted line"—a U-shaped demarcation that covers 80% of the world's busiest waters—with no legal basis, and denies claims by Vietnam, the Philippines, Malaysia, and Brunei.

China's legal warfare is part of its sea denial strategy. China's domestic law guarantees freedom of navigation in its exclusive economic zone (EEZ) but denies the freedom in China's "historic waters." China's EEZ claims are based on the historical "occupation" of the waters in the Yellow Sea, East China Sea, and South China Sea. China, thus, does not accept, for example, surveillance activities by foreign military vessels in its EEZ and fails to recognize the airspace above its EEZ as international airspace.[18] This type of behaviour precipitated the Hainan EP-3 incident in 2001 (when Chinese fighter jets collided with a US intelligence aircraft above China's EEZ and forced it to land) and the *USNS Impeccable* incident in 2009 (when a US military vessel was harassed by Chinese naval and enforcement ships and aircraft in the South China Sea).

China's primary weapon for legal warfare is law enforcement ships, rather than warships. China's paramilitary maritime law enforcement agencies, called "five dragons," or more recently "nine dragons," include the China Fisheries Law Enforcement Command (FLEC) under the Ministry of Agriculture; the China Marine Surveillance (CMS) under the State Oceanic Administration (SOA); the Maritime Police of the Border Safety Administration (BCD); the Maritime Safety Administration (MSA) of the Chinese Ministry of Transportation; and

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[16] The Senkaku Islands are located in the East China Sea. First annexed by Japan in 1895, the islands came under US control after World War II but returned to Japan with the 1971 US-Japan Okinawa Reversion Treaty. China and Taiwan long acknowledged Japanese sovereignty over the islands but suddenly began to claim ownership in 1971, referring to them as Diaoyu islands, after it was discovered that undersea oil reserves might exist nearby.

[17] For Japanese and Chinese claims over the Senkaku Islands, see Japan's Ministry of Foreign Affairs website, http://www.mofa.go.jp/region/asia-paci/senkaku/index.html.

[18] James Kraska, *Maritime Power and the Law of the Sea: Expeditionary Operations in World Politics* (New York: Oxford University Press, 2011), pp. 315-316.

the General Administration of Customs (GAC).[19] There was little coordination among the various Chinese agencies and they competed with one another over budget and jurisdiction.[20] More recently, China is improving maritime law enforcement capabilities, especially for CMS, with a huge ship-building program.[21] During the Nation People's Congress in March 2013, the Chinese government announced that it plans to centralize bureaucratic control over its maritime law enforcement agencies by consolidating them under SOA.

China's paramilitary enforcement forces are weak compared with those of Japan and the United States, but strong vis-à-vis those of other neighbouring countries. BCD is officially called "China Coast Guard" and participates in bilateral and multilateral engagements such as HACGAM and NPCGF. Other agencies have few contacts with foreign counterparts. The surveillance ships belonging to FLEC and CMS protect Chinese fishermen in the Asian littoral, while intimidating other countries' fishing boats with the threat or even the use of force.

FLEC and CMS vessels were also employed in numerous cases against neighbouring countries' warships and enforcement ships, such as the *USNS Impeccable* incident, and the confrontation over the Senkaku Islands after Japanese nationalization of the islet. In fact, China succeeded in changing the territorial status quo with its paramilitary force after the standoff over the Scarborough Shoal in the Philippine EEZ in April-June 2012. Both the Philippines and China claim ownership of the Scarborough Shoal, which was under Philippine control. The Philippine Coast Guard ships and CMS and FLEC ships confronted in the shoal after the Philippines Coast Guard attempted to detain Chinese fishing boats in April 2012. After a two-month standoff, the shoal is now under China's effective control. This is the first takeover of an island by China after 1995, when China occupied the Mischief Reef, replacing the Philippines.[22]

Thus, paramilitary ships turned out to be an effective tool for China to deny foreign countries' legitimate surveillance activities in the Asian littoral. Because they are not warships, the dispatch of those enforcement ships may not constitute a direct threat or use of force. But since they are owned by the state, those ships can enjoy sovereign immunity even in foreign territorial seas. On the other hand, those ships can demonstrate jurisdiction to demonstrate its maritime jurisdiction while challenging other states' surveillance capabilities in contested waters without escalating into a military conflict.

China's Hainan Province, which administers China's South China Sea claims, has introduced new regulations on navigation that allow public security border defense units to board, inspect, and seize foreign vessels engaging in illegal activities in Hainan's 12-nautical

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[19] See Lyle J. Goldstein, *Five Dragons Stirring Up the Sea: Challenge and Opportunity in China's Improving Maritime Enforcement Capabilities*, China Maritime Study, No. 5 (April 2010); and The International Crisis Group, *Stirring Up the South China Sea*, Asia Report No. 223, April 23, 2012.

[20] Goldstein, *op. cit.,* p. 3.

[21] The National Institute for Defense Studies, *NIDS China Security Report 2012*, December 2012, p. 33.

[22] Ibid,. p. 20.

mile territorial waters or landing on the province's islands and reefs.[23] Since territorial claims overlap in the South China Sea, this new regulation can worsen the situation in the South China Sea.

China plays a dangerous game by employing paramilitary forces. China's dispatch of enforcement ships is not a peaceful means. Whether the subject is a warship or enforcement ship is not a decisive factor for recognizing a threat of force; actual conduct is the primary determinant (Guyana vs. Suriname).[24] Japan, South Korea, the Philippines, Vietnam, and other regional countries are now building up their coast guard capacities and capabilities to meet challenges at sea, including those from Chinese assertiveness. As long as China uses its paramilitary force as its primary weapon for legal warfare, the chances of armed conflict and escalation will continue to increase.

However, legal warfare is not a Chinese or Asian monopoly. Other countries also make excessive maritime claims. For example, Vietnam and Indonesia require prior notification before foreign warships enter their territorial seas. India restricts foreign military exercise and manoeuvre in its EEZ, while Maldives introduced a permission system for the entry of foreign ships into its EEZ and for foreign warships in its territorial seas. Iran and Oman impose restrictions on passage through the Strait of Hormuz.[25] If those challenges are unaddressed, freedom of the seas in the maritime highways that connects Asia and Europe will be undermined. The international community must address such non-violent conflicts to maintain good order at sea globally.

CONCLUSION AND POLICY IMPLICATIONS

Freedom of the seas has become a key phrase in Asian security. The notion of free seas has its roots in ancient Rome, when the seas were regarded as being common to all men. Following the Age of Discovery, freedom of the seas was widely accepted, and, in the 19th century, the rights and obligations of states at sea were clarified in international treaties. Freedom of navigation was recognized as the customary international law. When piracy became a common enemy of mankind, global maritime powers stepped in and maintained good order at sea.

Today, no single maritime power can maintain good order at sea. Freedom of the seas requires regional and international coordination and cooperation. As discussed in this paper, maritime enforcement cooperation has both positive and negative implications for good order at sea. On one hand, regional enforcement agencies can cooperate and create success in repressing piracy in the Strait of Malacca. On the other hand, enforcement ships confront each other as primary tools for legal warfare, thus undermining good order at sea.

[23] Janes Perlez, "Alarm as China Issues Rules for Disputed Area," *New York Times*, December 1. 2012, http://www.nytimes.com/2012/12/02/world/asia/alarm-as-china-issues-rules-for-disputed-sea.html.

[24] Thomas V. Donovan, "Suriname-Guyana Maritime and Territorial Disputes: A Legal and Historical Analysis," *The Journal of Law and Policy*, Vol. 13-01 (Fall 2003).

[25] U.S. Department of Defense, Freedom of Navigation (FON) Report for Fiscal Year 2012, January 4, 2013, http://policy.defense.gov/Portals/11/Documents/gsa/cwmd/FY2012%20DOD%20Annual%20FON%20Report.pdf.

Although this paper's focus is regional cooperation on maritime law enforcement, navies also play an important role in the maintenance of good order at sea. Bilateral naval cooperation under the US alliance network still remains the most important form of cooperation. But trilateral frameworks among US, Japan, and India and US, Japan, and Australia have become promising given their capabilities. The Western Pacific Naval Symposium (WPNS) and the Rim of the Pacific Exercise (RIMPAC) are the most important multilateral mechanisms in the Asia-Pacific, and China is a participant of the former and will join the latter in 2014. WPNS has developed the Code for Unalerted Encounters at Sea (CUES), which provides safety measures and procedures, and the means to facilitate communications when ships and aircraft make contact. If the regional navies can properly implement CUES, it would contribute a lot to good order at sea.

Asia and Europe are linked by the maritime highways, and what happens in the Asian littoral matters to Europe. In order to promote a universal interpretation of freedom of the seas, Asia and Europe should push to prioritize maritime issues in multilateral forums such as the Asia-Europe Meeting (ASEM). This would entail working to convince countries in the region of the benefits of freedom of the seas as a community right while emphasizing respect for the sovereign rights of littoral states over maritime resources. Asia and Europe should also reaffirm their commitment to peaceful solutions for territorial and maritime disputes, not by threat or use of force.

More specifically, Asia and Europe should cooperate for capacity building to maintain good order at sea in Asia. Although the number of piracy in the Strait of Malacca has been reduced, the number of armed robbery incidents in Bangladesh, Vietnam, Malaysia, and Indonesia is constant or even on the increase. Enhanced surveillance and enforcement efforts are still necessary in Asia. Europe can contribute to capacity building of Asian coast guards bilaterally or multilaterally through ReCAAP or ASEM. Capacity building for Asian regional coast guards can help to resolve China's current disputes as well.

Maritime Security and Piracy: Issues, Responses and Multilateral Cooperation in South Asia

Vijay Sakhuja
Indian Council of World Affairs (ICWA)

In the post-Cold War era and in the age of globalization, maritime security has emerged in two distinct formats. At one level, the traditional concepts of naval warfare centered on "sea control", "sea denial" and "power projection" continue to shape naval thinking. This is notwithstanding the fact that the Cold War is over and several western nations have reduced their defence spending. In the context of Asia, there is a continued focus on the navies and in South Asia, India and Pakistan are good examples of countries which are developing robust three dimensional naval capabilities.

At the same time, a number of threats, challenges and perils at sea, related to and identified with violent non-state actors, have come to the fore and become part of the contemporary strategic and security discourse. These have gained salience and criticality due to the vulnerability of sea-based commerce to piracy, terrorism, gun running, drug smuggling, human smuggling and transnational crimes. Some of the non-state actors in South Asia have developed maritime capability and used the seas to engage in acts of violence to achieve their political agenda.

Thus, the maritime security environment is complex and the maritime domain reflects the coexistence of conventional and asymmetric threats. This involves various types of low to medium intensity conflicts related to the sea which have a high potential for escalation.

In the above context, this paper attempts to examine South Asia's maritime security environment and explores the possibility of cooperation between the countries of South Asia and the European Union (EU) and its member states to work together and uphold order at sea in South Asian waters and the wider Indian Ocean. The paper begins by reflecting on a number of maritime security challenges in South Asian waters and their impact on regional and international security. Thereafter, the paper highlights the "typology of piracy", piracy trends in South Asia, and the capability of regional countries to respond to piracy. Given the transnational nature of piracy, the paper examines the multilateral approaches to address the menace of piracy in South Asian waters and the Indian Ocean. Finally, the paper offers recommendations and possibilities for maritime cooperation between the countries of South Asia and EU member states.

MAPPING SOUTH ASIA

Geographically, five countries in South Asia are maritime states and their shores are washed by the waters of the Arabian Sea and the Bay of Bengal. The details of their coastline and the size of Exclusive economic Zones (EEZs) are listed below. India occupies a dominant position in South Asia and the peninsula juts out for almost 1000 nautical miles into the Indian Ocean, the world's third largest ocean, thereby providing it an extended sea frontage.

Another maritime significance of this region is the shipping lane, from the Strait of Hormuz, south of Dundra Head in Sri Lanka to the Straits of Malacca, passing through the EEZs of Pakistan, India, Maldives and Sri Lanka.

Most of the South Asian countries have resolved their maritime boundary disputes; two disputes, i.e., India and Bangladesh (currently pending before the International Tribunal of the Law of the Sea (ITLOS)) and India and Pakistan are still outstanding.

	EEZ (Sq Km)	Coastline (Km)	Signatory to 1982 LoSC	Maritime Boundary Disputes
Bangladesh	78,538	580	Yes	Yes (with India)
India	2,305,143	7517	Yes	Yes (Bangladesh and Pakistan)
Maldives	916,189	644	Yes	No
Pakistan	201,520	1046	Yes	Yes (with India)
Sri Lanka	532,919	1340	Yes	No

Source: Various documents.

MARITIME SECURITY CHALLENGES IN SOUTH ASIA

There are a number of maritime security challenges in South Asia. The first challenge emerges in the form of the governance of the large EEZs under the jurisdiction of the states. The EEZ is of immense geo-strategic and geo-econmic significance and is an element of the national power. This sea space requires constant monitoring and surveillance, and figures pre-eminently in the political-commercial-operational matrix of South Asian countries.

The second challenge relates to the security of international shipping that transit through the South Asian waters. The shipping lane is of immense geo-economic importance and serves as the umbilical cord for the global energy trade. The Indian Ocean is booming with maritime activity and nearly 90,000 vessels transit through its waters. Significantly, economic and security interests impact in a concentrated form in the Indian Ocean. Any unforeseen contingency or development along the sea lanes has security implications for South Asia including the landlocked states of Afghanistan, Bhutan and Nepal who are dependent on ports in Bangladesh, India and Pakistan for their energy supplies and international trade.

The third challenge relates to governance issues in the littoral spaces and coastal areas where non-state actors such as pirates and terrorists have sanctuaries and hideouts, including

material supply chain. These actors are able to deceive the national intelligence system and engage in illegal activity with impunity.

The fourth challenge is the necessity of constant surveillance and monitoring of the porous coastal areas that provide access to local and foreign actors to attack targets on land. Some of the South Asian states do not possess the requisite capacity and capability to monitor illegal activities in the littorals.

Illegal fishing and poaching in others' EEZs and disputed sea areas is the fifth major maritime security challenge confronting South Asia. These activities have the potential to generate nationalistic overtones and politico-diplomatic tensions, and, at times, could result in sabre rattling. In South Asia, it is common for the Indian and the Pakistani maritime law enforcement agencies to apprehend fishing vessels in the Sir Creek in the Arabian Sea where the two neighbours have yet to settle the boundary dispute. Likewise, India and Bangladesh have yet to resolve the boundary dispute in the Bay of Bengal. India and Sri Lanka are caught in a different type of dispute over the fishing rights of Indian fishermen over the Kachchathivu Island under the jurisdiction of Sri Lanka.

The movement of weapons of mass destruction (WMDs) by states and non-state actors is the sixth major challenge for South Asian security. There have been instances of interception of North Korean vessels carrying WMD components in Indian ports.

The seventh challenge is the lack of credible response systems in the form of navies and maritime law enforcement agencies and technological capability to respond to maritime threats and challenges. Although the existing force structures of the Indian and the Pakistan navies are designed for "sea control" or "sea denial", they, along with other South Asian navies, are restructuring to contend with the challenges arising from asymmetric threats, thus, emphasizing the duality of both high seas and littorals in their naval strategies.

PIRACY IN SOUTH ASIA

The definition of piracy has been a subject of international debate and discussion but Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) offers the internationally accepted definition. Maritime states in South Asia are signatory to the 1982 Law of the Sea Convention (LoSC) and have ratified it. It is also agreed that pirates are the enemies of all *hotis humani genesis* and all nations must take necessary initiatives to curb and eliminate piracy.

The International Maritime Organisation, (IMO), through the Maritime Safety Committee Circular MSC/Circ 622 of June 22, 1993, has classified sea piracy into three broad categories: (a) Low-Level Assault or Armed Robbery which is generally carried out from the vicinity of land from small high-speed craft by groups of petty thieves armed with machetes, clubs and occasionally low velocity weapons such as pistols and shotguns; (b) Medium-Level Armed Assault and Robbery is by people who are better organized and more heavily involved than those in the low-level category; and (c) Major Criminal Hijacks that involve extreme violence. It has also been argued that sea piracy has many variants such as Asian Piracy, Southeast Asian Piracy, West African Piracy, South American Piracy, etc.

Besides, there is also marine mugging, cargo hijacking and vessel hijacking. Given the above typology and understanding, it is fair to argue that piracy in a particular area is unique to that region and each piracy-prone area has its own characteristics, intensity, frequency, lethality and pirates.

Besides, geography, social, political and economic considerations contribute to the nature of piracy. Also, pirates adopt different tools, tactics and *modus operandi* to conduct their operations.

The International Maritime Bureau`s (IMB) annual report *Piracy and Armed Robbery Against Ships: Annual Report 1 January–31 December 2011,* has listed piracy incidents in the Indian subcontinent as below:

	2007	2008	2009	2010	2011
Bangladesh	15	12	18	23	10
India	11	10	12	5	6
Maldives					
Pakistan					
Sri Lanka	4	1			
Total	30	23	30	28	16

Source: Piracy and Armed Robbery Against Ships: Annual Report 1 January–31 December 2011

A quick analysis of the above data shows that since 2007 the least number of attacks were recorded in 2011 in the Indian subcontinent. The IMB report notes that most of the attacks in the Indian subcontinent took place at anchorages, were of petty nature, and involved minor thefts. All 16 cases in 2011 involved boarding and no vessel was hijacked, detained or went missing.

The IMB warning for December 2012 to the mariners states that ships must be "cautious and take necessary precautionary measures" when calling at Chittagong [Bangladesh] anchorages and approaches. There have been several instances when ships have been targeted while they were "preparing to anchor". The IMB also notes that "attacks in Bangladesh have fallen significantly over the past few years because of the efforts by the Bangladesh Authorities". The piracy in Indian ports essentially involves petty theft and boarding of vessels both within and outside port area. Cochin in South India witnessed four incidents of the total six that were recorded in India.

The IMB report does not provide data on the incidents of piracy and armed robbery in ports in Pakistan and Maldives; however, it is reasonable to assume that such incidents may have taken place but were not reported to the authorities. At the same time, it is also fair to suggest that the maritime forces and law enforcement agencies in these countries have been quite effective.

However, Maldives have witnessed Somali pirate activity in its western waters. According to Mohammad Nazim, the Defence Minister of Maldives, "These threats have now come

to our close proximity,"[1] The Maldivian security is further jeopardized because "either abandoned pirates or pirates that were lost in the middle of the night in their activities, or otherwise detached from their mother ships, were now landing in the Maldives." For instance, in December 2009 and May 2010, boats with Somali pirates/fishermen were found close to the southernmost tip of the Maldives.

REGIONAL MARITIME FORCES

In 2008, terrorists from Pakistan reached south Mumbai by the sea route, landed on unsecured waterfronts and carried out attacks. Post-Mumbai terror attacks, the Indian maritime security apparatus has been revamped and major organizational changes have been instituted. Further, national surveillance, coordination and combat capabilities have also been enhanced. The establishment of Joint Operation Centers has added a new dimension to India's maritime security, thus pushing the defensive perimeter further out into the sea. The Indian Navy and the Coast Guard are acquiring cutting edge technologies to enhance littoral security and these would bridge the gap in maritime surveillance and the ability to counter piracy and terrorism.

The Maritime Safety Agency (MSA), along with the Pakistan Navy, is responsible for maintaining order in the Pakistani waters. The MSA was established in 1987 as a paramilitary force and is responsible for protecting unauthorized exploitation of Pakistan's EEZ and enforcing national and international maritime laws in Pakistan's waters. The force has a number of assets including helicopters, hovercrafts, and more than a dozen fast patrol craft in its inventory. The primary purpose of this agency is to check smuggling along the coast, and its operations are limited to the territorial waters.

By all estimates, the current maritime security structure of Sri Lanka and Maldives is inadequate to deter, detect and defeat a challenger partly due to lack of capabilities. In their fight against the LTTE, the Sri Lanka Navy has developed some naval capability but it still lacks robust surveillance and response capability on the high seas. Likewise, Maldives' maritime forces are essentially constabulary in nature and lack combat capability.

REGIONAL COOPERATION

It is evident from the above discussions that some countries in South Asia do not possess the requisite capacity to conduct 24x7 surveillance and monitoring of sea areas under their jurisdiction and have sought regional/international assistance. For instance, Maldives and Sri Lanka have benefited from their maritime cooperation with India. At a functional–operational level, the Indian Navy has engaged both the Maldives coast guard and Sri Lankan navy through bilateral naval exercises, regular ship visits, training, transfer of naval hardware, and sharing of intelligence.

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[1] "Maldives Warns of New Dangers of Piracy Lurking Close", *DNA*, April 24, 2012.

The trilateral naval exercise code-named "Dosti" involving the maritime forces of India, Maldives and Sri Lanka aims to strengthen maritime security cooperation amongst regional navies. A Sri Lankan naval official has noted that "due to the increase in maritime terrorism and piracy it's important to strengthen regional maritime cooperation. Currently the Indian Ocean is threatened by piracy and it has now become the responsibility of the regional navies to work together to combat the current issues. We have previously conducted joint operations with India and Maldives. This will be an important exercise since all three countries are taking part with a common objective".[2]

Similarly, Indian Navy ships have, on a regular basis, undertaken anti-piracy and counter-terrorism patrols in Seychelles waters. India and Mozambique too have agreed to work together to improve maritime security in the Indian Ocean, including joint maritime patrols along the Mozambican coast. India is keen to extend "technical assistance to Somalia in developing a counter piracy policy and strategy."[3]

In 2008, at the pan-Indian Ocean level, India initiated the "Indian Ocean Naval Symposium" (IONS), a multilateral initiative aimed at enhancing co-operation among the regional navies. It is a forum where common security concerns among Indian Ocean states are discussed. Naval delegations from countries of the Indian Ocean participate in the symposium and address issues of maritime security and explore possibilities of developing regional and sub-regional cooperative mechanisms.

The IONS has defined four littorals that mark the Indian Ocean (a) South Asian Littorals—Bangladesh, India, Maldives, Pakistan, Seychelles and Sri Lanka; (b) West Asian Littorals—Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, UAE and Yemen; (c) East African Littorals—Comoros, Djibouti, Egypt, Eriteria, France, Kenya, Madagascar, Mauritius, Mozambique, Somalia, South Africa, Sudan and Tanzania; and (d) South East Asian and Australian Littorals—Australia, Indonesia, Malaysia, Myanmar, Singapore, Thailand and Timor Leste. This is a good example of a sub-regional approach to maritime security since each region has its own peculiarities and requires responses that are tailored to the region.

Likewise, "Milan" is another multilateral maritime initiative by India wherein navies from the Bay of Bengal littorals and several Southeast Asian countries meet at Port Blair in the Andaman and Nicobar Islands in the Bay of Bengal. The agenda at Milan includes a seminar focused on non-traditional threats and challenges such as maritime terrorism, piracy, humanitarian aid and disaster relief. This is followed by navies undertaking bilateral and multilateral exercises in the Bay of Bengal.

INTERNATIONAL COOPERATION AND RESPONSE

In the wake of rise in piracy attacks in the Gulf of Aden, the United Nations Security Council (UNSC) adopted Resolution 1816 in June 2008 which authorized nations to deploy

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[2] Asif Fuard, "Maldives, Sri Lanka and India Conducts Joint Naval Exercises", *Haveeru Online* , April 24, 2012.

[3] "India pledges aid for Somalia famine", *Suna Times*, September 14, 20011.

warships in Somalia's territorial waters and conduct counter-piracy operations, provided these states had such an arrangement with the Somalia's Transitional Federal Government (TFG). Thereafter several resolutions to counter piracy in the Gulf of Aden have been adopted calling upon states to provide assistance to Somalia, deploy naval forces, protect Somalia's EEZ and prevent illegal fishing and dumping of waste.

Navies from a number of countries and alliance partners are currently engaged in counter-piracy operations in the Gulf of Aden: US-led Task Force 151, EUNAVFOR through Operation Atalanta, NATO in support of Operation Ocean Shield, Chinese naval task force (CTF 525), warships from India, Iran, Japan, Pakistan, Malaysia, Singapore, Republic of Korea etc. China has deployed more than 25 warships in rotation and provided escort to over 4,500 vessels including Chinese-flagged ships. Likewise, India, Japan, RoK and Singapore have deployed their warships on a near continuous basis. The above forces have escorted merchant ships, prevented attacks, challenged/intercepted pirate boats/ships and even incapacitated the equipment used for conducting pirate attacks.

An array of organizations of the shipping industry has come forward to support international efforts to fight piracy. These include the Baltic and International Maritime Council (BIMCO), IMB Piracy reporting Centre (IMB PRC), International Association of Dry Cargo Ship-owners (INTERCARGO), International Chamber of Shipping (ICS), Oil Companies International Marine Forum (OCIMF), Society of International Gas Tanker and Terminal Operators (SIGTTO), Maritime Piracy: Humanitarian Response Programme (MPHRP), Mission to Seafarers, Save our Seafarers, and Seafarers Rights international (SRI), to name a few.

Likewise, the shipping industry has taken a number of operational initiatives, such as the best practices for navigation through piracy-infested waters, standard operating procedures for piracy response, onboard protection systems, and positioning of privately contracted armed security personnel (PCASP) for self defence. These have contributed to a decrease in the hijackings.

There are some very important and effective multilateral responses to counter piracy. Among these, the multilateral Shared Awareness and Deconfliction (SHADE) and the Contact Group for Piracy off the Coast of Somalia (CGPCS) partnership programme that provide an interface between the government and industry merit attention. Under the SHADE, country force commanders share tactical intelligence, information on threats and challenges, deployment of forces and other operational details relevant to counter-piracy operations. Likewise, the Contact Group for Piracy off the Coast of Somalia (CGPCS) is a platform which enables the military, industry, legal experts and other interest based groups to deliberate and share information relating to counter-piracy operations. The CGPCS meets three times annually at the United Nations and the five Working Groups meet on a regular basis to strategize international counter-piracy policies and programmes.

Some countries have extended their cooperation beyond the SHADE programme. For instance, China, India, Japan and RoK are members of the SHADE. At the same time, they conduct independent operations and have agreed to coordinate their efforts by sharing more information and engaging in coordinated escort responsibilities. Under the arrangement, one

of the navies is designated as "Reference Navy" for a period of three months, and first proposes its escort schedule for a similar time period. It has been noted that "[t]here are secured servers through which the emails about the timings of the escorted convoys are shared with the other two navies. This ensures that at least one convoy of ships is being escorted safely through the Internationally Recommended Transit Corridor (IRTC)." [4] The IRTC is a recommended passage corridor in which warships undertake patrolling and escort duties to provide cover to the international shipping, which is generally arranged in convoy formations.

There have also been some attempts to take the sub-regional approach to address common maritime security concerns. For instance, the Djibouti Code of Conduct (DCoC) is an initiative aimed at Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden and was signed on 29 January 2009. It also envisages technical co-operation and assistance and enhancing training in the region.

SOUTH ASIA AND THE EU COOPERATION IN MARITIME SECURITY

There are several reasons for South Asian countries and EU member states to cooperate in the wider Indian Ocean to enhance maritime security and harness their respective power potential to ensure safety of sea lanes and uphold order at sea.

First, South Asian countries and EU member states have significant stakes in the Indian Ocean for their economic vitality. Nearly 80 per cent of the trade of Bangladesh, India, Maldives, Pakistan and Sri Lanka is carried over the seas and the landlocked Afghanistan, Bhutan and Nepal are dependent on Bangladesh, India and Pakistan for access to sea-borne commerce. Likewise, EU member countries use the seas to engage in international commerce. It has been estimated that the EU commercial traffic volume through the Indian Ocean is set to increase by 121 per cent between 2006 and 2016.

Second, from the security perspective, the Indian Ocean is important to both South Asia and EU member states. In recent times, the Gulf of Aden and waters off Somalia have witnessed unprecedented incidents of piracy. The Somali pirates have extended their area of operation into the Indian Ocean towards the Arabian Sea and attacked and hijacked vessels close to Indian and Maldivian waters. Besides safety of sea lanes against piracy, there have been terrorist attacks on both maritime commercial and military targets. The attacks on *MV Limburg* and *USS Cole* in Yemen and the attacks in which terrorists came from Karachi, Pakistan to Mumbai, India are examples of the vulnerability of the maritime domain. Therefore, protection of sea-based commerce and the associated infrastructure is vital for the growth and perhaps the keel of economic globalization of South Asian countries and the EU member states.

Third, the defence of island territories is of critical importance to some of the South Asian countries and at least one EU member state. For India, the Andaman and Nicobar Islands in the Bay of Bengal and the Lakshadweep in the Arabian Sea are separated from the mainland by long distances and require constant surveillance. Likewise, Maldives is a chain

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[4] Ritu Sharma, "India, China, Japan to counter piracy", *The New Indian Express*, February 2, 2012.

of 26 atolls and needs constant monitoring. Similarly, the Indian Ocean island territories, i.e., Mayotte, Reunion Island, and the Scattered Islands are of economic and strategic importance to France.

Fourth, some of the South Asian countries enjoy bilateral/multilateral naval engagements with EU member states and these are driven by agendas of common interests. For instance, the Indian Navy has institutionalized joint naval exercises with the British Royal Navy (Konkan series) and the French Navy (Varuna series) and passage exercises with several other European navies. Likewise, Pakistan Navy, Bangladesh Navy and the Sri Lankan Navy have engaged in naval exercises in the Indian Ocean with EU member state navies. The ongoing engagement between India and EU (Operation Atalanta) in counter-piracy operations off Somalia along with other multinational forces is a good example of the maritime cooperation.

Fifth is the issue of capacity building of smaller states who do not possess capabilities to address a number of asymmetric threats. In this context, a Seychelles coast guard chief has observed: "The Seychelles coast guard by itself cannot make the waters safe, we need to combine forces. If we manage to bring everybody on board I think our fight against piracy will be simpler."[5]

Sixth, India and the EU have augmented the maritime capabilities of some of the Indian Ocean island states. India is engaged through anti-piracy and counter-terrorism patrols in Seychelles waters, joint maritime patrols along the Mozambican coast, and offering technical advice to Somalia to counter piracy. Likewise, EU is a major partner for Somalia, Seychelles and Kenya in combating piracy.

Seventh is the issue of operational interoperability. At the functional and operational level, interoperability is an important issue for cooperation and some of the South Asian navies enjoy bilateral military-to-military relations with some of the EU countries. Likewise, EUNAVFOR is a major partner for Seychelles and Kenya in combating piracy.

AGENDA FOR COOPERATION

Maritime and naval cooperation offers enormous opportunities for building mutual trust and confidence and in some of the cases it can result in strategic partnerships. These cooperative agendas are particularly significant for smaller navies who are constrained due to lack of response capabilities. Further, maritime and naval engagements can be leveraged in times of crisis and support multilateral responses, particularly to asymmetric threats and challenges.

At another level, maritime multilateralism is a tool for nations who consider using sea power for cooperation in their national interests. This is applicable to both medium and small navies and is evident in the tactical and strategic interactions that have evolved in the form of bilateral and multilateral engagements. In some cases, these interactions have been institutionalized, and in others, these have been listed in the "Joint Action Plans".

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[5] Ella Ide, "Overrun by Pirate Prisoners, Seychelles Call for Help", AFP, March 6, 2012.

In essence, policy makers and practitioners are convinced that countries may not possess the necessary capacities to address asymmetric threats independently. In this context, South Asian and EU member countries' navies can play an active role in promoting maritime cooperation both bilaterally and multilaterally by improving existing relationships and developing a regional and sub-regional approach to maritime security. The agenda for cooperation could be at three levels: (a) Policy; (b) Operational; and (c) Capacity Building.

Policy

a. Political cooperation between SAARC and the EU through regular ministerial meetings.

b. Intensify cooperation in the fight against piracy through the Shared Awareness and Deconfliction (SHADE) and the Contact Group for Piracy off the Coast of Somalia (CGPCS) partnership programme.

c. Develop contacts between South Asian intelligence agencies and Europol in the fight against terrorism.

d. Reinforce co-operation in fight against proliferation and in export control.

e. Establish Track I and II annual maritime security dialogue at levels of EU and SAARC.

f. Encourage bilateral and multilateral cooperation on issues of maritime security.

g. Participation in multilateral forums such as the IONS and IOR-ARC.

h. Enhance technical and regulatory co-operation spanning areas such as maritime law, marine pollution, shipping regulations, and other technical issues under the International Maritime Organisation.

Operational

a. Establish mechanism for joint naval exercises between navies of South Asia countries and EU member states.

b. Regular port calls to each others' ports by South Asian and EU navies.

c. Assist in developing doctrines and SOPs (standard operating procedures) for greater cooperation and improving communications interoperability among various arms of the security forces of smaller states.

d. Integrate regional navies in multilateral maritime operations to build response capability.

e. Technical cooperation to improve surveillance and enforcement of fisheries in the Arabian Sea and the Bay of Bengal.

f. Develop cooperative mechanisms for search and rescue, and disaster relief activities.

Capacity Building

a. Capacity building in maritime security through training and infrastructure.

b. Offer low-cost maritime security solutions to island states.

c. Undertake collaborative research on maritime security systems.

d. Provide training and capacity building of maritime law enforcement agencies.

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ABOUT THE AUTHORS

Dr Vijay Sakhuja is Director (Research), Indian Council of World Affairs (ICWA), New Delhi. He is also Visiting Senior Research Fellow at the Institute of Southeast Asian Studies (ISEAS), Singapore since 2006. Dr Sakhuja received his Ph D from the Jawaharlal Nehru University in New Delhi and also completed M Phil studies from the same university. A former Indian Navy officer, Vijay Sakhuja has been on the research faculty of various think tanks in India. He has lectured at various Indian and international universities and military colleges.

Vijay Sakhuja's research areas include politico-strategic developments in the Indian Ocean, Asia Pacific security, climate change and Arctic security, and maritime and naval developments. Dr Vijay Sakhuja is author of *Asian Maritime Power in the 21st Century: Strategic Transactions between China, India and Southeast Asia*, published in 2011, and *Confidence Building from the Sea: An Indian Initiative*. His recent manuscript is titled *Politico-Strategic Developments in the Arctic* (forthcoming).

Dr Vijay Sakhuja's edited volume *Indian and the European Union: Expanding the Static Partnership* is under production process. Dr Vijay Sakhuja is also editor of *India Vietnam Strategic Partnership: Exploring Vistas for Expanded Cooperation* (New Delhi: Pentagon Press, 2011) and *Revigorating IOR-ARC* (New Delhi: Pentagon Press, 2011), *Fisheries Exploitation in the Indian Ocean: Threats and Opportunities,* Rumley, D., Chaturvedi, S., Sakhuja, Vijay (Singapore: ISEAS, 2010), and *Nagapattinam to Suvarnadwipa: Reflections on Chola Naval Expeditions to Southeast Asia,* Hermann Kulke, K. Kesavapany and Vijay Sakhuja (Singapore: ISEAS, 2009).

Dr Vijay Sakhuja is on the editorial board of *Journal of Indian Ocean Region* and member of the Executive Council of the Centre for Ocean and Environmental Studies, New Delhi.

Indonesia's Maritime Security: Ongoing Problems and Strategic Implications

Shafiah F. Muhibat[1]
Centre for Strategic and International Studies (CSIS), Indonesia.

EXECUTIVE SUMMARY

Indonesia is the largest archipelagic and maritime state, as more than half of the maritime zones in Southeast Asia are within Indonesian jurisdiction. The need and obligation to maintain security at sea, however, have been hindered by the lack of resources devoted to law enforcement and the maintenance of maritime order.

This paper examines some of the most pressing problems for Indonesia's maritime security, which include crimes at sea (such as smuggling, illegal entry, intrusion of terrorist elements, piracy and armed robberies, illegal traffic in drugs, illegal human trafficking, illegal exploitation of natural resources, and sand mining), management of sea resources, and maritime disputes.

This paper assesses Indonesia's maritime capability and strategic interests in maritime security. Due to the military's off-budget revenues, the government is accustomed to a relatively low level of military spending that has only started to pick up in recent years. The current priorities for naval development include patrol and transport ships (particularly to replace ageing ships which may cause danger to the operator), logistic capabilities, and the development of an intermediary (bridging) technology.

Naval build-up aside, the ongoing challenges to Indonesia's maritime security emphasises the complexity of overlapping authorities, as the responsibility for maritime affairs is spread across a number of government institutions. Effective interagency cooperation and coordination is the focus in a holistic approach to maritime security. Indonesia's maritime strategy should continuously be designed in accordance with the objective to create and maintain good order at sea.

This paper suggests that a successful response to maritime security threats requires international cooperation as the threats are primarily transnational. Structural, normative, and economic changes to the regional system facilitate greater maritime security cooperation.

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[1] Dr. Shafiah F. Muhibat is a researcher at the Centre for Strategic and International Studies (CSIS), Indonesia.

Given the strengthening of regional cooperation norms, higher priority has to be given to maritime security and the need to press for enhanced maritime security cooperation

INTRODUCTION

Indonesia is the largest archipelagic and maritime state, as more than half of the maritime zones in Southeast Asia are within Indonesian jurisdiction. The vast area of sea that lies within and around the Indonesian archipelago is crucial to the state for a number of reasons. The sea is an avenue of transport and communication, and an important economic resource. At the same time, the sea is also a source of vulnerability, potential highways of criminal acts and the smuggling of goods and people. Maritime security is of concern to Indonesia in many aspects, particularly as there have been substantial ongoing problems in the law enforcement and security at sea as piracy and robberies continue, particularly in the archipelagic water in the Straits of Malacca and Singapore and in the South China Sea.

The need and obligation to maintain security at sea, however, have been hindered by the lack of resources devoted to law enforcement and the maintenance of maritime order. Although Indonesia has a long history of seafaring prowess, it has been relatively weak in governing and mastering new technologies that would enable the government to control the seas. The Indonesian navy admits the lack of capacity for surveillance and investigation within the whole national jurisdictional waters, particularly in the Straits of Malacca and Singapore due to the limited availability of defence instruments, infrastructure and personnel, both in terms of quality and quantity.[2]

This paper aims to examine some of the most pressing problems for Indonesia's maritime security, followed by a brief assessment of Indonesia's strategic interests in maritime security. This paper then discusses Indonesia's cooperative efforts with other states to secure the troubled sea areas, including possible venues for cooperation with extra-regional states, including Europe.

EXISTING PROBLEMS

Crimes at Sea

Most of the armed robberies at sea in Southeast Asia have occurred in Indonesian waters, particularly in the archipelagic waters between Singapore and the Java Sea, in the Malacca Straits, and in the South China Sea. These include smuggling, illegal entry, intrusion of terrorist elements, piracy and armed robberies, illegal traffic in drugs, illegal human trafficking, and illegal exploitation of natural resources, such as illegal logging and sand mining.

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[2]   The Indonesian navy released in 2005 its navy blueprint titled "Green-Water Navy", in which it explained the target to have a 274-force structure by 2024, divided into a Striking Force (110 ships), Patrolling Force (66 ships), and Supporting Force (98 ships).

In particular, acts of piracy and armed robbery at sea have occurred within Indonesia waters for decades and continue to take place.[3] These acts have become a striking problem in particular parts of the region after the 1997 Asian financial crisis. Many believe that the crisis, which caused a great loss of jobs, more poverty, and the deterioration of overall financial situation, led people, especially in coastal areas, to engage in criminal activities as a way to supplement their incomes.[4] The characteristics of sea areas in East Asia, dotted with islands, rocks, and reefs, provide hiding places and narrow sea-lanes that slow ships down, making them easier targets. These geographical characteristics are very unique for the region, so that the "hit and run" armed robbery activities occurring there are often referred to as the "Asian Method."[5] In the area of the Malacca Straits, in particular, the most common targets of armed robbery at sea have been product tankers and general cargo vessels, as there are numerous such vessels in these waters, which are also frequently engaged in local voyages closer to the coast, thereby making them easy targets for pirates lying in wait.[6]

Figure 1. Reported Criminal Acts at Sea in Indonesia, 2000-2012

Year	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Jan-Jun 2012
Total	47	60	115	119	91	103	121	94	79	50	43	28	15	40	46	32

Source: International Maritime Bureau, Piracy and Armed Robbery Against Ships (Annual Reports and Quarterly Reports, Various Issues 2003-2012). Figures include actual and attempted attacks.

Several agencies are responsible for law enforcement and security at sea in Indonesia. These agencies are assembled as the Indonesia Maritime Security Coordinating Board, which is supposed to coordinate all maritime security and law enforcement activities. The coordinating board has actually existed since 1972, when it was set up through a joint decree between the minister of defence and security affairs (and chief commander of the armed forces), the minister of transportation, the minister of judicial affairs, and the attorney general. Following the new trends of maritime affairs, the board has gone through reform and has called for urgent restructuring. The good news is: official and community attitudes towards robberies at sea in Indonesia have hardened significantly in recent years.[7]

Management of Sea Resources

The other concern of Indonesia is how to make the rich maritime resources contribute to the welfare of the Indonesian people as a whole. The exploitation and management of these

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[3] Stefan Eklöf, *Pirates in Paradise: A Modern History of Southeast Asia's Maritime Marauders* (Copenhagen: NIAS Press, 2006).

[4] Catherine Zara Raymond*, Piracy in Southeast Asia: New Trends, Issues, and Responses*, IDSS Working Paper No. 89 (Singapore: Institute for Defence and Strategic Studies, 2005), p. 13.

[5] See, for example, Derek Johnson and Mark J. Valencia (eds.), *Piracy in Southeast Asia: Status, Issues, and Responses* (Singapore: Institute of Southeast Asian Studies, 2005).

[6] Ibid.

[7] John F. Bradford, "Shifting the Tides against Piracy in Southeast Asian Waters," in *Asian Survey* Vol. 48 (3) (Berkeley: University of California Press, 2008) p. 480.

resources, both living marine/coastal resources and mineral resources, present a challenge. One problem to highlight in this regard is illegal fishing. It is one of the main economic and security concerns, and has become a direct threat to the efforts to responsibly manage Indonesia's fish resources and is an impediment to achieving sustainable fishing. Indonesia loses around 3 billion US dollars a year as a result of illegal fishing.[8] Moreover, overfishing and unstable coastal management deplete coastal and pelagic fish stocks in parts of the coral triangle area.

Illegal fishing in Indonesia is generally done by fishing boats that operate without proper fishing operation permits or other documents. These boats do not report their catch, nor pay the taxes applicable to them. There are also boats that possess the proper permits but do not abide by the existing regulations, and are usually prone to using unauthorised fishing equipments, or illegal and dangerous substances.

Moreover, a lot of fishing areas in Indonesia are considered "open access". This implies that fishermen can freely and easily exploit resources without the obligation to comply with the existing regulations. A 2007 report by the Food and Agriculture Organization of the UN stated: "the condition of fish resources in Indonesian waters covering the Indian Ocean and the Pacific Ocean shows evidence of being fully-exploited and over-exploited." Over-exploitation of fish resources endangers the continuity of the resources, and signals a failure in the fisheries management system.

Maritime Dispute

Maritime disputes in the region could spiral out of control and threaten the stability of the region. These cases and the building of tension between Indonesia and the neighbouring states in relation to maritime boundary disputes sends a clear message about how sensitive pending maritime boundaries could be. The danger from maritime disputes, even those of which Indonesia is not a direct party, poses a great challenge. The disputes are generally more political rather than military; nonetheless, the ongoing inability to settle some disputes creates concern in the longer run.

Maritime disputes date back to the colonial period, yet still prove to be a challenging task and have led to a number of territorial disputes. Southeast Asia is a region fraught with unresolved territorial disputes and border problems. Being an archipelagic state, Indonesia has complicated maritime boundaries, which generate a number of different maritime zones, for example internal waters, archipelagic waters and territorial sea, the exclusive economic zone, and the continental shelf.

Indonesia still has problems demarcating its internal waters. Moreover, no discussion has taken place between Indonesia and some of its neighbours regarding the exercise of their rights in the overlapping contiguous zone. With a vast area of exclusive economic zone, Indonesia has to delimit its EEZ boundaries with its neighbours. There are also plenty of technical and practical issues that might later be crucial, which deal with different interpretation and application among states with regard to the provisions of the United Nations Convention on

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[8] "RI May Ramp Up Exploitation of Ocean for Profit," *The Jakarta Post*, 2 March 2004.

the Law of the Seas 1982. These may include issues such as innocent passage in territorial sea, and navigation and over-flight on and above the EEZ.

The growing tensions over conflicting territorial claims are also being driven by presumed seabed resources such as oil, gas, and living marine resources. The related issues such as increasingly valuable energy sources and food security add another layer to the increasing tensions over maritime disputes. Rapid economic growth increases the need for new resources required to sustain economic development.

As for the disputes in the South China Sea, Indonesia is not a claimant to any of the islands or rocks in the Spratly group, which is a spot that has arguably caused the most tension. However, if the Chinese/Taiwanese unidentified and interrupted dotted lines of 1947 were to be considered and continuously connected, depending upon the nature and interpretation of the Chinese claim, then these claims could also intrude upon the Indonesian EEZ and continental shelf as defined in UNCLOS 1982 and as demarcated in the Indonesian-Malaysian Agreement 1969, although China assures that no disputes should exist with Indonesia.[9]

INDONESIA'S MARITIME CAPABILITY

Although Indonesia once enjoyed the role of a leader in regional cooperation in Southeast Asia, its status as a regional power has greatly diminished since 1997, following the financial crisis and shift of focus to domestic politics due to domestic reform.

Due to the military's off-budget revenues, the government is accustomed to a relatively low level of military spending that has only started to pick up in recent years; US$3.1 billion was allocated in 2006, in contrast to around US$1.2 billion in 2000. To serve a military of over 375,000 personnel (predominantly serving in the army) this amount remains inadequate, especially considering ageing Indonesian military equipment (often over twenty-five years old, at best) and low infrastructure standards. The Indonesian military is mostly made up of soldiers with substandard equipment and resources, which should be the key point in the effort to professionalise the military, including the naval capability.

Indonesia's naval defences have not been tested in conflict since the 1960s. Since independence, the *Hankamrata* doctrine has emphasised that Indonesia's defence planning gave little attention to the navy as a first line of defence against foreign intrusion. Of course, this has been translated to small budgets and a relatively low general standing for the navy within the armed forces. Indonesia's innovation in marine surveillance has been a political rather than a technological one.

The current priorities for naval development include patrol and transport ships (particularly to replace ageing ships that may cause danger to the operator), logistic capabilities, and the development of an intermediary (bridging) technology. Since 2001, Indonesia has begun a more extensive modernisation of its navy, with the goal of developing an effective, formidable green-water fleet able to protect Indonesia's territorial waters, and a strong commercial

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9 Hasjim Djalal, "South China Sea Island Disputes," in The Raffles Bulletin of Zoology (8) (Singapore: NUS, 2000) p. 12.

fleet to improve Indonesia's international trade. The Indonesian navy's current strategic planning is divided into three phases of which the first ran from 2003-07. The blueprint sets out a plan to build a 274-ship force structure by 2024, and to upgrade the existing assets with new systems and armaments. This is Indonesia's largest naval modernisation plan in over 40 years. In addition to building a formidable navy, Indonesia's current strategic planning aims to ensure that the Indonesian navy is technologically equal or superior to the naval forces of its neighbouring countries.

There are six frigates in the navy; these are the Dutch Van Speijk class that were built in the sixties and sold to Indonesia in the eighties. There are four Sigma-class corvettes built in the Netherlands, which have been in service since 2009. In 2011, Indonesia's amphibious capabilities were boosted with the commissioning of the fourth Makassar-class Landing Platform Dock (LPD) vessel. One of them even participated in a hostage rescue operation in the Gulf of Aden in March 2010. The Indonesian navy also ordered a SIGMA 10514 class frigate with the Damen shipyard in the Netherlands, which is expected to enter service in 2014. The submarine capability is made up of two Charka class submarines, which are diesel-electric submarines of the German Type 209 class. Indonesia also operates a large number of patrol boats, minesweepers and attack boats, and a couple of Landing Ship Tanks.

The recent years have also seen some improvement in Indonesian defence infrastructure, including the building of radar sites along the Malacca Straits and peripheral island chains. Plans for improving and adding regional naval bases for patrols and security operations are moving forward in the budgeting process, albeit slowly. Much more must be invested into Indonesia's basic ability to service and maintain its military before it considers significant overseas purchases. One of the latest developments was the naval exercise in the Indian Ocean in April 2011, during which an Indonesian navy frigate test-fired a Russian-made Yakhont supersonic anti-ship missile.

To understand whether these developments are significant, let's make a comparison to other regional powers. Indonesia and other Southeast Asian nations have generally sought to improve their naval capabilities. Compared to its neighbouring countries, Indonesia's navy is sizeable, but ageing. As a comparison, Thailand maintains a modern, advanced fleet along with an aircraft carrier. Singapore, another example, has possession of the region's most impressive submarine fleet.

There is a growing asymmetry of naval power in East Asia to the advantage of China.[10] The nations of Southeast Asia are building up their militaries, buying submarines and jet fighters at a record pace and edging closer strategically to the United States as a hedge against China's rise and its claims to all of the South China Sea. Weapons acquisitions in the region almost doubled from 2005 to 2009 compared with the five preceding years.[11] Overall, Asia's defence spending continues to grow and could account for 32% of global military spending

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[10]   See, for example, Ralf Emmers, "The Changing Power Distribution in the South China Sea: Implications for Conflict Management and Avoidance", in *Political Science* 62 (2011).

[11]   Stockholm International Peace Research Institute, *SIPRI Yearbook 2009: Armaments, Disarmament and International Security*, Oxford 2009.

by 2016, or US $480 billion, up from 24% in 2007 unlike North America, the biggest spender in 2007 with 39% of the world arms market would account for 29% or $435 billion.[12] Furthermore, Asian military spending will be led by China (from US $120 billion in 2007 to $255 billion by 2016) and India (about US $100 billion for procurement in the next five years).[13]

INDONESIA'S MARITIME SECURITY: STRATEGIC IMPLICATIONS OF ONGOING PROBLEMS

A coastal state has to maintain safety in its waters, protect the marine environment, and generally maintain good order at sea. Maritime strategy must always reflect the changing nature of threats to global order and regional stability. Indonesia's maritime strategy should continuously be designed in accordance with the objective to create and maintain good order at sea. In theory, Indonesia's maritime security policy would reflect, and is influenced by, the perception of existing threats. However, when combined with limited capabilities, such reflection might experience alteration. For Indonesia, the interest to secure a larger maritime area offers both challenges and hopes for the future.

Naval build-up aside, the ongoing challenges to Indonesia's maritime security emphasises the complexity of overlapping authority, as responsibility for maritime affairs is spread across a number of government institutions. Although, as mentioned, a coordinating board exists, the coordination of the activities of these agencies has been problematical, as some roles are not clearly defined. Such confusions only add to the incapability to provide security and enforce law at sea, and this too has been realised by the responsible parties. The revitalisation of the coordinating board in 2005 has upgraded its organisational structure, thus increasing its capacity to carry out tasks. Its tasks now include formulating general policy in the maritime security sector, coordination of activities and maritime security operations within territorial waters, formulating technical and administrative support, and assisting the enhancement of institutional capacity. However, the US experience suggests that simply situating different agencies under the same bureaucratic umbrella does not guarantee effective interagency cooperation; nor does it assist in building cooperation with other departments and agencies.[14] Effective interagency cooperation and coordination is the focus in a holistic approach to maritime security. If bureaucratic politics and turf wars between agencies continue to exist, none of the restructuring efforts would matter. It is in Indonesia's interests to keep on improving on this particular issue.

Littoral states bordering the pirate-infested waters seek to counter these threats. Unfortunately, these states often lack the necessary resources to deal adequately with the

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[12]   Ibid.

[13]   Ibid.

[14]   See Christopher Rachman, "Concepts of Maritime Security: A Strategic Perspective on Alternative Visions for Good Order and Security at Sea, with Policy Implications for New Zealand," Centre for Strategic Studies Discussion Paper No. 07 (Wellington: Victoria University, 2009), p. 49.

threat, both in terms of technical expertise and the actual security capacity. Indonesia, for one, would have to invest profoundly in its law enforcement agencies to provide sufficient resources and personnel in order to offer effective maritime security. However, this is not so likely to be made any time soon, as other issues are more prioritised, particularly issues directly related to improving the social and economic resources in the country. Nevertheless, addressing the state's lack of resources available to military and law enforcement agencies at sea should be the main approach in the effort to respond to the employment of private security companies within its territory.

An alternative is, of course, to cooperate with the neighbouring states and to seek assistance from regional and extra-regional powers. Although competing priorities and sovereignty concerns have in many cases inhibited the efforts towards closer regional cooperation, such endeavours have indeed bore the fruit of success, albeit still far from what is desired. The danger lies in a possible halt of ongoing cooperative initiatives. Sustained air and naval patrols are costly to run in terms of manpower and maintenance. Although Indonesia is concerned with limited funds and manpower, the continued existence of crimes at sea serves as a reminder that the initiatives should continue. The following part will discuss Indonesia's cooperation with other states to secure Indonesia's and regional maritime area.

MARITIME SECURITY IN SOUTHEAST ASIA: REGIONAL COOPERATION

Information-sharing plays a very important role in tackling maritime security issues, and it is the central area of cooperation among littoral states in Southeast Asia. Since the early 2000s, there have been somewhat underrated endeavours of closer regional cooperation in maritime security. An ASEAN Regional Forum (ARF) meeting in Cambodia in 2003 put maritime security on its agenda. At that meeting, the ARF adopted several measures in the area of maritime security, including increased contacts among personnel, information-sharing, anti-piracy exercises, and regional training in anti-piracy, plus the adoption of new measures that would enable members to control movements of extremists across borders through improved capacity.[15]

Within the ASEAN framework, the ASEAN Special Ministerial Meeting on Terrorism adopted a work programme to implement the ASEAN Plan of Action to Combat Transnational Crimes in 2002, which explicitly includes matters of maritime security.[16] The work programme lays out several projects in the areas of information exchange, legal matters, law enforcement matters, training, institutional capacity-building and extra-regional cooperation in response to sea piracy problems. At the moment, the ASEAN Maritime Forum and the ASEAN Regional Forum have gone into extensive discussions on strategies to manage piracy; the smuggling of goods, people and narcotics; terrorism and marine disasters.

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[15] Acharya, "Regional Institutions and Security in the Asia Pacific," p. 28.

[16] ASEAN, "Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime."

Specifically in the Straits of Malacca, efforts on multilateral cooperative security have been the most impressive. This is due, in particular, to the drastic increase in concern, mostly from the business sector, when the area was named a War Zone by a London-based insurance company in 2005.[17] The growing concern succeeded in pushing the three littoral states (Indonesia, Malaysia and Singapore) to sit together and find a cooperative solution.[18] To a great extent, the littoral countries set aside long-simmering border issues and began sharing information and conducting joint patrols of the area.

In 2004, a trilateral agreement among the littoral states was signed to establish the Malsindo, a coordinated patrol in the Malacca Straits involving the navies of the three littoral states.[19] Comprising seventeen warships from the three littoral states, it serves as a joint special task force to safeguard the dtraits and provide effective year-round policing along the waterway and the patrols.[20]

In 2005, to increase the coverage of the patrols, combined coordinated air patrols over the straits, called the Eye in the Sky (EiS), were introduced.[21] EiS includes a combined maritime air patrol by the armed forces and maritime enforcement agencies of the littoral states and invited international participating states. It forces "shoulder-to-shoulder" teamwork in a security context, which means that despite long-standing secretiveness and suspicion among the three participants, team members must share information and reveal closely guarded capabilities.[22]

In 2006, the Malsindo initiative was renamed the Malacca Straits Sea Patrols (MSSP).[23] Together with EiS, the sea patrols were brought together as the Malacca Straits Patrol (MSP) Network, and standard operating procedures were signed. Therefore, since 2006, the MSP has comprised three elements: MSSP, EiS, and the Intelligence Exchange Group (IEG). A joint coordinating committee made up of officials from the three littoral states meets twice

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[17] Joint War Committee, Lloyd's Market Association and International Underwriting Association of London, Hull War, Strikes, Terrorism and Related Perils: Listed Areas (2005).

[18] For more discussion on the failure of the unilateral efforts of the littoral states to secure the straits, see, among others, Shafiah Muhibat, "Competing to Secure the Straits of Malacca," *The Indonesian Quarterly*, 35/3 (2007).

[19] The initiative began with a proposal from Indonesia in June 2004 for trilateral coordinated patrols, which was quickly agreed to by Malaysia as well as Singapore.

[20] Singapore Ministry of National Defence, "Launch of Trilateral Coordinated Patrols - MALSINDO Malacca Straits Coordinated Patrol," News Release (2004), available at http://www.mindef.gov.sg/imindef/news_and_events/nr/2004/jul/20jul04_nr.html

[21] Singapore Ministry of Defence, "Launch of Eyes in the Sky (EiS) Initiative," News Release (2005), available at http://www.mindef.gov.sg/imindef/news_and_events/nr/2005/sep/13sep05_nr.html

[22] Ellen L. Frost, *Asia's New Regionalism* (Boulder: Lynne Rienner, 2008), p. 190.

[23] In April 2006, the three countries further strengthened their military cooperation in the Malacca Strait by signing an agreement on the formation of a joint coordinating committee on the MSP and Standard Operational Procedures on Coordinated Patrols. See Singapore Ministry of Defence, "Remarks by Chief of Defence Force LG Ng Yat Chung at the Malacca Straits Patrol (MSP) Joint Coordinating Committee Terms of References and Standard Operating Procedure Signing Ceremony," News Release (2006), available at http://www.mindef.gov.sg/imindef/news_and_events/nr/2006/apr/21apr06_nr.html

a year and a number of working groups have been established to augment the committee's work. Intelligence is also shared among the participants. The IEG went on to develop the MSP Information System to improve coordination and situational awareness. With clear initiatives, littoral states cooperate under a coordinated hotline command structure.[24] Two years later, in 2008, the armed forces of the three littoral states plus Thailand participated in the inauguration of the MSP Information Sharing Exercise, held in Singapore, and then Thailand was formally admitted to the MSP.[25] Under revised arrangements, Thailand started its participation in the MSSP in October 2008 and the EiS in January 2009. Thailand's area of operations is in the northern approaches to the Malacca Strait in the Andaman Sea. A second MSP Information Sharing Exercise was held later in June 2010.

POSSIBLE VENUES FOR EXTRA-REGIONAL COOPERATIVE EFFORTS

In Southeast Asia, an initiative solely of the littoral or regional states, such as the Malacca Straits Patrol, has been more successful than initiatives by external powers. The states in the region, including Indonesia, view the problem of criminal acts at sea purely as a domestic concern to be addressed internally by each state as it sees fit. This is the first main point that I would like to emphasise in this part.

Littoral states appreciate the assistance of external states as long as such assistance is neutral, limited, and non-military. The direct involvement of an external actor in establishing cooperation is not desired, but the idea of closer cooperation and the components needed to create such cooperation on a security issue are there to be adopted and implemented. Indonesia, for one, has stressed that foreign military presence is absolutely out of the question. However, it welcomes assistance, particularly in the framework of financial and technical assistance. For example, Indonesia receives security assistance and counter-terrorism funding from the US and Australia, and aid from Japan.[26] Indonesia also conducts coordinated patrols with India[27] and signed various agreements with Australia, Japan, and India to increase cooperation in security matters. Indonesia also expanded its defence interactions with the US after the restoration of the US International military education and training (IMET).

A number of frameworks that include extra-regional states have been problematic. In 2004, the US proposed the Regional Maritime Security Initiative (RMSI). In the same year, Japan pioneered the establishment of the Regional Cooperation Agreement on Combating

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[24]   Ships in the MSP have the right of hot pursuit up to five nautical miles into the sovereign waters of a neighbour. It is, as yet, a very limited right of hot pursuit, but at least there is now a clearer mechanism for cooperation among the navy forces.

[25]   The defence chiefs of Indonesia, Malaysia, Singapore, and Thailand attended the signing ceremony for the revised Standard Operating Procedures and Terms of Reference for MSP Joint Coordinating Committee in Bangkok, 18 September 2008. See Singapore Ministry of Defence, "Thailand Joins Malacca Straits Patrols," News Release (2008), available at http://www.mindef.gov.sg/imindef/news_and_events/nr/2008/sep/18sep08_nr.html

[26]   Frederick Chew, *Piracy, Maritime Terrorism and Regional Interests*, Geddes Papers (Canberra: Australian Defence College, 2005), p. 78.

[27]   "RI, India Conduct Coordinated Patrol," *The Jakarta Post*, 5 April 2008.

Piracy and Armed Robbery against Ships in Asia (ReCAAP). These efforts, particularly the one by the US, ignited controversies due to sovereignty concerns and competing priorities.[28] RMSI ignited a firestorm of protest from Malaysia and Indonesia, mainly because Indonesia and Malaysia perceived the proposal to put US military personnel in the Straits of Malacca as an erosion of their sovereignty, as both Indonesia and Malaysia had repeatedly argued that the security of Southeast Asia is the sole responsibility of countries in the region and thus external powers should not interfere.[29] On the other hand, the problem with ReCAAP was mostly centred on the location of the multinational Information Sharing Centre (ISC).[30] ReCAAP established a framework for cooperation among the member states based on three main kinds of activities: information-sharing, capacity building, and operational cooperation. For this, it proposed establishing an ISC in one of the sixteen countries, with the intention of improving incident response through facilitating communication, information exchange, and operational cooperation among members. Indonesia and Malaysia refused to ratify the agreement in protest over the decision to headquarter the ISC in Singapore, mostly because of the possibility that the centre might publish reports unfairly critical to the littoral states.[31] Moreover, the agreement does not obligate members to take any specific action other than share information that they deem pertinent to imminent piracy attacks.[32]

There are, nonetheless, less controversial and better-accepted initiatives by Japan, as Japan continues to seek closer cooperation in a number of areas, such as seabed mapping, navigation safety and also assists in anti-piracy efforts, such as through training, and sharing of equipment. Some view Japan's diplomatic style in dealing with the ASEAN countries and its civilian focus in cooperative security management as being in accordance with the ASEAN Way.[33] Japan has, indeed, focused on civilian cooperation and refrained from directly utilising its maritime self-defence force for specific tasks in the region other than disaster relief.

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[28] The controversy centred on the role of the US in RMSI. The Commander of the US Pacific Command explained RMSI in a testimony before the US Congress, in which he explained that the goal was to improve international cooperation against transnational security threats, including the proliferation of weapons of mass destruction, terrorism, trafficking in humans and narcotics, and piracy in the "ungoverned littoral regions of Southeast Asia." See Thomas B. Fargo, "Regarding U.S. Pacific Command Posture," testimony before the House Armed Services Committee, US House of Representatives, Washington, DC, 31 March 2004. For more analysis on this subject, see, among others, Storey, "Securing Southeast Asia's Sea Lanes."

[29] Ibid, p. 114.

[30] Ibid, p. 114-115.

[31]   John F. Bradford, "The Growing Prospects for Maritime Security Cooperation in Southeast Asia," *Naval War College Review*, 58/3 (2005), p. 7. At the meeting to finalise ReCAAP in Tokyo in November 2004, four countries bid to host the Information Sharing Centre: Singapore, Malaysia, Indonesia, and South Korea. Instead of attempting to reach a consensus, the Japanese host put the issue to a vote and Singapore won. The decision angered Indonesia and Malaysia in particular as Indonesia felt that as the biggest country in the region, it should have had the privilege of hosting the ISC. For more discussion on this issue, see Storey, "Securing Southeast Asia's Sea Lanes."

[32] Bradford, "The Growing Prospects for Maritime Security Cooperation in Southeast Asia," p. 7.

[33] Yoichiro Sato, *Southeast Asian Receptiveness to Japanese Maritime Security Cooperation*, Asia Pacific Center for Security Studies Paper (Honolulu: APCSS, 2007).

The second point that needs to be emphasised is that the promotion of cooperation through international organisations is very feasible. Extra-regional powers can work through international organisations in order to play a greater role in resolving maritime security threats. One example is the cooperation between the littoral states of the Malacca Straits and the International Maritime Organisation (IMO), which was realised through two meetings, the first one in Jakarta in 2005 and later on in Kuala Lumpur in 2006.[34] The Jakarta meeting authorised the Tripartite Technical Experts Group to establish a mechanism for regular meetings of user states and the shipping industry to facilitate cooperation in matters of the straits' safety and security. The second meeting adopted the Kuala Lumpur Statement[35], which reflects the seriousness of the joint effort to realise its objectives. In this statement, it was agreed to support the continuous efforts of the littoral states and a cooperative mechanism on the safety of navigation and environmental protection, the aim of which is to promote dialogue and facilitate close cooperation among the littoral states, user states, the shipping industry and other stakeholders.

Specifically for Europe, what are the possible venues for cooperation between Europe and Southeast Asia? The European Union has kept a relatively low profile in Southeast Asia's maritime security issues, despite sizeable navigational interests. The EU is not a leading player in the issue, but could be doing more to encourage solutions. Its main interests lie in ensuring the stability of global commons and maintaining Sea Lanes of Communication open.

The EU should not seek to exceed the limit of its relatively restricted leverage in Southeast Asia; rather, it should seek to engage more systematically on maritime security in the region,[36] such as prioritising in technical cooperation. In this regard, visibility is the key. On the one hand, individual (or bilateral) cooperation with littoral countries in Asia, or in this case more specifically with Indonesia, should be promoted. The best opportunities for closer cooperation between the EU and Indonesia are within the context of technical assistance to build capacity, particularly training for coastal guards and patrols, and the development of naval infrastructure.

On the other hand, multilaterally, the EU must continue it participation in Asian forums that deal with security issues, such as the ASEAN Regional Forum. Throughout 2012, the EU has actually been particularly active in Asia. The EU high representative, for example, co-chaired the 19th ASEAN-EU Ministerial Meeting, and attended the ARF Ministerial Meeting and signed the Treaty of Amity and Cooperation (TAC) on behalf of the EU. Such active participation and visibility in various frameworks should be maintained.

It is in the EU's interest to play a positive role by providing technical assistance and sharing legal expertise. It can also contribute to the empowerment of existing frameworks.

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[34] International Maritime Organization, "Kuala Lumpur Statement on Enhancement of Safety, Security and Environmental Protection in the Straits of Malacca and Singapore," (2006), available at http://www.imo.org/includes/blastData.asp/doc_id=7008/kuala%20lumpur%20statement.pdf

[35] Ibid.

[36] See more analysis on this issue in Gaudi Khandekar, "Maritime Security in Asia: What the EU can do", *FRIDE AGORA Asia-Europe* No. 5 (2012).

Extra-regional states can promote confidence and increase interoperability through exercises, as bilateral and multilateral exercises build the operational expertise of local navies, improving their abilities to secure the straits. Such exercises also increase interoperability, which would facilitate future operational cooperation should the opportunity arise.

CONCLUSION

Indonesia faces many problems in maintaining and providing security in its sea territory. This is more than a national issue because the Indonesian archipelagic waters host the most significant sea lanes of international transportation and communication. Indonesia seeks international assistance in the provision of aid, equipment and trainings, and in organising and coordinating cooperative efforts and linkages with other interested parties.

The states in the region, including Indonesia, appreciate cooperation with extra-regional states. However, the direct involvement of an external actor in establishing cooperation is not desired, although the idea of closer cooperation and the components needed to create such cooperation on a security issue are there to be adopted and implemented. Indonesia and Southeast Asia welcomes external assistance, particularly in the framework of financial and technical assistance, as long as such assistance is neutral, limited, and non-military.

But challenges remain. In fact, more challenges are to come, along with the trend of ever increasing transnational crime. A successful response to maritime security threats requires international cooperation, as the threats are primarily transnational. Structural, normative, and economic changes to the regional system facilitate greater maritime security cooperation. Given the strengthening of regional cooperation norms, a higher priority is to be given to maritime security, and the need to press for enhanced maritime security cooperation. Strengthening regional maritime security cooperation, both bilateral and multilateral, should remain in the agenda. The interest of many nations in maritime security and economic stability increase the opportunity for sharing burdens and for operating in collaboration.

Safe Waters: Malaysia's Response to Enhancing Security in Southeast Asia's Maritime Domain

Sumathy Permal
Maritime Institute of Malaysia

EXECUTIVE SUMMARY

Europe and Asia share a long history of multilateral and bilateral relations. Both regions have many things in common, including political, economic and cultural ties that have always been closely interlinked. Despite these long-standing relations, new challenges are currently emerging. Maritime security issues such as piracy, cross-border illegal activities and threats emanating from non-state actors are bound to pose challenges to the maritime security environment. Malaysia has bilateral and tri-lateral cooperation mechanisms in place to address these challenges, although stronger initiatives along these lines with the EU are yet to materialise. The same can be said of cooperation between the EU and Asia on this issue, and advancing efforts on maritime security in the region and beyond where Malaysia's interests are at stake require the development of a comprehensive security framework for Europe and Asia. Maritime piracy is a highly sophisticated crime involving all the activities of legitimate company operations although its profits also underwrite other illegal activities such as human trafficking. As with challenges facing other areas of maritime security, there has been scant cooperation between the EU and Asia on addressing this scourge. This study aims to propose links through comprehensive country studies that would bring the EU and Asia closer together in this area by addressing maritime security challenges in the Southeast Asia region with specific attention to issues affecting Malaysia.

1. MARITIME SECURITY ENVIRONMENT IN SOUTHEAST ASIA

The maritime security environment in Southeast Asia (SEA) has moved beyond common non-traditional concerns of maritime piracy and armed robbery to include the threat of maritime terrorism and other transnational issues such as protection of marine environment and the use of maritime domain for smuggling activities. The Straits of Malacca and Singapore have received extensive international attention due to high cases of piracy in 2004-2006 as well as the potential threat of terrorism. The littoral states' navies, the Royal Malaysian Navy,

Indonesian Navy and Republic of Singapore Navy increased their assets in this waterway and were able to reduce piracy incidents. The three navies launched the Trilateral Coordinated Patrols of the Straits of Malacca and Singapore, now known as Malacca Straits Patrol, in 2004. This initiative was a positive example of evolving CBM in ASEAN. Nevertheless, the changing nature of security in the maritime domain poses challenges to navies and law enforcement agencies. The activities of the separatist movement in the Southern Philippines, for example, have security implications on Malaysia's maritime borders in eastern Sabah.

After the end of the cold war, the Asia Pacific Region witnessed new developments in ocean management related to the 1982 United Nations Convention on the Law of Sea (UNCLOS) and the resulting claims to ownership over maritime space and marine resources. Though the prospects of interstate wars are diminishing, inter-state tensions arising from extensive and overlapping claims of maritime space are common. Several ASEAN countries are involved in disputes with one another. The most important of these involve Thailand's tense relationship with Myanmar, the Philippines' dispute with Malaysia over the State of Sabah, the competing claims of the Philippines, Malaysia, Vietnam and Brunei in the South China Sea, territorial disputes between Malaysia and Indonesia and Malaysia and Thailand, and tensions between Singapore and Malaysia over the delimitation of maritime boundaries around Pedra Branca, Middle Rocks and South Ledge. Since the maritime boundaries are not clearly established, the large sea areas in Southeast Asia are highly contested. Boundary demarcation and delimitation and disparities in national interests among the member countries of ASEAN are clear examples of the fragility of the region's CBMs. These pose serious impediments to the expanded intra-ASEAN defense cooperation that narrow down to naval cooperation.

The current status of regional maritime security scenario revolves around the issues of maritime security and cooperation in ASEAN and also among the countries in the Asia Pacific, such as maintaining freedom and safety of navigation, addressing piracy and sea robberies, nontraditional threats, and boundary delimitation among the claimants in the South China Sea. In the regional context, maritime security and cooperation are important as they contribute to the three pillars of ASEAN community building, namely, the ASEAN Political Security Community, the ASEAN Economic Community, and the ASEAN Socio-Cultural Community. A significant part of the world's and SEA's trade passes through the various straits and seas in the region. With ASEAN committed to enhancing regional initiatives through the implementation of the Master Plan on ASEAN Connectivity, maritime linkages will become an increasingly important factor in the development of a competitive ASEAN Community. Maritime security and safety is thus critical to the continued development of an ASEAN Community by 2015.

While the maritime security environment among ASEAN nations has changed, especially with newly emerging and more diverse threats, trans-boundary issues have required most of the Southeast Asian navies to redefine their roles. The navies of Singapore, Malaysia, Indonesia, and Vietnam are among those in ASEAN that are acquiring state-of-art naval capabilities including surface platforms, anti-ship missiles, submarines, maritime patrol aircraft and unmanned platforms. Most navies in the region have rushed to modernise their maritime

forces due to high levels of naval activity, increased spending and to respond to the possible threat of maritime related crime. As such, confidence building measures are essential to avoid conflict and confrontation particularly among navies in the SEA.

2. BACKGROUND: ISSUES AND CHALLENGES TO MALAYSIA'S MARITIME SECURITY

Malaysia is bounded by the Straits of Malacca, South China Sea, Andaman Sea, Sulu-Sulawesi Sea and the Indian Ocean and faces many issues and challenges in safeguarding her maritime zone. Malaysia's maritime areas cover the internal waters, territorial seas, continental shelves, exclusive economic zone and the air space over the zones. Malaysia's economy is strongly dependent on offshore natural resources of petroleum and gas and her maritime domain features busy shipping sea lanes of communication (SLOCs), i.e., Strait of Malacca and South China Sea and the Indian Ocean, which act as gateways for the nation's trade. The SLOCs that link Europe, West Asia and South Asia with East Asia straddle the Straits of Malacca and the South China Sea. Hence the seas play a vital role in the nation's life. The country's seas are rich fishing zones; 45% of Malaysia's total fish landings in 2009 were from the Strait of Malacca.[1] SOM also generates income from marine tourism and approximately 165,000 visitors have arrived in SOM marine parks from 2000-2011.

Maritime security threats to Malaysia are both traditional and non-traditional. The traditional threats come from geopolitics and external power relations, maritime boundary delimitation, securing SLOCs, military activities at sea and the implication of arms/naval build-up by navies in the region. Non-traditional threats in Malaysia are divided into three categories, i.e., transnational crimes including smuggling, piracy, slave trading and illegal logging; illegal seaborne including illegal immigration and criminals and terrorist movement across borders and environmental and economic issues, which includes accidental spill, illegal dumping, or illegal fishing. Non-traditional security issues that are the focus of this report include piracy, terrorism, smuggling/human trafficking, illegal, unreported and unregulated fishing, transportation of WMD etc. Non-traditional threats involve the maritime boundaries of many countries and are cross border in nature, making it more cumbersome to handle. As such, they have to be addressed in a comprehensive manner; more importantly, countries need to cooperate with other adjoining coastal states as no one country can solve the problem as it involves trans-boundary issues and state and non-state actors.

There are many agencies involved in addressing issues related to maritime security in Malaysia. The top decision making authorities at the policy level are the Cabinet and the Prime Minister's Department and there are many other layers to the process involving management/planning, coordination, enforcement, research, training and education. Table 1 describes the agencies and their functions with regard to maritime security in Malaysia.

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[1] Siti Nazatul Mohd Ishak and Tan Kim Hooi, *Fisheries in Straits of Malacca* in H.M. Ibrahim and Hairil Anuar Husin (eds), Profile of Straits of Malacca, Malaysia's Perspective, MIMA Publications, 2008, pg 88.

Table 1: Agencies involved in Maritime Security, Malaysia

Function	Agency
Policy Formulation	Cabinet and Prime Minister's Department
Foreign Relations	Ministry of Foreign Affairs Malaysia
Management/Planning	Ministry of Defence (Policy Division) PM's Department
Coordination	National Security Council, Malaysia
Enforcement	Royal Malaysian Navy(RMN), Malaysian Maritime Enforcement Agency (MMEA), Marine Operation Forces (MOF)
Research	Maritime Institute of Malaysia, MIDAS, Universities
Education and Training	Universities, MMEA, RMN

3. PIRACY IN THE STRAITS OF MALACCA

Among maritime security threats, those posed by pirates or sea robbers attract particular international interest. This is particularly significant in light of the present piracy cases off the coast of Somalia and in the larger Indian Ocean. In the case of Southeast Asia, the areas where most incidents of piracy or sea robbery have been recorded are in the Straits of Malacca and the South China Sea. In addressing the issues of piracy, it is a common practice in Malaysia to differentiate the term *piracy* as opposed to *sea robbery*. The difference between piracy and sea robbery is that an act is termed as piracy if it happens in the high sea and in the EEZ; and the act was committed between two ships where, in this case, the universal jurisdiction is applied (which means that any states can arrest the preparatory). In contrast, if the act happens in territorial seas and internal waters, it would be termed as robbery and Malaysia's Penal Code is applied for arrest and prosecution. The types of piracy in this region are categorised as organised and non-organised crimes; organised crimes are, for example, ships hijacked while underway and used as "phantom ships", normally to steal cargo, and crews are kidnapped and held for ransom. Non-organised crime is valuables stolen with minimum force when a group of people assemble and get a boat to attack a ship looking for valuables that have market value and under normal circumstances, a hijacked ship is handed back to the ship's crew once the valuables have been taken.

Malaysia has accorded high priority to the safe and secure navigation for ships transiting the Straits of Malacca (SOM) by applying appropriate measures and action. The initiatives include the establishment of the Malaysian Maritime Enforcement Agency in 2004. The MMEA was established with the concept of a coast guard empowered to enforce all 14 federal laws that cover non-traditional security threats. To enhance security in the Straits of Malacca and Singapore, Indonesia, Malaysia and Singapore launched the Trilateral Malacca Strait Sea Patrol (MSSP) in July 2004 to conduct coordinated patrols. To complement the sea patrols with air surveillance, the "Eyes-in-the-Sky", or EiS, initiative was launched in September

2005 and it provides combined and coordinated aerial surveillance over the straits using the maritime patrol aircrafts of Indonesia, Malaysia, Singapore and Thailand.

The MMEA and the Royal Malaysian Navy (RMN) have been actively involved in counter-piracy/counter-sea robbery operations since 2005 and have had a tremendous impact in securing the straits since the Straits of Malacca was listed by the Joint War Committee as a War Risk Zone from 2005-2006. The number of piracy cases was highest at 80 in 2000 and declined significantly to 0 in 2012 *(see figure 1).* Regional co-operation to counter maritime security incidents remains very active and overall threats to the shipping community continue to decrease. Best management practices continue to be the best form of implementation by the shipping community to counter unauthorised access to vessels, be it for piracy/armed robbery, smuggling, stowaway movements, or cargo theft.

The predominant threat facing the Strait of Malacca currently is armed sea robbery off the coast of western Singapore Straits entrance/off Tg Piai and eastern Singapore Straits/ Tanjung Ayam – Tg Punggai.[2] From 2006-2012, there were 59 robbery cases recorded in this area with the highest (23) in 2011 *(see figure 2).* In addition to robberies in the anchorage, there has been an increase in in-transit robberies within the transit channels, particularly focusing on low freeboard vessels such as tugs. Despite the threat of armed sea robbery and smuggling, the Singapore Straits is relatively stable and cooperation mechanisms in place between the three littoral states are improving. In 2011 and 2012, the MMEA recorded a number of success cases with regard to piracy /sea robbery, including:

- Arrest of 7 robbers trying to rob Mt *Front Queen* on 9 March 2011

- Recovery of tug boat *Marina 26* & barge *Marine Power 3301* which were hijacked on 22 March 2011

- Arrest of 2 robbers trying to rob fishermen off Pulau Jarak on 7 August 2011

- Arrest of 6 robbers attempting to rob MV *Sky Jupiter* on 19 September 2011

- Cooperated with the RMN in the recovery of Mt *Nautica Johor* which was hijacked on 28 Oct 2011

- Arrest of 4 robbers attempting to rob tug boat H*ub 1* and barge H*ub 8* on 18 Oct 2012

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[2] Zulkifli Abu Bakar, *Non Traditional Security and safety of Life at Sea: Challenges and Cooperation*, Paper Presented at National Conference on UNCLOS 1982—Three Decades On: Progress and Future Development for Malaysia, 3-4 December, Kuala Lumpur, 2012.

Figure 1: Number of piracy and armed robbery incidents in the Straits of Malacca, 2000-2012
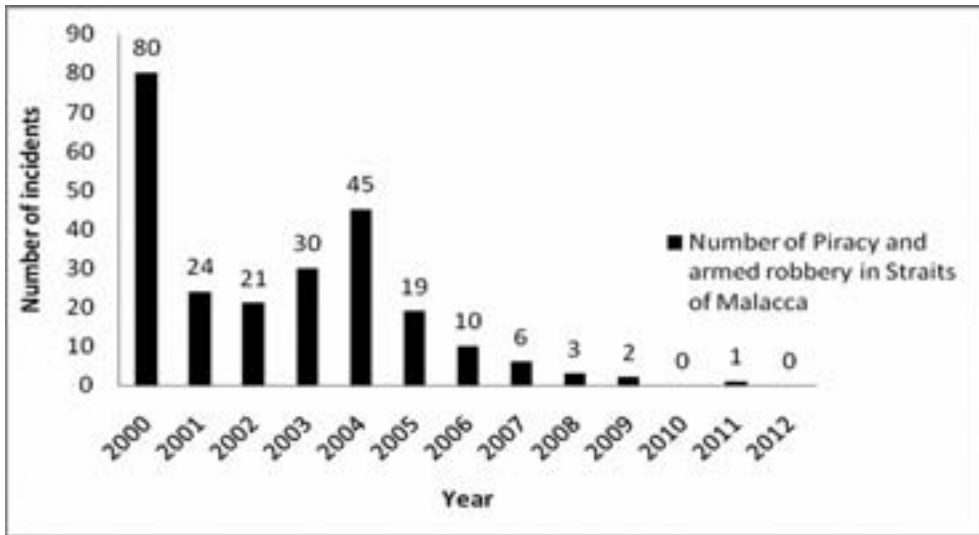
Source : Malaysian Maritime Enforcement Agency, 2012

Figure 2: Incidents of Robberies at Sea in Singapore Straits/South Johor
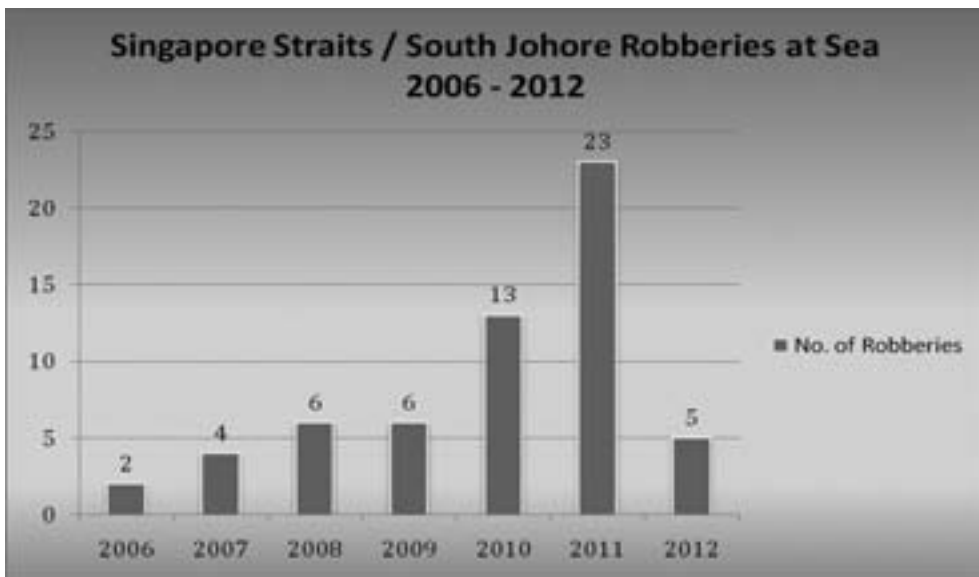
Source: Malaysian Maritime Enforcement Agency, 2012

4. PIRACY AND ARMED ROBBERY IN THE GULF OF ADEN AND IN THE INDIAN OCEAN

Piracy in the Gulf of Aden poses a threat to international trade, port activities along the Red Sea, and the Suez Canal and has implications on the transportation of 40% of the world's energy via the Strait of Hormuz and 11% via the Suez Canal.[3] With the increase in piracy attacks not only in the Gulf of Aden but in the Indian Ocean, challenges towards maritime security continue to confront the maritime commons in SEA. Since piracy and armed robbery in the Straits of Malacca has declined, it is important that Malaysia consolidates its approaches and ideas on maritime security issues, particularly on piracy, so that she can contribute towards multilateral cooperation to contain piracy in the GOA and in the Indian Ocean.

Up to the third quarter of 2012, maritime security concerns in the Indian Ocean continued to be dominated by piracy and armed robbery at sea, specifically the hijacking of merchant vessels by well-armed Somalia-based pirates.[4] By the end of 2011, 214 vessels had been attacked and 31 hijacked (a 14% success rate) while 8 vessels remained captured awaiting payment of ransom, 497 seafarers were held captive, and 10 seafarers had died.[5] According to ICC, Pirates Attack Groups (PAGs) are increasingly well-armed and highly motivated by the prospect of very large ransom payments, with an average payment estimated at $5.4 million, and many are using captured merchant vessels as motherships to stage further attacks.

A recent study by *Stimson* noted that in 2011 there were about 35-45 warships and auxiliaries deployed in the Indian Ocean on counter-piracy operations drawn from some 28 states, and there remain three dedicated counter-piracy coalition forces including the EU's counter-piracy task force, the EU NAVAL FORCE (EU NAVFOR or Operation Atalanta), NATO's Standing Naval Maritime Group (SNMG) 1 and 2, and Combined Task Force 151 (CTF-151).[6] The majority of naval assets are deployed in the Internationally Recognized Transit Corridor (IRTC), and off the eastern Somali coast. The European Union EU Naval Force (Eunavfor) has created a new naval mission, its third, to combat piracy and insecurity in the Indian Ocean and Horn of Africa region. Intelligence reports from Global Intelligence Report by SIN show that EU NAVFOR will engage in active fighting against all maritime piracy and security threats in the Indian Ocean and off the Horn of Africa coasts. This means the rules of engagement will change from mere peace keeping, surveillance, and escort to active engagement of enemy crafts.

Despite the presence of major naval forces in the ocean space, piracy continues as a major threat to shipping in the Indian Ocean. A report by Lowy Institute assessed that the severity of piracy in the Indian Ocean prompted merchant vessels transiting or operating in

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[3] *World Oil Transit Chokepoints*, U.S. Energy Information, August 22, 2012.

[4] ICC.IMB *Piracy and Armed Robbery Against Ship Report-First Quarter*, ICC International Maritime Bureau, 2012.

[5] Ibid.

[6] David Michel and Russell Sticklor, *Indian Ocean Rising: Maritime Security and Policy Challenges*, Stimsons Publications, July 2012.

the affected areas to implement their own anti-piracy measures. Over 140 recently launched PMSCs employ at least 2700 armed contractors onboard commercial ships, with more than a quarter of commercial ships now using armed security onboard.[7] The study also mentioned that there are plans for more than 2000 European military personnel to be privately hired by shipping firms as vessel protection detachments. One way or another, the counter-piracy fight is becoming a private one and private armed contractors have been effective in reducing successful pirate attacks upon shipping. Piracy attacks have decreased by 60 per cent thus far in 2012, and though it is too soon to conclusively establish why, some experts believe this is because of the use of private armed guards.[8] In recent months, 9 out of 10 failed attacks by pirates on merchant ships were repelled by armed PMSCs. Efficiently regulated PMSCs represent a cost-effective counter-piracy solution for shipping companies and allow navies to incur less costs operating counter-piracy flotillas.

The threat from Somali piracy is of particular concern to Malaysia because of the risk to Malaysian seafarers crewing foreign-owned ships. More general interests include the security of maritime trade to our region, reducing pressure on the costs of trade stemming from piracy, and the impact of piracy on security in the Indian Ocean. To mitigate the threats of pirate attacks on Malaysian commercial ships transiting the GOA and the Indian Ocean, Malaysia has been deploying auxiliary escort services through her Operation Fajar series launched in 2008, following the hijacking of Malaysian International Shipping Corporation ships *Bunga Melati 2* and *MV Bunga Mas 5*. Operation Fajar is based on the SMART Partnership programme between the Royal Malaysian Navy and MISC that deploys converted merchant ships as naval auxiliary, crewed by naval reserve personnel complying with International Maritime Organizations (IMO) standards of compliance.[9] These ships, carrying Special Forces, with an embarked helicopter, are tasked to provide protection for MISC tankers transiting the IRTC in the Gulf of Aden. In 2011, RMN special forces foiled an attempt by Somali pirates to hijack the Malaysian owned *Bunga Laurel* about 555km east of Oman. In 2012, RMN auxiliary ships conducted Operation Fajar 14 and Operation Fajar 15 in the Gulf of Aden for 145 days of deployment.[10] During this period the crews successfully conducted 38 convoys and successfully escorted and protected 27 Malaysian ships.[11]

Malaysia could consider a few options in addressing piracy in a comprehensive manner including enacting legislation, placing military personnel onboard Malaysian-flagged commercial vessels and allowing private armed guards onboard.[12] Domestic legislation on piracy facilitates the prosecution of pirates arrested by the relevant Malaysian law enforcement agencies. The option of military personnel onboard could be relatively cost-efficient and a

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[7] James Brown, *Pirates and Privateers: Managing the Indian Ocean's Private Security Boom*, Lowy Institute For International Policy, September 2012.

[8] Ibid.

[9] *Briefing on Ops Fajar*, Royal Malaysian Navy, Kuala Lumpur, 2012.

[10] Ibid.

[11] Ibid.

[12] Author's interview with officials from Malaysian Maritime Enforcement Agency, Putrajaya, 2012.

preventive measure to potential acts of piracy. Nevertheless, this option gives rise to legal issues relating to military personnel operating onboard non-government vessels such as those arising in the *Enrica Lexie* case. Private armed guards are also an option and help in reducing costs such as high insurance premiums for pirate-infested routes. However, this option faces certain complications at present relating to, among others, the possession of firearms in states' territorial waters.

Thus, while available solutions may not be perfect, the best option for Malaysia at this juncture remains the enactment of domestic legislation that addresses the void in current laws and at the same time conforms to principles and standards of international law. One case came to light when Malaysian Special Forces succeeded in rescuing the hijacked Panama-flagged MT *Bunga Laurel*. Seven pirates were arrested and brought to Malaysia to be tried. The pirates were apprehended under international laws in the high seas; unfortunately, there are no domestic laws to charge them with piracy. After much deliberation, proceedings were initiated against them under an alternative charge under the Firearms Act 1965 Section 32 (Increased Penalties) Act 1971 as offences committed against the security of Malaysia and citizens of Malaysia. They were charged with committing the offence with the intent to cause death or hurt with discharging firearms against the Malaysian forces team on board the vessel.

At the operational level, Malaysia has been successful in reducing piracy in the Straits of Malacca and in providing escort services to ships transiting the GOA. The larger problem of piracy at the policy level lies on the legal issues. Malaysia faces a dilemma in terms of dealing with the *lacuna* in domestic legislation on piracy. In the context of Straits of Malacca, there are enough policies, structures and mechanisms, and the right approach has been taken sufficiently in order to contain piracy. Nonetheless, issues relating to apprehension and prosecution of pirates in the high seas and the EEZ are not properly advocated.

To address crimes at sea the Malaysian government, through its National Security Council, has drafted a Maritime Security Act[13] that is the outcome of discussions and consultations among relevant agencies dealing with maritime security, such as the National Security Council, Royal Malaysian Navy, Royal Malaysian Air Force, the Attorney General, Ministry of Foreign Affairs, and Malaysian Maritime Enforcement Agency.[14] The Act is expected to contain legislation and provisions that could close the existing gap to address maritime security issues, including piracy and other offences in the Malaysia maritime domain.

5. SECURITY THREATS IN THE SULU-SULAWESI SEA

The Sulawesi Sea (also known as the Celebes Sea) and the Sulu Sea are in the southwest Pacific Ocean where Indonesia, Malaysia and the Philippines share the Tri-Border Sea Area (TBSA). This area forms an alternative route to the Straits of Malacca as it is the only water in the area capable of supporting submarines and supertankers. It also forms an important area

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13 Author's personal conversation with authorities at National Security Council, Malaysia, 2012.

14 Author's discussion with officials from National Security Council, Malaysia.

for local trade, is an important maritime environmental area for coral reef reservation, and is part of the World Coral Triangle covering the tropical marine waters between Indonesia, Malaysia, the Philippines, Timor Leste, Papua New Guinea and the Soloman islands.[15] In recent years, the TBSA has been exposed to many non-traditional security issues that require addressing by both individual and the littoral states.

The security situation in this maritime area has implications on the bilateral relations among these states and the lives of the people living in the coastal areas as well. Due to the porous nature of the borders, the area is open to criminal activities. In the past, illegal immigrants and illegal fishing were the main irritants. In recent years, with the instability in the Mindanao region, additional security issues such as terrorism, human trafficking, drug trafficking, smuggling of arms and goods and others have become more prevalent, raising concerns among not only the littoral states but also user countries that have economic and security interest in the area, such as the US, Australia, Japan and China.

Non-traditional threats appear as a major challenge to maritime security in the Sulu and Sulawesi Seas. Among them are piracy, armed robbery, smuggling of small arms and explosives, human trafficking, illegal immigrants, illegal fishing, maritime terrorism, and threat to maritime environment and marine resources; these are perceived as important threats to the three littoral states and also of concern to other states. The Sulu Sea is the main route used by criminals to sneak into Sabah. The arrival of illegal immigrants from southern Mindanao and the Sulawesi islands has caused social instability in Sabah. Since the 9/11 attack, the US has paid much attention to these in this area, especially the Mindanao area, which is a safe-haven for insurgents and terrorists.

Given the presence of militants, the Philippine government has become more actively involved, with US intelligence assistance since 2009. The conflict in the southern Philippines and the activities of the militants in the Sulu Sea is of concern to the Philippines as it has significant influence over the non-traditional security situation in the TBSA. When the security situation in Mindanao worsens, the problem of the NTS issue in the TBSA will increase.

5.1 Illegal movement of people in TBSA

Although people have been moving around in this area traditionally, the illegal movement of people in the TBSA is a significant problem for the littoral states, and bilateral arrangements have been initiated over the last 20 years to overcome this problem. The movement of people has increased due to the strong economic conditions in Malaysia, and illegal migration has emerged as an important issue. The movement of people from the Philippines to Sabah is the major security issue faced by Malaysian enforcement agencies. The Malaysian government regards illegal immigrants as a security threat and the waters off Sabah is one of the major entry points for illegal immigrants. An estimated 100,000 to 150,000 illegal immigrants

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[15] Coral Triangle facts, Available from: http://wwf.panda.org/what_we_do/where_we_work/coraltriangle/coraltrianglefacts

from Indonesia and the Philippines are in Sabah[16] and the movement of illegal immigrants is considered as a normal routine activity by the coastal community. The encouragement of trade under the Brunei-Indonesia-Malaysia-Philippines East ASEAN Growth Area (BIMP-EAGA) facilitates the movement of people. Barter trade in the area is traditional and difficult to control; hence the Sabah administration and enforcement agencies are unable to regulate the movement of goods and people between Sabah and the Philippines due to historical and cultural reasons.

There are two specific demographic situations that exist in the TBSA that involve the movement of people. First, in the south of the Philippines reside about 10,000 Indonesian citizens, mostly living in Sarangani province, Cotabato and Davao area.[17] Most of them are from the Sangil or Sangir ethnic groups living in Indonesia. Sangihe and Talaud islands are the group of islands in the northern part of Sulawesi where the latter ethnic group comes from. They have been there for almost three to five generations and are still assumed to be Indonesian citizens although they do not have Indonesian passports or Philippine IDs.[18]

In Sabah, the number of Filipino refugees was estimated at between 57,000 and 70,500 in 2008.[19] They have been there since the late sixties, when the Mindanao region in the South Philippines was embroiled in civil war, resulting in many seeking refuge in Sabah. The other reason for Indonesians and the Filipinos moving to Sabah is the better economic and social conditions in Sabah. Indonesia is not only a source, but also a transit and destination country for human trafficking. Illegal migrants are difficult to control because of traditional social interactions and travelling without appropriate documents and the existence of many entry points along the sea borders.

5.2 Kidnappings

Between 2000 and 2005, there were numerous kidnappings near Sipadan, Mataking and Padanan Islands near Lahad Datu by Abu Sayaf Group based in the southern Philippines.[20] These incidents received the attentions of the Malaysian enforcement agencies, especially the Royal Malaysian Navy and the Malaysian Army, which are responsible for the maritime security of that area. The islands' dive sites and the coastal areas off eastern Sabah were declared not safe for tourists and additional navy and army units were deployed there. Given this threat, the RMN, Marine Operation Force (MOF) and the Malaysian Maritime Enforcement

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[16] Sumathy Permal, *Malaysia's Maritime Border Security: Case study of Sabah*, Maritime Institute of Malaysia Report, 2011.

[17] Dusanto, Atok, *Managing Non-Traditional Security Issues: Cooperation Among Indonesia, Malaysia and the Philippines in the Sulawesi and Sulu Seas*, Thesis submitted in partial fulfillment for the Degree of Master of Social Sciences in Defence studies, Universiti Kebangsaan Malaysia, 2010.

[18] Ibid.

[19] Azizah Kassim, "Filipino Refugees in Sabah: State Responses, Public Stereotypes and the Dilemma Over Their Future*", Southeast Asian Studies*, Vol. 49. No 1, Institute of Malaysian and International Studies, Universiti Kebangsaan Malaysia, 2009.

[20] Sumathy Permal, *Malaysia's Maritime Border Security: Case study of Sabah*, Maritime Institute of Malaysia Report, 2011.

Agency (MMEA) became operational in the area in 2005 with the RMN involved in enforcing patrols along disputed borders and countering the encroachment of foreign military vessels in Sabah's EEZ.

With the kidnapping of Malaysian nationals in Sipadan and Ligitan in 2001, the Malaysian government began to regulate boats and traders from the Philippines, restricting all boats, including the *kumpits*, to the designated sea lanes, or approaches to Sabah.[21] There are between three to six Filipino *kumpits* on average calling at the state-run Sandakan Barter Trade Jetty daily, with each boat staying for up to three days. There must be clearance from the Philippine port authorities before the ferry is allowed to dock at the Sandakan Port. Sabah does not insist on strict border controls and traders from the Philippines are given special travel documents on arrival at any of the six designated barter trade ports in Sabah. Hijacking of fishing boats and kidnapping for ransom remain a concern in the form of rebel groups from the Philippines. However, there were no reports of such incidents in 2010-2011.[22]

The ASG, which is based on the islands of Basilan and Jolo, has been involved in criminal activities, raiding the tourist resorts in Malaysia and the Palawan Island in the Philippines in 2000 and 2001. In 2004, the ASG was reported as responsible for the sinking of MV *Super Ferry 14* in Manila Bay in which 116 were killed and 300 injured. In January 2009, three Red Cross workers, including an Italian and a Swiss national, were suspected to have been kidnapped in southern Philippines by the ASG. Between 2000 and 2004, the following incidents of kidnapping occurred:[23]

- 23 April 2000: the ASG kidnapped 15 people (3 Malaysians and 12 foreign tourists) from Pulau Sipadan

- 2000: 3 Malaysians kidnapped by the ASG were taken to Southern Philippines

- 2001: Kidnappers took hostages from Palawan Island, close to the Philippines/ Malaysian border

- 2003: 10 armed criminals kidnapped 2 Filipino and 4 Indonesian nationals from Borneo Paradise Eco farm on Pandanan Island

- February 2010: 10 gunmen (suspected ASG operatives) kidnapped a Malaysian businessman from Jolo Island in southern Philippines

- 14 February 2004: MV *Superferry 14* sank in Manila Bay, killing 116 and injuring 300

- 12 April 2004: A Malaysian vessel was hijacked and three crew members taken hostage off Malaysian waters of eastern Sabah

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[21] Ellen Laipson, Amit Pandya, Mak Joon Num, *Pirates, Barter Traders, and Fishers: Whose Rights, Whose Security? User Conflicts and Maritime Non-traditional Security in Malaysian Waters,* The Indian Ocean Resource and Governance Challenges, 2009, The Henry L. Stimson Center.

[22] Discussion with authorities from Malaysian Maritime Enforcement Agency, 2011.

[23] Sumathy Permal, *Revisiting Maritime Security in Eastern Sabah*, MIMA Bulletin, Vol.19 (1), 2012, pg. 14.

The threats of piracy in the Sulu-Sulawesi seas are closely linked with the separatist groups, among the cases are as follows:[24]

- In early January 2007, the Philippine authorities rescued dozens of fishermen who were held ransom off Tawi-Tawi.

- In March 2009, suspected MILF operatives held 20 fishermen hostage off Mindanao

- On 7 April 2009, a tug and barge sailing from Singapore to Vietnam was hijacked 125 nm southwest of Balabac Island, Palawan.

6. MARITIME ENFORCEMENT ISSUES

Despite these security issues, the major challenges are the lack of coordination and cooperation among the three littoral states to overcome these non-traditional security issues, although enforcement agencies of three states operate in the TBSA. This is due to two major factors. First is the absence of a policy framework for the TBSA as it has been a neglected area by the central governments in Jakarta, Kuala Lumpur and Manila. Second, there is no common legal framework for this: for example, in Indonesia, there are different laws for the different enforcement agencies and they are interpreted differently. With regard to the operational effectiveness of the three littoral states' maritime forces, the Philippine Navy (PN) and the Philippine Coast Guard (PCG) have limited capabilities. The Philippines National Marine Policy is outdated, and domestic laws and policies are not sufficient to handle non-traditional security issues in the respective littoral states. The Indonesian Navy has insufficient naval craft and is incapable of monitoring the country's 34,000 miles of coastline and 4.9 million square miles of territorial waters and EEZ. It has little capacity to interdict movements of traffickers and illegal immigrants with only limited patrol boats to monitor the north Sulawesi Sea.

The Malaysian government regards illegal immigrants as a security threat to the nation and the waters off Sabah are one of the major entry points of illegal immigrants to Malaysia. In addition, kidnappings have occurred on Sipadan, Mataking and Pandanan islands, near Lahad Datu and have received the attention of Malaysia's national security enforcement agencies, including the navy and the army that focused on maritime security in the area. Thus, Malaysia is in a better position to deal with these maritime problems. The RMN is better equipped and the formation of the MMEA in 2005 beefed up the enforcement of maritime laws. The enforcement agencies and their operations are described briefly below.

Malaysian Maritime Enforcement Agency

The MMEA has five bases, i.e., Labuan, Kota Kinabalu, Kudat, Sandakan and Tawau, with 14 ships and 12 boats. MMEA is a new agency and will need time before it can enhance its effectives in combating the various threats in the porous borders that lacks finance, assets and personnel to operate in the vast area.

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[24] Ibid.

Marine Operation Force

The MOF operates in 7 maritime zones in the Sabah maritime domains: Kudat, Sandakan, Kota Kinabalu, Lahad Datu, Sepangar, Labuan and Tawau. These zones are divided into two major cordons known as the "Outer Cordon" that covers patrols along the outer islands, usually by big vessels. and "Inner Cordon" that carry out patrols on boats. The MOF has a total of 77 vessels policing 15 islands in Sabah, mainly covering illegal immigrants and operations.

Royal Malaysian Navy

RMN plays a bigger role as Sabah has a long coastline. Currently the RMN has a submarine and naval base in Sepangar. It also has four naval bases in Sabah—Labuan, Sandakan, Semporna and Sepangar—where the RMN's HQ Region II is located. In January 2009, six RMN ships from the Fast Patrol Boat Sixth Fleet held a four-day naval exercise in the waters off the east coast. The exercise covered an area of 300 nautical miles stretching from the Sulu Sea to the Sulawesi Sea, involving more than 300 officers and men and comprised eight ships. The RMN also conducted Ops Sinar Sakti, aimed at preventing foreign military vessels encroachment.

Ops Pasir under Joint Forces Initiatives

This was a combined tri-service operation formed under the command of the Malaysian Army in Sabah, aimed at providing full security in Sabah's maritime domain especially from the separatists.

7. MARITIME SECURITY THREATS IN THE INDIAN OCEAN

The strategic importance of the Indian Ocean (IO) to Malaysia is based on the Andaman–Malacca Strait link at the northern entrance of the Strait of Malacca that approaches Peninsular Malaysia. Being a littoral to the IO, the Straits of Malacca commands the vital sea route connecting maritime traffic between the Indian Ocean and the Pacific Ocean. On the economic front, Malaysia has two ports in the area—Port Klang and Port of Tanjong Pelepas in the eastern rim of the Indian Ocean—and they are among the largest container ports in Asia

The maritime security threats in the IO are both multidimensional and multifaceted and involve non-traditional or non-military aspects such as maritime terrorism, drug trafficking and piracy which have acquired trans-regional dimensions. In addition, narco-arms and human smuggling are rampant in the IO region and further complicate the security matrix. Among those threats, piracy remains a serious challenge to merchant vessels transiting the IO and is being addressed by national and international counter-piracy planning.

8. TRAFFICKING BY SEA

Human, contraband goods, and drug trafficking and smuggling via the sea are the threats faced by Malaysia. The MMEA made 80 arrests involving 561 illegal immigrants in 2012,

of which 275 were from Indonesia, 129 from Myanmar, 117 from the Philippines, 13 each from Thailand and Afghanistan, 12 from Cambodia and two from Vietnam.[25] To detect and track illegal movements of vessels in Malaysian waters, the MMEA uses the Sea Surveillance System (SWASLA) which is equipped with nine radars and cameras installed along the western coastal areas of Peninsular Malaysia.

In the past, the threats from crimes emanating through the sea, such as trafficking of firearms, drugs and illegal immigrants operating from the Andaman Sea, was a concern to Malaysia. This was also admitted by Vice-Admiral Vinod Pasricha, then Chief of Eastern Naval Command, Visakhapatnam, in December 1999. Most illegal immigrants from Myanmar and Bangladesh entering Malaysia use Thailand's northwestern border, using both sea and land routes. Landing points for those who travel by sea via Langkawi, Yan and Tg Dawai are all located on the northeastern coast of the Strait of Malacca.[26] On the other hand, due to their greater bulk, cannabis consignments are smuggled by high-speed boats usually at night. They are ferried to predetermined pick-up points, usually on isolated islands like Pulau Payar and Pulau Bidan, both located on the northern coast of the Strait of Malacca.

The threat from transnational crimes plaguing the Indian Ocean and the Southern Asian region is exacerbated by the lack of "channelized" efforts towards addressing maritime challenges. Previous efforts to combat these problems have been mostly bilateral and tri-lateral and there is an absence of a multilateral approach. Track II arrangements like the Council for Security Cooperation in the Asia-Pacific (CSCAP) and the Western Pacific Naval Symposium (WPNS) has been active in hosting seminars and discussions, but most states have yet to incorporate their suggestions into national policies.

Illegal, unregulated, and unreported (IUU) fishing has continued in the western Indian Ocean's most important fishing areas, most notably in the important tuna grounds in the waters around Mauritius, Comoros, Madagascar, the Seychelles, and Reunion.[27] Currently, albacore, yellow-fin and big-eye tuna are being fished to the maximum limit deemed possible by conservationists. However, IUU has long been a growing threat, both to key fish species and to the economies of the island states where the fish are sought. Although the Indian Ocean Commission has been able to help some states with satellite and radar surveillance to curtail IUU, the navies and coast guards of these states are too small to cope with the vast areas of ocean in which this activity occurs. For Malaysia, IUU refers to illegal fishing that is covered under Sec 25 of Fisheries Act, Malaysia where any person who contravenes or fails to comply with any provision of the Act is guilty of an offence. IUU fishing is mainly driven by ineffective management regimes, overcapacity in the world fishing fleet and lower administrative and management costs. IUU fishing has negative economic, environmental, ecological and social impacts and constitutes one of the most serious threats to the sustainable exploitation of living aquatic resources and marine biodiversity. It causes depletion of fish stocks and

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[25] Info obtained from Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants.

[26] Ibid.

[27] *The Impact of Piracy on Fisheries in the Indian Ocean*, European Bureau for Conservation and Development, 2012. Available from: http://www.ebcd.org/pdf/en/162

future stock growth and damages the marine environment by overfishing and irresponsible fishing practices and techniques as well as poor management decisions.

Malaysia cooperates with her neighbors in the ASEAN region and with countries in the SCS and the Sulu-Sulawesi Seas to counter the threats from IUU fishing. This includes the *Joint Ministerial Statement on Promoting Responsible Fishing Practices in the Region*, an agreement to collaborate and cooperate in promoting responsible fishing practices. The Department of Fisheries, Malaysia has established a coordination committee to monitor and review the effective implementation of the measures under the *Regional Plan of Action in the Region (comprising the Republic of Indonesia, Australia, Brunei Darussalam, Cambodia, Peoples Republic of China, Japan, Malaysia, Papua New Guinea, The Philippines, Singapore, Thailand, Timor-Leste and Vietnam)* in combating IUU fishing. The Department produced *Strategic Plan 2011-2020*, which spells out Malaysia's commitment to combat IUU fishing through sound capture-fisheries management.

However, statistics show a decrease in transnational crimes in the past decade in the vicinity of the northern waters of Malaysia linking the Andaman Sea. This is mainly due to the presence of both the RMN and the MMEA in the Langkawi area since 2007 and 2009 respectively. There were a few cases of firearms smuggled from Thailand into Malaysia; however, the number was low and insignificant. Between 2009-2012, MMEA's Northern Region in Langkawi made 11 arrests, mainly for drug smuggling *(see table 2)*. However, there was no definite investigation og the source of the crime and the origin of the consignment is unknown although it is suspected to be shipped through boats arriving from Thailand and Myanmar. In order to curb the crime over the mid-to-long term, there is a need to have detailed information such as source countries, points of export (ports/harbours/coastlines), transshipment nodes/countries, means of transportation (vessel type), sea transportation routes and destination countries/ports.

Table 2: MMEA arrests on transnational crimes in the Northern Region

Year	Drugs	Firearms	Contrabands	Diesel
2009				
2010	1			
2011	1		2	1
2012	4	1		1
Total	**6**	**1**	**2**	**2**

Adapted from: MMEA Northern Region, 2012

Though the numbers of transnational crimes have declined, the sustained trafficking of illicit drugs, firearms contrabands and people within, and via, the Indian Ocean will persist for the medium-to-long term for several key reasons. There are numerous sources of high-volume supply for all three commodities; there is a sufficiently large number of points of export located in key countries that suffer from severe insecurity and/or corrupt officials and an array of sea transportation servicing all of the necessary sites of demand and consumption. The

smuggling of diesel, cigarettes, endangered species, and other contraband will be a source of sustained threat to the maritime domain.

Malaysia's Anti Human Trafficking 2007 Act was amended to include the human smuggling element and is now known as the Anti Human Trafficking and Anti Migrant Trafficking Act 2007, which came into force in November 2010. The amendment has made the law more comprehensive in countering international syndicates, using Malaysia as a transit point for human smuggling to third countries, especially Australia. Most human trafficking victims are from Afghanistan, Pakistan and Myanmar and are brought into Malaysia before transiting via Indonesia to Australia. The Malaysian government is also increasing enforcement to counter human trafficking by stationing added police personnel in trafficking hotspots like the Strait of Melaka and South China Sea that often serve as the main entry points. In addition, the government has taken a systematic approach to this issue through the National Anti Human Trafficking Plan (2010-2015) that sets the direction and focus in eradicating human trafficking.

In January 2012, the Malaysian government and an international organization co-hosted the Bali Process Workshop on combating transnational organized crime, including trafficking, which was attended by delegates from a number of other countries in the region. While authorities continued anti-trafficking training for officials with responsibilities to combat trafficking, including trainings conducted through cooperation with foreign donors, international organizations, and NGOs, the lack of understanding of human trafficking by many Malaysian front-liners such as the police, immigration, and labor officials, continues to hinder the identification and proper investigation of trafficking cases and assistance to trafficked victims.

9. SEARCH AND RESCUE AND HADR

Perils, such as natural disasters at sea, from tsunamis to oil spills, affect the maritime domain through accidents at sea, catastrophic incidents, phantom ships, piracy and armed robbery and incur loss of life and injury, loss of and damage to property and risk to the environment. SAR is the last resort to mitigate risks and distress at sea and to render assistance to save lives and property. The Maritime Search and Rescue Policy is contained in the Merchant Shipping Ordinance 1952 and 1960, which makes it a legal obligation for the saving of life, property and the environment within Malaysia's Maritime SAR Region of responsibility. The Safety of Life at Sea Convention (SOLAS) 1974 was ratified by Malaysia in 1983, obliging her to provide Maritime SAR facilities.[28]

In Malaysia, the MMEA is responsible for a number of SAR tasks, including the detection of maritime incidents, the coordination, control and conduct of maritime SAR operations within Malaysian areas of responsibility, and when and wherever available, MMEA also provides SAR resources to assist in humanitarian and civil incidents. The MMEA also conducts SAR preventive programs to reduce the number and severity of marine SAR

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[28]   Information from Malaysia Maritime Enforcement Agency, 2012.

incidents. MMEA has established the Maritime Rescue Coordinating Center (MRCC) and five Maritime Rescue Sub Centers for the purpose of coordinating search and rescue operations at sea in the Malaysian Maritime Search and Rescue Region (MSRR) that covers the waters along the Peninsula's west coast, from the Strait of Malacca to the Andaman Sea. In addition, it also covers emergencies in the waters along the Peninsula's east coast to the Exclusive Economic Zone in the South China Sea. These centers operate around the clock. For SAR operations, the MMEA uses government and private aircrafts, ships and boats and even merchant ships if they happen to be at the right location at the time of an emergency. Between 2006 to September 2012, MMEA coordinated 673 SAR operations and rescued 2,610 people.[29]

SAR is one component of cooperation that can promote maritime CBMs among Southeast Asian navies. The SEA region is prone to natural disasters such as the 2004 tsunami and cyclone Nargis in 2008. The ASEAN Declaration on Cooperation in Search and Rescue and Rescue of Persons and Vessels at Sea, initiated by Vietnam, are some of the important developments in ASEAN. Cooperation of this nature increases the level of understanding at operational levels among the navies. Cooperation among navies for HADR has to be sustainable through combined exercises at the multilateral level. At the 42nd ASEAN Ministerial Meeting in Thailand in 2009, HADR was identified as one of the 11 political and security priority issues in future ASEAN cooperation.[30]

The ever-changing global climate will impact the waters of SEA and could lead to an increase in accidents at sea especially in the territorial waters of the ASEAN member countries. The evolving role of regional navies requires that HADR and SAR be a part of ASEAN naval cooperation. The challenges for SAR in this region include enhancing interaction among components and more systematic and pragmatic inter-departmental coordination and arrangements. Inter-departmental coordination is needed in areas of responsibility, communication channels, standard operational procedures, standard of qualification and training and sharing of SAR resources as well as information exchanges. There is a need for Regional SAR Coordination, as maritime safety and security are fundamental elements for the promotion of regional maritime connectivity. As such, there has to be coordination on SAR data information exchange, area or regional contingency plans, standard operating procedures for joint operations and joint training exercises for SAR personnel.

SAR agreements have been concluded between the Department of Civil Aviation Malaysia and the SAR authorities of Brunei, Indonesia, Philippines, Singapore and Thailand. Vietnam and Myanmar are covered by ASEAN Agreements for the facilitations of search for aircraft in distress and rescue of survivors from aircraft accidents.[31] These agreements provide for mutual assistance in the conduct of SAR operations within each other's SAR Regions and approval for entry of SAR aircraft, vessels and personnel of one state into the SAR of the

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[29] *Malaysia's Maritime Enforcement Agency Ensures Safety of Nation's Coastal Line*, BERNAMA, 6 Dec 2012.

[30] Association of SEA, *Blueprint for the ASEAN Socio-Cultural Community—2009-2015*, *Agreement and Declaration*, Available from: http://www.aseansec.org/22336.pdf

[31] Information obtained from Department of Civil Aviation Malaysia.

other state, with prior permission for the purpose of conducting SAR operations or rendering SAR assistance and for direct communications between the SAR authorities or agencies on all common SAR matters. At the regional level, it is important that member states of ASEAN adhere to UNCLOS obligations before the SAR implementation. Most member countries of ASEAN have ratified the People of Distress at Sea Agreement and this agreement forms the basis for further elaboration.

10. POLITICAL INITIATIVES AND MEASUREMENTS IMPLEMENTED TO SECURE SLOCS:

10.1 Malaysia and adjoining coastal states have effectively improved trilateral coordination and capacity in existing strategic alliances

This was done among the governments of Malaysia, Indonesia and Singapore in the Straits of Malacca to address the threat of piracy and crime at sea as well as between Malaysia, the Philippines and Indonesia in the tri-border area in the Sulu-Sulawesi. In the Strait of Malacca, collaboration among the countries which formed the Malacca Straits Patrol (MSP), Malaysia, Singapore, Indonesia and Thailand, achieved a close to zero rate for piracy incidents in 2010 and 2012.

10.2 Coordinated cross-agency functionality

Prior to the establishment of the MMEA, Malaysia had no coast guard despite having a long coastline. With the various agencies overseeing the responsibilities to protect the Malaysian maritime zone, it has proved to be a challenging task, which has often resulted in overlapping duties. One of the main reasons for the establishment of MMEA was the need to get away from the sectoral approach to maritime enforcement by having a single dedicated agency for the enforcement of all federal laws at sea. MMEA functions to keep the SLOCs secure from maritime threats in Malaysian Maritime Zones that include internal waters, territorial seas, continental shelf, exclusive economic zone and the Malaysian fisheries waters and includes the air space over the Zones. The functions of the agency are to enforce law and order under any federal law; to perform maritime search and rescue; to prevent and suppress the commission of an offence; and generally to perform any other duty for ensuring maritime safety and security within the Malaysian Maritime Zone. On the high seas, MMEA is responsible for the performance of maritime search and rescue; for controlling and preventing maritime pollution; for preventing and suppressing piracy; and for preventing and suppressing illicit traffic in narcotic drugs. The MMEA Act 2004 allows maritime enforcement activities to be more structured and integrated into a single holistic agency whereas previously it was conducted by various agencies such as the RMN, RMP, Department of Fisheries, Department of Immigration etc.

10.3 Sharing of knowledge on maritime related issues

Malaysia has been sharing its development experience and expertise in maritime and other areas with other developing countries through the Malaysian Technical Cooperation Program (MTCP) since 1980. Through MTCP, Malaysia promotes the strengthening of regional and sub-regional cooperation, and the nurturing of collective self-reliance among developing countries. MIMA, with the collaboration of the Ministry of Foreign Affairs, conducted courses under MTCP in 2010 and 2011 under the "International Training Course on the Strategic Management of the Maritime Sector for Senior Officials" from CLMV (Cambodia, Laos, Myanmar and Vietnam). In 2013, MIMA will organize an MTCP course on Maritime Non Traditional Security for countries in the Southeast Asian Region. During the programme, participants discuss issues and challenges as well as share knowledge from many government agencies that deal with non-traditional security in the maritime domain.

10.4 Increased effective Maritime Domain Awareness (MDA)

MDA requires information-sharing among countries that share a common maritime boundary or have a common interest in a particular maritime area. MDA at the national level is coordinated by the Malaysian Enforcement Coordination Centre under the MMEA and acts as the centre to coordinate efforts among the maritime security agencies and facilitate sharing of knowledge of what is happening in neighbouring waters as well as within the agencies. This is achieved through agreed information-sharing arrangements such as ReCAAP and Information Fusion Centre to gain a current understanding on various Southeast Asian countries' perspectives on border-control threats, challenges and opportunities in the maritime domain; exchange views on the basic requirements for improving maritime border control; and to gain a better appreciation for shared maritime border control. However, inter-agency cooperation and collaboration is a major challenge faced by Malaysia and efforts are being made to improve them. For example, as part of Malaysia's efforts towards shared awareness at the regional and international level, Malaysia has stationed naval officers as National Liaison Officer (ILO) at the Information Fusion Centre in Singapore and Senior Naval Representatives Combined Maritime Forces HQ in Bahrain to assist in collaboration to enhance interoperability and cooperation focused on maritime security issues and regional challenges.

11. EU-Malaysia Cooperation

For Malaysia, European countries are important dialogue partners, a vital destination for Malaysia's trade, and a source of advanced technology, education and training, as well as investments. Europe is of strategic importance to Malaysia as it is one of the main players in the global economic and political system. Malaysia's total trade with European countries increased from RM133.8 billion in 2010 to RM144.5 billion in 2011[32] with the trade balance in

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[32] Ministry of Foreign Affairs Malaysia, Available from: www.mofa.gov.my

Malaysia's favour. Malaysia, an emerging economy of 27.5 million people, plays an important role in the EU's efforts to reach out to the entire world.

In October 2010, Malaysia and the EU launched two major EU-Malaysia bilateral initiatives, namely the negotiations for the Free Trade Agreement (FTA) and for the Partnership and Cooperation Agreement (PCA). These initiatives are respectively aimed at boosting bilateral trade and investment and at creating a new strategic dimension for the EU-Malaysia political dialogue and economic cooperation. The EU is also gradually establishing cooperation with Malaysia and is entering a new era under the Common Foreign and Security Policy (CFSP)[33], such as maritime security and non-proliferation of weapons of mass destruction. Currently the highest level forum between the European Union and Malaysia is the annual Senior Officials Meeting, which provides a platform for both parties to review global and multilateral issues.

Malaysia's participation in the strategic equation in the Indian Ocean is through the Shared Awareness and Deconfliction (SHADE) initiative. SHADE began in 2008 as a mechanism of meetings aimed at coordinating and de-conflicting activities between the countries and coalitions involved in military counter-piracy operations in the Gulf of Aden and the western Indian Ocean. The meetings are held in Bahrain at regular intervals and co-chaired on a rotational basis by the Coalition Maritime Forces (CMF), NATO, and EUNAVFOR. Since 2008, military and civilian representatives from 27 countries, 14 international organizations, the maritime industry and several governments have joined the meetings.

The reduction in the number of piracy cases is due to effective security mechanisms that were put in place at the height of piracy incidents in the Malacca Straits in 2006. In fact, in March 2009, the European Commission held an international workshop that commended the success of the three littoral states in implementing cooperative security measures to combat piracy. Among the mechanisms that drew praise were the Eyes in the Sky, the Malacca Straits Surface Patrol (MSSP) and the Maritime Cooperative Mechanism, which were jointly implemented by the three littoral states, the establishment of the Information Sharing Centre, ReCAAP based in Singapore and the formation of the MMEA.

There are three multinational naval forces, EU, NATO and Combined Maritime Forces (CMF) conducting counter-piracy operations in the GOA and the Indian Ocean, as well as a number of countries occasionally deploying warships there under national command, among them China, Egypt, India, Japan, Malaysia, Pakistan, Russia, Saudi Arabia, South Korea, Thailand and Turkey. The naval forces, however, have different mandates and different rules of engagement and this reflects the policy differences of the participating countries, resulting in a lack of "unity of command" although the objectives might be similar. This might be an area that can be addressed to enhance management of command and control by participating countries.

On the issue of human trafficking, Southeast Asian countries could consider the EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016) adopted by

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[33] *Common Foreign and Security Policy (CFSP) of the European Union*, Available from: http://eeas.europa.eu/cfsp/index_en.htm

the European Commission. There are a few practical measures envisaged to be implemented over the next five years that can be taken as Best Practices by countries in this region. These include the establishment of national law enforcement units specialised in human trafficking and the creation of joint European investigation teams to prosecute cross-border trafficking cases.

The European Union enforced *EC Regulation 1005/2008* starting 1 January 2010 to prevent, deter and eliminate IUU fishing. Malaysia has implemented two regulations under Fisheries Act 1985, the *Fisheries (Quality Control of Fish for Export to the European Union) Regulations 2009* and the *Fisheries (Maritime) (Licensing of Local Fishing Vessels) (Amendment) Regulations 2010,* that have to be complied with by all fisheries entrepreneurs and exporters wishing to export to the EU.[34]

CONCLUSION

Although not a lead player in SEA maritime security, the EU certainly has interest in ensuring the stability of the global commons and maintaining open SLOCs. To achieve this, the EU can play a positive role by providing technical assistance to littoral states and sharing legal expertise which could contribute to better management of maritime security threats. Best practices on law enforcement to counter the threats of illegal fishing, illegal migration, human trafficking, trans-border trafficking of goods and the prosecution of pirates are some areas that the EU and countries in SEA could share. Malaysia will continue to be active in the Indian Ocean and the Gulf of Aden counter-piracy initiatives with the EU. Future prospects for Malaysia and the EU would come under the EU Common Foreign and Security Policy (CFSP); in particular capacity-building on coast guards, information sharing, naval interoperability and development on legal issues are the viable area for cooperation between the EU and Malaysia in enhancing maritime security.

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[34] Department of Fisheries Malaysia, (2013*) Illegal, Unreported And Unregulated (IUU) Fishing: Issues And Challenges—Sharing Best Practices*, Presentation at Malaysia Technical Cooperation Programme on Non Traditional Security Threats, Kuala Lumpur, 7-20 January.

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