

**COMBATING MARITIME PIRACY
WITHIN THE ASIA AND PACIFIC REGION:
SELECTED ISSUES
FROM AN INTERNATIONAL LAW PERSPECTIVE**

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1. Introduction¹

Combating maritime piracy within the Asia and Pacific rim is still of significant relevance because of the continuing existence of acts of piracy

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¹ See also: V. Lowe, S. Talman (eds), 'The Legal Order of the Oceans. Basic Documents on Law of the Sea', HART Publishing, Oxford and Portland, Oregon 2009; A. Forbes (ed.), 'Sea power: Challenges old and new. Proceedings of the Royal Australian Navy sea power conference 2006', The Sea Power Centre – Australia and Halstead Press, Sydney 2007; K. Li, CWM Ingram, *Maritime law and policy in China*, Cavendish Publishing Limited, London. Sydney 2002; R. Herbert-Burns, S. Bateman, P. Lehr (eds.), 'Lloyd's MIU Handbook of Maritime Security', CRC Press. Taylor & Francis Group 2009; J.H. Noer, D. Gregory, *Chokepoints. Maritime economic concerns in South Asia*, Published in cooperation with the Center for Naval Analyses. National Defense University. Institut for National Strategic Studies, National Defense University Press, Washington, DC 1996; J. Kraska, B. Wilson, *Fighting piracy. International coordination is the key to countering modern-day freebooters*, 'AFJ. Armed Forces Journal', February 2009; D.R. Bugajski, *Prawa żeglugowe okrętu w świetle prawa międzynarodowego* [Nautical rights of a ship in international law], Wyd. Naukowe SCHOLAR, Warszawa 2009.

and armed robbery at sea. The international community, mainly within the United Nations, the International Maritime Organization (“**IMO**”) and regional organisations such as Association of South East Asian Nations (“**ASEAN**”), continue to address the issue of piracy. The 1982 United Nations Convention on the Law of the Sea (“**UNCLOS**”), as well as the stipulations of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (“**SUA Convention**”), revised in 2005, are discussed in this article. It is also worth examining the legal rules included in regional agreements, declarations and treaties accepted also both by the IMO and ASEAN with the aim of combating maritime piracy in Asian and Pacific waters, especially in the Malakka and Singapore Straits and in the South China Sea. These, however, do not remove the sources of piracy – such as poverty, the weakness of state organs, corruption, and the black market. The international community should adopt appropriate legislation and other measures to avoid and more effectively combat maritime piracy within the Asia and Pacific rim.

The geopolitical significance of the South Asia and Indian Ocean region is marked by the influence of such unresolved important factors as significant disputes concerning land and sea areas in the South China Sea area and China’s quest for access to the Indian Ocean as an area of crucial strategic meaning: sea lines of communication (“**SLOCs**”).

The primary functions of the Indian Ocean region are *inter alia*: to act as a medium for international commercial transportation and as a theatre of maritime military operations, and as an important gateway; a kind of bridge between the Atlantic and the Pacific through dangerous choke points. Given the special maritime environment in the Indian Ocean region, some of the United States’ partners undertake efforts to maintain and strengthen their navy so as to achieve key strategic objectives such as moderating the influence of such continental and sea powers as China and Russia and to ensure unrestricted access to Middle East energy resources. China and Pakistan continue to strengthen their maritime Indian Ocean cooperation and policy.

Since ancient times, traders from China, India, Southeast Asia and Persia sailed through the Indian Ocean and facilitated an important maritime trading system linked through the Indian Ocean as far as the Mediterranean. Moreover, great fleets from India and China sailed through the Straits of Malacca, projecting power and defeating challengers. The

Indian Ocean is also of significant importance to China's contemporary strategic calculations, continuing as a kind of legacy from ancient times.

Indian Ocean littorals discussing common security concerns focused on the safety and security of sea lanes, combating sea piracy and search and rescue. Maritime cooperation represents an important aspect of interactions that has also resulted in military exchanges, training and joint exercises. Piracy at sea and the safety of SLOCs in the Indian Ocean and the Malacca Straits provided the efforts necessary for maritime cooperation.

Of topical significance is the expanding role and presence of other actors at Asia seas region which define maintenance of maritime security as a distinct task of their navies, given the uniqueness of this region for the security of world trade and commerce.

Dynamic changes in recent years have meant that maritime transport is increasingly recognized as a key integrated component of international logistics and as a facilitator of global and regional supply chains².

As regards the expansion of U.S. naval activity in the Indian Ocean, it does not envisage enlarging existing U.S. bases. However U.S. has defense agreements with Brunei, Malaysia, and Singapore which ensure free navigation and unimpeded energy flows throughout Eurasia³.

Guam is expanding as a U.S. naval base which, together with the nearby Northern Mariana Islands, are both almost equidistant from Japan and the Strait of Malacca. The southwestern tip of Oceania – the offshore anchorages of Australia– and the adjacent seaboard of western Australia itself – looks out from below the Indonesian archipelago toward the Indian Ocean. Under Garrett's plan, the U.S. Navy and the U.S. Air Force could

² See: K. Cullinane (ed.), 'International Handbook of Maritime Business', Edward Elgar Publishing, Cheltenham, 2010. See also: M. Sturley, T. Fujita, G J van Ziel, *The Rotterdam Rules: The UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, Sweet and Maxwell 2009. This book provides a comprehensive commentary on the new UN convention coming into force in September 2009; A. Pozdnakova, *Liner Shipping and EU Competition Law*, Kluwer Law International, 2008. The author systematically considers various cooperative behaviours of shipping companies and clearly identifies the legal issues that liner shipping companies are likely to face as well as their agreements and market strategies.

³ See: R.D. Kaplan, *The geography of Chinese Power*, 'Foreign Affairs' 2010, Vol. 89, No. 3, at p. 22.

take advantage of Oceania's geography to constitute a "regional presence in being" located "just over the horizon" from the informal borders of a "Greater China" and the main shipping lanes of Eurasia⁴.

Concentrating its forces on Taiwan, the Chinese navy is projecting power in the South China Sea, China's gateway to the Indian Ocean and to the world's hydrocarbon transport route. The challenges of piracy, and the rise of India's navy reside allalong the way, including near the bottlenecks through which a large part of China's oil tankers and merchant ships must pass. In terms of strategic significance, the South China Sea could become a "second Persian Gulf". In the view of Nicholas Spykman (a geopolitics scholar), throughout history states have engaged in "circumferential and transmarine expansion" to gain control of adjacent seas⁵.

The U.S. sea presence in Oceania would be a compromise approach between resisting a Continental China at all costs and assenting to a future in which the Chinese navy policed the first island chain. It would also allow the United States to scale back its "legacy bases" on the first island chain but nonetheless allow U.S. ships and planes to continue to patrol the area⁶.

"Indonesia, (...) is caught between needing the United States' naval presence to hedge against China and fearing that if it looks too much like a U.S. ally it will anger the rest of the Islamic world"⁷. In Southeast Asia, states in the region are cooperating with one another also to mitigate piracy at seas: so Indonesia, Malaysia, and Singapore have banded together against piracy.

2. Preconditions of maritime transport in Southeast Asia seas

The map of Southeast Asia shows why maritime transport is of special importance to the economies of Asia, specifically transit through the southern South China Sea, the Java Sea, and the Straits of Lombok and Makassar.

⁴ *Ibidem.*

⁵ *Ibidem.*

⁶ *Ibidem.*

⁷ *Ibidem.*

Many littoral nations of the South China Sea do not have well-developed land transport infrastructure, which might otherwise offer substitute modes for maritime transport, *e.g.*, for the numerous islands.

The maritime transport mode is more important to this region than it is to most other regional economies, because it ensures that much of the region's domestic trade and all coastal and intraregional trade moves by sea.

A large volume of international maritime traffic crosses this area, which also ensures that almost all such trade funnels through the southern Straits of the Indonesian Archipelago, and that the share transits the South China Sea⁸. Large merchant vessels have only a few choices of what course to sail. There are five main options: Malacca Straits, Sunda Strait, The Straits of Lombok and Makassar, Ombai-Wetar Straits and Torres Strait.

Over half of the world's merchant fleet capacity in 1993 – more than one-third of the world's ships – sailed through the Straits of Malacca, Sunda, or Lombok, or sailed past the Spratly Islands. Shipping sailing on the South China Sea gives the region its global significance.

There are a few alternative little-used channels, such as for example San Bernadino. Ruling out Ombai-Wetar and Torres leaves three southern gateways for main shipping routes through the archipelagos: the Straits of Malacca, Sunda, and Lombok. The other option is to sail along or around Australia. In the South China Sea, ships sailing north must sail past the Spratly Islands.

Since many nations in Southeast Asia are insular or peninsular, or have extended coastlines, most trade moves by sea, and merchant shipping thrives on three entrances into the region: the Straits of Malacca, Sunda, and Lombok. Also vessels passing by the Spratly Islands on the South China Sea are of significance in this area.

Japan, Australia, and the nations of Southeast Asia send over 40 percent of their trade by sea through these chokepoints. Hong Kong, Taiwan, and South Korea send more than one-quarter of their imports and exports through these SLOCs. The economic vitality of these nations – and their trading counterparts depends on free, unrestricted and secure access to these sea lanes.

⁸ J.H. Noer, D. Gregory, *op. cit.*

In the Malacca's Straits the safety problem is compounded by the lack of navigational aids along the channel and volumes of shipping⁹. The two littoral states that own most of the waterways' coastline, Malaysia and Indonesia, benefit far less from the international through traffic than Singapore, which has jurisdiction over a relatively small portion of Malacca. There is the responsibility for disaster response to consider.

In 1994 the Malaysian government established the Malaysian Institute for Maritime Affairs ("**MIMA**") to coordinate maritime policy. In 1995, Malaysia proposed a Vessel Traffic System ("**VTS**"), featuring local area radar, traffic advisories, and voluntary coordination of shipping in the channel (similar to air traffic control). Malaysia also presented a scheme before the IMO for redefining shipping lanes and improving nav aids. This was supported by Japan, implying financial support in future for waterway improvements.

The MIMA has indicated interest in determining what shipping passes through the straits, including such details as registration, origin, and destination. Malaysia intends to use the results of a Malacca Straits maritime traffic survey to identify nations that benefit economically from the straits, in order to solicit financial support from them. Such a user's fee or toll on shipping would appear to violate international law, given the straits' status as international waterways. Voluntary contributions from foreign governments based on use of the straits does not violate the law, but requires international cooperation.

The concept of "freedom of navigation" has economic and strategic significance, and the States have tangible economic interests in maritime stability in the South China Sea. Commercial freedom of navigation

⁹ Over half a billion deadweight tons of supertanker capacity passed through the Straits of Malacca in 1993, nearly 2,300 voyages in all. Most of this traffic is the larger supertankers, those most affected by the channel depth constraint. Eastbound these supertankers were laden with oil. Westbound supertankers were in ballast, returning empty. Over 1,100 laden voyages and nearly 300 million DWT of laden vessel capacity throughput are affected. A tradeoff exists between operating cost efficiency and safety matters for supertanker voyages. There have been few groundings and collisions given the amount of deep draft traffic going through the Straits of Malacca. Traffic density combined with the channel depth can create a difficult situation in the narrow channel.

is a prerequisite to, but not a guarantee of, global free trade¹⁰. World shipping markets link Southeast Asian sea lanes to the state's economy, though many are halfway around the world and carry small amounts of trade. If events threatened trade in the South China Sea, shippers could be forced to use alternate routes and pay higher shipping rates, or lose service. Trading nations have a vested interest in preserving stability in the Southeast Asian SLOCs.

The U.S. Navy carried out its traditional mission of protecting freedom of the seas. After the Cold War, the U.S. naval mission of protecting shipping emerged as an explicit national priority.

Malacca, Sunda, and Lombok Straits serve as "southern entrances" to the South China Sea, but Ships sailing the main routes north on the South China Sea must pass by the Spratly Islands, which are more reefs than islands, and must be aware of navigational hazards.

The straits of the South China Sea are a crossroads for world shipping, and more than half of the world's large merchant shipping capacity, and in 1993 over one-third of merchant vessels in the world fleet, passed through at least one of the chokepoints.

Security concerns in the Southeast Asian region might affect freedom of navigation on the SLOCs, as lane disruption.

In 1993 several nations claim part or all of the Spratly Islands and, by extension, claim rights over the waters adjacent to the islands¹¹. Five countries maintain armed garrisons on the atolls: mainland China, Taiwan, Malaysia, the Philippines, and Vietnam. The attractions are fish and petroleum, and the islets are the basis for claiming sovereignty over adjacent waters.

¹⁰ Maritime trade is complicated by the fact that the ship, flag, and cargo may be owned by different "national entities", or consortiums, and the cargo itself may originate and/or be delivered from and to nations unrelated to ownership or flag registry.

¹¹ In the 1980s, China began occupying islets and has resurrected a claim to virtually all the South China Sea other than the coastal waters of other states. In 1988 Chinese forces sank three Vietnamese vessels and killed about eighty Vietnamese while seizing several of the islands from Vietnam. In 1995, China occupied the Mischief Reef, claimed by the Philippines. The Philippine military subsequently destroyed Chinese structures on the reefs, after which Chinese naval vessels appeared. Both conflicts over the Spratlys could spill over into the north-south sea lanes of the South China Sea.

There have been tensions among the nations sharing the shoreline of the Straits of Malacca. As in case of other threats to freedom of navigation there were attempts to impose policy restrictions on shipping. There have been proposals to regulate traffic and impose tolls on shipping in the Straits of Malacca. Oil spills accidents in Malacca have hampered shipping in the straits at times, stimulating international calls for regulation of shipping in the name of environmentalism and maritime safety. Indonesia seeks to assert control of shipping among its islands under a policy of “archipelagic sea lanes” (“**ALKI**”).

Regional conflicts or sovereignty claims that could disrupt passage through the Southeast Asian sea lanes are not likely to occur. The naval commitment of the United States and other nations contribute to stability in the region. Unanticipated challenges or territorial claims could arise that might cause disruption with serious consequences for shipping. Understanding such consequences helps identify and evaluate the potential problems and benefits of military presence and cooperation in Southeast Asia¹².

In 1993, continental “Great China”, Hong Kong, South Korea, Taiwan, and Japan received significant amounts of commodities through the Lombok-Makassar route from Australia. Most of the North Asian economies would select the Lombok alternative if the South China Sea became dangerous or if Malacca were unavailable¹³. The Philippines would support the Lombok alternative to ensure the safety of shipping to the south and east. Sponsored consensus could be built in favour of protecting commercial freedom of navigation via Lombok-Makassar. There is no regional military alliance with the North Atlantic Treaty Organization as regards combating piracy.

A regional accord might stress the importance of not permitting events elsewhere to disturb the Lombok-Makassar route. This route is not controversial in the same way as the Spratly SLOCs. Practical considerations, such as issues of geographic areas of responsibility, would have to be worked out, creating a real multinational naval capability for

¹² See H.J. Kenny, *An Analysis of Possible Threats to Shipping in Key Southeast Asian Sea Lanes*, February 1996 (CNA Occasional Paper 20).

¹³ Indonesia has tried to mediate the Spratly dispute, as well as also encouraged international use of Lombok-Makassar.

fighting piracy. Such an international arrangement could not help to ensure results in the event of trade being rerouted.

3. Navigational rights and freedoms at the main sea routes and lanes within Asia and Pacific and the security of international world trade exchange: The UNCLOS, SUA Convention and ReCAAP perspective

Navigational rights and freedoms were declared during the 3rd United Nations Conference on the Law of the Sea. Freedom of navigation on the high and other seas also constitute the legal pillars of security for both the global and regional economy¹⁴. Sea transport involves about 80 per cent of the total global trade exchange. The main waterways linking East-West economic relations include busy lines connecting the Indian Ocean with the Far East and Pacific Ocean through the Straits of Malakka and Singapore and the archipelagic waters of Indonesia and others. So, trade by sea and ensuring security at sea are topical issues for the contemporary law of the sea.

The UNCLOS stipulations play a significant role in sea transport security issues and also influence regional and bilateral agreements and domestic laws in Asian and Pacific coastal states, all of whom are bound by this convention. Apart from the right of innocent passage, right of transit passage and right of archipelagic sea lanes passage UNCLOS determines the principles of passage and stay of vessels of foreign flags on territorial waters, *i.e.*, internal waters, territorial sea and archipelagic waters. Furthermore, the basic principle used to regulate the entry of territorial waters is the right of innocent passage, which has become a customary law confirmed in treaty law. UNCLOS also determines the scope of navigational rights and legal order for seas and oceans which would facilitate international sea communication and serve to guarantee security at sea.

In order to support the fundamentals of the global economy, commerce and security it is still necessary for coastal states and competent international organizations to increase security levels on the

¹⁴ See: D.R. Bugajski, *op. cit.*

Asian and Pacific seas. This may be achieved with the help of modern legal technical and organizational means, such as monitoring vessels' navigation, modern technologies in shipbuilding, road means such as traffic organization, keeping forces and other means able to more effectively manage threats. Accordingly, coastal states should be obliged to offer proper technical, legal and organizational assistance capable of ensuring the security and protection of both international navigation and their own interests.

Moreover, the protection of international sea navigation routes is the most important mission of national navies, which utilise the freedom of the high seas and all navigational rights to reach their objectives. The right of transit passage and the right of archipelagic sea lane passage is also accepted. Where the right of transit passage or the right of archipelagic sea lanes passage is not established for waters and straits used in international navigation, there still exists the right of innocent passage. This legal solution fully enables merchant navigation, as used in global and regional trade exchanges. In the famous case when three archipelagic sea lanes have been outlined merely by Indonesia, certain navigational matters remained unsolved, such as those connected with archipelagic sea lanes passage. In this case Indonesia, as an archipelagic state, and the main user states such as Australia and the U.S., continue to remain in dispute.

Certain problems of the archipelagic maritime delimitation also constitute an obstacle to combatting piracy in the South East Asia region. The security of shipping and passing within the boundaries of the archipelagic states, including in and through archipelagic sea lanes, would be within States' sovereignty and jurisdiction, taking into account national legislations, bilateral agreements and international law.

The maritime boundaries of Indonesia include its internal waters, archipelagic waters, territorial seas, contiguous zones, exclusive economic zones (EEZs) and continental shelves. According to new legislation on autonomy and the devolution of powers from central to local governments, there are also district and provincial maritime zones in Indonesia¹⁵.

¹⁵ H. Djalal, *Challenges of maritime resource and shipping security that face archipelagic states*, [in]: A. Forbes (ed.), *op.cit.*

Indonesia determines its internal waters very similarly with the land territory of a state, so foreign vessels would not generally have the rights to pass even by way of innocent passage. Indonesia has not determined the boundaries of its internal waters within its archipelagic waters. Archipelagic waters of Indonesia are surrounded by “straight archipelagic baselines, joining the outermost points of the outermost islands and drying reefs”¹⁶.

Foreign vessels have the right of innocent passage through archipelagic waters in accordance with Government Regulation No. 36/2002 and the rights of archipelagic sea lanes passage (“**ASLP**”) through certain archipelagic sea lanes in accordance with Government Regulation No. 37/2002. The determination of the ASLP as well as the rights and obligations of passing vessels determined in line with the UNCLOS, have been accepted by the IMO. In parts of the archipelagic waters there is the right to repair one’s own underwater cables, and the rights of traditional fishermen of neighbouring countries to continue fishing in parts of

¹⁶ *Ibidem*, at p. 97, 98. By declaring Indonesian archipelagic principles on 13.12.1957, which was strengthened by Law No. 4/PRP/1960, the outer limits of Indonesian archipelagic waters, as promulgated and registered in the United Nations. With the UNCLOS coming into force on 16.11.1994 (Indonesia ratified it with Law No. 17/1985), Law No. 4/ PRP/60, was replaced by Law No. 6/1996, as adjusted to meet the requirements of the UNCLOS. The new coordinates for the archipelagic baselines were announced in Government Regulations No. 38/2002 and No. 61/1998 (for the waters near Karimata Strait and the South China Sea). Indonesia determined three archipelagic sea lanes (ALKI) in the north south direction Sea Lanes (ALKI) I through Karimata Strait, Western Java Sea, and the Sunda Strait for navigation between the South China Sea and Indian Ocean; ALKI II through the Strait of Makassar and the Strait of Lombok for navigation between the Pacific Ocean and the Sulawesi Sea to the Indian Ocean; and ALKI III from the Pacific Ocean through the Moluccas Sea, Seram Sea and Banda Sea; branching out through ALKI III through Sawu Sea; ALKI IIIB to Timor Sea; and ALKI IIIC to Arafura Sea. The three ALKIs have been accepted by the international community through the IMO and are now in force. Indonesia has not determined the east-west ALKI through the Java Sea. The absence of determination of east-west ALKI has the potential to create political sensitivities and conflicts in the Java Sea. The absence of well-determined ALKI in this area may pose certain security problems to shipping and to Indonesia as a whole. Indonesia, is continuing its studies and research before establishing the east-west ALKI. However, Government Regulation No. 37/2003 has regulated the passage of foreign vessels through the ALKIs following discussions with the US and Australia.

the archipelagic waters. Implementation of these rights is determined and regulated in separate bilateral agreements, *e.g.*, in the Indonesian-Malaysian Treaty of February 1982, which was ratified by Indonesian Law No. 7/1983. It covers the traditional fishing rights of Malaysian fishermen using traditional methods in waters around the Anambas Islands in the South China Sea.

Territorial sea boundary delimitation agreements exist between Indonesia and Malaysia as regards the Malacca Strait, and between Indonesia and Singapore as regards the Singapore Strait. Nevertheless, the two territorial sea boundaries have not been connected and, therefore, there is to date no territorial sea boundary agreement in the western part of the Singapore Strait between Indonesia, Malaysia and Singapore.

Indonesia has encouraged its two good neighbours to complete the territorial sea boundary determination in that area, but so far these efforts have not met with a positive response from Malaysia or Singapore, although the latter has indicated its willingness to discuss the matter. The absence of this territorial sea boundary has caused serious concerns for Indonesia, insofar as concerning the protection of fisheries resource, preventing smuggling, armed robberies, maritime terrorism and ensuring the security and safety of shipping.

The eastern part of the Singapore Strait toward the South China Sea has also not been subject to territorial sea delimitation, neither between Indonesia and Singapore nor between Indonesia and Malaysia (Johor). The crux of this issue concerned ownership of the Horsburgh Lighthouse at the entrance to the South China Sea, which was disputed by Malaysia and Singapore. Territorial sea delimitation in this area could be settled gradually. The Singapore Strait between Singapore and the South China Sea is very sensitive for Indonesia for many reasons, such as the illegal mining of sands from the sea and their illegal export to Singapore; rampant smuggling between Indonesia and Singapore and Malaysia; and problems related to the elimination of piracy and armed robbery as well as other trans-boundary crimes in the area.

Indonesian internal waters, archipelagic waters and the territorial seas including in the ALKIs, are part of Indonesian territory, and under the UNCLOS, Indonesian sovereignty of its maritime zones covers an area of about 3 million square kilometres. Indonesia's capacity to utilize the resources of those waters and to defend its sovereignty and security

in its maritime zones have not expanded commensurately, particularly in terms of law enforcement and its defence posture in combating piracy.

Indonesia has not specifically enacted legislation on its contiguous zone. Indonesia would also have to establish the delimitation of its contiguous zones with neighbouring countries in areas of waters comprising less than 48 nautical miles (“**NM**”), such as in the northern part of the Malacca Strait. Indonesia is preparing its own legislation on this matter.

This matter is extremely important for the protection of maritime resources and security of Indonesia in view of the rampant activities of foreigners, in some cases in collusion with Indonesian factions, searching illegally for the remnants of ancient vessels in Indonesian waters¹⁷.

Indonesia has enacted EEZ legislation but in the absence of delimitation with its neighbours, except with Australia as regards the Arafura Sea, the Timor Sea, south of Sumba, and between the Java and Christmas Island. This agreement, concluded in 1997, has not been ratified by the two countries.

Indonesia has not determined the delimitation of its EEZ boundaries with its partners in ASEAN, neither with Thailand and Malaysia as regards the northern part of the Malacca Strait, nor with Malaysia and Vietnam as regards the South China Sea, nor with Malaysia and the Philippines as regards the Sulawesi Sea. The failure to negotiate these boundaries has been justified by arguing that it is not necessary because the continental shelf boundaries have already been agreed upon and could be regarded as the same as the EEZ boundaries. Indonesia, however, disagrees with this argument since both legal regimes are different (and the Australian-Indonesian Maritime Delimitation Treaty of 1997 is based upon this legal understanding).

The absence of EEZ boundaries between Indonesia and its neighbours represents one of the reasons for continuing difficulties in managing and protecting the living marine resources in the EEZ. Numerous fisheries

¹⁷ The Department of Maritime Affairs and Fisheries of Indonesia indicates that there are some 463 sunken vessel sites in Indonesian waters, and only 41 sites or about 10 per cent of them have been licensed for investigation and recovery. Under Indonesian legislation, a sunken vessel of more than 50 years becomes a “historical and cultural object”.

regulations are violated in the grey area where no EEZ delimitation exists. Mutual arrests of fishermen by neighbouring countries in South East Asia for alleged illegal fishing are increasing. This also poses increasing security problems for South East Asian countries, particularly for Indonesia. Indonesia has concluded maritime boundary delimitations of the continental shelf with some of its neighbours¹⁸.

The contiguous zone, EEZ and continental shelf do not fall within the scope of Indonesian territorial sovereignty; rather they are areas where Indonesia has sovereign rights over natural resources and jurisdictions to exercise certain powers in accordance with the UNCLOS. Unlike in the maritime area under Indonesian sovereignty, within these maritime zones, the freedom of navigation, over-flights and other freedoms continue to be respected. With the application of EEZ and continental shelf regimes, now comprising about 6 million square kilometres, Indonesia has the right to protect and to utilize the maritime resources of the area and to protect the security of this area.

The challenges of managing Indonesian maritime resources and shipping security are becoming increasingly complicated due to provincial and districts autonomous city maritime boundaries¹⁹.

¹⁸ With India between the Andaman and Nicobar Islands and Aceh; with Thailand and Malaysia as regards the northern parts of the Malacca Strait; with Malaysia and Vietnam as regards the South China Sea; with Papua New Guinea as regards some parts of the Pacific Ocean, north of Papua; with PNG and Australia as regards the Arafura Sea; and with Australia as regards certain parts of the Timor Sea. There is no agreement between Indonesia, Malaysia and the Philippines as regards the Celebes Sea, nor between Indonesia and East Timor as regards the Timor Sea.

¹⁹ Law No. 22/1999, replaced by Law No. 32/2004, stipulated that every province has a 12 nm maritime zone measured from the coastline, and every district/autonomous city that borders a coastline has a maritime zone of 4 nm measured from the coastline. This has created sensitivities between neighbouring coastal districts and cities. between the provinces, and between the provinces and the central government regarding the maritime boundaries and their respective rights and jurisdictions. Although Laws No. 22/1999 and No. 32/2004 (the Law on Regional Autonomy), many people and observers consider their provisions federalistic, which many people think is unacceptable and contradictory to the cherished form of the unitary state of Indonesia. As a result of the new legislation, some disagreements have arisen between local governments with regard to the ownership over remote small islands and among many Indonesian fishermen who were prevented by local fishermen from fishing in what they considered to be their own maritime zones.

With regard to shipping, more and more local governments seek greater control over their ports and facilities. It is not yet clear how these demands will affect shipping security.

Indonesia cooperates with its neighbours in managing the semi-enclosed seas around Indonesia – such as the South China Sea, the Celebes Sea, the Arafura Sea and the Timor Sea – on the basis of Article 123 of UNCLOS.

Indonesia is also experienced in managing potential conflicts in the South China Sea and in moving from confrontation to cooperation by developing and encouraging dialogue processes, confidence building, and designing and implementing cooperative programs.

Indonesia is concerned to protect its maritime resources and shipping. Illegal fishing in Indonesian maritime zones, either by Indonesian fishermen or by foreign fishing vessels, constitutes one of the main concerns²⁰.

Smuggling, illegal entry, intrusion of terrorist elements, the removal of border markers, and the illegal exploitation of natural resources, such as illegal logging, are rampant throughout Indonesian waters.

These issues require closer cooperation between the neighbouring countries, law enforcement agencies, and the proper distribution of powers and coordination between central and local authorities.

Indonesia is strategically important as the crossroad of international navigation and transportation, its geographical structure as an archipelagic state consisting of thousands of islands with very long coastlines and extensive sea areas in between. Indonesian maritime zones and coast lines are very open and it is relatively easy for foreign subversion and intrusion by smugglers, terrorists and pirates.

There remain a number of unsettled maritime boundaries between Indonesia and its neighbours, particularly territorial seas, the EEZ and the continental shelf. Unless these boundaries are settled by agreements

²⁰ In 2005 the Indonesian Eastern Maritime Command investigated 1507 vessels for possible violations at sea: 847 were fishing vessels, 495 were carrying logging and 165 were cargo vessels and tankers. Two hundred and sixty-four of them went to court, while 1243 were released. The Western Maritime Command intercepted 998 vessels: 446 were fishing vessels, of which 345 were suspected in smuggling of all kinds of goods. Of the 998 vessels intercepted and investigated, 276 of them went to court. See: A. Forbes (ed.), *op. cit.*, at. p. 105.

between the neighbouring countries concerned, the challenges to be faced in managing the maritime resources and shipping security are severe.

Indonesia's economic and financial capacity to protect and maintain law and order, to defend the archipelagic state from unwanted intrusion, and to protect maritime resources and shipping interests through its maritime zones is rather limited. Threats to international shipping have taken place in the western part of Indonesia, in the Malacca and Singapore straits. Indonesia, Malaysia and Singapore have cooperated for 25 years to promote the safety of navigation and the protection of marine environment in the area. The user states, except Japan, have not shown much interest in helping coastal countries in the Straits of Malacca and Singapore to overcome their problems in accordance with their commitment under Article 43 of the UNCLOS.

There are also problems with law enforcement agencies, whose capacity to act is limited when compared to the extensive maritime areas they are required to protect.

Collaboration to develop international law to suppress maritime piracy has exceeded certain predictions, laying the groundwork for new authorities and partnerships, because most of the ocean's surface is not under state jurisdiction, and no single nation has the naval capability to effectively patrol the vast areas affected by piracy. The U.N. and the IMO have taken steps to broaden the scope of international legal authorities available to suppress maritime piracy, but the fight against piracy should be more effective. It requires a smarter approach to counter-piracy operations, logistics and the legal endgame by developing agreements among the major shipping nations and regional states to enable real-time coordination for dealing with "persons under control" ("**PUC**").

In the US, an Interagency community resolves national-level maritime issues pursuant to a maritime operational threat response ("**MOTR**") plan that facilitates rapid and real-time communication among the State and Defense departments, the Coast Guard, and other agencies. Each agency is required to continuously operate a tactical watch centre capable of taking agency decisions arising from time-sensitive maritime diplomatic issues on short notice. Within the U.S. government, the MOTR process is used to form administration positions and courses of action on the full range of maritime exigencies, including the interdiction of foreign drug trafficking fast boats, interception of migrants at sea and

PUCs obtained during counter-piracy operations in the Western Indian Ocean. The problem of PUCs can be solved through the development of an international MOTR plan that contains 24-hour points of contact in shipping states and regional partners for the national police, coast guard or naval forces, foreign ministries and departments of justice who can quickly make decisions on behalf of the concerned government.

Models exist for achieving greater international collaboration during maritime security operations. For over a decade, the U.S. has worked with countries throughout the Caribbean and South America under maritime counterdrug agreements. There are nearly 30 such agreements, which commit nations to expedite communication on legal and jurisdictional issues associated with emergent counterdrug operations at sea.

The Proliferation Security Initiative (“**PSI**”)²¹ is another successful international analogue that continues to yield improvements in the operational capabilities and legal infrastructure of partner nations. Under PSI, states commit to share information and disrupt the transfer or transport of weapons of mass destruction in accordance with a set of principles. States participating in PSI agree to review and work to strengthen relevant national legal authorities and to strengthen international law to facilitate those commitments. Some of the nations with the largest shipping registries in the world (Panama, Liberia and Malta), have signed PSI shipboarding agreements with other states. These reciprocal agreements facilitate real-time collaboration, requiring parties to make quick and binding decisions on questions of interdiction, diversion and boarding.

Many of the counterdrug and PSI agreements are bilateral, the IMO has been instrumental in bringing states together in multilateral operational maritime agreements that facilitate collaboration. States lacked adequate criminal statutes to prosecute vessel hijacking. In response to the attack, the IMO brought together member states to develop a maritime criminal law treaty, and the SUA Convention was signed and entered into force in 1992²². The SUA Convention requires

²¹ See: *Interdiction Principles for the Proliferation Security Initiative (Paris Principles)*. Agreed at Paris, 4 September 2003, [in:] V. Lowe, S. Talman (eds), *op. cit.*, at pp. 803–804.

²² This Convention was revised by the Protocol of 2005. See: *Ibidem*, at pp. 837–856.

state parties to criminalize acts that endanger the safe navigation of ships. In 2005, a diplomatic conference at IMO adopted the SUA Protocols to the treaty that created a legal framework for combating the proliferation of weapons of mass destruction and their delivery systems on board vessels and fixed platforms, such as oil platforms. The SUA Protocol provide a framework for criminalizing maritime transport terrorists or weapons of mass destruction at sea.

The revised SUA Convention is not limited to offences committed on the high seas or in an exclusive economic zone. It applies to offences committed in maritime zones under the territory sovereignty of coastal states (territorial sea and archipelagic waters) as well as in maritime zones outside the territorial sovereignty of coastal states. The convention applies so long as the ship is scheduled to navigate beyond the limits of the territorial sea of a single state. An attack against a ship exercising the right of transit passage through the Straits of Malacca and Singapore would constitute an offence under the SUA Convention if the attackers seized control of the ship or used violence against a person on board the ship. Also an attack on a ship at anchor off the coast of a state would constitute an offence under the SUA Convention if the attackers seized control of the ship or used violence against a person on board the ship.

The SUA Convention is a useful tool to combat some cases of attacks, piracy, and armed robbery against ships. On 31.12.2000, there were only 52 states parties to the convention. The 52 states parties included three states from South Asia (India, Pakistan, and Sri Lanka) and two states from Northeast Asia (China and Japan). ASEAN countries were not parties as of 31.12.2000.

Following 11.9.2001, the IMO urged its members to become parties to the SUA Convention and the number of state parties increased significantly. On 30.11.2006 there were 142 state parties. In south Asia, four states are parties (Bangladesh, India, Pakistan, and Sri Lanka), whereas only the Maldives is not. In northeast Asia four states are parties (China, Japan, Mongolia, and South Korea), whereas only North Korea is not. Six members of ASEAN are parties (Brunei, Cambodia, Myanmar, Philippines, Singapore, and Vietnam) and four members of ASEAN are not (Indonesia, Laos, Malaysia, and Thailand). Unfortunately, three of the states that are not parties border the piracy-prone Malacca Strait – Indonesia, Malaysia, and Thailand.

Not all of the states in the Asia Pacific region were parties to the SUA Convention. Attacks on ships in the region that involve violence or the takeover of a ship do not constitute offences under the convention, and the flag state and the state in whose territorial sea the attack took place would both have jurisdiction over the offence. If the perpetrators entered the territory of another state party, that state would also have jurisdiction over the offence. The SUA Convention would cover the most serious type of attack on ships – planned activities by international organized crime syndicates to “hijack” merchant ships for the purpose of stealing the ship and its cargo.

All states should give high priority to the ratification and implementation of the 2005 SUA Protocol. India and Pakistan have problems with the provisions relating to states not parties to the Treaty on the Non-Proliferation of Nuclear Weapons (1968), but should seriously consider acceding to the 2005 SUA Protocol. India and Pakistan might consider making a reservation regarding the provisions that they believe do not adequately address their concerns. The success of the SUA Convention and the 2005 SUA Protocol depends to a large extent on their becoming universally accepted by the leading states in the region.

More than 90 states have agreed as part of PSI to examine and strengthen their domestic legal and policy authorities and crisis response decision-making capacity. They could commit to broader support for the full spectrum counter-piracy operations.

The IMO has conducted an anti-piracy project consisting of a number of regional centres and workshops, with participants coming largely from piracy-infested areas of the world. The project includes a number of evaluation and assessment missions to areas particularly affected by piracy. In years 2001 and 2002, missions were held inter alia in Jakarta, Indonesia and Singapore.

These efforts are focused on opening up the possibility of regional international agreements to implement anti-piracy measures. The IMO developed a draft regional agreement on cooperation for preventing and suppressing acts of piracy and armed robbery against ships. This draft agreement was an ideal model for use by states who seek to work more closely together. Provisions of the draft include procedures for states to conduct boarding and searches of suspected vessels, and provisions for criminal enforcement and determining the choice of jurisdiction among coastal and flag states.

The multilateral 2005 SUA Protocol provides a model for negotiating a regional agreement, which should include support from nations with large shipping registries and other maritime powers in the South Pacific region.

There is a need of an international MOTR. The governments of regional states of Asia are able to make well-coordinated decisions arising from maritime exigencies at any time under the MOTR process. This process enables the various executive departments and agencies to develop a single position and to advise the National Security Council in a time-sensitive fashion. The revised SUA Convention provides a ready-made structure for an international MOTR process that could be annexed to the treaties. This annex could serve as an international “phone book” that provides 24-hour contact information for shipping states, regional partners and major maritime powers so that these states can quickly coordinate issues regarding on-scene interdiction of vessels hijacked by pirates and pirate “mother ships”, as well as questions regarding “persons under control” disposition and logistics.

Regional powers of Asia and Pacific have underdeveloped law enforcement and judicial systems and suffer from a lack of resources. They have insufficient numbers of lawyers and judges and confinement facilities, as well as lack of essential items and equipment such as communications systems.

In 2007, as the result of a comprehensive and sweeping piracy policy governing diplomatic and legal action to fight piracy, President of U.S. G. W. Bush signed the National Policy for combating maritime piracy as annexed to the National Strategy for Maritime Security and established a framework for warships that encounter or interrupt acts of maritime piracy and armed robbery at sea, as well as for agencies charged with facilitating the prosecution of perpetrators and the repatriation of victims and witnesses. This document sets several national goals, including the prevention of piracy, deterrence through maritime presence, vulnerability assessments, accountability, preservation of freedom of the seas, protection of sea lines of communication, and commitment to broaden international efforts to combat piracy. The U.S. policy emphasizes collaborative strategies by states and the maritime sector to prevent pirate attacks and other criminal acts of violence against U.S. vessels, persons and interests. The U.S. accelerates efforts to partner with shipping states,

regional coastal states and major port states to create a more effective international legal network.

International experience suggests that articulation of a consolidated government policy solely for piracy refines interagency coordination and clarifies what is important. The process of developing a national piracy policy further focused the interagency community on reaching agreement on defining the problem and creating a common set of goals and objectives and the means to achieve them.

The Global Maritime Partnership is another effort that supports the repression of piracy and possesses great potential to expand international cooperation and engagement. The concept embraces a figurative “1,000-ship navy”, representing both the idea and goal of the partnership to working together and capitalize on international law to facilitate closer collaboration among states. Admirals from India, Indonesia and Japan have recognized the potential value of the concept in relation to increasing effective international cooperation to counter piracy. U.S. Chief of Naval Operations Admiral G. Rougheadre – emphasized the importance of international collaboration in his 2009 guidance, and highlighted piracy as an area for close cooperation²³.

Maritime piracy is a violation of international law and a universal crime that imposes a duty on all states to take action. The UNCLOS defines maritime piracy as an illegal act of violence or detention committed for private ends. This is distinguished from maritime terrorism, which is committed rather for political ends. Any state may lawfully act to suppress maritime piracy but only major maritime powers that operate blue water fleets and naval aviation have the capability to patrol sea lanes for long periods on large sea areas.

Developing the modern legal capacity and frameworks in international law necessary to defeat piracy begins at the IMO in London, the specialized U.N. agency for maritime matters which has 167 member states.

The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia (“**ReCAAP**”) was signed in Tokyo on 11.11.2004 and entered into force on 4.9.2006. It represents the first government-to-government agreement that addresses the incidence of

²³ See: ‘AFJ’, February 2009, p. 12.

piracy and armed robbery in Asia. The ReCAAP initiative aims to enhance multilateral cooperation among sixteen regional countries.

The contracting parties to this agreement considered the complex nature of the problem of piracy and armed robbery against ships, and:

- Recognized the importance of safety of ships, and their crews, exercising the right of navigation provided for in UNCLOS;
- Reaffirmed the duty of States to cooperate in the prevention and suppression of piracy under the UNCLOS;
- Recalled the “Tokyo Appeal” of March 2000 and the “Tokyo Model Action Plan” of April 2000 and noted the relevance of resolutions adopted by the United Nations General Assembly and recommendations adopted by IMO;
- Reaffirmed the importance of international cooperation and the urgent need for greater regional cooperation and coordination of all states affected within Asia, to prevent and suppress piracy and armed robbery against ships in Asia.

The Contracting parties declared to ensure the “greater effectiveness” of this Agreement and “to promote further regional cooperation”. Article 1 contains definitions of “piracy” and “armed robbery against ships”²⁴.

24 Article 1. Definitions: “1. For the purposes of this Agreement, ‘piracy’ means any of following acts:

- (a) any illegal act 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 against persons or property on board such ship; (ii) against a ship, 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 of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).
2. For the purposes of this Agreement, ‘armed robbery against ships’ means any of the following acts:
- (a) any illegal act of violence or detention, or any act of depredation, committed for private ends and directed against a ship, or against persons or property on board such ship, in a place within a Contracting Party’s jurisdiction over such offences;
 - (b) any act of voluntary participation in the operation of a ship with knowledge of facts making it a ship for armed robbery against ships;

In the “general provisions”(Article 2) the contracting parties obliged themselves to implement this Agreement without attesting the rights and obligations under other international agreements, including the UNCLOS, and the relevant rules of international law.

The following are listed as “General obligations” under Article 2:

- “1. Each Contracting Party shall, in accordance with its national laws and regulations and applicable rules of international law, make every effort to take effective measures in respect of the following:
 - (a) to prevent and suppress piracy and armed robbery against ships;
 - (b) to arrest pirates or persons who have committed armed robbery against ships;
 - (c) to seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and under the control of pirates or persons who have committed armed robbery against ships, and to seize the property on board such ships; and
 - (d) to rescue victim ships and victims of piracy or armed robbery against ships.
2. Nothing in this Article shall prevent each Contracting Party from taking additional measures in respect of subparagraphs (a) to (d) above in its land territory”.

Pursuant to this Agreement, an Information Sharing Centre was established in Singapore to promote close cooperation among contracting parties. This Centre comprises a Governing Council and a Secretariat. The Governing Council is composed of the representatives from each of the sixteen contracting states and adopts policies concerning all matters of the Centre and its own rules of procedure.

Pursuant to this Agreement the Centre, as an international organization whose members are the Contracting Parties, enjoys such legal capacity, privileges and immunities in the Host State of the Centre as are necessary for the fulfilment of its functions. The Executive Director and the staff of the Secretariat shall be accorded, in the Host State, such privileges and immunities as are necessary for the fulfilment of their functions. The Centre entered into an agreement with Singapore as the Host State – on these matters.

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

The functions of the Centre, (upon Article 7) shall be:

- “(a) to manage and maintain the expeditious flow of information relating to incidents of piracy and armed robbery against ships among the Contracting Parties;
- (b) to collect, collate and analyze the information transmitted by the Contracting Parties concerning piracy and armed robbery against ships, including other relevant information, if any, relating to individuals and transnational organized criminal groups committing acts of piracy and armed robbery against ships;
- (c) to prepare statistics and reports on the basis of information gathered and analyzed under subparagraph (b), and to disseminate them to the Contracting Parties;
- (d) to provide an appropriate alert, whenever possible, to the Contracting Parties if there is a reasonable ground to believe that a threat of incidents of piracy or armed robbery against ships is imminent;
- (e) to circulate requests referred to in Article 10 and relevant information on the measures taken referred to in Article 11 among the Contracting Parties;
- (f) to prepare non-classified statistics and reports based on information gathered and analyzed under subparagraph (b) and to disseminate them to the shipping community and the International Maritime Organization; and
- (g) to perform such other functions as may be agreed upon by the Governing Council with a view to preventing and suppressing piracy and armed robbery against ships”.

The Centre operates in an effective and transparent manner, in accordance with the policies made by the Governing Council, and avoids duplication of existing activities.

Each Contracting Party shall, upon the request of the Centre, respect the confidentiality of information transmitted from the Centre and shall ensure the smooth and effective communication between its designated focal point, and other competent national authorities including rescue coordination centres, as well as relevant non-governmental organizations.

Each Contracting Party shall make every effort to require its ships, ship owners, or ship operators to promptly notify relevant national authorities including focal points, and the Centre when appropriate, of incidents of piracy or armed robbery against ships.

Any Contracting Party which has received or obtained information about an imminent threat of, or an incident of, piracy or armed robbery against ships shall promptly notify relevant information to the Centre through its designated focal point.

In the event that a Contracting Party receives an alert from the Centre as to an imminent threat of piracy or armed robbery against ships pursuant to subparagraph (d) of Article 7, that Contracting Party shall promptly disseminate the alert to ships within the area of such an imminent threat.

According to Article 10:

- “1. A Contracting Party may request any other Contracting Party, through the Centre or directly, to cooperate in detecting any of the following persons, ships, or aircraft:
 - (a) pirates;
 - (b) persons who have committed armed robbery against ships;
 - (c) ships or aircraft used for committing piracy or armed robbery against ships, and ships taken by and under the control of pirates or persons who have committed armed robbery against ships; or
 - (d) victim ships and victims of piracy or armed robbery against ships.
2. A Contracting Party may request any other Contracting Party, through the Centre or directly, to take appropriate measures, including arrest or seizure, against any of the persons or ships mentioned in subparagraph (a), (b), or (c) of paragraph 1 of this Article, within the limits permitted by its national laws and regulations and applicable rules of international law.
3. A Contracting Party may also request any other Contracting Party, through the Centre or directly, to take effective measures to rescue the victim ships and the victims of piracy or armed robbery against ships.
4. The Contracting Party which has made a direct request for cooperation pursuant to paragraphs 1, 2 and 3 of this Article shall promptly notify the Centre of such request.
5. Any request by a Contracting Party for cooperation involving extradition or mutual legal assistance in criminal matters shall be made directly to any other Contracting Party”.

According to Article 12 Contracting Party shall, subject to its national laws and regulations, endeavour to extradite pirates or persons

who have committed armed robbery against ships, and who are present in its territory, to the other Contracting Party which has jurisdiction over them, at the request of that Contracting Party.

A Contracting Party shall also endeavour to render mutual legal assistance in criminal matters, including the submission of evidence related to piracy and armed robbery against ships, at the request of another Contracting Party (Article 13).

For the purpose of enhancing the capacity of the Contracting Parties to prevent and suppress piracy and armed robbery against ships, each Contracting Party shall endeavour to cooperate to the fullest possible extent with other Contracting Parties which request cooperation or assistance (Article 14).

The Centre shall endeavour to cooperate to the fullest possible extent in providing capacity building assistance. Such capacity-building cooperation may include technical assistance such as educational and training programs to share experiences and best practices.

Cooperative arrangements, such as joint exercises or other forms of cooperation, as appropriate, may be agreed upon among the Contracting Parties concerned (Article 15).

Each Contracting Party shall (pursuant to Article 16) encourage ships, ship owners, or ship operators, where appropriate, to take protective measures against piracy and armed robbery against ships, taking into account the relevant international standards and practices, in particular, recommendations adopted by IMO.

ASEAN-China Declaration on the Conduct of Parties in the South China Sea, signed during the 8th ASEAN Summit in Phnom Penh, 4.11.2002²⁵ also contributes *inter alia* to combating piracy and armed robbery at sea, as well as other regional ASEAN's instruments²⁶.

²⁵ 'Chinese Journal of International Law' 2003, Vol. 2, at p. 418.

²⁶ ASEAN Declaration On The South China Sea, <http://www.aseansec.org/3634.htm>; Declaration On The Conduct Of Parties In The South China Sea, <http://www.aseansec.org/13163.htm>. Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues, <http://www.aseansec.org/13185.htm>. ASEAN Plan of Action to Combat Transnational Crime, <http://www.aseansec.org/16133.htm>; D. Lee, *Pirates Strike At Will In The Straits Of Malacca*, <http://uniorb.com/ATREND/piracy.htm>; ASEAN Declaration on Transnational Crime, <http://www.aseansec.org/5640.htm>; ASEAN-Japan Dialogue Relations, <http://www.aseansec.org/5740.htm>; Memorandum of Understanding

According to this Declaration “cooperative activities” include *inter alia*: “the safety of navigation and communication at sea”, “combating transnational crime, including, but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, illegal traffic in arms”, and “ensuring just and humane treatment of all persons who are either in danger or in distress” (points: 7(c) and (e) and 6(b)).

4. Final remarks on South Asia’s maritime security cooperation

South East Asia is a maritime region which includes globally significant trade routes such as the Malacca Strait and Indonesian archipelagic lanes. The naval interests of extra regional powers has also escalated as a result

Between The Governments of the *Member Countries of the Association of Southeast Asian Nations (ASEAN) And The Government of the People’s Republic of China On Cooperation in the Field of Non-traditional Security Issues*, <http://www.aseansec.org/15647.htm>; *ASEAN Regional Forum Statement on Strengthening Transport Security Against International Terrorism*, <http://www.aseansec.org/16250.htm>; *ASEAN Plan Of Action To Combat Transnational Crime*, <http://www.aseansec.org/16133.htm>; *ASEAN’s Contribution To Regional Efforts In Counter-Terrorism*, <http://www.aseansec.org/17274.htm>; *ASEAN Vision 2020*, <http://www.aseansec.org/1814.htm>; *ARF Statement on Cooperation Against Piracy and Other Threats to Security*, <http://www.aseansec.org/14837.htm>; *Co-Chairmen,s Summary Report of the ARF Experts’ Group Meeting (EGM) on Transnational Crime*, <http://www.aseansec.org/3570.htm>; *Combating Transnational Crime In ASEAN*, <http://www.aseansec.org/2823.htm>; *Joint Communiqué of the 24th ASEAN Chiefs of Police Conference*, <http://www.aseansec.org/16326.htm>; *Joint Communiqué of the 25th ASEAN Chiefs of Police Conference*, <http://www.aseansec.org/25ASEANAPOL.pdf>; *Joint Communiqué of the Fifth ASEAN Ministerial Meeting on Transnational Crime (AMMTC)*, <http://www.aseansec.org/17937.htm>; *Joint Communiqué of the Second ASEAN Plus Three Ministerial Meeting on Transnational Crime (AMMTC+3)*, <http://www.aseansec.org/17940.htm>; *Opening Speech by Mr.Tetsuma Esaki, Senior State Secretary for Foreign Affairs Regional Conference on Combating Piracy and Armed Robbery against Ships*, <http://www.aseansec.org/5802.htm>; *Regional Agreement on Combating Piracy and Armed Robbery against Ships in Asia*, http://www.mofa.go.jp/mofaj/gaiko/kaiyo/pdfs/kyotei_s.pdf; *Scaling new heights in ASEAN-Japan ties*, <http://www.aseansec.org/15510.htm>; *Sea Piracy In South Asia*, <http://www.saag.org/papers13/paper1259.html>.; *Treaty on Mutual Legal Assistance in Criminal Matters*, <http://www.aseansec.org/17363.pdf>; *US proposes cooperation on maritime security for Asia-Pacific*, <http://www.aseansec.org/afp/42.htm>; *Vientiane Action Programme*, <http://www.aseansec.org/VAP-10th%20ASEAN%20Summit.pdf>; *Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime*, <http://www.aseansec.org/5616.htm>.

of increased piracy at sea and threats to energy supplies transiting the region en route to North East Asia. Countering piracy and other forms of maritime crimes has become significantly more important for coastguard forces and has created the need for naval support.

Since 2004, significant naval cooperation within ASEAN has been restricted to a patchy matrix of bilateral exercises and coordinated (but not joint) patrols. Singapore maintained the most wide-ranging network of intra-ASEAN naval links, engaging in collaboration with Brunei, Indonesia, Malaysia and Thailand. Security in the Malacca Strait galvanised the inauguration of trilateral Malaysia-Singapore-Indonesia (“**MALSINDO**”) coordinated naval patrols during 2004, which included Thailand in 2005. During 2005, a maritime aerial surveillance element – “Eyes in the Sky” (“**EiS**”) was added. In 2005, Indonesia and Singapore inaugurated the joint naval monitoring system, which will allow their navies to share patrolling of the Singapore Strait and to deploy vessels more effectively. In the east of the ASEAN region, where illicit maritime activities have become increasingly rampant, the Malaysian and Philippine navies also exercise together.

Western states’ involvement in South East Asian security provides the framework for some of the most important regional and international maritime security collaboration by ASEAN members.

Furthermore, the Royal Malaysian Navy (“**RMN**”) is required to assist other maritime agencies in maritime surveillance, reconnaissance and law enforcement. The RMN was the lead agency in providing security measures in the Malacca Strait until such time when the Malaysian Maritime Enforcement Agency, Malaysia’s coastguard was established on 16.4.2003 and the RMN must also adapt itself to face the non-traditional security challenges in the Malacca Strait.

Regional cooperation in Asia works since a regional approach to piracy in the straits of Malacca and Singapore has led to significant reductions in maritime piracy.

In 2006 the U.S. and India affirmed their commitment to address piracy and armed robbery at sea in the Indo-U.S. Framework for Maritime Security Cooperation. The agreement calls for regular meetings on maritime security between the U.S. and India and serves as a basis for expanding bilateral cooperation against piracy and other transnational maritime threats in the western Indian Ocean.

International maritime partnerships should create a network to facilitate a collaborative approach to maritime security. The Indian Navy is one of the largest and most capable in the region, and many of the victims of piracy are Indian-flagged vessels or operated by Indian nationals.

The maritime security framework focuses on countering piracy in the western Indian Ocean as its first substantive activity. Regional partnerships are needed to effectively counter piracy. In Asia, ReCAAP has resulted in a reduction in piracy by developing mechanisms for cooperation.

Japan has helped to galvanise multilateral maritime security cooperation through the Asia Maritime Security Initiative 2004 (“**Amarsective 2004**”), aimed at boosting the antipiracy capacity of Asian coastguards, and ReCAAP, primarily involving intelligence exchange and involving the ASEAN members as well as Japan, China, South Korea, India, Bangladesh and Sri Lanka. The ReCAAP, on a common platform to share information in coping with piracy in the region, is an important initiative in promoting regional security cooperation in Asia.