WORLD MARITIME UNIVERSITY

Malmö, Sweden

ADDRESSING MAJOR MARITIME SECURITY ISSUES OF GLOBAL, REGIONAL AND NATIONAL SIGNIFICANCES: LAW AND POLICY IMPLICATIONS IN THE CONTEXT OF CHINA

By

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China

A dissertation submitted to the World Maritime University in partial fulfilment of the requirements for the award of the Degree of

MASTER OF SCIENCE

in

MARITIME AFFAIRS

(Maritime Administration)

2003

DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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ACKNOWLEDGEMENT

ABSTRACT

Title of Dissertation: **Addressing Major Maritime Security Issues of Global, Regional and National Significances: Law and Policy Implications in the Context of China**

Degree: **Master of Science in Maritime Affairs (Maritime Administration)**

This dissertation is a study of major maritime security issues, focusing on piracy and armed robbery against ships as well as maritime terrorism, all of which are of great global significance in the world and also presently and potentially significant in the context of China either as a major maritime nation or as an important role player in regional cooperation concerned. The objective of this dissertation is to work out appropriate and effective approaches, global, regional and national, to addressing these maritime security concerns.

Maritime security has already become a global concern in the present world. Severe threats could be posed if maritime security is jeopardized, as has been proven by a large numbers of incidents of such kind. Addressing maritime security concerns requires international efforts. On a global basis, such efforts have been made mainly by two general categories of actions, namely, by establishing international legal framework in combating maritime security offences against ships and by defining global requirements for technical measures in preventing of such occurrences. IMO plays a leading role in the international efforts in ensuring maritime security for commercial shipping. The UNCLOS 1982 (part of it), SUA Convention 1988 and many IMO instruments including the recently adopted ISPS Code have constituted a complete package of effective tools in addressing maritime security concerns.

The effectiveness of any international conventions or similar instruments largely depends on national compliance and implementation. In this dissertation, a particular analysis is made on the maritime security concerns existing in China, this author's

country of origin. The law and policy practices in dealing with maritime security issues, particular with piracy cases, are examined and the relevant existing problems and challenges are also identified. Being a very important flag state, port state and coastal state as well as Contracting Party to UNCLOS, SUA Convention and SOLAS Convention, China should take legislative, legal and technical measures to suppress and prevent piracy and maritime terrorism in its maritime zones and ports and onboard its ships. As for the implementation of the ISPS Code entering into force July 2004, the recent practices in the United States could have significant implications on Chinese policy-making. Due to constraints of time and space, this dissertation only puts its emphasis on the basic role of government in implementing the ISPS Code in China.

Apart from global requirements and national compliance and implementation, international cooperation is an important complementary factor contributing to the success of ensuring maritime security. For a geo-political purpose, this dissertation tries to examine international cooperation in maritime security on a regional or subregional basis that China can be significantly involved in and benefit from. For the time being, it is quite imperative for China to participate in regional cooperation with ASEAN countries to combat and prevent piratical attacks in their bordering waters, particularly in the South China Sea.

In conclusion, equal importance should be attached to both pre-occurrence prevention and post-occurrence suppression in addressing maritime security issues. Government and industry should establish partnership of close cooperation. Effective actions, either legal or policy-oriented, should be taken at different levels, namely, global, regional and national levels. By doing all these, China will contribute a lot to promoting maritime security in the world.

KEYWORDS: Security, Piracy, Terrorism, ISPS Code, China, Cooperation

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List of Abbreviations

AIS	Automatic Identification Systems
APEC	Asian Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
CMI	Commite de Maritime International
CSCAP	Council for Security Cooperation in the Asia Pacific
CSO	Company Security Officer
CSR	Continuous Synopsis Record
DOALOS	Division for Ocean Affairs and the Law of the Sea (of UN)
DOIC	Department of International Cooperation (of MOC)
DOPS	Department of Public Security (of MOC)
DOWT	Department of Water Transport (of MOC)
EEZ	Exclusive Economic Zone
GAC	General Administration of Customs (of China)
ICC	International Chamber of Commerce
IMB	International Maritime Bureau
IMO	International Maritime Organization
INS	Immigration and Natural Service (of US)
ISM Code	International Safety Management Code
ISPS Code	International Ship and Port Facility Security Code
ISSC	International Ship Security Certificate
MARPOL	International Convention for Prevention of Pollution from Ships
MOC	Ministry of Communications (of China)
MOPS	Ministry of Public Security (of China)
MSA	Maritime Safety Administration (of MOC)
MSC	Maritime Safety Committee
MTSA	Maritime Transportation Security Act

NPC	National People's Congress
OECD	Organization of Economic Cooperation and Development
PFSA	Port Facility Security Assessment
PFSP	Port Facility Security Plan
PSC	Port State Control
PSCO	Port State Control Officer
RCC	Rescue Co-ordination Centre
RSO	Recognized Security Organization
SEAPOL	Southeast Asian Programme on Ocean Law and Policy
SOLAS	International Convention for the Safety of Life at Sea
SSO	Ship Security Officer
SSP	Ship Security Plan
STCW	Convention on Seafarers Training, Certification and Watchkeeping
SUA	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
US	United States
USCG	United States Coast Guard

CHAPTER 1
INTRODUCTION

Merchant shipping provides an invaluable service to society by transporting goods and commodities across the world. However, the commercial climate for shipping on seas and oceans can be inhospitable, subjecting mariners not only to natural sufferings such as storms, fog, ice and heat, but also to human-brought hardships like piracy and maritime terrorism which pose increasingly serious threats to maritime security.

Maritime security has long been one of the most significant concerns for the international maritime community, particularly since the 1980s. But it is only recently that maritime security has gained the focused international spotlight either in terms of maritime transport practices or in the associated academic research. The "September 11" terrorist attacks in the United States in 2001 has turned maritime security into an extremely hot topic for the maritime industry, academia and policy-makers. Maritime security has never drawn more worldwide attention than before.

It is known to all that maritime transport accounts for nearly all the tonnage of goods moved globally. The increasing globalization of trade means that ocean carriers call on ports in nearly every country. Commercial maritime interests, therefore, can be jeopardized worldwide by a broad range of illegal activities like piracy and maritime terrorism, adversely affecting their optimum competitiveness. The increasingly complex nature and international scope of security issues, which threaten the maritime industry, and the movement of cargo in international trade requires a wide range of participation from government and the international commercial maritime industry. Improved maritime security around the world can ensure the viability of commercial trade, which in turn, enhances economic

development potential and improves the prospects for emerging open-market countries like China. As such, the importance of maritime security is no exception for China, a major maritime nation in the world.

1.1 Concepts: Maritime Safety vs. Maritime Security

Maritime security is a broad term for both the maritime transport industry and for maritime administrators and researchers. People even argue over what maritime security really means as compared to the term "maritime safety" which is so rooted deeply for long in the maritime circle and the ordinary persons as a whole.

According to Max Mejia, "the words safety and security are basically synonymous", but "it is normal in the shipping sector to make a distinction between maritime safety and maritime security". With these two different words, such distinction is simple enough in the English language. In other languages, however, he continues, "trying to make a distinction between these two concepts causes confusion in terminology". One will find that, invariably, the same word is used for both safety and security. In Spanish, for instance, it is *"seguridad"* while in French it is *"securite"* (Mejia, 2002, p28).

As a matter of fact, the similar situation also exists in the Chinese language as in French and Spanish. Basically speaking, the Chinese word "安全*(anquan)"* can be used to express the meaning of what it is supposed to cover both "safety" and "security". But the Chinese people can obviously feel that the differences of the same word "*anquan*" in different context. The English words "safety" and "security" can easily tell apart these different "anquans" normally put in the Chinese language. Even though people use the same Chinese word "anquan", the English translations are different, particularly when the word is combined with other descriptive or restrictive words. Examples of the names of some governmental organs can well illustrate this point. At the central governmental level, for instance, there are several "anquan"-related ministries, departments and agencies: the Ministry of National Security *(Guojia **Anquan** Bu),* the Ministry of Public Security (*Gong An Bu,* in fact short form of *Gonggong **Anquan** Bu*), State Administration of Production Safety

*(Guojia **Anquan** Shengchan Jiandu Guanli Ju)* and China Maritime Safety Administration (*Zhongguo Haishi Ju*, literally meaning *Zhongguo Haishang **Anquan** Jiandu Ju* if retranslated from its English translated name).   Even under the Ministry of Public Security, there is a department named Traffic Safety Management Bureau (*Jiaotong **Anquan** Guanli Ju*).   It is quite natural that people say "traffic safety" instead of "traffic security" in English. Despite these, the maritime community in China have succeeded in finding another word to express the meaning of "security" – *"baoan"*; by the same token, "maritime security" is referred to as *"haishang baoan"*. Literally, *"baoan"* means "to secure that something/somebody is safe from being deliberately hurt, attacked or threatened".

Nevertheless, Mejia emphasized that safety and security are not mutually exclusive.   The distinction is necessary in broad terms but there will always be measures that are complementary.   In a sense this is how Mr. O'Neil, Secretary-General of the International Maritime Organization (IMO), is able to put maritime security at the top of agenda of IMO and still maintain the Organization's technical character.   After all, the revised Chapter XI as well as the International Ship and Port Facility Security (ISPS) Code have been incorporated within a safety convention – the International Convention for the Safety of Life at Sea (SOLAS).

As far as the IMO itself is concerned, maritime security is very closely linked with maritime safety.   It is well-known that IMO has long set its fundamental objective as "safer shipping" since its inception in late 1940s and "cleaner ocean" later in 1960s when prevention of pollution from ships became a global concern. As this new millennium has arrived, IMO is readjusting its overall objectives.   In addressing the graduating class 2003 of IMO International Maritime Law Institute, Mr. O'Neil expressed his confidence in these graduates, saying that they will "help IMO to achieve its desired goals of safe, secure and efficient shipping on clean seas" (O'Neil, 2003).   Obviously enough, his words reflected the fact that maritime security has already been one of the top agenda items of IMO.   Through its own work in the last decade or so, IMO has established or is being established three new pillars of conventions, namely, the International Safety Management Code (ISM

Code), the Amendments to Convention on Seafarers Training, Certification and Watchkeeping 1995 (STCW 95) and the International Ship and Port Security Code (ISPS Code).

1.2 Study Themes of the Dissertation

This dissertation is concentrating on the study of maritime security issues in the context of China as a significant flag state, coast state and port state. The paper focuses on security issues directly relating to or having direct impact on merchant shipping.

In Chapters 2, 3 and 4, the general topic of maritime security is examined at the global level. An historic overview in this regard is made and the current major forms of maritime security concerns in the world, namely, piracy and maritime terrorism, are examined and discussed in Chapter 2. It should be noted that drug trafficking at sea, stowaway, and illegal immigration, although falling into the coverage of maritime security issues, are not be discussed here. Chapters 3 and 4 examine the international efforts made so far to address maritime security issues under the global framework. The legal framework of combating offences as an emphasis is discussed in Chapter 3, while the preventive measures initiated by IMO are discussed in Chapter 4.

Chapter 5 identifies the maritime security concerns existing in China and examines measures, either legislative, legal or technical, that have been taken to address these concerns happening in this country as a Contracting Party to the SOLAS Convention. The implementation of the ISPS Code in China is analyzed in detail in Chapter 6, in which a number of proposals are put forward as preliminary design for the roadmap of implementation.

Chapter 7 focuses on regional cooperation in addressing maritime security concerns, mainly on China's participation in such cooperation.

In Chapter 8, a summary of conclusions is made on the basis of the analysis and discussions in the preceding chapters. A series of specific recommendations are put forward on how to address the maritime security concerns in the context of China.

1.3 Methodology

This dissertation is completed mainly on the basis of theoretic academic research. It also combines such research with international practices existing in the world and national practices in China. In addition, while writing this dissertation, this author tries to resort to his own working experiences over the last 7 years as well, particularly these on regional cooperation practices. Moreover, the following aspects of methodology are taken into consideration in particular:

➢ Referring to latest information and resources. Maritime security is a relatively new topic for research. While having acquired limited materials, especially official publications, this author tries to take advantage of emerging and latest information and resources. For example, *the US Maritime Strategy for Homeland Security* and the US Coast Guard *Interim Rules on Implementation of ISPS Code* are referred to.

➢ Using case study. In discussing regional cooperation in maritime security, a case study is made on the international cooperation on combating piracy in the South China Sea area.

➢ Making comparative study. In Chapter 6, for instance, the practices in US and China are compared for acquiring some law and policy implications.

➢ Combining qualitative and quantitative research. For example, in order to examine the situation on piracy concerns in China, this author makes both qualitative description and quantitative analysis to give a full account of the picture.

➢ Using various means of illustration. Figures, tables and diagrams are used in the dissertation for better illustration of some facts as well as for summary of conclusions.

CHAPTER 2

MARITIME SECURITY AS A GLOBAL CONCERN

Shipping on seas and oceans has its origins in very ancient times. It can be said that, connected with the development of shipping in history, maritime security has always more or less been a parallel issue along with the shipping business. For many centuries, piracy was the most imminent security issue that made the shipping business suffer greatly both economically and in terms of life at sea. In the just past century, especially after the end of the Cold War, there was a resurgence of modern maritime piracy that threatened shipping in many areas of the world. Maritime security has already become a global concern for all the people directly or indirectly involved in the shipping sector.

On 11 September 2001, the World Trade Centre and the Pentagon buildings in the United States were viciously attacked by the terrorists who used airplanes as their weapons. This was far beyond the people's imagination. Like the aviation sector, the international maritime community has every reason to ask if ships could also be used as weapons by the terrorists someday. No one can deny such a possibility. There also exists the possibility that ships could be used for carrying weapons of mass destruction or other dangerous materials that threat the security of ships, crews and properties as well as people living in the land.

This chapter will examine two major forms of maritime security issues, namely, piracy and armed robbery against ships and maritime terrorism. Several typical cases will be mentioned to facilitate illustration. Before that, however, it seems necessary to take a quick look at what general threats could be posed if maritime security is jeopardized.

2.1. What Are the Threats?

Perhaps foremost among the risk factors associated with maritime transport is the sheer volume and numbers of goods moving by sea. The United Nations Conference on Trade and Development (UNCTAD) estimates that 5.8 billion tons of goods were traded by sea in 2001. This accounts for over 80% of world trade by volume. The bulk of this trade is carried by more than 46, 000 vessels servicing nearly 4,000 ports throughout the world. And there are no signs that world maritime trade will be decreasing any time soon.

In addition to its size, the maritime sector, by its very nature as a complex, international open transportation network, poses several additional challenges from a security standpoint. According to a recently released report by the Organization of Economic Cooperation and Development (OECD), one of these is the multiplicity of terrorist risk factors associated with shipping. Sea-going vessels can be the vector for, or target of, attacks. They can also serve to facilitate other attacks and/or raise revenue for terrorist organizations. The principal risk factors related to shipping – cargo, vessels, people and financing – are also linked to the broader risk of major disruptions in world trade and increased economic costs linked to heightened security. (OECD, 2003, p6)

As far as the dangers posed by bulk vessel cargoes are concerned, these dangers highlight the potential for an entire vessel to be used as a weapon in a terrorist strike just as jet aircraft were used in the "911" attacks. In such cases, a vessel can be used against a population centre adjacent to port facilities and/or shipping channels, to damage port facilities themselves or to sink the vessel(s) and block access to a port facility. While the potential damage from such an attack is great, previous terrorist incidents involving ships have tended to target vessels rather than use them. Given the relative difficulty in triggering a major explosion through an attack on a vessel, it is more likely that the principal motivation for terrorists to attack a vessel would be to hijack its cargo, hold its crew hostage for ransom or political purposes, sink the vessel and cause as much loss of life as possible, or

cripple trade by threatening to close down access to ports and/or vulnerable trade routes. (OECD, 2003, p11).

The risk to shipping from terrorist attacks is underscored by the persistent problem of modern piracy. Every year cargo, passenger and fishing vessels come under attack by pirates seeking to gain revenue by hijacking and selling cargo and/or ransoming crew. While most incidents involve attacks and thefts from vessels at anchor or in ports, a significant number of attacks are mounted by relatively well-organized and heavily armed gangs of pirates on the high seas. Detailed discussion in this regard will follow below.

2.2   Major Forms of Maritime Security Concerns

Broadly speaking, maritime security concerns in the current world embodies piracy and armed robbery against ships, maritime terrorism, stowaways, illegal immigration and smuggling at sea as well as other security-related issues. The possible forms can be best summarized in the ISPS Code (to be discussed later), although people normally believe is an anti-terrorism instrument. Part B, Paragraph 8.9 of the Code provides the following:

"The SSA (i.e. ship security assessment, this author emphasizes) should consider all possible threats, which may include the following types of security incidents:

.1   damage to, or destruction of, the ship or of a port facility, e.g. by explosive, devices, arson, sabotage or vandalism;

.2   hijacking or seizure of the ship or of persons on board;

.3   tampering with cargo, essential ship equipment or system or ship's stores;

.4   unauthorized access or use, including presence of stowaways;

.5   smuggling weapons or equipment, including weapons of mass destruction;

.6   use of the ship to carry those intending to cause a security incident and/or their equipment;

.7   use of the ship itself as a weapon or as a means to cause damage or destruction;

.8   attacks from seaward whilst at berth or at anchor; and

.9   attacks whilst at sea."[i]

The study in this dissertation concentrates only on the major forms of maritime security concerns that have global, regional and national significances in the context of the maritime administration of China. As such, the major forms of maritime security issues to be studied in this paper are piracy and armed robbery against ships and maritime terrorism.

2.2.1   Piracy and Armed Robbery against Ships

Although piracy has existed almost as long as shipping and maritime trade, it seemed that, by the end of the 19th century, it had already been put under control. Piracy came to be seen as an interesting historical problem, associated with the skull and crossbones flag, galleons of gold and villains carrying cutlasses with a dash of excitement and even romance. The fact that piracy was always a crime, often vicious and usually murderous, was seemingly forgotten or ignored by people. But piracy had not disappeared. During the 1970s and 1980s, attacks on merchant ships began to increase and it became a problem that soon could no longer be ignored.

 In the years 1999-2002, the International Maritime Bureau of the International Chamber of Commerce (ICC/IMB or IMB) registered a record number of attacks against vessels. Targets of these attacks included most classes of vessels: bulk/general cargo vessels, tankers, container carriers and chemical and LPG

carriers. The attacks were concentrated in several distinct geographical areas including the Malacca straits, Indonesian and Malaysian waters, the coasts of Bangladesh and India, the Red Sea/Horn of Africa area and the west coast of Africa. The Division for Ocean Affairs and the Law of the Sea (DOALOS) of the Office of Legal Affairs of the United Nations has observed the activities of modern maritime piracy in the following words:

> "Nowadays piracy still exists, albeit in new forms which require new means for its suppression. Pirate attacks occur with alarming frequency in many parts of the world. Attacks range from incidents in which the pirates have simply taken money and valuables from the crew and ship's safe to cases where the entire cargo has been stolen and in some cases the ship as well. Usually only the threat of violence is used but there have been injuries and sometimes crewmembers have been murdered. Reports of incidents show that apart from the danger to the crews who are the victims of an attack, the navigational and environmental dangers in cases where the crews have been tied up and the ships have been left to steam at full power with nobody in control while the robbers make their escape can scarcely be exaggerated, especially in areas where there is heavy traffic."(as cited in Zou, 2000, p366)

Appendix A details a typical case of piracy, from which it can be seen what the modern piracy is like.

Statistically, it is disappointing that piracy incidents have increased in 2002 compared with the previous year. According to the Report made by the International Maritime Bureau of the International Chamber of Commerce, the so-called piracy watchdog, there was a steep increase in vessel hijackings and growing violence in 2002. The IMB's report on piracy notes that 370 incidents were reported compared to 335 in 2001. Hijackings rose to 25 from 16 in 2001 and mainly involved tugs, barges and fishing boats in the Malacca Straits and Indonesian waters. Ten seafarers were killed compared to 21 during 2001, but 24 crew or passengers are still missing. The

potential for violence continues to be a worrying factor; in some parts of the world, it is all too easy to unlawfully board a merchant vessel.

Piracy is traditionally regarded as *hostis humani generis*, the enemy of the human race. They commit acts of murder, robbery, plunder, rape or other villainous deeds at sea, cruelly against humanity. Because of such nature of its offense, it is punishable wherever encountered. The law of piracy is directed to eliminate and suppress all acts of piracy in the world. Since piracy is *sui generis*, the law is to some extent very special in comparison with other laws. "Pirates are common enemies, and they are attacked with impunity by all, because they are without the pale of the law. They are scorners of the law of nations; hence they find no protection in that law. They ought to be crushed by us… and by all men. This is a warfare shared by all nations" (Zou, 2000, p384).

2.2.2 Maritime Terrorism

Terrorism in the maritime environment is not a new phenomenon and arguably not a dramatically growing one. Maritime terrorism has been an adjunct to political and quasi-military campaigns for more than a century. Maritime terrorism since the end of World War II displays most characteristics common to other areas of terrorism in the period.

The fact is still that maritime terrorism precisely mirrors other forms of terrorism in that about 85% of incidents involved bombs or other explosives. The number of reported incidents demonstrates some growth from decade to decade, not all of which can be accounted for by better reporting and analysis. Although terrorist hijacking is not particularly common, it often receives the majority of media speculation and antiterrorist planning. The most well-known case in history, cited by a large number of scholars in their papers, is the *Achille Lauro*, the key facts of which is described in Appendix B.

The events of "911" have jolted the United States and the world to the recognition as to just how vulnerable the international systems of transportation and

trade are to those who would do harm to the world. An event equivalent to these attacks would have a very serious and long-lasting negative impact in the maritime sector, both to the international systems of trade and the economies as a whole. The economic impact by terrorist attacks against maritime transport could be extremely tremendous. The maritime transport system is vulnerable to being targeted and/or exploited by terrorists. A large attack, especially a well-co-coordinated one, could have the result of shutting down the entire system as governments scramble to put in place appropriate security measures. These may be drastic, such as the complete closure of ports, and inefficient, such as duplicative and lengthy cargo checks in both originating and receiving ports. According to the OECD report, the cost of such an attack would likely be measured in the tens of billions of dollars (*e.g.* up to USD 58 billion for the United States *alone*). It is precisely for these reasons that governments have sought to strengthen their security dispositions *vis-à-vis* maritime transport. (OECD, 2003, p2)

The most recent case of suspected maritime terrorism was the case of the oil tanker *Limburg*. On 6 October 2002, an explosion occurred involving this French oil tanker while she was waiting for a tug to be taken to Mina al-Dabah near Mukalla, about 500 miles from Sana'a, Yemen. The blast wrecked the oil tanker, killed one crewmember and spilled 90,000 barrels of oil into the Gulf of Aden. The initial results of the inquiry carried out by French, Yemeni and American investigators suggested that the explosion was due to an attack. The French and American investigators agreed that the blast was probably terrorism. American officials even said the blast was an act of terrorism most likely carried out by people with links to Al-Qaida. Various reports indicate there have existed contradictory opinions as to what the real causes were. Whatever it really, the incident happened at a time when final preparations were being made in IMO to establish an adequate regulatory regime on maritime security to protect shipping against acts of terrorism. It is doubtless to say that, from the *Limburg* incident, people have every reason to believe that ships are very soft target vulnerable to terrorist attacks.

CHAPTER 3

INTERNATIONAL LEGAL FRAMEWORK FOR

ADDRESSING MARITIME SECURITY CONCERNS

Shipping itself is an international economic sector. To address maritime security concerns requires international efforts. The efforts made so far on a global basis can be divided into different classes by different criteria. For the purpose of this dissertation, this author intends to divide them into two parts, namely, the international legal framework for addressing maritime security concerns, which is discussed in this chapter, and the global requirements for technical measures, to be discussed in detail in the next chapter. The former focuses on how to combat offences against maritime security, which is basically of a post-occurrence nature, whereas the latter focuses on how to prevent the maritime security incidents, which is of more or less a pre-occurrence kind.

Any international effort to combat maritime security offences against ships must take place in a manner that is consistent with the rules of public international law. First, such cooperation must be consistent with the legal regime established for the law of the sea, which is set out in the 1982 United Nations Convention on the Law of the Sea (UNCLOS 1982). Second, such cooperation must be consistent with the principles of international law governing criminal jurisdiction and cooperation in criminal matters, including extradition. This is mainly embodied in the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention 1988). These two international treaties have to a large extent constituted the current legal framework for addressing maritime security issues.

3.1 UNCLOS: Legal Umbrella

The UNCLOS 1982 is universally regarded as the "constitution of the oceans", which lays down the fundamental international legal framework for seas and oceans regime through international convention. However, an exercise of searching for the word "security" in its text indicates that there is no mention of what this author refers to as in the topic of "maritime security". On the contrary, this word is contained in "peace, security and order" or connected with "collateral" to mean "financial security". The similar searching for the word "maritime" leads to that these terms are found: maritime port(s)", "maritime casualty(ies)", "maritime authority", "maritime zones", "International Maritime Organization", "maritime traffic", "maritime affairs", and "maritime environment". Obviously, the term "maritime security" is not mentioned literally at all in UNCLOS. Does this mean that UNCLOS has nothing to do with maritime security? The answer is "No". As mentioned earlier in the preceding chapter, it has been well-known to all that there are very important provisions on piracy contained in the UNCLOS .

3.1.1 Definition of "Piracy"

Since piracy is a crime with international character, it is governed under international law. The term "piracy" is usually referred to a board range of violent acts at sea. People find the legal definition of "piracy" from an international convention although there is still argumentation on this definition. Article 101 of UNCLOS defines piracy as consisting of any of the following acts:

> (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
> (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or air-craft;
> (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

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

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

The above definition is quoted *verbatim* from the 1958 Geneva Convention on the High Seas, which codified customary international law on the point. It consists of five elements: (1) the acts complained against must be crimes of violence such as robbery, murder, assault or rape; (2) committed on the high seas beyond the land territory or territorial sea, or other territorial jurisdiction, of any State; (3) by a private ship, or a public ship which through mutiny or otherwise is no longer under the discipline and effective control of the State which owns it; (4) for private ends; and (5) from one ship to another so that two ships at least are involved.

However, the definition provided for in the UNCLOS has limitations in respect to the phenomenon of piracy. First, it defines "piracy" as only for "private ends", though it is argued that such wordings could be given a wider interpretation. It is therefore that the terrorist acts at sea for political ends are generally excluded. That is why after the *Achille Lauro* incident (see details in Appendix B), the world community adopted the SUA Convention (to be discussed below). Second, according to the above definition, piracy *juris gentium* presupposes that a criminal act be exercised by passengers or the crew of a ship against another ship or persons or property on its board. The two-vessel requirement is an ingredient of the crime of piracy, unless a criminal act occurs in *terra nullius*. Thus "internal seizure" within the ship is hardly regarded as "act of piracy" under the definition of the UNCLOS. Because of these limitations and other alleged deficiencies in the definition, some scholars have suggested revising this definition.

IMO adopted the UNCLOS definition of "piracy" but did something to add and extend the expression as "piracy and armed robbery against ships". In other words, IMO defines these "piratical" attacks that occur within the jurisdiction of States as "armed robbery against ships". In the *Code of Practice for the*

Investigation of the Crimes of Piracy and Armed Robbery Against Ships, armed robbery against ships is defined as follows:

> Armed robbery against ships means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, directed against a ship or against persons or property on board such ship, within a State's jurisdiction over such offences[iii].

This is why the phrase "piracy and armed robbery against ships" should be used as a whole.

Despite the above, it is worth mentioning that the IMB suggested a definition of piracy "as an act of boarding any vessel with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act". This definition seems to be accepted by the shipping industry but has not been recognized both in international law and in domestic law. Nevertheless, it bears some value of reference when the definition of piracy in international law is considered.

3.1.2 Obligations of States to Suppress Piracy

International law has established an obligation on States to cooperate in suppression of piracy and grants States certain rights to seize pirate ships and criminals. Article 100 of the UNCLOS provides that "All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State". Article 105 further provides that "on the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith". Only warships or

military aircraft or similar governmentally authorized ships or aircraft have the power to seize a pirate ship or aircraft in the high seas.

However, there is a problem in this respect arising from the introduction of the new concept of Exclusive Economic Zone (EEZ) under UNCLOS 1982. What is EEZ today was originally part of the high seas before UNCLOS 1982. Since the articles relating to piracy in the UNCLOS are fully and unchangeably copied from the 1958 Convention, it may query whether these articles are still applicable to the EEZ, as residual rights and/or obligations in question, despite the latter's modified legal status. Article 58 of the UNCLOS expressly provides that the piracy provisions are applicable to the EEZs in so far as they are not incompatible with the provisions on EEZs of that convention and in compliance with the laws and regulations adopted by the coastal State. Since piracy is closely related to the safety of navigation, according to Zou Keyuan, States could assume a correspondent duty or right to suppress piracy in the EEZ of other States provided that anti-piracy measures taken by such States are inadequate. The problem is more complex when a certain coastal State is unable to handle effectively acts of piracy occurring within its EEZ. For such reason, it is argued that the piracy provisions in the UNCLOS should apply to the EEZ in so far as they are not incompatible with the rights of coastal States set forth in the UNCLOS. Since enforcement against a pirate, in normal circumstances, could not be viewed as impinging upon any rights reserved to the coastal State, the law of piracy in the EEZ must be viewed as identical to that applying beyond. (Zou, 2000, p114).

The above points have very important legal implications for China and its regional cooperation with other countries, which will be discussed in Chapters 6 and 7.

3.2 SUA Convention: Post-Occurrence Prosecution and Punishment

The UNCLOS 1982 is the legal umbrella for addressing maritime security issues, but it is, to some extent, in too broad terms as it is "the Constitution of the Oceans" and more specific international legislation is naturally needed. The SUA

Convention is such a legal tool formulated by the IMO, the UN specialized agency responsible for safety at sea and protection of marine environment.

3.2.1 General Background

Historically, IMO was of purely technical nature until 1960s when a lot of legal issues came about on its agenda to deal with oil pollution by ships. As a further step, IMO's expansion of function from purely technical nature to also getting involved in judicial affairs could be well evidenced by the adoption of the SUA Convention.

The 1980s witnessed growing concerns about unlawful acts that threaten the safety of ships and the security of their passengers and crews. Against such background, especially following the 1985 hijacking of the *Achille Lauro*, the UN General Assembly adopted Resolution 40/61 in 1985, urging States to co-operate in contributing to the elimination of causes underlying terrorism and invited the IMO to study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures.

In 1988, a convention was adopted by IMO in Rome, Italy on the basis of the joint proposal made by Australia, Egypt and Italy 2 years ago in response to the *Achille Lauro* hijacking. So this convention on the subject of unlawful acts against the safety of maritime navigation is also called Rome convention in some cases. Entering into force on 1 March 1992, the SUA Convention and to date it has been ratified by 83 states.

3.2.2 Provisions of SUA Convention

In accordance with the SUA Convention, any person commits an offense if that person unlawfully and intentionally commits, attempts to commit, threatens to commit, or abets the seizure or exercise of control over a ship by force or threat of force or any form of intimidation; or commits any of the following acts if it endangers or is likely to endanger the safe navigation of that ship: an act of violence against a person on board; destroying a ship or damaging a ship or its cargo; placing

or causing to be placed on a ship a device or substance likely to destroy the ship or cause damage to the ship or its cargo; destroying or seriously damaging maritime navigational facilities or seriously interfering with their operation; or communicating information he knows to be false. It is also an offense to injure or kill any person in connection with the commission or attempted commission of any of the previous offenses. These provisions and other relevant wordings in the SUA Convention are currently under review and reassessment by the IMO and will be amended accordingly so as to respond to the new situation after the "911" terrorist attacks.

The SUA Convention applies if the ship is navigating or is scheduled to navigate into, through, or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States. In all other cases, the Convention also applies when the offender or alleged offender is found in the territory of a State Party other than the State in whose waters the offence occurred. States Parties are required to make the offenses punishable by appropriate penalties that take into account the grave nature of those offenses.

In accordance with the SUA Convention, measures to establish jurisdiction over the offenses shall be taken when the offense is committed against or on board a ship flying the flag of the State at the time the offense is committed; in the territory of that State, including its territorial sea; by a national of that State; by a stateless person whose habitual residence is in that State; in an attempt to compel that State to do or abstain from doing any act; or when a national of that State is seized, threatened, injured, or killed during the commission of the offense.

3.2.3 Compliance and Enforcement of SUA Convention

The SUA Convention provides that, once jurisdiction has been established, States shall take the offender into custody and immediately make a preliminary inquiry into the facts. States Parties are required to either extradite the offender in custody or submit the case for prosecution. States Parties are also required to assist each other in connection with criminal proceedings brought under the Convention. States Parties are also to cooperate in the prevention of offenses by taking all

practicable measures to prevent preparations in their respective territories for the commission of those offenses within or outside their territories and by exchanging information in accordance with their national laws. Contracting governments are obliged either to extradite or prosecute alleged offenders thereby ensuring that those responsible for perpetrating acts of violence against or onboard ships will be brought to justice, wherever in the world they seek to hide.

The SUA Convention establishes a legal regime applicable to acts against international maritime navigation. It provides basis for the co-operation and mutual assistance between state-parties in order to reduce the criminal activities at sea in the first instance and also makes it possible to apprehend the perpetrators and bring them to court. It addresses for the first time terrorism at sea and other crimes, which encompasses piratical attacks committed within the jurisdiction of a State. The Convention does not define what a piratical act is, neither terrorist acts nor other unlawful acts against maritime safety but rather left it to the Party-States to define and describe those acts in conformity with its established legal regime. Whether or not the unlawful act or attack on the ship is for private ends or for political is immaterial within the purview of the Convention.

However, the lack of ways and means to enforce the law will still pose a problem if states that become signatories to SUA convention will not have the necessary armed forces to manage the perpetrator. Therefore national legislation incorporating the SUA Convention is a critical factor that ensures the success of this convention. In this regard, China and India are two good examples. As a response directly arising from the dealing with the case of *Alandra Rainbow,* the Indian Government has designed new law to curb illegal activities on all installations and vessels on the seas. The law will punish piracy and other criminals with life terms. It is also found that the Chinese Authorities after becoming a Party to the SUA Convention promptly changed its attitude toward piracy. To help countries make the relevant domestic legislation, the Commite de Maritime International (CMI), an international organization dedicated to harmonizing national maritime laws, has also drafted a Model National Law on Piracy or Maritime Violence.

CHAPTER 4

GLOBAL REQUIREMENTS FOR TECHNICAL

PREVENTIVE MEASURES INITIATED BY IMO

A Chinese saying goes, "make sure a house is repaired before it rains." It means that everything negative should be avoided by doing something preventive well in advance. It is of course true of the solution to maritime security problem – to avoid attacks of piracy and maritime terrorism by taking any necessary preventive measures well before they can actually happen.

IMO has played a major role in co-coordinating the international response to piracy and armed robbery against ships and maritime terrorism. Over the past many years, IMO has initiated a wealth of global requirements for technical measures in ensuring maritime security, most of them being both preventive and operational against actual attacks. The latest major step the IMO took was the adoption of the ISPS Code, a purely preventive and precautionary instrument.

4.1 IMO Course of Actions: an Overview

As early as in the 1980s, the IMO recognized that the suppression of piracy and armed robbery was not effective if only by means of efforts made unilaterally by individual countries themselves. In consideration of this, the IMO began to adopt measures in suppression of piracy and armed robbery by introducing several international instruments.

In 1983, IMO adopted Assembly resolution A.545 (13) on measures to prevent acts of piracy and armed robbery against ships, to address the specific problems relating to piracy and armed robbery. By this resolution the IMO introduced the well universally accepted term "piracy and armed robbery". In 1985,

following the *Achille Lauro* incident, IMO's 14th Assembly adopted resolution A.584 (14) on measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews. Resolution A. 584(14) notes "with great concern the danger to passengers and crews resulting from the increasing number of incidents involving piracy, armed robbery and other unlawful acts against or on board ships, including small craft, both at anchor and under way". The resolution also invited the Maritime Safety Committee (MSC), IMO's senior highly technical body, to develop detailed and practical technical measures to ensure the security of passengers and crews on board ships.

In December the same year, in response to the *Achille Lauro* incident, the United Nations General Assembly called upon IMO "to study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures". One year later, in September 1986, the MSC of IMO approved MSC/Circ.443 on measures to prevent unlawful acts against passengers and crew on board ships, intended for application to passenger ships engaged on international voyages of 24 hours or more and the port facilities which service them. The measures state that Governments, port authorities, administrations, shipowners, shipmasters and crews should take appropriate measures to prevent unlawful acts, which may threaten passengers and crews. The measures stress the need for port facilities and individual ships to have a security plan and appoint a security officer. The measures describe in detail the way in which security surveys should be conducted and the security measures and procedures that should be adopted. These measures have, 16 years later, been incorporated into and expanded into what is known as the ISPS Code, to be discussed below.

Starting from April 1984, piracy and armed robbery against ships was established as a separate but fixed item in the MSC's work programme. Having agreed on the need for an indication of the scale of the problem via reports on piracy and armed robbery against ships submitted by Member Governments and international organizations, the MSC circulate monthly reports containing names and

descriptions of ships attacked, position and time of attack, consequences to the crew, ship or cargo and actions taken by the crew and coastal authorities.

Since 1998, IMO has organized a series of expert missions and seminars around the world, to discuss the prevention and suppression of piracy and armed robbery against ships. In 1999, the MSC agreed to revisions to two circulars aimed at dealing with piracy and armed robbery against ships, which were originally adopted in 1993. The changes update the circulars and make the guidelines more comprehensive. Details of these two circulars will be discussed under the next subsection.

In addition, IMO made efforts to provide guidance to member states in investigating piracy crimes. In November 2001, IMO adopted *the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships* by Resolution A.922 (22). The resolution urges Governments to take actions, as set out in the Code of Practice, to investigate all acts under their jurisdiction of piracy and armed robbery against ships, and to report to IMO pertinent information on all investigations and prosecutions concerning these acts. It also urges all Governments responsible for ports, anchorages and sea areas to inform IMO of specific advice available to ships on the subject of piracy and armed robbery against ships for promulgation by the industry to such vessels.

4.2 Circulars 622 and 623 on Piracy and Armed Robbery

It is of great necessity to mention two highly technical documents on piracy and armed robbery designed and issued IMO, namely, MSC circulars 622 and 623.

MSC/Circ.622, as modified, is entitled *Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships*. It suggests possible counter-measures that could be employed by Rescue Co-ordination Centres (RCC) and security forces. The circular recommends that

> "before embarking on any set of measures or recommendations, it
> is imperative for governmental or other agencies concerned to

gather accurate statistics of the incidents of piracy and armed robbery against ships, to collate these statistics under both type and area and to assess the nature of the attacks with special emphasis on types of attack, accurate geographical location and modus operandi of the wrongdoers and to disseminate or publish these statistics to all interested parties in a format that is understandable and usable."[iv]

According to the circular, representatives of shipowners and seafarers should also be involved in developing counter-measures and States should develop Action Plans on preventing and responding to attacks and also on dealing with any pollution that might result from an attack. The necessary infrastructure and operational arrangements should be established to prevent and suppress piracy and armed robbery against ships. It is imperative that all attacks or threats of attacks are reported to the local RCC or coast radio station. The RCC should in turn inform local security authorities and other ships in the area. The recommendations also deal with how to investigate piracy incidents and criminal jurisdiction. They give guidance to coastal States in areas that are affected by piracy on action to be taken, including the establishment of regional agreements to facilitate a co-coordinated response to attacks. The circular has now included a model draft of such regional agreements on co-operation.

The revised MSC/Circ.623 gives guidance to shipowners and ship operators, shipmasters and crews on how to prevent and suppress acts of piracy and armed robbery against ships. Contained in the circular are comprehensive advice on measures that can be taken onboard to prevent attacks or, when they occur, to minimize the danger to the crew and ship. It outlines steps that should be taken to reduce the risk of such attacks, possible responses to them and the vital need to report attacks, both successful and unsuccessful, to the authorities of the relevant coastal State and to the ships' own maritime Administration. A lot of technical measures, preventive and operational, are recommended in this circular to the shipping industry and those who are working on the seas.

It should be pointed out that, to prevent and suppress piracy and armed robbery against ships, it is quite necessary that a public-private partnership of cooperation be established and maintained. In other words, equal importance should be attached to the government's action and the industry's response. While appreciating the industry's efforts, IMO Secretary-General Mr. O'Neil also emphasized, "of course, action taken by ships alone cannot solve the problem of terrorism or piracy; this requires concerted diplomatic action and in some cases strong police or military intervention may be necessary. Let us not forget, these are acts of violence against innocent people and they have to be dealt with firmly."[v] This shows how important the government and industry should establish close cooperation of partnership.

4.3 SOLAS/ISPS Code: Comprehensive Precautionary Package

The fundamental solution to address all kinds of maritime security concerns and to eradicate the offences once for all will rely on the higher degree of economic development to be achieved. But with the international maritime community, the underlying measures shall be precaution-oriented under any circumstances. In the wake of the "911" attacks, the IMO has done a lot in this regard. One of its products in this field is the introduction of the ISPS Code.

4.3.1 Birth of ISPS Code

In December 2002, the IMO convened a diplomatic conference of SOLAS Contracting Parties.   The Conference adopted a number of amendments to the 1974 Safety of Life at Sea Convention (SOLAS), the most far-reaching of which enshrines the new ISPS Code. The Code contains detailed security-related requirements for Governments, port authorities and shipping companies in a mandatory section (Part A), together with a series of guidelines about how to meet these requirements in a second, non-mandatory section (Part B). The Conference also adopted a series of resolutions designed to add weight to the amendments, encourage the application of the measures to ships and port facilities not covered by the Code and pave the way for future work on the subject.

Following these measures of crucial significance not only to the international maritime community but the world community as a whole, a new, comprehensive security regime for international shipping will be established after July 2004. IMO Secretary-General William O'Neil stated that "the Conference has generated worldwide, in highlighting and promoting the need for the development of a security consciousness in all that we do to complement IMO's existing objectives of developing a safety culture and an environmental conscience." In a call for continued vigilance, he added, "In the meantime, all involved in the operation of ships and ports should continue to be aware of the potential dangers to shipping through acts of terrorism and the need to be extremely vigilant and alert to any security threat they might encounter in port, at offshore terminals or when underway at sea."[vi].

4.3.2 Risk Management: Philosophy of ISPS Code

In essence, the ISPS Code takes the approach that ensuring the security of ships and port facilities is basically a risk management activity and that to determine what security measures are appropriate, an assessment of the risks must be made in each particular case. The purpose of the Code is to provide a standardized, consistent framework for evaluating risk, enabling governments to offset changes in threat with changes in vulnerability for ships and port facilities.

In accordance with the Code, each Contracting Government will conduct port facility security assessments. Security assessments will have three essential components. First, they must identify and evaluate important assets and infrastructures that are critical to the port facility as well as those areas or structures that, if damaged, could cause significant loss of life or damage to the port facility's economy or environment. Then, the assessment must identify the actual threats to those critical assets and infrastructure in order to prioritize security measures. Finally, the assessment must address vulnerability of the port facility by identifying its weaknesses in physical security, structural integrity, protection systems, procedural policies, communications systems, transportation infrastructure, utilities, and other areas within a port facility that may be a likely target. Once this assessment has been completed, Contracting Government can accurately evaluate risk.

This risk management concept is embodied in the Code through a number of minimum functional security requirements for ships and port facilities. For ships, these requirements will include ship security plans, ship security officers, company security officers and certain onboard equipment. For port facilities, the requirements will include port facility security plans, port facility security officers and certain security equipment.

In addition, the requirements for ships and for port facilities include: monitoring and controlling access, monitoring the activities of people and cargo, and ensuring security communications are readily available. Because each ship (or class of ship) and each port facility present different risks, the method in which they will meet the specific requirements of this Code will be determined and eventually be approved by the Administration or Contracting Government, as the case may be.

In order to communicate the threat at a port facility or for a ship, the Contracting Government will set the appropriate security level. Security levels 1, 2, and 3 correspond to normal, medium, and high threat situations, respectively. The security level creates a link between the ship and the port facility, since it triggers the implementation of appropriate security measures for the ship and for the port facility.

Just as stated in the preamble to the Code, as threat increases, the only logical counteraction is to reduce vulnerability. The Code provides several ways to reduce vulnerabilities. Ships will be subject to a system of survey, verification, certification, and control to ensure that their security measures are implemented. This system will be based on a considerably expanded control system as stipulated in the 1974 SOLAS Convention.

4.3.3 Contents of ISPS Code

4.3.3.1 Responsibilities of Companies and Ships

Under the terms of the Code, shipping companies will be required to designate a Company Security Officer (CSO) for the Company and a Ship Security Officer (SSO) for each of its ships. The CSO's responsibilities include ensuring that a

Ship Security Assessment (SSA) is properly carried out, that Ship Security Plans (SSP) are prepared and submitted for approval by (or on behalf of) the Administration and thereafter is placed on board each ship.

The SSP should indicate the operational and physical security measures the ship itself should take to ensure it always operates at security level 1. The plan should also indicate the additional, or intensified, security measures the ship itself can take to move to and operate at security level 2 when instructed to do so. Furthermore, the plan should indicate the possible preparatory actions the ship could take to allow prompt response to instructions that may be issued to the ship at security level 3.

Ships will have to carry an International Ship Security Certificate (ISSC) indicating that they comply with the requirements of SOLAS chapter XI-2 and part A of the ISPS Code. When a ship is at a port or is proceeding to a port of Contracting Government, the Contracting Government has the right to exercise various control and compliance measures with respect to that ship. The ship is subject to port State control inspections but such inspections will not normally extend to examination of the Ship Security Plan itself except in specific circumstances. The ship may also be subject to additional control measures if the Contracting Government exercising the control and compliance measures has reason to believe that the security of the ship has, or the port facilities it has served have, been compromised.

4.3.3.2 Port Facility

One of the salient features of the ISPS Code is that its scope of application is extended to ship/port interface, thus covering port facilities and unlike many other IMO technical conventions merely focusing on ships. The ISPS Code requires each Contracting Government to ensure completion of a Port Facility Security Assessment (PFSA) for each port facility within its territory that serves ships engaged on international voyages. The PFSA is fundamentally a risk analysis of all aspects of a port facility's operation in order to determine which parts of it are more susceptible, and/or more likely, to be the subject of attack. Security risk is seen a function of the

threat of an attack coupled with the vulnerability of the target and the consequences of an attack.

On completion of the analysis, it will be possible to produce an overall assessment of the level of risk. The PFSA will help determine which port facilities are required to appoint a Port Facility Security Officer (PFSO) and prepare a Port Facility Security Plan (PFSP). This plan should indicate the operational and physical security measures the port facility should take to ensure that it always operates at security level 1. The plan should also indicate the additional, or intensified, security measures the port facility can take to move to and operate at security level 2 when instructed to do so. It should also indicate the possible preparatory actions the port facility could take to allow prompt response to the instructions that may be issued at security level 3.

Ships using port facilities may be subject to port State control inspections and additional control measures. The relevant authorities may request the provision of information regarding the ship, its cargo, passengers and ship's personnel prior to the ship's entry into port. There may be circumstances in which entry into port could be denied.

4.3.3.3 Responsibilities of Contracting Governments

Under the new IMO maritime security arrangement, Contracting Governments have various responsibilities, including the following, inter alia:

- ➢ setting the applicable security level;
- ➢ approving the SSP and relevant amendments to a previously approved plan;
- ➢ verifying the compliance of ships with the provisions of SOLAS chapter XI-2 and part A of the ISPS Code and issuing the ISS Certificate;
- ➢ determining which port facilities located within their territory are required to designate a PFSO;

- ➤ ensuring completion and approval of the PFSA and the PFSP and any subsequent amendments; and
- ➤ exercising control and compliance measures in capacity as port state.

Contracting Governments are also responsible for communicating information to IMO and to the shipping and port industries.

Alternatively, Contracting Governments can designate, or establish, Designated Authorities within Government to undertake their security duties and allow RSOs to carry out certain work with respect to port facilities, but the final decision on the acceptance and approval of this work should be given by the Contracting Government or the Designated Authority. This shows the well-established principle contained in several major IMO conventions and guidelines that the relevant work may be delegated from the government to other organizations but the final responsibilities still rest on the government itself.

4.4 Amendments to SOLAS Associated with ISPS Code

In conjunction with the creation of the ISPS Code, a series of Amendments to the 1974 SOLAS Convention was adopted at the December 2002 Conference, aimed at enhancing maritime security on board ships and at ship/port interface areas. Among other things, these amendments create a new SOLAS chapter dealing specifically with maritime security, which in turn contains the mandatory requirement for ships to comply with the ISPS Code.

Modifications to Chapter V (Safety of Navigation) contain a new timetable for the fitting of Automatic Identification System (AIS). Ships, other than passenger ships and tankers, of 300 gross tonnage and upwards but less than 50,000 gross tonnage, will be required to fit AIS not later than the first safety equipment survey after 1 July 2004 or by 31 December 2004, whichever occurs earlier. Ships fitted with AIS shall maintain AIS in operation at all times except where international agreements, rules or standards provide for the protection of navigational information.

The existing SOLAS Chapter XI (Special measures to enhance maritime safety) has been re-numbered as Chapter XI-1. Regulation XI-1/3 is modified to require ships' identification numbers to be permanently marked in a visible place either on the ship's hull or superstructure. Passenger ships should carry the marking on a horizontal surface visible from the air. Ships should also be marked with their ID numbers internally.

And a new regulation XI-1/5 requires ships to be issued with a Continuous Synopsis Record (CSR), which is intended to provide an on-board record of the history of the ship. The CSR shall be issued by the Administration and shall contain information such as the name of the ship and of the State whose flag the ship is entitled to fly, the date on which the ship was registered with that State, the ship's identification number, the port at which the ship is registered and the name of the registered owner(s) and their registered address. Any changes shall be recorded in the CSR so as to provide updated and current information together with the history of the changes.

A brand-new Chapter XI-2 is added after the renumbered Chapter XI-1. This chapter applies to passenger ships and cargo ships of 500 gross tonnage and upwards, including high-speed craft, mobile offshore drilling units and port facilities serving such ships engaged on international voyages. Regulation XI-2/3 of the new chapter adopts the ISPS Code. Part A of this Code will become mandatory and part B contains guidance as to how best to comply with the mandatory requirements. Regulation XI-2/4 confirms the role of the Master in exercising his professional judgment over decisions necessary to maintain the security of the ship. Regulation XI-2/5 requires all ships to be provided with a ship security alert system, according to a strict timetable that will see most vessels fitted by 2004 and the remainder by 2006. Regulation XI-2/6 covers requirements for port facilities, providing among other things for Contracting Governments to ensure that port facility security assessments are carried out and that port facility security plans are developed, implemented and reviewed in accordance with the ISPS Code.

CHAPTER 5
MARITIME SECURITY ISSUES OF NATIONAL SIGNIFICANCE TO CHINA

China is the biggest developing country in the world with a huge population of over 1.2 billion. Since the adoption of reforming and opening-up policy in 1978, China has undergone a booming economic development for more than 20 years. Now the country has become a major trade nation and also a significant shipping power. It is no doubt that maritime security is of great national significances to China.

5.1 A Glance at the Basic Situation

5.1.1 China as an Important Flag State and Coastal State

China is a significant flag state. By the end of 2000, China had owned a fleet of 2,525 vessels for international shipping with 37 million deadweight tonnages. Among these there are 1986 ships flying the Chinese flag with about 17 million deadweight tonnage. The total carrying capacity of China's fleets still ranked the fifth place in the world. [vii] So the fulfilment of flag state obligations and responsibilities is the one of the first-priority tasks for the Chinese maritime authorities.

On the other hand, China is also an important coastal state. It has a mainland coastline as long as around 18,000 kilometres. Along the east coast, there are dozens of ports linked to other parts of the world by international shipping routes. In addition, as a contracting party to the UNCLOS 1982, China has also owned or

claimed vast area of maritime zones in the Yellow Sea, the East China Sea and the South China Sea. So China has to fulfil it obligations and responsibilities as a coastal state. The Chinese authorities are obligated to ensure that shipping in its maritime zones is safe and secure, free from piracy and maritime terrorism.

5.1.2 Piratical Attacks in Chinese Waters or Against Chinese Ships

With reference to maritime security incidents, for the time being, the attacks occurring in Chinese waters or against Chinese vessels are almost all of piratical nature. No terrorist attacks have been recorded either in Chinese waters or against Chinese vessels. So when examining the situation on maritime security issues, the focus is on piracy and armed robbery against ships.

An overview of the piratical attacks happening in the Chinese waters can be gleaned from Table 5.1 on the basis of the IMB statistics.

Table 5.1   Annual Figures of Actual and Attempted Piratical Attacks by Selected Locations

Locations	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
China/HK/ Macau	0	0	1	6	31	9	5	2	0	2	0	0
East China Sea	0	1	10	6	0	1	1	0	0	1	2	1
South China Sea	14	6	31	6	3	2	6	5	3	9	4	0
Indonesia	55	49	10	22	33	57	47	60	115	119	91	103
Malaca Strait	32	7	5	3	2	3	0	1	2	75	17	16
Singapore Strait	0	0	0	3	2	2	5	1	14	5	7	5

Source: ICC/IMB Annual Report 2002 on Piracy and Armed Robbery

It should be pointed out that the numbers of actual and attempted piratical attacks occurring in Chinese waters do not include that of Taiwan Province for

obvious reasons. It is seen that the attacks in 1995 reached the peak with a total of 31. During the 12-year statistic period, except the years of 1991, 1992, 1999, 2001 and 2002 with zero record, there were only a few cases, ranging from 1 to 9. Compared with some piracy-prone area like the Indonesian waters and South China Sea, the incidents in Chinese waters were quite rare. Despite these, some cases were extremely serious. For example, in November 1998, the bulk carrier *Cheung Son* was hijacked by pirates on the way from Shanghai, China to Port of Klang, Malaysia and all the 23 crew members onboard were killed.

The attacks against the Chinese-flagged ships are illustrated in Table 5.2.

Table 5.2   Annual Figures of Chinese-Flagged Ships Attacked from 1991-2002

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Figure	0	0	0	0	2	0	1	12	2	4	2	0

Source: Source: ICC/IMB Annual Report 2002 on Piracy and Armed Robbery

From the table we can see that 1998 was the year in which the Chinese ships suffered from the most numerous attacks. An example of such cases can be cited that is *Yu Jia*, which was attacked allegedly by the armed "Tamil Tiger" guerrillas when navigating on waters northeast off Sri Lanka.

5.1.3 Problem of Allegations of "Safe Haven for Pirates"

In 1990s, when piracy and armed robbery against ships were very serious in the South China Sea and Southeast Asian waters, China was alleged by some press and even maritime community as " a safe haven for pirates" because of its attitudes towards and practices of dealing with piracy cases. Some people even believed that there is a continuing problem off the coast of China with what amounts to state-sponsored piracy by some official Chinese craft[viii].

The case causing the most numerous criticisms may be the *M V Petro Ranger*. *M V Petro Ranger* sailed from Singapore on 16 April 1998 with a cargo of gas oil and kerosene. Nine hours later, 12-armed pirates boarded her. The crew was held hostage whilst the pirates sailed the vessel to Hainan Island in China. The 21 crewmembers under control of the pirates were threatened with death and remained locked in the mess room for ten days. The Chinese authorities alleged that the ship was engaged in smuggling operations. They questioned the 12 alleged pirates who were carrying Indonesian travel documents. The authorities also detained and questioned the crew for over two weeks. However, on 16 October 1998, "despite indisputable evidence, the alleged pirates were simply sent back to Indonesia without being prosecuted." (Abhyankar, 2003, p32).

With reference to the *Petro Ranger*, the Chinese authorities regarded it as a smuggling case. Finally, the Indonesians were deported from Chinese territory. In accordance with the Chinese Criminal Code, deportation is one category of penalty exclusively imposed on foreigners for committing certain crimes. So it cannot be simply alleged that the Chinese authority set these Indonesian free without prosecution. During the process of dealing with this case, the Malaysian Police even requested the extradition of these Indonesian nationals from the Chinese authority, but there is no extradition agreement between the two countries, which made the extradition impossible.

As a matter of fact, the Chinese courts have tried several cases of piracy since 1999. One of the trials was conducted in January 2000, in which 13 pirates were sentenced to death for the killing of 23 crewmembers of the Hong Kong-registered cargo ship *Cheung Son* in December 1998. The 13 death convicts were among the 38 pirates accused of sea robbery, murder, drug trafficking and illegal possession of guns and ammunition. Among these 13 one was an Indonesian national. In another trial, conducted in August 2000 against 14 pirates who were Burmese nationals, the court handed down one suspended death sentence against the leader of the gang and jail terms ranging between three and ten years against the rest of the gang for their crime of piracy committed in March 1999 against a Panama-registered vessel. There

was no immediate death sentence in this case because the 21 seamen on board the hijacked vessel were later rescued by Thai fishermen. Both cases were tried under the relevant provisions of the Chinese Criminal Code.

Another example is the case of *the Tenyu*, a cargo ship carrying tin ingots, which was hijacked while steaming on 27 September 1998. It was found in the Port of Zhangjiagang, China on 22 December 1998 with an all-Indonesian crew and that all persons in the original crew were murdered. The Chinese Maritime Court adjudicated that the ship be handed over to the Japanese owner, which was the first case of such kind.

5.2 Study into the Practical aspects in Addressing Maritime Security

The practice in addressing maritime security issues pursued by China can be analyzed from the institutional, policy and legal aspects as follows.

5.2.1 Institutional Build-up on Maritime Security in China

With reference to the institutional build-up regarding maritime security in China, one should take into consideration the legislative, administrative, judicial and military organizations together. Figure 5.1 shows an institutional structure of organizations concerning maritime security maritime security matters in China.

The National People's Congress (NPC) is the organ with the highest power and is the highest legislative body in China. NPC meets once every year and, when it closes, its standing committee functions on its behalf. As the legislative body, the NPC and its standing committee have power to make laws on maritime security.

The State Council, also called the Central Government, exercise administrative powers in accordance with the state laws made by NPC. At the same time, the State Council also makes administrative laws. Under the State Council, there are several ministry-level agencies whose functions and responsibilities include dealing with maritime security matters. Among these two are the most important: the Ministry of Communications (MOC), under which the maritime administration is

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┌─────────────────────────┐                                          ┌──────────────────────────┐
│ Standing Committee of NPC│                                          │  China Maritime Safety   │
└─────────────────────────┘                                          │     Administration       │
            │                                                        └──────────────────────────┘
            │                           ┌─────────────────────────┐  ┌──────────────────────────┐
┌─────────────────────────┐             │ Ministry of Communications│  │  Bureau of Public Security│
│     State Council        │             └─────────────────────────┘  └──────────────────────────┘
└─────────────────────────┘                                          ┌──────────────────────────┐
                                                                      │  Department of Water     │
                                                                      │       Transport          │
                                                                      └──────────────────────────┘
                                                                      ┌──────────────────────────┐
                                                                      │ Department of International│
                                                                      │      Cooperation         │
                                                                      └──────────────────────────┘
                                         ┌─────────────────────────┐  ┌──────────────────────────┐
                                         │ Ministry of Public Security│ │  Bureau of Frontier control│
                                         └─────────────────────────┘  └──────────────────────────┘
                                                                      ┌──────────────────────────┐
                                                                      │  Criminal Investigation  │
                                                                      │         Bureau           │
                                                                      └──────────────────────────┘
                                         ┌─────────────────────────┐  ┌──────────────────────────┐
                                         │ General Administration of│  │ Bureau of Investigation into│
                                         │        Customs           │  │    Smuggling Crimes      │
                                         └─────────────────────────┘  └──────────────────────────┘
                                         ┌─────────────────────────┐  ┌──────────────────────────┐
                                         │  Ministry of Agriculture │  │    Bureau of Fisheries   │
                                         └─────────────────────────┘  └──────────────────────────┘
                                         ┌─────────────────────────┐
                                         │ Ministry of National Defence│
                                         └─────────────────────────┘
┌─────────────────────────┐             ┌─────────────────────────┐
│ Central Military Committee│            │           Navy           │
└─────────────────────────┘             └─────────────────────────┘
                                         ┌─────────────────────────┐
                                         │     Maritime Courts      │
                                         └─────────────────────────┘
┌─────────────────────────┐             ┌─────────────────────────┐
│  Supreme People's Court  │            │   Provincial High Court  │
└─────────────────────────┘             └─────────────────────────┘
┌─────────────────────────┐             ┌─────────────────────────┐
│Supreme People's Prosecute│            │   Provincial Prosecute   │
└─────────────────────────┘             └─────────────────────────┘
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Note: ▬▬▬▬▬   Parallel relation at highest central level

        ▬▬▬▬   Subordinate relation

        ────   Subordinate relation
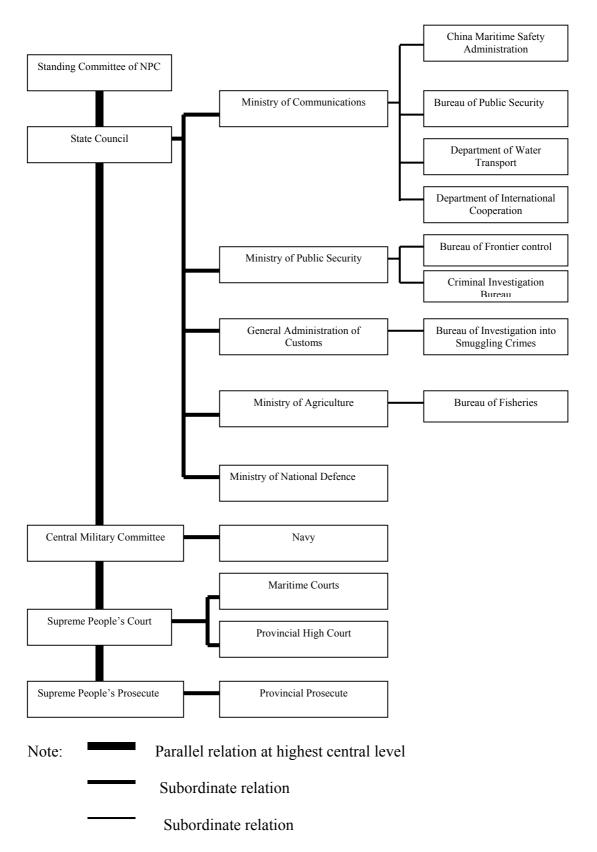
Figure 5.1   Institutional Structure of Organizations Concerning Maritime
               Security in China

located, and the Ministry of Public Security (MOPS), under which the maritime police is found.

Judicially, the Supreme People's Court and its lower branches – Provincial High Courts, Prefecture Intermediate Courts and County Courts – try cases of both civil violations and criminal offences. Maritime Courts have exclusive jurisdiction over maritime trade cases. Maritime security cases, if in need of being tried, have to be submitted to courts for proceedings or prosecutions.

In addition, in some cases, the military forces, mainly the navy, also get involved in ensuring the maritime security. Subject to the principles discussed earlier, the Chinese warships may seize pirate ships on the high seas regardless of their flags. The Chinese Navy also gives help to the maritime administration and police in law enforcement in the Chinese maritime zones for the purpose of maritime security.

At any rate, most of the tasks for ensuring maritime security rest on the Ministry of Communications and the Ministry of Public Security. Their respective specific functions will be discussed below.

5.2.2 Policy Aspects of Practice in Addressing Maritime Security Issues

Although it is recognized that maritime terrorism has posed global threat to the world shipping, in practice over the past few year and up till now, it is still an issue in China with only potential policy-oriented significance. However, anti-piracy has long been a priority on the work agenda of the Chinese maritime administration and maritime police. The Bureau of Frontier Control and the Crime Investigation Bureau, both under the Ministry of Public Security, have worked very closely with China MSA in fighting against piracy and armed robbery in the Chinese waters and supplying assistance to the foreign counterparts in dealing with some relevant cases.

In 1993, several Chinese ministries issued a document on enhancement of security for shipping and fishery in the eastern sea areas, which is regarded as a

special regulation on the suppression of piracy. This document requested the coastal provinces and all relevant departments to pay close attention to the security for the shipping and fishery sectors. The Central Government and local governments have adopted a series of policies and measures to prevent and suppress piracy attacks. Particularly after 1999, several campaigns against piracy have been organized.

5.2.3 Legal Aspects of Practice in Addressing Maritime Security Issues

In China's legal system, there is no such definition as "piracy". According to its recently revised Criminal Code, certain crimes, particularly some crimes of endangering public security, are relevant to piracy so that the piracy can be punishable under this law. In addition, this law provides that "for the crimes defined in international treaties, concluded or acceded to by the People's Republic of China, which are under the jurisdiction of the People's Republic of China within the framework of the treaty obligations, this Law shall apply"[ix]. It thus establishes the universal jurisdiction of China over some kind of international crimes. China ratified the UNCLOS 1982 and the SUA Convention 1988, which have provisions on the suppression of piracy and maritime terrorism. For that reason, China is obliged to arrest and suppress piracy at sea and should impose punishment upon it according to its law. As mentioned at the beginning of this chapter, the Chinese courts have tried several serious piracy cases and give sentence to the perpetrators in accordance with the *Criminal Code of the People's Republic of China.*

In his paper entitled "Transformation of Convention into National Legislation: Piracy and Suppression of Unlawful Acts", Professor Mukherjee excellently examined how international legislation may be appropriately transformed into national legislation through a "hands on" approach by doing an exercise on the provisions of UNCLOS 1982 and the whole SUA Convention 1988. In the exercise, the piracy provisions of UNCLOS and the relevant provisions of the SUA Convention in its current form was combined into a single piece of legislation. The legislation so conceived, he suggested, may be a separate Act or Law incorporating these convention provisions, or it could be part of a comprehensive Shipping Act or Maritime Code. (Mukherjee, 2002, p75). The drafting exercise itself proceeded on

the basis of the latter. China is basically a country with civil law system, and it seems quite unlikely that the relevant provisions of UNCLOS and SUA Convention can be transformed directly in to the single Chinese Maritime Code.

The CMI Model National Law on Piracy or Maritime Violence has been mentioned in Chapter 2 as one of the most important aspect of international efforts to address maritime security concerns. The China Maritime Law Association as one CMI member, participated in the formulation of this very important document that voices out private maritime sector's appeal. Basically, the CMI Model is trying to encourage states to make a single specific law on suppression of piracy or maritime violence. However, due to China's prevailing legislative system and practice as well as the current work priorities of legislative bodies, this author thinks that it is not much likely for China to follow this CMI Model. Even so, nevertheless, there will exist the following possible alternatives:

➢ One option is to add specific provisions on combating piracy to the Criminal Code. The crime of piracy can be separately stated in the Code but not belonging to the category of robbery or of murder. But this option is very unlikely to be subscribed.

➢ The Standing Committee of the National People's Congress adopts a special decision on anti-piracy. The NPC has adopted many special decisions on suppression of particular crimes for example, crimes in banking sector, economic crimes, cult crimes. These stand also as laws. But crimes specified in these instruments should be very severe and, without such decisions adopted, the courts have no laws to apply to suppress such crimes. But this alternative of dealing with piracy seems also improbable.

➢ Another alternative is for the Supreme People's Court to offer special judicial interpretation on piracy crime. Just like many other circumstances, interpretative provisions on how to try piracy crime cases might be prescribed with the CMI Model National Legislation as a useful reference tool.

With such legislative and enforcement actions together with the above-mentioned technical measures, it is no doubt that "iron arms" approaches have resulted in satisfactory achievements. That is why there were no piracy cases reported in Chinese waters in 2001 and 2002. The IMB Deputy Director Capt Jayant Abhyankar applauded China's strong line on piracy[x]. Based on these, in terms of the national compliance and implementation of the international instruments in anti-piracy, China's practice is worth emulating. China is a responsible country in trying to make its waters free from piracy.

As for maritime terrorism, the ISPS Code adopted by the SOLAS Contracting Parties Conference and mentioned in Chapter 4 of this dissertation is undoubtedly the most important IMO instrument in preventing mainly maritime terrorism incidents. Every Contracting Party to SOLAS is obligated to comply with it and implement it by introducing national legislation and taking necessary policies. China as a SOLAS contracting party is not an exception. This will be discussed in detail in the next chapter as a separate topic.

5.3 Participation in International Cooperation in Maritime Security

Apart from the national compliance and implementation of international conventions and other instruments to address maritime security, international cooperation, especially regional cooperation, has also been proved an effective approach in addressing piracy and maritime terrorism issues. China is a Category A member of IMO Council and has played a very important role in participating in the IMO activities. During the 71st Session of MSC in May 1999, the Chinese Delegation affirmed the Chinese Government's stance to suppress piracy and armed robbery against ships and appealed for international cooperation in combating transnational piracy. In addressing the outstanding maritime security issues in its waters or neighbouring waters, China should actively participate the international cooperation particularly on a regional basis. For a more detailed analysis, this will be elaborated in Chapter 7.

CHAPTER 6

PRELIMINARY DESIGN FOR IMPLEMENTATION

OF ISPS CODE IN CHINA: GOVERNMENT'S ROLE

In Chapter 4, it is mentioned that the ISPS Code and the associated new amendments to SOLAS Convention will enter into force on 1 July 2004. From the time this chapter of this dissertation is being written, there are less than 12 months before that date. Every Contracting Party to the SOLAS is faced with a lot of tasks for the implementation of these new global requirements, including adopting new national legislation as well as completing plenty of technical work for compliance. IMO Secretary General Mr. O'Neil has urged all parties concerned to start putting in place all the necessary legislative, administrative and operational provisions needed to give effect to the decisions of the Conference as soon as possible.

As a very important flag state and port state, China's implementation of these new global requirements has great significances to the success of the ISPS Code. The prevailing current situation on maritime security in China has been examined in Chapter 5, in which an analysis of practices in legal approaches, already available or potentially feasible, has also been made. This chapter is drifted to focus on a preliminary study on the implementation of ISPS Code in China. Being well aware that a limited number of pages cannot be sufficient for such a tedious job, this author only confines the discussion to some basic facets of the Government's role in the implementation.

6.1 Recent Practices in the United States and the Implications

The United States is one of the most active promoters for the creation of the ISPS Code. No one can under-emphasize the role played by the US government in promoting the adoption of ISPS Code and amendments to SOLAS Convention.

There is no doubt that the ISPS Code has strong American colour in it. Therefore it is necessary to examine how and what the Unites States government, particular the US Coast Guard (USCG), has been doing recently and will be doing in the coming future. It is believed that there will be some implications on the undertakings in China.

On November 24th, 2002, US President George Bush Jr. signed both the Maritime Transportation Security Act (MTSA) of 2002 and the law that establishes the new Department of Homeland Security. The US Coast Guard has already been put under this new Department. The MTSA of US certainly addresses the critical need to focus on the security of America's seaports and the maritime transportation system. But it also creates a comprehensive legislative framework to enhance the security of the global maritime transportation system. It does this through a systematic approach of defining responsibilities, creating standards, assessing vulnerabilities, and authorizing funds to address those vulnerabilities. Furthermore, the MTSA provides a clear and fresh legislative mandate for the Coast Guard to initiate new rulemaking for maritime homeland security.

While moving forward in implementation domestically, the US Coast Guard remains its focus on an aggressive outreach program with US interests and the international maritime community. Since January 2002 they had a number of discussions with industry and the public on maritime security initiatives. A series of public meetings were hosted by the Coast Guard to discuss the implementation of the MTSA and the IISPS Code and solicit public input for drafting regulations.

On 1 July 2003 the US Coast Guard published a series of six interim rules and promulgate maritime security requirements mandated by the US MTSA 2002 and conforming to the ISPS Code. The six interim rules consist of: Implementation of National Maritime Security Initiatives; Area Maritime Security; Vessel Security; Facility Security; Outer Continental Shelf Facility Security; and AIS. The series of interim rules addresses security assessments and plans, as well as other security standards, measures, and provisions that, with the exception of AIS, will be codified in the new subchapter H of Title 33 of the Code of US Federal Regulations. This

Implementation of National Maritime Security Initiatives establishes the general regulations for subchapter H. These domestic maritime security requirements have alignment with the ISPS Code and the recent amendments to the SOLAS Convention. These interim rules are effective from 1 July 2003 until 25 November 2003. In November the US Coast Guard will finalize the rules. Although the finalized rules will be made on basis of public comments on the interim rules during the next 4 months, it is not foreseeable that major changes will be brought about.

While undertaking all the above, the US Coast Guard takes a strategic approach characterized by placing a premium on identifying and intercepting threats well before they reach the US shores by conducting layered, multi-agency, maritime security operations; by strengthening the port security posture of our strategic economic and military ports; and by building on current international cooperative security efforts. The Coast Guard's Maritime Strategy for Homeland Security is an integral part of the US National Homeland Security Strategy. On July 2002, the US President unveiled their National Homeland Security Strategy, which outlines plans to accomplish three broad objectives: to prevent terrorist attacks within the United States; to reduce America's vulnerability to terrorism; and to minimize the damage and recover from attacks that do occur. The US strategy depends primarily on sharing information, securing the US borders, protecting vital infrastructure, partnering with others at home and abroad, and preparing to respond quickly to future events.

According to the US Coast Guard, there are six principal elements of their maritime security strategy. First, they ensure that enhanced security operations be conducted. Second, they aim to strengthen their port security posture and reduce the vulnerability of strategic economic and military ports. Third, they are to create a more comprehensive awareness of threats and activities in the maritime domain. Fourth, they will acquire and build Critical Security Capabilities. Fifth, they prepare their forces to transition easily between homeland security and homeland defence operations. Finally, they have set out to organize and sustain a lasting partnership between the public and private sectors, both at home and abroad.

It is worth mentioning the US plans for port state control measures specified in the interim rules. The Coast Guard considers ISPS Code, part B, an essential element to ensure full and effective compliance with the intent of the MTSA. Foreign flag vessels entering the U.S. will be expected to carry valid ISSCs and have the security plans fully implemented. The relevant provisions in ISPS Code, part B, will be taken into account by Port State Control Officers (PSCOs) to assess if the security plan is fully implemented as required by the interim rules. The USCG intends to implement strong Port State Control (PSC) measures to aggressively enforce these regulations that will include tracking the performance of all owners, operators, flag administrations, recognized security organizations, charterers, and port facilities. Noncompliance will subject the vessel to a range of control and compliance measures, which could include denial of entry into port or significant delay. They will strictly enforce compliance with SOLAS and the ISPS Code for foreign SOLAS vessels, including assessing the risks posed by such vessels and any control measures that may be required when they call on foreign port facilities that do not comply with SOLAS and the ISPS Code. A vessel's history of compliance, or lack thereof, or security incidents involving a vessel will be important factors in determining what actions are deemed appropriate by Coast Guard PSC Officers to ensure that maritime security is preserved. The performance of the owner, operator, flag with ISSCs issued by recognized security organizations that are not properly designated, or that do not meet the required competencies and qualifications, will be subject to strict control measures, including possible expulsion from port and denial of entry into the US.

According to the USCG Commandant Admiral Collins, they are "leaning forward aggressively to give life to the ISPS Code"[xi]. One can clearly see this from the above descriptions of their latest practices and plans. The US national legislation on transportation security is going on in parallel with the IMO rule making on maritime security and to a large extent, the ISPS Code is modelled on the US MTSA. The US and other enthusiastic countries successfully made the ISPS Code adopted by Contracting Parties to SOLAS Convention. The PSC measures planned by the USCG have made it imperative that any flag states with their ships calling the US

port have to do anything necessary to comply with the ISPS Code. Otherwise their ships may face troubles after 1 July 2003 in the US ports.

6.2 Several Problems Relating to the Implementation of ISPS Code in China

By making comparisons between the US and China, one may find out several outstanding problems relating to the implementation of ISPS Code in China.

Firstly, there is a question on risk management philosophy. It does not mean there is no risk management philosophy in place in the Chinese maritime administration, but it is true that, regarding the maritime security, particularly on the maritime terrorism issues, China has not so strong consciousness of risks and vulnerabilities compared with the US. After all, the American people felt more from the "911" attacks. Maritime security has become a global concern, but the meaning of risks might be different to different parts of the world. For an effective implementation of ISPS Code, this author believes that China should first enhance the risk management principles.

Risk management principles acknowledge that while risk generally cannot be eliminated, it can be reduced. Risk reduction is done by adjusting operations to reduce consequences, threats, or vulnerability of a security threat. Generally, it is easier to reduce vulnerabilities by adding security measures than to reduce consequences or threats (although reductions in all three are possible). Risk assessments provide visibility into those elements of the risk equation that exert the greatest influence on risk. Those elements become the priorities in the risk management approach. The goal for maritime security is to ensure that if the level of threat increases, either the consequences or vulnerabilities decrease enough to offset that increase. So it is still important that even without terrorist or other serious attacks that have happened in China, the risk management principle should be borne in mind for implementing the ISPS Code.

The second problem is the shortcomings in institutional build-up. The US Coast Guard is now shifted from the Department of Transportation to the Department of Homeland Security, thus further intensifying its position as lead agency in ensuring maritime security. But in China it is a different story. As mentioned already in Chapter 5, in China, most of the operational tasks for ensuring maritime security rest on the Ministry of Communications (MOC) and the Ministry of Public Security (MOPS). The MOPS is mainly in charge of investigation of maritime crimes like piracy or terrorist attacks after these really have happened, although sometimes it gets involved in taking preventive measures like, for example, sending police to patrol at sea. As far as the ISPS Code is concerned, its implementation is still within the scope of functions of the MOC. Even so, there are shortcomings existing internally within the MOC mainly because the ISPS Code also applies to port facilities. Under the MOC, the Department of Public Security (DOPS) – at the same level as the Maritime Safety Administration (MSA) - is mandated to take care of security onboard coastal and inland passenger ships and security within all the ports across China. In nearly all ports in China, the DOPS has its police or other equivalent personnel. The DOPS may take charge of the port security assessment and approval of port security plans as required by the ISPS Code. On the one hand, it is good because these persons might well function as the PFSOs required by the ISPS Code. On the other hand, this makes it necessary that the implementation of ISPS Code has to be tailored to two different departments, namely, the MSA and the DOPS. The coordination of these two departments appears crucial to the implementation. In addition, within the MSA, the current institutional organization cannot adapt to the new challenges brought about by ISPS Code. There is no division exclusively in charge of maritime security issues, and the professional personnel are also inadequate.

The third problem might be the lack of technical legislation in maritime security. The availability of the US MTSA substantially facilitates the USCG in implementing the ISPS Code in their country. In many case, what the USCG needs to do is to just directly make references to the words of ISPS Code in its legislation, which can be simply seen in the interim rules. But China lacks such high-profile

legislation. On 28 June 2003 China promulgated its Port Law, which will take effect from 1 January 2004. Chapter 4 of this law concerns port safety and the associated supervision and regulation, but all the provisions in this chapter are about the technical safety of ports, not the security. The focus placed here is still the "safety of production" as emphasized by China in all production-related sectors. Therefore regarding national legislation for implementing ISPS Code, China will have a lot of pressing work to do.

Fourth, the "overregulation" on the industry because of the ISPS Code is also obvious.   The complaints made by the shipping and port industry on overregulation have been frequently heard. Since the ISPS defines a series of responsibilities for the company, the ship and the port authority, similar complaints cannot be avoided, not only on the documentary requirements, but also on the huge financial resources required for the implementation of this new international regime. The USCG in its interim rules made a summary of cost assessment in respect of implementation of ISPS Code, which shows that it needs a tremendous amount of budget both from the Administration and the industry. According to the OECD Report, it is estimated that the initial burden on ship operators to be at least USD 1,279 million and USD 730 million per year thereafter. The bulk of ship-related costs are related to management staff and security-related equipment expenditures (OECD, 2003, p2). It is no doubt that China will also come across such a situation, but the problem for China is how the government can proceed effectively with the implementation process even if the budget is inadequate and the industry also complain about overregulation.

There are many other problems the Chinese maritime administration might encounter in implementing the ISPS Code, but all these will be specific problems concerning the transforming of ISPS provisions into technical rules. This Chapter of this dissertation is focusing on the general government roles that the Chinese authorities might play in implementing the ISPS Code.

6.3 Some Insights for Preliminary Roadmap Design

By reviewing the relevant ISPS Code provisions on Contracting Government's responsibilities and identifying basic problems existing in China, this author has the following initial insights for designing China's roadmap of implementing the ISPS Code.

6.3.1 Creating a New Division in MSA

It is entirely imperative that a new division be set up within the China MSA, which should dedicate itself to dealing with, among others, maritime security issues. Under the MSA there is a division – Division for Navigational Administration, which is directly or indirectly responsible for some maritime security issues, such as participating in piracy prevention and combating. The functions of such nature of that division can be incorporated into the new division, hopefully named as the Division of Maritime Security. As the first top priority of urgency, this new division should be mandated for implementing the ISPS Code across China. The similar organization should also be set up at MSA branches in localities. If the jobs concerned are not delegated out to other organizations like the recognized security organizations, maybe the best way is to establish a well-staffed centre like the ISM Code Audit Centre, which has existed for several years. The US practice is that, for the time being, the Coast Guard has no any plans for delegating such functions but do all itself instead.

6.3.2 Accelerating the Process of Introducing New Technical Legislation

The ISPS Code is fundamentally of a technical nature. It is not impossible for China to have state law just for the sake of implementing this international technical instrument in short period of time. In China it takes years to have a state law available. But at the ministry level, technical regulations can be issued in the form of a Ministry decree. The MSA should work very hard to accelerate such a process by introducing such a ministry decree to contain national legislation provisions that are consistent with the security regime hammered out at IMO.

6.3.3 Verifying the Compliance of Ships and Issuing ISSCs

Right after the technical regulations mentioned above are in place, the verification of companies and ships should be started at once to determine their compliance with the ISPS Code. As mentioned earlier, the USCG intends to implement strong PSC measures to aggressively enforce its regulations, interim for the time being but to be finalized within this year. A large number of the Chinese-flagged ships are engages in international voyage between Chinese ports and US ports or between other countries' ports and US ports. To avoid the troubles that the Chinese ships may face in the US ports, the MSA should also speed up the verification of the compliance by the companies and ships. Of course, before that, the companies and ships will have to formulate security plans. Even if there are such similar plans already, the contents of the plans should also be rechecked so as to be in complete conformity with the ISPS Code and the amendments to SOLAS Convention.

6.3.4 Ensuring Close Cooperation and Coordination Within the MOC

Although the MOC is the lead ministry for implementing the ISPS Code, there should be internal divisional functions among different departments within the MOC. These departments should have close cooperation and cooperation. Apart from MSA and DOPS mentioned above, there are another two departments which are also relevant to the implementation of ISPS Code. The Department of Water Transport (DOWT), which takes overall sectoral responsibility in administering the port industry particularly in port operation and management, could play some role in participating in the port security assessment and plan approval. The newly promulgated Port Law of China has stipulated administrative powers in port industry development, some of which will be exercised by the DOWT. The Department of International Cooperation (DOIC), another one of equal importance, could take care of external relations that the Ministry is maintaining in respect of the cooperation with IMO and other relevant international organizations as well as foreign countries in a bilateral way. At any rate, China MSA under the MOC should act as the coordinator in implementation of ISPS Code and play the leading role.

6.3.5 Paying Attention to External Inter-Ministry Cooperation

In order to ensure that the government role is fully played for implementing the ISPS Code, the MOC also needs to carry out close cooperation with other ministries and governmental agencies. Perhaps the practices in the US in this regard have some implications. The US Coast Guard collaborate quite frequently with the US Customs Service and the Immigration and Natural Service (INS) to improve and simplify the collection of information on people, cargo, and vessels entering in and passing through the American maritime transportation system. They meet regularly with INS and Customs to discuss the information needs of each agency and how to collect and share information. Their goal is to eventually require vessel operators to submit all arrival information to just one location, allowing government agencies to share the information. The strength worthy of being mentioned is that these three federal agencies now have co-location within the new DHS. The Chinese MOC also needs to coordinate with other ministries, mainly the General Administration of Customs (GAC) and the MOPS, for smooth implementation of the ISPS Code. To comply with the ISPS Code-defined requirement for Governments to set maritime security levels, the MOC has to coordinate with the MOPS so that the systems of maritime security levels are not in contradiction with the general public security levels defined.

CHAPTER 7

CHINA'S PARTICIPATION IN REGIONAL COOPERATION IN MARITIME SECURITY

The International legal framework for combating piracy and maritime terrorism as well as the policy-oriented global requirements for prevention and suppression of these incidents have been examined in Chapters 3 and 4. But international efforts are not merely confined to these aspects, they should also include the international cooperation on a practical basis through which countries are able to join together to materialize these global requirements. The international cooperation is therefore an important complementary factor to national compliance and implementation of international instruments concerning maritime security. Since this dissertation is intended to make a study in the context of China, this chapter therefore will, for a geo-political purpose, try to examine international cooperation on a regional or subregional basis that China can be significantly involved in and benefit from. From a practical point of view, an emphasis will be put on the prevention and suppression of piracy in the South China Sea through a regional approach - "ASEAN plus China" approach.

7.1 Necessity of Regional Cooperation

As far as the maritime security is concerned, the global level serves an indispensable function in creating blueprints for action (e.g. UNCLOS, SUA Convention and many IMO regulatory instruments), and in defining general principles, but in many circumstances it is simply expecting too much to look to this level for obligations which are both binding and detailed, or for decision-making processes which would be appropriate to all parts of the world. The region can

provide an important mediating level between the generalities of global regimes and the specifics of national implementation. The regional level cooperation can provide a convenient means of organizing the world into manageable units, for which information can be collected and digested in a sensible way, and through which patterns of behaviour may be discernible which are not evident at the global level. (Saunders, 2001, p3). One of the simplest reasons for the need of regional cooperation in maritime security is found in recognition of the fact that many piracy or maritime terrorism cases are inherently transboundary in nature, and that not all of these offences are functionally manageable at a global level. Today's maritime crime has been called the "near perfect crime", (Abhyankar, 2003, p1), which always geographically involves several countries in one same region. A lot of piracy cases occurring in the Southeast Asian region have already proved this point. Therefore it is quite necessary for countries in this region to take a regional cooperative and proactive approach to addressing such maritime security concerns. China as a maritime country in the East Asia does not have to enhance its cooperation with these regional neighbors unless it is determined to resolve the problems it is confronted. The analysis made in Chapter 5 has also led to such need for enhancement of regional cooperation.

7.2 Regional Practice in Addressing Piracy Concerns in Southeast Asia

7.2.1 Intra-ASEAN Cooperative Mechanisms

The piracy problem has been the subject of discussion in several international governmental and nongovernmental forums, including the ASEAN Regional Forum, the Asian Pacific Economic Cooperation Forum (APEC) and the Council for Security Cooperation in the Asia Pacific (CSCAP). Within APEC, for example, its Transportation Working Group established in 2001 the Transportation Security Expert Group, which is delicately intended to address transportation security issues in the APEC region. However, due to too vast geographical membership coverage (APEC has 21 members, the overwhelming majority of them being surrounding the Pacific Ocean) or because of much broader cooperative focuses other than maritime security (APEC's emphasis is on economic and trade liberalization and CSCAP more

on military and political security), the cooperative efforts through these mechanisms are more generally strategy-oriented instead of being specific, focused and operational.

In recent years, many Southeast Asian governments have taken an active role in cracking down on piracy within their jurisdictions and through their own cooperative mechanisms. It is believed that Indonesian, Malaysian, and Singaporean agencies have increased their cooperation in combating maritime piracy. The Philippine navy has set up special forces to patrol a number of areas in the Philippine Archipelago. Indian and Japanese navies have offered their assistance to the countries around the South China Sea in holding joint patrols. A good example of successful anti-piracy operation is the case of *Han Wei*. The Fairplay-carried article entitled '*Teamwork pays off in piracy fight*' said that the recovery of the missing ship "*Han Wei*" had provided another instance of the effectiveness of maritime law enforcement agencies working in close co-operation with the anti-piracy watchdog IMB[xii].

7.2.2 Regional Efforts in Anti-Piracy under Japan's Initiative

The Government of Japan has been very concerned about piracy attacks because it is dependent on passage through the Malacca Straits and Indonesian waters for its international trade. It has taken the initiative to organize various meetings within the region to enhance international cooperation and coordination to suppress piracy. Officials and law enforcement agencies have held meetings in Singapore, Japan, and Malaysia in the past two years to discuss the issue of piracy. The Coast Guard of Japan has held joint training exercises with India and Malaysia. The Japanese government has also taken steps to enhance the capacity of coast guards in the region to combat piracy by offering training at the Japan Coast Guard Academy and Training School. Two high-level international conferences on combating piracy were held in Tokyo in March and April 2000 that resulted in the endorsement of the Tokyo Appeal, the adoption of the "Asia Anti-Piracy Challenges 2000" and a Model Action Plan. Japanese foundations have also played a leading role in regional initiatives. For example, the Okazaki Institute of Tokyo collaborated

with the Southeast Asian Programme on Ocean Law and Policy (SEAPOL) and ASEAN in organizing an International Conference in Bangkok in March 2001 on Combating Piracy and Armed Robbery in Southeast Asia. In October 2001, Japan's foreign ministry hosted an international conference to discuss anti-piracy coordination efforts among Asian countries. In July 2002, this conference continued another session, at which the Japanese Government proposed a draft intergovernmental agreement on combating piracy. However, it was not accepted by the meeting, one reason of which was that Japan suggested the establishment of a piracy information centre while such a centre will have more or less the same functions as the ICC Piracy Reporting Centre in Kuala Lumpur, Malaysia. Japan's proposal for undertaking joint patrol was not supported either.

7.2.3 China's Participation and Initiatives

In order to ensure maritime security in the Chinese waters as well as to the Chinese-flagged vessels and the Chinese crews, the relevant Chinese Governmental agencies have already participated in the regional cooperation concerning maritime security in the Southeast Asia and beyond, especially the efforts to prevent and combat piracy and armed robbery against ships. The Chinese Government sent delegations to the abovementioned conferences hosted by Japan. China was also represented at the Senior Officials Maritime Meeting in Northwest Pacific Ocean, the other countries at which are United States, Russia, Republic of Korea, Canada and Japan. In addition, by cooperation with authorities of the relevant countries, the Chinese police and judicial departments dealt with some piracy cases of regional significance, some of them already mentioned in Chapter 5.

With the closer relationship with the ASEAN countries, the Chinese Government strived to set up cooperative mechanism on maritime security taking a China-ASEAN model. Mr. Huang Zhendong, Former Chinese Minister of Communications, proposed in September 2002 that China and ASEAN countries should "strengthen cooperation in enhancing international shipping safety and suppression of piracy against ships". In order to protect human lives and properties and promote the maritime transport industry of China and ASEAN, both sides should,

within the framework of IMO, strengthen cooperation in enhancing the safety of international shipping and take effective measures to fight against piracy[xiii]. The more specific implementation project for cooperation is underway at present.

7.3 Academic Perspectives in Regional Cooperation in Anti-piracy in Southeast Asia

There has been much study conducted by various scholars on regional approaches in addressing maritime security concerns. Many of them pay their attention to the study of potential options for combating piracy in the Southeast Asian Region, one of the piracy hot spots. The suggestions they have put forward should have some values of reference to a given extent.

John Mo proposed 7 possible options to combat maritime piracy in the Southeast Asia, namely, regional agreement to combat piracy, international treaty within the UNCLOS, international cooperation within the world trade organization, development of model law, improvement of the existing national system, establishment of private forces and improving existing systems[xiv]. Robert Beckman, however, emphasized that cooperative efforts should be undertaken in 3 aspects: cooperation with the IMB, cooperation with the shipping community and experts group on legal issues[xv].

Timothy Goodman, after studying problems not only in the Southeast Asia but also in other regions, suggested adopting a regional Piracy Charter approach. Such a Charter he proposed should include these minimum elements: (1) reaffirmation of a signatory State's obligation, as Party to the Piracy Charter, to suppress piracy according to the custom and practice of international law, including all relevant international agreements currently in force; (2) the obligation of each Party to secure and promote the safety of the vessels, shipping, and nationals of all Parties to the Piracy Charter; (3) the obligation among Parties to establish a regional enforcement mechanism to suppress piracy. This mechanism would take place within the framework of designated maritime zones, or "Joint Patrol Areas" (JPAs), in which each Party's navy and maritime law enforcement would police the region's

waters, arrest individuals, and seize offending vessels; and (4) a regional, uniform extradition procedure for apprehended pirates that changes the current practice to permit each State to prosecute pirates under its own laws. Instead, each Party which apprehends a pirate would be required to deliver up him or her to the nation state whose property and/or nationals are deemed most reasonably damaged, injured, or otherwise negatively impacted in the piratical incidents. These extradition decisions would be made by a regional, quasi-judicial "Piracy Commission". In Southeast Asia, Goodman specifically holds, a Piracy Charter for Southeast Asia linked to the existing organization like ASEAN could enhance the battle against piracy in the Malacca Straits and the South China Sea[xvi].

Although there are different focuses emphasized in the above academic perspectives on anti-piracy in the Southeast Asia, at least one thing in common is that they all agree that a regional legal arrangement approach should be taken. It is desirable that the ASEAN countries to conclude regional agreement on cooperation in combating piracy. This is also one of the requirements contained in the MSC Circular 622. The agreement may include coordination in prosecution of pirates, extradition of pirates as prescribed in the SUA Convention and joint patrol for prevention of piratical attacks. But it should be noted that there may be existing some possible legal barriers to the anti-piracy efforts or the likewise activities to combat maritime terrorist offences. While recognizing that the UNCLOS provides an option for combating piracy in Southeast Asia and the treaty must be enforced by its members, this author notes with curiosity that Thailand, one of the major littoral countries in Southeast Asia, has not ratified this convention. In Southeast Asia and within its immediate vicinity, only China, India, Japan, Pakistan, and Sri Lanka have ratified the SUA convention and many littoral countries in Southeast Asia are not contracting parties to the convention, thus making that the effect of the convention on combating piracy in Southeast Asia is quite limited. For conclusion of an ASEAN agreement, these countries should ratify the SUA Convention as a first step.

7. 4 Potential China-ASEAN Cooperation in Suppression of Piracy in the South China Sea: A Case Study

In the 1990s, the South China Sea was categorized as one of the most piracy prone areas in the world. As mentioned earlier, the hijacking of the oil tanker *Petro Ranger* was a typical example that happened in this area and brought highly regional significances. A number of scholars referred to the international cooperation in suppressing piracy in the South China Sea. Many proposals have been also put forward. This author makes a case study on this very issue under the potential China-ASEAN cooperation framework trying to work out some feasible solutions.

7.4.1 Importance of South China Sea in Maritime Transport

The South China Sea is part of the "choke points" in the sea-lanes of transport in the world. The security of navigation of vessels through these sea-lanes is of vital interest for the East Asian countries. More than half of the world's merchant fleet capacity sails through the straits of Malacca, Sunda and Lombok and the South China Sea. More than 10,000 vessels of greater than 10,000 dwt move southward through the South China Sea annually, with well over 8,000 proceeding in the opposite direction. With the fast growth of economy in East Asia, the recent trend to greater intra-Asian trade results in more shipping in the littoral waters of Southeast Asia and the South China Sea. Thus the sea routes in the South China Sea are usually regarded as economic lifelines for the East Asian countries. For such reason, it is obvious that acts of piracy in the South China Sea constitute a great threat to the security of navigation as well as to the safety of vessels and crews.

7.4.2   Reasons for Piracy Incidents in South China Sea

There are a lot of reasons why serious piracy cases have happened in the South China Sea, including economic, political, legal and geographical ones. The complicated topography and the vast size of the South China sea may stimulate pirates to commit crimes more frequently than in other regions. From a legal point of view, effective law enforcement is extremely difficult in the South China Sea

because of its vastness (more than 200 nautical miles wide) and due to the fact that it is dotted with numerous uninhabited islands to which pirates can retreat.

Another reason lies in the application and interpretation of some provisions of UNCLOS. This is also a reason common to many other piracy hot spots. Since the definition of "piracy" under UNCLOS is only applicable to the acts of piracy in the high seas or places outside jurisdiction of States, it has a geographic limitation and could not cover the whole piratical situation in the South China Sea. The piracy provisions in the UNCLOS, once they become the basis for the regional cooperation combating the piracy at sea, are applicable to the EEZs in the region. It is recognized that suppression of piracy within national jurisdiction is a duty and obligation of a coastal State on behalf of the interest of the entire international community as well as for its own interest. Since the EEZ is now within the national jurisdiction of the coastal State, the degree and scope of the applicability of the piracy provisions in the UNCLOS may differ from their application to the high seas. The key question lies on the jurisdictional aspect. If a pirate is chased on the open sea and flees into the territorial maritime belt, the pursuers may follow, attack and arrest the pirate there; but they must give him up to the authorities of the littoral state. Despite all these, the reality is that the littoral countries in the South China Sea are always reluctant to intervene piracy cases even in their EEZ while the cases are happening, but instead, confine their actions only in their territorial seas, even if they may have the capabilities to sail their warships or governmental vessels their EEZ.

The third reason might be the different provisions on piracy in national laws of the countries in the South China Sea Area. The law of piracy at the national level is different from the law of piracy at the international level in that in the case of municipal crime the jurisdiction is reserved to the nation State, whereas in the case of international crime all nations may seize, try and punish for the offense. The coastal States have the sole jurisdiction over the acts of piracy committed within their internal waters and/or territorial sea. Thus jurisdiction and enforcement in these sea areas differ from those exercised in the EEZ or the high seas. There is no uniformity of definition in the municipal legislation of different states. The Philippines

specifically put "piracy" under its Penal Code and impose death penalty on those who commit piracy. As to other countries, it seems that there is no specific mention of piracy in their criminal laws, but they can rely upon some legal basis in their relevant laws and regulations to control and punish piracy in the South China Sea. As already mentioned earlier, China has further strengthened its efforts to crack down the maritime crimes within its jurisdictional waters after the *Petro Ranger* incident by resorting to its Criminal Code. There are more than dozes of pirates already sentenced to death. But in some countries, death penalty is not allowed by law. It is believed that if China's "hard hit" policy were also adopted in other South China Sea countries, there would be less and less piratical attacks in this region.

Perhaps the main obstacle to the regional cooperation in the South China Sea is the overlapping territorial claims for groups of islands. The Nansha Islands (referred to in international literature as the "Spratly Islands") are claimed by five adjacent countries, i.e., Brunei, China (including Taiwan), Malaysia, the Philippines, and Vietnam, and the territorial disputes have not yet been resolved. Even if the territorial disputes had been solved, there are still boundary delimitation issues in the South China Sea. But these cannot be solved overnight. Disputes over maritime boundaries make accurate delineation of enforcement responsibility difficult, if not impossible. As a result, the pirates take advantage of these weaknesses of inadequate enforcement.

7.4. 3 Possible Options for Solutions by Regional Cooperation

Since there are such complicated circumstances like obstacles due to territorial disputes, cooperation is the only way for the regional maritime security in the South China Sea. The regional cooperation could take various forms. Based on the above analysis, it is believed the following options for solutions should be took into consideration.

7.4.3.1. Regional or Bilateral Agreement

If all the countries bordering the South China Sea are willing and intend to agree to form some kind of regional mechanism on suppression of piracy, for example, the "ASEAN plus China" mechanism, then they need a framework agreement as a guiding code to negotiate and implement necessary concrete measures. Some of the elements in other existing relevant treaties, whether regional or worldwide, can be imported for such framework agreement. For instance, the ASEAN countries and China can conclude such an agreement using the model specified in MSC Circular 622. Some of the contents in IMO Resolution 922 on investigation of piracy cases may be incorporated into such an agreement. John Mo's proposal and Goodman's "piracy charter" suggestion, as mentioned above, may also have some implications for conclusion of an ASEAN-China agreement. Alternatively, such agreements may be concluded on bilateral basis taking into account the various national situations.

7.4.3.2 Joint Patrol

Joint patrol for preventing piracy has already been realized in some sea areas, for example, the patrol in the Straits of Malacca and Singapore by the tripartite team of Singapore, Malaysia and Indonesia, and also the joint patrol by Indonesia and India in the Andaman Sea. But in the South China Sea, this would be more complicated due to various reasons, some of which have been mentioned above. For the time being, the possibility seems vague as the territorial disputes remains as obstacles. There is still a lack of trust among some of the neighboring countries in the region. Malaysia has rejected the idea of joint anti-piracy patrols with Japan at a meeting in Kuala Lumpur in 2000, which was attended by officials from 15 countries to discuss combating pirate attacks in Southeast Asia. But as a long-term objective, joint patrol by the relevant countries is still likely as they enhance mutual confidence and the constraints like territorial disputes are gradually removed.

7.4.3.3 Exchange of Information

Even with the availability of a regional agreement, the ultimate duties would still rest on the individual states through their individual actions. But exchange of information to the fullest extent is a key factor to the success and effectiveness of such individual actions. It was already suggested that China's "hard hit" policy be adopted by other South China Sea countries concerned. The unilateral "hard hit" is also largely dependent on complete exchange of information necessarily required. In any case, the pirate will go back to land after committing attacks. If countries exchange in-time information on the pirates and their acts and take legal actions, for example, prosecution and punishment, against them, then they will have nowhere to hide them. In this sense, the complicated topography and the vast size of the South China will never be an advantage to be used by pirates.

7.5 Recommendations on Regional Approaches

The above case study on the South China Sea concerns only the piracy matters. In fact, the similar approach can also be taken for solutions to maritime terrorism, if any. The ISPS Code also recognizes the necessity of conclusion of regional agreement on implementation of the Code.

It is believed that China can significantly contribute to regional or subregional cooperation in maritime security and therefore benefit from such cooperation. To sum up, the following recommendations are put forward:

➢ To make use of the established mechanism, e.g. "ASEAN plus China" cooperation in transportation;
➢ To conclude regional agreement following the IMO Model draft;
➢ To set "joint patrol" as a long-run objective;

➢ For some ASEAN countries, to ratify SUA Convention; and
➢ To ensure complete and in-time exchange of information.

CHAPTER 8
SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Maritime security has now become a global concern, which is no exception for any maritime nation in the world. The threats posed by pirates and terrorists have done harm and damage to the ships, crews and property at sea and at ports as well as to the peace in some regions and national security in some countries. After the "September 11" attacks, maritime security, like security of other kind, has never drawn such more worldwide, regionwide and nationwide attention than before. To address maritime security concerns and issues is a top priority item of IMO's working agenda as well as of its members.

In this dissertation, this author has examined efforts already made to address the maritime security at the global level, particular by the IMO, either through legal means or technical measures. The national practices in China and the relevant regional cooperation with China's participation are also examined. The outstanding problems have also been identified and some proposals for solutions to these problems have been put forward. During the study leading to these proposals, two lines of thinking with different focused are obvious: one on piracy, on legal means by combating, and on regional cooperation (cooperation in the South China Sea, in particular); the other on maritime terrorism, on technical measures by prevention, and on national compliance with the new ISPS Code.

8.1 Summary of General Conclusions

This author makes a summary of conclusions from the preceding chapters by offering the following illustrative model:

Nature of Measures
(Chronological)

Levels
(Vertical)

Role Players
(Horizontal)

⇩

⇩

⇩

GLOBAL
Requirements/Standards/
Recommendations

IMO Resolutions/Guidelines

ISPS Code

SUA Convention 1988

MSC Circ. 622

MSC Circ. 623

Government

Prevention/
Precaution

REGIONAL/
INTERNATIONAL
Cooperation

Implementation of ISPS Code and Others

Administration Responsibility

Close Cooperation
and Coordination

Equally Important
Measures

UNCLOS 1982

Suppression/
Combating

Legislation

Enforcement

NATIONAL
Compliance &
Implementation

Industry

Company and Port Authority Responsibility

⇧

⇧

⇧

Combination of
Pre- and Post-
Occurrence
Measures

National Compliance
and Implementation
& Regional/International
Cooperation under Global
Requirements Framework

Government-
Industry
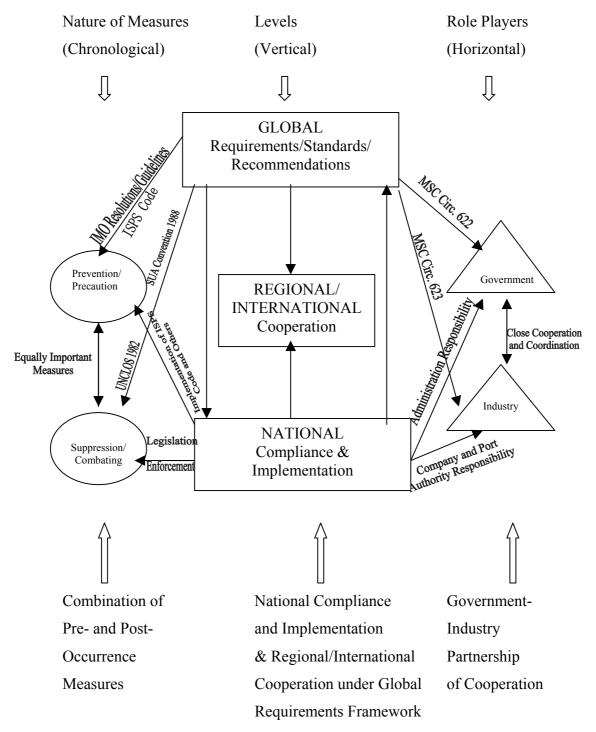Partnership
of Cooperation

Figure 8.1 Model: Basic Framework of Approaches to Addressing Maritime
Security Issues

An overall summary of points on this model is made as follows:

➢ Because of the existence of different levels, it must be ensured that a sound performance embodying national compliance and implementation as well as regional/international cooperation under the global requirements framework is achieved;

➢ Equal importance should be attached to prevention/precaution and suppression/combating to ensure that a combination of both pre- and post-occurrence measures is pursued;

➢ A partnership of close cooperation between government and industry should be established and maintained to take all these measures required;

➢ The global requirements for preventing maritime security incidents are laid down mainly in SOLAS Convention Chapter IX-2 and ISPS Code as well as a series of IMO Resolutions and Circulars. ISPS Code is the most comprehensive one taking risk management approach, directed both to government and industry, whereas MSC Circ.622/Rev. is directed to the governments and MSC Circ.623/Rev is to the industry (shipowners, shipmasters and shipcrews). In fact, the two important MSC circulars also cover some suppression measures such as investigation of incidents;

➢ The global requirements for suppression and combating unlawful acts against maritime security are spelled out mainly in the UNCLOS 1982 and the SUA Convention 1988. By and large, they contain responsibilities of governments that should be taken to investigate and combating the maritime security incidents and arrest, prosecute, punish and extradite the offenders;

➢ Regional and international cooperation should be conducted by national administrations and industry sector to both prevent and suppress maritime security incidents. Shipping is an international business, and terrorism is an international threat requiring long-term multilateral solutions. International cooperation is critical in some circumstances (e.g. anti-piracy). As the U.S. Coast Guard Commandant Admiral Thomas H. Collins put, "none of us can do it alone"[xvii].

Consequently, it could be concluded that the global requirements are prevailing necessary preconditions for ensuring maritime security in the world; the national compliance and implementation of international maritime security in one state is critical to success in its jurisdiction; the regional and subregional cooperation is complementary and effective tools for promoting national compliance and implementation.

8.2 Specific Recommendations to China

Based on the analysis and study in the preceding chapters, a number of recommendations could be put forward to China. In terms of their nature, these recommendations include technical ones (for government and industry), legislative ones (primary and subsidiary legislation), law enforcement-related ones (enforcement of both regulatory and penal laws) and institutional (structure reforming, personnel training and capacity building).   Moreover, some recommendations are suggested keeping in mind the combination of on self-reliance and learning from others (for example, considering the actual national situation in China and the recent and current practices adopted by the US). Specifically, these recommendations are suggested as follows:

> *Adhere to some basic principles*

In accordance with the above general conclusions, China should adhere to some basic principles: equal importance should be to attached to both prevention and suppression; government/administration and industry should maintain close cooperation and coordination at all times; domestic implementation of global treaty requirements and participation in the international/regional cooperation should be carried out simultaneously in parallel; at operational level, maritime administration and maritime police should enhance their cooperation and coordination in a way of making concert efforts.

> *Take some steps in the near future*

There is only less than one year from now to the entry into force date of SOLAS Amendments and ISPS Code. Like all the other maritime administrations, China MSA faces a challenge in implementing the Code. A new division should be set up within the MSA at the headquarters and branches levels to dedicate to dealing with maritime security issues, and the top priority of urgency is to implement the ISPS Code across China. The process of preparation for implementation of ISPS Code should be accelerated so as to meet the deadline set by the SOLAS amendments.

➢ *Introduce policy-oriented initiatives and policy measures*

Like the United States, China should also develop its maritime strategy for homeland security under the overall framework of National Homeland Security Strategy. In implementing the ISPS Code, it is strongly encouraged to use the "Family of Plans" concept among the international partners, so as to maximize communication and coordination throughout the maritime community as well.

Technical standards of security-related equipments should be developed and rules and regulations on certification, survey and installations of these equipments onboard ships should be formulated. In accordance with the IMO requirements, ships engaged in international voyages shall install two systems relating to ship security, namely, the AIS and the ship security alert system. The relevant amendments to the SOLAS Convention have made substantial adjustments on timing of requirements for installation of these two systems. The timetable is much earlier than previously set because of the new situation of anti-terrorism in the world. The early operation of these systems will be beneficial to the communications between ships and shore authorities. In suppression operations, the momentum of "hard hitting" against piracy should continue to be upheld.

➢ *Introduce new legislation with respect of maritime crime against maritime security*

Since piracy and maritime terrorism are maritime crimes, it is imperative for China to introduce necessary new legislation. For example, the Criminal Code could be modified to include some anti-piracy provisions, or alternatively, special rules on combating piracy crimes should be introduced.

➤ *Provide guidance to the shipping and port industry*

The Maritime Administration should give all necessary technical guidance to the shipping and port industry in respect of maritime security. Such guidance should be scenario-specific and nature-of-incident-based. For example, preventive measures against piracy and these against maritime terrorism to be taken by a ship underway must have some differences. To prevent piracy, the shipping company, the ship master and crews should be well aware of international requirements and standards.

➤ *Be an active participant in the international cooperation, either on global or regional basis, for preventing and suppressing maritime security incidents*

Geo-politically, China should enhance its cooperation with the ASEAN countries in maritime security, in which the most appropriate mechanism is "10+1" cooperation in transportation. For the time being, the cooperation with the ASEAN countries should be further pushed forward in preventing and combating piracy, especially in the South China Sea area.

8.3 The Way Ahead

Maritime security is a global concern in the current world. To ensure and enhance maritime security, efforts should be made at global, regional and national levels. As a major maritime nation, China should join the other countries to achieving the objective of safe, secure and efficient maritime transport on clean seas and oceans. For a right way ahead, the following must be firmly kept in mind:

"Our imperative must go beyond specific security measures. We have been extremely successful as partners in building a positive culture

of consciousness with respect to safety and environmental matters. We must apply even greater energy in adding a security culture to world shipping. Despite the obvious difficulties, we must be committed to improving both security and efficiency in world shipping. And we must be committed to seeking multi-lateral solutions, rather than unilateral solutions wherever possible."[xviii]

Endnotes

[i] IMO, *ISPS Code*, pp61-62.

[ii] See *United Nations Convention on the Law of the Sea,* article 101.

[iii] See IMO Assembly Resolution A.922 (22), annex, paragraph 2.2.

[iv] MSC Circular 622, Annex, paragraph 1.

[v] See W. A. O'Neil, *Foreword, Security at Sea: Terrorism, Piracy and Drugs*.

[vi] See *IMO News*, Issue 1, 2003, p2.

[vii] Http://www.moc.gov.cn/gaikuang/WATER/2000-01.doc. Retrieved on 2 July 2003.

[viii] See comments of William M. Carpenter, http://www.uscg.mil/hq/g-m/nmc/security/papers.htm.

[ix] See *the Criminal Code of the People's Republic of China*, Article 9.

[x] See *Fairplay*, 28 October 1999, p 14.

[xi] See speech made by Admiral Thomas H. Collins Commandant, United States Coast Guard International Maritime and Port Security Conference Singapore on 21 January 2003, p3

[xii] See *Fairplay*, 6 June 2002, p9.

[xiii] See Minister Huang's speech entitled *Working Together to Open Up a New Prospect For China-ASEAN Cooperation on Transport, at* http://www.moc.gov.cn/zhengwu/zhengwu/76english.htm.

[xiv] See Mo, J. (2002, March and April). Options to combat maritime piracy in Southeast Asia. *Ocean Development & International Law, 33* (3-4), pp343-358.

xv See Beckman, C. R. (2002, March and April). Combating piracy and armed robbery against ships in Southeast Asia: the way forward. *Ocean Development & International Law,* 33(3-4), pp317-342.

xvi See Goodman, T. *"Leaving the Corsair's name to other times:" How to enforce law of sea piracy in the 21st century through regional international agreements*. At http://proquest.umi.com/pqdweb?TS...Sid=1&Idx=74&Deli=1&RQT=309&Dtp=1.

xvii See speech made by Admiral Thomas H. Collins Commandant, United States Coast Guard International Maritime and Port Security Conference Singapore on 21 January 2003, p4.

xviii Ibid, p6.

References

Abhyankar, J. (2003). *Maritime crime*. Unpublished lecture handouts. World Maritime University, Malmö, Sweden.

Beckman, C. R. (2002, March and April). Combating piracy and armed robbery against ships in Southeast Asia: the way forward. *Ocean Development & International Law,* 33(3-4), 317-342.

Collins, T. H. (2003, January 21). Speech given at the International Maritime and Port Security Conference, Singapore. Retrieved 4 May 2003 from the World Wide Web:
http://www.info.gov.hk/gia/general/200302/25/0225090.htmon

Huang Z.D. (2002, September 20). *Working together to open up a new prospect for China-ASEAN cooperation on transport.* Speech given at the first ASEAN-China Transportation Ministers Meeting. Retrieved 5,March 2003 from the World Wide Web: http://www.moc.gov.cn/zhengwu/zhengwu/76english.

ICC/IMB. (2003). *Piracy and armed robbery against ships: Annual Report.*
1 January – 31 December 2002. London: ICC/IMB.

International Convention for the Safety of Life at Sea 1974 (SOLAS), IMO (2002).

International Convention on the Law of the Sea 1982. United Nations (1982).

International Maritime Organization. (2000). Piracy and armed robbery at sea. In *Focus on IMO.* London: Author.

ISPS Code. London: International Maritime Organization (2003).

Mejia, M. Q. Jr. (2003). *Maritime Crime*. Unpublished lecture handout, World Maritime University, Malmö, Sweden.

Mejia, M. Q. Jr. (2002). Defining maritime violence and maritime security. In Mukherjee, P. K., Mejia, M. Q. Jr. & Gauci, G. M. (Eds.), *Maritime violence and other security issues at sea: The proceedings of the symposium on maritime violence and other security issues at sea, 26-30 August 2002, World Maritime University, Malmö, Sweden* (pp. 27-38). Malmö: WMU Publications.

Menefee, S. P. (2002). CMI model national law on piracy or maritime violence. In Mukherjee, P. K., Mejia, M. Q. Jr. & Gauci, G. M. (Eds.), *Maritime violence and other security issues at sea: The proceedings of the symposium on maritime violence and other security issues at sea, 26-30 August 2002, World Maritime University, Malmö, Sweden* (pp. 101-114). Malmö: WMU Publications.

Mo, J. (2002, March and April). Options to combat maritime piracy in Southeast Asia. *Ocean Development & International Law,* 33 (3-4), 343-358.

Mukherjee, P. K. (2002). Transformation of conventions into national legislation: Piracy and suppression of unlawful acts. In Mukherjee, P. K., Mejia, M. Q. Jr. & Gauci, G. M. (Eds.), *Maritime violence and other security issues at sea: The proceedings of the symposium on maritime violence and other security issues at sea, 26-30 August 2002, World Maritime University, Malmö, Sweden* (pp. 71-100). Malmö: WMU Publications.

O'Neil, W. A. (2000). IMO and the fight against piracy and armed robbery at sea. In Baltic and International Maritime Council, *BIMCO review 1997*. (pp68-70). London: Book Production Consultants Pl.c.

O'Neil, W. A. (2003). Speech at 14th Graduation Ceremony of the International Maritime Law Institute. Retrieved 16 June 2003from the World Wide Web at: http://www.imli.org/gradnews.htm.

Organization of Economic Cooperation and Development (OECD). (2003). Security in maritime transport: risk factors and economic impact. Geneva: Author

Parritt, A. H. (1991). *Security at sea: Terrorism, piracy and drugs: A practical guide.* London: Nautical Institute

Parritt, A.H. (1996). *Crime at sea: a practical guide.* London: The Nautical Institute.

Ronzitti, N. (1990). *Maritime terrorism and international law*. The Netherlands: Martinus Nijhoff Publishers,

Saunders, P. (2001). Maritime regional cooperation: Theory and principles. In Mark Valencia, (ed.) *Maritime Regime Building: Lessons learned and their relevance for Northeast Asia*. The Hague: Nijhoff

United States Coast Guard. (2003). *Implementation of National Maritime Security Initiatives.* Retrieved 2 July 2003 from the World Wide Web: http://frwebgate.access.gpo.gov/cgi-bin/multidb.cgi

United States Coast Guard. (2003). *Maritime Strategy For Homeland Security*. Retrieved 2 May 2003 from the World Wide Web: http://www.uscg.mil/news/reportsandbudget/Maritime_strategy/USCG_Maritme_Strategy.pdf

Zhang, X.J. (1999). *National maritime labour legislation*. Unpublished master's dissertation. World Maritime University, Malmö, Sweden.

Zou K. (2000, January). Enforcing the law of piracy in the South China Sea. *Journal of Maritime Law and Commerce*. 107-117

Zou, K. (2000, August). Piracy at sea and China's response. *Lloyd's Maritime and Commercial Law Quarterly*. 364-382

Appendix A   Case Example: *Alondra Rainbow*

Case Example: *Alondra Rainbow*

On 22 October 1999, the ***Alondra Rainbow,*** registered in Panama, loaded a cargo of 7000 mts of aluminium ingots and sailed from Kuala Tanjung, Indonesia for Miike, Japan. The ship was under command of Capt K O Ikeno with 16 other crew. Shortly after her departure, a gang of pirates armed with swords and guns hijacked the ship. The 17-crew members were threatened with death and transferred to another ship, which came alongside at sea. They were held captive for a week and eventually set adrift in a life raft on 29 October 1999. 10 days later, on 8 November 1999, they were rescued by a Thai fishing boat off the North East Coast of Sumatra.

On 28 October 1999, the IMB Piracy Reporting Centre commenced broadcasting a message to ships at sea via safetyNET service of Inmarsat-C with a request to any agencies report any ship, which matched the description of the ***Alondra Rainbow***. This was followed by a special alert to relevant agencies, ports, authorities and law enforcement in the Region requesting them to look out for a ship or cargo of a similar description.

On 14 November 1999, the master of a Kuwaiti tanker reported sighting a ship matching the profile of the ***Alondra Rainbow*** heading in to the Arabian Sea. The IMB Piracy Reporting Centre passed this information along with a photograph of the ***Alondra Rainbow*** to the Indian Coast Guard and requested their assistance. The response of the Indian authorities was swift, and the Indian Coast Guard immediately despatched a patrol aircraft to search the area. Upon sighting the suspect ship, the Coast Guard advised that her profile matched the photograph of the ***Alondra Rainbow.*** However, the suspect ship had a name ***Mega Rama*** and was flying the Belize flag. Quick checks by the IMB Piracy Reporting Centre revealed that no such ship was registered in Belize. This message was relayed to the Indian Coastguard. The patrol aircraft then attempted radio contact with the ship but she maintained radio silence. Thereafter a coast guard patrol vessel was sent to intercept the ship, 70 miles west of Ponnani. Despite warning shots fired across her bow, the ship increased speed and continued her path. It was only when a missile carrying Corvette, ***INS Prahar***, was called in to action that the high seas chase was brought to an end. The naval ship deployed a graduated use of force to bring about the suspect ship's capture on the 16 November 1999, approximately 300 miles west of Mumbai.

The 15 Indonesians found on board allegedly attempted to destroy the evidence by setting fire to and scuttling the ship. The naval boarding party put out the fire, brought the flooding under control and towed the ship to Mumbai.Investigations showed that Burham Nanda, chief engineer along with Christinous Mintando, master, met an employment agent at a coffee shop in Batam, Indonesia on 4 October 1999. They finalised the plans to hijack a ship. Nanda and Mintando boarded MV SANHO anchored in Jakarta. SANHO sailed with about 35 persons on board. 12 of these were armed with weapons. The persons in charge was referred to as "boss". SANHO's first port of call was Batam where she took bunkers, water and provisions. On 17 October 1999, she sailed for Kuala Tanjung, Indonesia arriving there on 22 October 1999. One member of the gang had already boarded the Alondra Rainbow whilst she was loading her cargo. In the late evening of 22 October 1999, about 10 to 12 persons armed with pistols and lethal weapons were transferred from SANHO to a speed boat. When the Alondra Rainbow was sighted, the speed boat reached behind her stern. The member of the gang who had hidden on board the Alondra Rainbow, lowered ropes for his accomplices to climb on board. The crew of the Alondra Rainbow were captured and their hands were tied. At this stage SANHO came alongside and Mintando and 14 other "crew" climbed aboard and took charge of the Alondra Rainbow. The original crew of the Alondra Rainbow ere transferred to SANHO.

On 23 October 1999, Mintando and the 14 crew changed the name of the Alondra Rainbow to GLOBAL VENTURE and proceeded to Miri in East Malaysia, arriving there on 26 October 1999. Black paint was supplied at Miri and her hull was repainted in black. On 27 October 1999, about 3,000 MT of aluminium ingots were transhipped on to another ship called BONSOON II, which came alongside. After this the employment agent instructed Mintando to sail toward Karachi in Pakistan. In the meantime the name of the ALONDRA RAINBOW, alias GLOBAL VENTURE was changed again to MEGA RAMA. In the meantime BONSOON II proceeded to Philippines and discharged the stolen 3,000 MT of cargo there. The MEGA RAMA was finally captured and taken in to Mumbai as described above. At least two of the 15 Indonesians found on board had featured in the hijacking of *Tenyu* in September 1998, which suggest that they are part of an organised syndicate.

On 26 February 2003, a court in Mumbai, India convicted these 14 Indonesians on piracy-related charges. With the conviction, they were handed down sentences varying from six months to seven years and fined Rs 28,000 ($580) each.

Appendix B   **Case Example:** *Achille Lauro*

Case Example: *Achille Lauro*

It was in October 1985 when four Palestine Liberation Movement operatives hijacked the Italian Cruise Liner while she was en route from Alexandra, Egypt to Italy. The terroists' original plan was apparently to infiltrate Israel together with their arms and explosives, but when their presence on board the vessel was accidentally discovered, they decided to hijack the cruise liner and take the passengers and crew hostage. There were 201 passengers from, among others, Australia, the United States, Italy, Germany, and Greece and 344 crew members. They threatened to kill all the passengers if 50 Palestinian prisoners, who were held in Israeli jails, were not released. They attempted to take the ship to Syria but Syria refused entry, so the vessel ended up orbiting in the Mediterranean sea. Meanwhile, the Italian turned to PLO Chief Yasser Arafat who then sent an intermediary named Abu Abbas to Egypt There followed negotiations between Egypt, Italy and West Germany. It was agreed that if the terrorists surrendered without harming the passengers, they would not be prosecuted and would be allowed to go to Tunisia, where the then headquaters of the PLO were located. This took place in the period between 7th and 9th October 1985.

On 10th October, three days after the hijacking, the terrorists disembarked in Port Said, Egypt and the captain of the ship informed the Italian Prime Minister that one of the American Passengers, who was confined to a wheelchair, was killed. Egypt denied knowledge of this situation and in the meantime the aircraft carrying the four terrorists left from Egypt to Tunisia. The aircraft, an official Egyptian plane, was also carrying the intermediary, Abu Abbas, some Egyptian diplomats and ten armed guards. Tunisia refused landing rights to the plane so it attempted to land in Greece, where permission to land was also refused. It was while the plane was turning back that the United States appeared on the scene, sending their fighter jets to intercept the Egyptian plane and to force it to land in a NATO airbase in Sicily. When the Egyptian plane landed, two US transport planes also landed in the NATO base.

Now the real "James Bond" situation unfolded. Italian military surrounded the Egyptian aircraft while the American Delta Force commandos surrounded the Italians. So the plan had two rings of security forces. The Italian somehow or other managed to prevent the Americans form entering the aircraft and take the terrorists.

US and Italian diplomatic consultations started and Italy took the terrorists to prison. Thereafter the Egyptian aircraft flew to Rome with Abu Abbas and it was escorted by four Italian Air Force jets and tailed by an American aircraft, which had no right to be over Italian airspace. When the Egyptian aircraft landed at Rome, the American plane also landed. The Americans declared a state of emergency and demanded that Abu Abbas be handed over to them.

Some more serious negations between Italy, Egypt and Palestine followed and while all this was going on the vessel was still in Egyptian waters. Thus the Egyptians had a very strong card in their hands and declared that they would not allow the ship to sail until Italy released the Egyptian state airplane. Finally Abu Abbas, protected by diplomatic immunity awarded to him by the Iraqi government, was allowed to leave and, together with the terrorists, disappeared to Yugoslavia Egypt protested to Washington against the illegal hijacking of its aircraft; the Italians protested to Washington for violation of their airspace and the Americans claimed that there was lack of cooperation from both Italy and Egypt.

18 years after the above-mentioned hijacking of Achille Lauro, in March 2003, Abu Abbas was arrested by the US troops in Bargdad, Iraq during the military campaign overturning the Sadam Husin's regime.

Appendix C

IMO Resolutions and Circulars Concerning Maritime Security

Assembly Resolutions

A.461(XI)   Barratry and unlawful seizure of ships and their cargoes (1979)
                 superseded

A.504(XII)   Barratry and unlawful seizure of ships and their cargoes and other
                 forms of maritime fraud (1981)   **superseded**

A.545 (XIII)   Measures to prevent and suppress piracy and armed robbery against
                 ships (1983)

A. 683 (17)   Prevention and suppression of acts of piracy and armed robbery
                 against ships (1991)

A.738 (18)   Measures to prevent and suppress piracy and armed robbery
                 against ships (1993)

A. 922(22)   Code of practice for the investigation of the crimes of piracy
                 and armed robbery against ships

Council Resolutions

C 88/10   Prevention and suppression of acts of terrorism against
                 shipping

C 88/10/Add.1   Idem. Outcome of the 84th Session of the Legal Committee

C 88/10/Add.2   Idem.

C 88/10/1   Idem. Technical Assistance aspects

Maritime Safety Committee   (MSC) Circulars

MSC/Circ.443   Measures to prevent unlawful acts against passengers and crews on
26/09/1986   board ships

MSC/Circ.475   Measures to prevent unlawful acts against passengers and crews on
22/06/1987   board ships

MSC/Circ.476   Measures to prevent unlawful acts against passenger and crews
22/06/1987   on board ships (Notice containing measures to prevent unlawful
                 acts against passéngers and crews onboard ships,
                 implemented in the United States in response to MSC/Circ.443

MSC/Circ.597 & Add.1 18/08/1992	Piracy and armed robbery against ships (recommending the use of search and rescue (SAR) services and mobilization, through the SAR services, of appropriate maritime authorities so that action could be taken to provide assistance to ships under attack or pursue the attackers with the minimum of delay)
MSC/Circ.622/Rev.1 16/06/1999	Recommendations to governments for combating piracy and armed robbery against ships
MSC/Circ.623/Rev.3 29/05/2002	Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships
MSC/Circ.700 20/07/1995	Piracy and armed robbery against ships (reporting increase in piracy and reiterating various Assembly resolutions)
MSC/Circ.805 06/06/1997	Guidance for the use of radio signals by ships under attack or threat of attack from pirates or armed robbers
MSC/Circ.967 06/06/2000	Piracy and armed robbery against ships: Directives for Maritime Rescue Co-ordination Centres (MRCCs)
MSC/Circ.984 20/12/2000	Draft code of practice for the investigation of the crimes of piracy and armed robbery against ships
MSC/Circ.1067	Early implementation of special measures to enhance maritime security
MSC/Circ.1073 10/06/2003	Measures to enhance maritime security: Directives for Maritime Rescue Co-ordination Centres (MRCCs) on acts of violence against ships