

World Maritime University

The Maritime Commons: Digital Repository of the World Maritime University

World Maritime University Dissertations

Dissertations

2006

The impact of post 9-11 security measures on small, aspiring and export-dependent maritime states : mixed blessings for the Caribbean

Paul Wayne Wright
World Maritime University

Follow this and additional works at: https://commons.wmu.se/all_dissertations



Part of the [International Trade Law Commons](#)

This Dissertation is brought to you courtesy of Maritime Commons. Open Access items may be downloaded for non-commercial, fair use academic purposes. No items may be hosted on another server or web site without express written permission from the World Maritime University. For more information, please contact library@wmu.se.

WORLD MARITIME UNIVERSITY
Malmö, Sweden

**THE IMPACT OF POST 9-11 SECURITY MEASURES
ON SMALL, ASPIRING AND EXPORT-DEPENDENT
MARITIME STATES:
Mixed blessings for the Caribbean**

By

PAUL W. WRIGHT
Jamaica

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 SAFETY AND ENVIRONMENTAL PROTECTION)

2006

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.

(Signature)

(Date).....

Supervised by:
Cdr. Maximo Q. Mejia (PCG)
Assistant Professor
World Maritime University

Assessor:
Dr. Jens-Uwe Schröder
Associate Professor
World Maritime University

Co-assessor:
Capt. (N) Ivan Valenzuela Bosne (CN)
Maritime Governor
Gobernacion Maritima de Punta Arenas
Punta Arenas
Chile

ACKNOWLEDGEMENTS

One of the satisfactions to be derived from writing my dissertation is the opportunity to repay a debt of gratitude owed to all those who stood by me in these moments of redoubtable trial. In my case, I am indebted to a number of people even before I left my lovely island, Jamaica, to pursue my course at World Maritime University (WMU). My appreciation to the Sasakawa Foundation of Japan, particularly to Mr. Yohei Sasakawa, which provided the scholarship that made my studies possible. Mr. Sasakawa, your generosity is not only highly valuable, but highly valued.

I owe a special debt of gratitude to the Jamaica Defence Force (JDF) in particular to Rear Admiral Hardley M. Lewin and Commander Sydney R. Innis who supported my application and in many ways made it possible for me to attend WMU, and their motivational words as I undertook writing my dissertation. My thanks are also directed to the Officers of the JDF Coast Guard who made an additional sacrifice to facilitate my studies overseas. I look forward to meeting at the river to continue our spirited discussions.

I am grateful to Commander Maximo Mejia, for his meticulous supervision of this dissertation, valuable advice, constructive suggestions and encouragement; Professor Proshanto Mukherjee, my Course Professor, for his valuable suggestions and inspiring discussions; Professor Jens-Uwe Schröder and Captain(N) Ivan Valenzuela Bosne for kindly consenting to assess and co-assess respectively this dissertation; the staff of the WMU, in particular the staff of the library Ms Susan Wangeci-Eklöw and Ms Cecilia Denne who were on constant lookout for articles and other publications they thought might help me to complete the paper. I wish to also gratefully acknowledge Mr. Erik Ponnert, IT Program Officer, WMU, for his assistance with my illustrations.

Lieutenant Commander Kenneth A. Douglas, Lieutenant Commander Leighton Bennett, and Mr. Glenford W. Taylor thanks for always telling me like it is and for providing me the encouragement, guidance, information and moral support in the writing of this dissertation. To my host family and friends in Sweden, Ed and Maria Epstein, and Jörgen and Madeleine Hagelborn, thanks for making my stay in Malmö considerably easier.

My heartfelt gratitude to my wife Careen and daughter Bryanna, for making the sacrifices and tolerating my absence back home with courage and fortitude. I thank them for their patience, love and support through it all. I am truly blessed to have you both in my life. There have been many who have helped me gain the lifetime of knowledge and experience that was required to write this dissertation; my special thanks to them and to all those who I failed to mention here specifically.

Through and with God's help all things are possible.

ABSTRACT

Title of Dissertation: **The impact of post 9/11 maritime security measures on small, aspiring and export-dependent maritime states: Mixed blessings for the Caribbean**

Degree: **MSc**

Since 9-11, a large number of dissertations have either focused on maritime security or mentioned it. This paper, however, focuses on the impact of maritime security on small states. The study is arranged in six chapters, commencing with a summary of the maritime industry prior to 9-11 and continuing with the changes caused by 9-11, which are illustrated by *Wright's Security Relation Link* model.

Two types of maritime states, the small, aspiring and export-dependent maritime state and the embedded maritime state are discussed in detail, along with the impact of globalization, the changes in the industry and significance of strategic alliances. Post 9-11 maritime security legislative frameworks are analysed in particular their implications, adequacy and compatibility in light of the threat and the implications as it relates socially and economically on the seafarer of both types of states.

Chapter 4 delves into the impact of these measures on small states, focusing primarily on the Caribbean island states; this then dovetails into a case study of the impact specifically on the island of Jamaica. The main thrust of the study is the likelihood that some states appear to benefit more from post 9-11 maritime security measures than others and the measures are not the panacea for all the security ills that befall the shipping industry and states. However, in reality the impact lies somewhere in between; hence, the term *mixed blessings*. The dissertation closes with conclusions drawn from the investigations of this study and outlines a number of recommendations on how small states, in particular Caribbean States, can benefit from the pending re-emergence of the embedded maritime state.

KEYWORDS: Post 9-11 security measures, Small maritime state, Embedded maritime state, Distinction: security and safety, Absolute contra proportional security, Caribbean region.

TABLE OF CONTENTS

Declaration	i
Acknowledgements	ii
Abstract	iii
Table of Contents	iv
List of Figures	vii
List of Abbreviations	viii
1.0 Introduction	
1.1 Background	1
1.2 Objectives and methodology	4
2.0 Post 9-11 maritime security measures	
2.1 Maritime security traditions and threats to shipping	7
2.2 The nature of maritime security	8
2.3 Paradigm shift	10
2.3.1 SOLAS security requirements	12
2.3.2 IMO's anti – piracy programme	13
2.3.3 ILO security initiative	14
2.4 Distinction: safety and security	15
2.5 Initiatives of the US	16
2.6 Absolute contra proportionate security	19
2.7 Conclusion	21
3.0 Maritime governance: the small state perspective	
3.1 Maritime governance	23
3.2 Interest and activities of an aspiring and export-dependent maritime state	24
3.3 A small, aspiring and export-dependent maritime state defined	27
4.0 The Caribbean	
4.1 Significance of US-Caribbean relationship	29
4.2 The strategy of alliance	31
4.3 The Caribbean MoU on PSC	32
4.4 Impact of post 9-11 maritime security measures – Jamaica case study	34

4.4.1	Geography and the socio-economic milieu	34
4.4.2	Maritime status	36
4.4.3	Legal regime: Impact on state's maritime security legislation	38
4.4.4	Protective regime: Impact on maritime security culture	39
4.4.5	Preventive regime: Economic impact of security measures	40
4.4.6	Cooperative regime: Impact on government strategies	41
4.5	Conclusion	42
5.0	Measurement of impact: trick or treat?	
5.1	Shipping and global power	45
5.2	Burden sharing	46
5.3	Impact of post 9-11 maritime security measures on a state's tonnage	48
5.3.1	The flag factor	49
5.3.2	The means	50
5.3.3	The end result	51
5.4	Impact on the state's seafarer	52
5.4.1	Some seafarers are more equal than others	53
5.4.2	The ITF perspective	54
5.5	Measuring maritime security measures	57
5.6	Mixed blessings	58
6.0	Conclusions and Recommendations	
6.1	Conclusions	61
6.2	Recommendations	63
6.2.1	The US CSI implementation	63
6.2.2	National legislation and policies	64
6.2.3	Bilateral agreement – On signing SUA 2005	64
6.2.4	Maintenance of security standards	65
6.2.5	Seafarer identification document	66
6.2.6	Regional representation at IMO	66
References		69
Appendices		
Appendix A	Explanation of terms	78
Appendix B	The MTSA, § 70108 - § 70110	79
Appendix C	List of small states	81

Appendix D	Global MoUs on Port State Control	83
Appendix E	Tonnage of Caribbean states	84
Appendix F	IMO Conventions to which Jamaica is a state party	85
Appendix G	Estimated costs for maritime security equipment in Jamaica	86
Appendix H	Maslow's theory of human motivation	88
Appendix I	Participating states in the Visa Waiver Program	89

LIST OF FIGURES

Figure 1	Wright's Security Relation Link (Pre 9-11)	2
Figure 2	Wright's Security Relation Link (Post 9-11)	11
Figure 3	Impact of ISPS Code and US CSI on shipping	18
Figure 4	Movement of cargo from the export state to destination country	27
Figure 5	Jamaica's maritime boundaries and neighbours	35
Figure 6	Students enrolment in the CMI three year programmes	37

LIST OF ABBREVIATIONS

9-11	Terrorist attack on September 11, 2001 against targets in the US
AMS	Aspiring Maritime State
CARICOM	Caribbean Community
CLASS	Classification Society
CMI	Caribbean Maritime Institute
CMoU	Caribbean Memorandum of Understanding
CSI	Container Security Initiative
CSME	Caribbean Single Market Economy
EBSVERA	Enhanced Border Security and Visa Entry Reform Act, 2002
EDS	Export Dependent States
EMS	Embedded Maritime State
EU	European Union
EEZ	Exclusive Economic Zone
FOC	Flag of Convenience
FAL	Facilitation of Maritime Traffic, 1965
GDP	Gross Domestic Product
gt	gross tonnage
ILO	International Labour Organization
IMO	International Maritime Organization
ISM Code	International Safety Management Code for the Safe Operations of Ships and for Pollution Prevention
ISPS Code	International Ship and Port Facility Security Code
ITF	International Transport Workers' Federation
JA\$	Jamaican dollars
JDF	Jamaica Defence Force
JDFCG	Jamaica Defence Force Coast Guard
KCT	Kingston Container Terminal
MAA	Maritime Areas Act 1996
MAJ	Maritime Authority of Jamaica
MARAD	Maritime Administration
MARPOL	International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978.
MTSA	US Maritime Transportation Security Act of 2002
MoU	Memorandum of Understanding
NAC	National Accreditation Committee

OECD	Organisation for Economic Co-operation and Development
PAJ	Port Authority of Jamaica
PCIJ	Permanent Court of International Justice
PSC	Port State Control
RBDF	Royal Bahamas Defence Force
RMA	Regional Maritime Advisor
SAEDMS	Small aspiring and export dependent maritime state
SID	Seafarer's Identity Document
SOLAS 74	International Convention for Safety of Life at Sea, 1974, as amended in 1995 and 1997
SSO	Ship Security Officer
SUA	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988, as modified by the Protocol of 2005
TEU	Twenty foot equivalent units
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea, 1982
US	United States of America
USCG	United States Coast Guard
US\$	United States dollars
VWP	Visa Waiver Program
WMU	World Maritime University
WTC	World Trade Centre
WTO	World Trade Organization

CHAPTER 1

INTRODUCTION

Do not shake the apple tree unless you will get an apple – Malcom McLean, Pioneer of containerized cargo handling

1.1 Background

On September 11, 2001, approximately three thousand men, women and children, including over one hundred nationals from fifteen Caribbean countries, lost their lives in the world's deadliest terrorist attack, subsequently known as 9-11. This attack, which included the destruction of the World Trade Centre (WTC), was the worst on American soil since the Japanese bombing of Pearl Harbour on December 7, 1941. The WTC, described by Hawkes (1993, p. 82) as a "Terrorist dream", was owned by the Port Authority of New York and New Jersey and home to a large number of maritime related businesses.¹ Understandably, the United States (US) implemented a comprehensive foreign policy against terrorism with the overarching aims of preventing terrorism, reducing vulnerability to attacks, and minimizing damage from such attacks should they recur. The implication of such policies for the wider world in general, and the Caribbean in particular, cannot be ignored, as the US is the world's largest trading country and sole military super power. This attack, as Hawkes predicted, plunged the shipping industry into a profound transformation resulting in environmental protection, safety and security being placed on an equal footing in the list of priorities of maritime states.

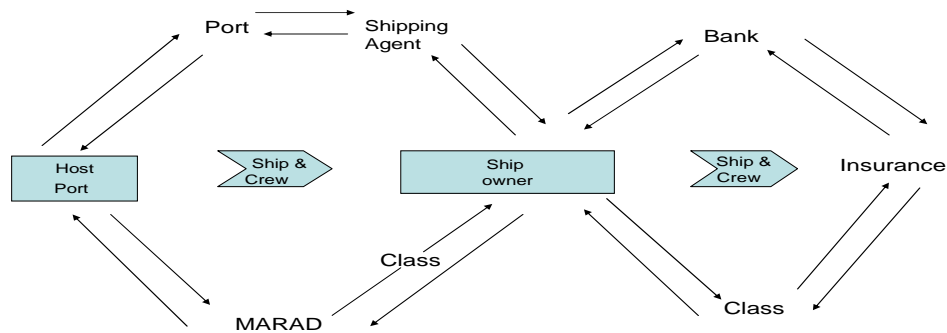
The shipping industry is seen by some as the hero of a maritime state's economy whose success is dependent not just on passenger and cargo transportation but also on the infrastructure that supports it. Hence, the complex political relationship between private investment and government strategy is critical, as the port and the regulations that govern it are the prerogative of each government. To understand a state's motive, therefore, is to understand the complex relations governing the major stakeholders of shipping. As alluded to by Mykoo (2003, p. 21) the major stakeholders are the entities that "comprise the most prominent pillars by virtue of their explicit legal responsibilities within the regulatory regime"; namely the flag states, host states, the ship-owner and the International Maritime Organization (IMO).² Be that as it may, none of the stakeholders would exist without the key component – the ship and her crew, which prior to 9-11 each stakeholder revolved around as illustrated in Figure 1. With the exception of the IMO, all stakeholders, despite their purpose, are driven by the improvement of their particular state of interest. In this pursuit,

¹ This description was made by Hawkes after the terrorist incident on February 26, 1993 when, there was an explosion at the underground foundation of the WTC.

² The terms 'host state' and 'port state' are used interchangeably throughout this dissertation.

they improve the standard of the environment in which their families live and grow. Therefore at the heart of the industry is the improvement of the homeland - the state.

Figure 1- Wright's Security Relation Link (Pre 9-11)



Although having a pivotal role to play, many governments are ignorant about the role of each player in the industry. This is so partly because prior to 9-11, there was a disconnect between the ship, the owner and the government as depicted by Figure 1; the industry's inherent tradition of freedom; and the fact that a concerted effort is usually made by maritime lawyers toward "wrapping the whole operation in the necessary corporate veils to ensure maximum secrecy" (Gold, 2001, p. 269). Further, if most of the ships in the harbour fly strange flags and employ mainly foreigners, it is difficult for the citizens of most states to relate to the shipping industry. The result is an industry of mystery that is disconnected from those with political power and from the citizens of most states.³

Outside the world of shipping, the physical movement of people and cargo by sea proceeds almost unnoticed in people's daily lives. However, negligence by the crew and company operating the roll-on roll-off car and passenger ferry *Herald of Free Enterprise*, which capsized in Belgian waters on March 6, 1987, dramatically brought passenger safety to the fore. Similarly, before the 1960s there was little concern with pollution of the sea. However, accidents such as the grounding of the *Torrey Canyon* grounding on March 18, 1967, which resulted in the spillage of crude oil on British and French shores, have alerted policy makers, legislators and the public to the growing problem of marine pollution in general.⁴ This was further reinforced by subsequent accidents involving passenger ferries and tankers resulting

³ This apparent disconnect was evident in the US during the Dubai port deal; US Government officials apparently thought the operator of a port was also responsible for security of the port.

in the amendments to previous conventions aimed at reducing the loss of life and harm to the environment.⁵ Consequently, environmental protection, human element and safety were the buzzwords prior to 9-11.

One aspect of safety which was taken for granted was the subfield of shipping security. Anyone who was remotely acquainted with the maritime industry prior to 9-11 would have been aware that security issues were not among the maritime industry's top priorities. This was reflected in the vague terms used in documentation of heavy and bulk cargo transportation.⁶ Although the major stakeholders discussed the physical, technical and operational aspects of safety, attention was rarely focussed on security as this area was not only foreign to them, but was a costly path to tread. Also, prior incidents had affected primarily the shipper, ship-owner and the crew.

Piracy, stowaways and pilferage of cargo were the main security concerns; however, these did not directly threaten state owned vessels or the state itself. Piracy, arguably the most treacherous of the concerns, was not on the list of priorities of most government officials, as it rarely affected their own population and thus was considered to be a problem of the foreign-flagged ship and crew. Until 9-11, an act of piracy or armed robbery was viewed primarily as a criminal matter to be dealt with by civil authorities. Consequently, piracy and armed robbery did not stimulate much discussion at IMO conferences compared to safety and environmental issues. Actually, with the exception of a clause in Articles 100 to 104 of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 (SUA), no IMO conventions specifically addressed the issue of security.⁷

Prior to 9-11, most ports were focused on port expansion projects such as modernising terminals and dredging channels. Although these projects were costly initially, they were expected to provide high returns. Further, counter measures for items entering the port facilities were limited, as most ports tend to focus on items leaving. Incidentally, it was not extraordinary for one to observe individuals fishing within the vicinity of a ship whilst it conducted cargo operations alongside. All this changed on September 11, 2001, upon the realisation that quality in shipping security and profitability were not mutually exclusive,

⁴ The *Torrey Canyon* incident resulted in the subsequent adoption of the International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL).

⁵ In MARPOL Regulation 13 G of Annex 1, the age limit proposed is lower than those initially provided for under this Regulation and applies to categories of oil tankers which, on account of their size, were not covered by this Regulation until after the *Erika* incident.

⁶ Vague cargo terms such as 'general cargo' or 'STC' (said to contain) were often used.

⁷ UNCLOS Articles 100 to 104 generally define and encourage cooperation of states to repress piracy.

because in the event of a maritime catastrophe in a port, the host government has the most at stake. Quality in shipping operations now meant safe, pollution – free, efficient management and security.

1.2 Objectives and methodology

The passage of time can play havoc with one's powers of recollection. Although it may appear to be only yesterday, it has been over two years ago that the shipping industry waited with bated breath in anticipation of July 1, 2004, the date the new IMO security measures came into effect. As we now know, there was no major disruption, ships continued to sail and the shipping industry continues to realize a profit. Hence, with the passage of two years, the time is opportune to analyse the impact of these measures on the industry as there is sufficient time to recognize trends, evaluate one's progress and early enough to amend your path if necessary. However, in doing so, it is very important to understand from the outset that when one speaks of the shipping industry, one is speaking not only of ships, ship-owners or seafarers, but also about states having to compete for the training of seafarers, employment of seafarers, transshipment ports, ship building and repair contracts and the registry of ships. Hence, the implemented post 9-11 maritime security measures are at the very heart of the dominance of some states over other states, as these measures come at a cost, some financial, others social and political.

Most existing works on post 9-11 maritime security measures have dealt substantially with the challenges of implementing these measures leading up to their enforcement date, the impact on the shipping market in general and seafarers in particular and the economics of its implementation. In contrast, little is written on the impact on small states, primarily because independently they do not paint a large echo on the industry or IMO's radar screen. Similarly, most small states are so focused on implementing and maintaining the required security standards that they have limited time to look ahead; hence, the relevance of this dissertation. The aim of this dissertation is to assist small states to look and plan ahead by examining the long term economic, social and political impact of these security measures and seeks to explore options that are most likely to produce benefits for small maritime states in terms of socio-economic development and global competitiveness in the new security era. It is hoped that the political will of small states, in deciding on the protection of their interests in the maritime industry, may be assisted by some of the policy-oriented analyses expressed here.

Thus, this aim will serve as a point of departure for more detailed discussions about:

- Post 9-11 maritime security measures.
- What a small, aspiring and export-dependent maritime state (SAEDMS) is.
- Evaluating the impact of post 9-11 security measures on Caribbean states and their seafarers.
- Analysing why it appears some states and their seafarers have benefited or may benefit more than others from these security measures; and
- Policy proposals and recommendations concerning how Caribbean states can maximize their investments whilst complying with the requirements of these security measures.

One prominent feature of this dissertation which deserves immediate explanation is its considerable attention on the Caribbean, especially Jamaica. The selection of this region is guided by the considerations that the Caribbean is the world's most tourism-dependent region, it is a reasonably large maritime area speckled with a number of small island states; it is the crossroads between the high-volume east/west trades and the growing north/south routes linking South America to the US and Europe; and, finally, Caribbean states are part of the Americas yet are neither wholly Latin American nor North American. Therefore, most writers tend to group them with either Latin America or North America instead of treating them as a distinct entity.

A second feature is the case study on the impact of these measures on a SAEDMS and Caribbean island, Jamaica. This approach is chosen as an attempt to examine all SAEDMS or even the ten located within the Caribbean, although ideal, would be not only go beyond the page limitations of this dissertation, but it would also violate an age old axiom in the security field - *if you look at everything, one will see nothing*. At the outset it must be pointed out that it is beyond the scope of this study to discuss the impact on shipping companies specifically or the impact on small countries, only states (See Appendix A for the difference between a country and a state). It is also no part of this dissertation to attempt to ascertain or analyze estimates of expenditure by ports around the world to implement these measures; thus, only the most important features will be highlighted, as these are extremely complex due to their diversity and requires specialist study (OECD, 2003, p. 39).

The methodology will be distinctive as no questionnaire, for which dissertations are well known, were utilized as this would only highlight the obvious that security is necessary, it is expensive to implement effectively, and the innocent will have to make sacrifices for the

security well being of the majority. Instead, interviews were conducted specifically with the individuals who are held directly accountable for the implementation of these measures by their respective governments, the International Ship and Port Facility Security (ISPS) Code Coordinators.⁸ Each chapter is also given a theme which the reader is invited to write on a sheet of paper, or a used envelope, as Mr. Malcom McLean would, who incidentally provided the theme of Chapter 1. As you read, occasionally look back at the theme of each chapter and let it be your lighthouse as you navigate the pages of this dissertation.

⁸ Personal and electronic interviews were conducted with the ISPS Coordinator of Jamaica, Bahamas and Trinidad and Tobago. The full name of the ISPS Code is the International Code for the Security of Ships and of Port Facilities.

CHAPTER 2

POST 9-11 MARITIME SECURITY MEASURES

Safety and security are now inextricably linked - William O'Neil, Former IMO Secretary-General

2.1 Maritime security traditions and threats to shipping

The history of the world is a history of exploration, conquest and trade by sea; consequently, shipping is steeped in tradition while at the same time being organic and dynamic. Improved maritime security can be traced back to over 500 years ago when Christopher Columbus hurried back to Spain to report his discovery of the new world within the Caribbean and Americas. Soon after Columbus' discovery in 1492, Spanish galleons sailed from Spain for the new world and would return with their ships laden with gold, silver and emeralds. As word spread throughout Europe of the new world's riches, pirates took an interest in intercepting, boarding and robbing such ships. Hence, one of the major considerations for a ship-owner in purchasing an ocean going galleon was not only how many masts, sails or decks of the ship but also how many guns and cannons the ship could carry with a view of protecting his cargo from independent pirates and English buccaneers.

Overwhelmed by the increased number and violence of the pirates, the galleons opted to rendezvous in Havana, Cuba, and sailed together to Spain along with the heavily armed Spanish navy ships (McDonald & McDonald, 2006). Flying the Spanish flag then ensured that the ship-owner was provided protection against pirates and capture by naval vessels of rival states. In return, the cargo ship was under obligation to support naval operations through transportation of troops and war material. Understandably, this was a reasonable arrangement for both the flag state and the ship-owner and thus a strategic alliance was forged.⁹ The state was able to achieve its political, economic and military objectives and the ship-owner security for his ship and cargo. This tradition has withstood the test of time and is now being utilised as leverage to entice ship-owners to reflag to their state of citizenship.

Stowaways have been in existence since the first ships were built. In the days of sail, this uninvited passenger was particularly welcomed onboard especially on the homebound voyage when some seafarers had fallen ill, died or stayed behind for other reasons. Today however, a stowaway is an external threat for a ship and a manifestation of a breach in the ship's security system. For the cargo ship, the three main external threats are piracy, drugs/arms smuggling and stowaways. Exploiting weakness in any part of the transportation chain is central to committing these offences, which may result in serious disruption and

revenue lost to the ship. For several years the IMO has grappled with the question of what to do about these threats, which proved difficult as they usually occur within states' territorial waters.¹⁰ The most serious of the security threats, piracy, has raised its head higher and has become more vicious threatening the safe and efficient conduct of the shipping industry today.

For centuries, piracy and the unlawful seizure of ships, cargo and their crews as well as the actions of stowaways have beleaguered the shipping industry. The modus operandi employed by pirates has not changed much since 1492: intercept and board the appropriate ship, steal the cargo and kidnap crew for ransom. During most of these incidents the seafarer is often a casualty. However, if the natural perils of the sea and the actions of pirates were not sufficient, today the industry has an additional threat to confront - terrorism. There are many definitions of terrorism; however, the difference between piracy and terrorism is largely an informal distinction. If the motive is financial gain then it is piracy, and if it is not for financial gain then it is terrorism (Mejia, 2003, p. 157). Also, pirates tend to work under the radar of international attention, whilst the terrorist wants to convey a powerful message to politicians, military leaders, or economic leaders as loud as possible. In so far as the master and crew of the captured vessel are concerned, the difference between the two is semantics. Be that as it may, the fact that pirates are able to board and take control of a vessel theoretically means that a terrorist could easily do the same. Similarly, the fact that smugglers can contaminate cargo means a terrorist can do so as well.

2.2 The nature of maritime security

Long before the horrifying 9-11 terrorist attacks, the transportation sectors, vehicular, rail, ship and aircraft had been the target of terrorist activities. Subsequent terrorist incidents, such as the attack on the French registered oil tanker *Limburg* off Yemen in October 6, 2002, the Madrid train bombings on March 11, 2004 and the London bus and train bombing on July 7, 2005, have simply reinforced the fact that the transportation infrastructure of the world are vulnerable to terrorist attacks. This is due to the fact that they are easily accessible and offer increased potential for inflicting casualties on a large scale thus grabbing prime time media coverage. The vulnerability of the maritime transport system highlights the susceptibility of international trade which thrives on an efficient system. Therefore, with shipping being a dynamic industry on which most of the world's trade relies, it offers prime

⁹ Flag state naval protection has been in existence since the genesis of international trade. Article 94 of UNCLOS has since preserved it.

¹⁰ This is the body of water which extends twelve miles seawards beyond a state's land territory or in the case of an Archipelagic State, its archipelagic waters, over which it has sovereignty.

targets for would-be attackers to advance and gain publicity to their cause as exemplified in the *Limburg* attack.¹¹

Security is critical to the performance of all organisations and industries. According to Hawkes (1989, p. 9) maritime security is essentially measures employed by the various interests in the maritime industry to prevent hostile interference with lawful shipping operations. This hostile interference includes but is not limited to seizure, sabotage, piracy, pilferage and maritime violence. Maritime security is dynamic and fluid and as such it is subject to constant changes due to external factors, globalization, the laws and requirements applied by different states towards international commerce, imaginative enemy and technological innovation. The maritime transport sector is especially vulnerable due to the sheer volume of cargo and the large number and size of vessels involved; thus, it is very difficult to monitor effectively. This situation is compounded by the fact that shipping is a time-driven industry which require vessels to transit voyages in specific times and to load and discharge cargo in the shortest possible time. Further, the industry comprises a diverse range of nationalities, cultures, perspectives, skills and responsibilities. Thus, the need for multi-tiered and coordinated security measures nationally and internationally, through which an attacker or intruder must penetrate. This multi-tiered security measures is referred to by Hawkes as “security in depth” (1989, p. 11). For ships the first line of defence is the shipper, then the port gate, the area between gate and berth, and finally the ship’s gangway and crew. Each tier is critical in reducing the risk.

Risk, when used in relation to security, is defined as the product of the threat and vulnerability of an undesirable event or attack along with the possible consequence of that event upon its occurrence (Schröder, 2005, p. 108). Generally it is ideal and easier to reduce the vulnerability than to reduce the consequences or threats. The possibility of future terrorist acts creates uncertainty, which increases the perceived risk and the subsequent risk premium and precautions demanded by investors and trading partners. The goal for local maritime security administrators is to ensure that if the level of threat increases, either the consequence or vulnerability decreases to offset that increase. For example, a port may decide to conduct physical security checks of containers from a particular ship after being advised that its last port of call is an apparent unsecured port. Similarly, the pirate also conducts such an assessment if he intends to utilise the ship’s crew for a ransom, whereby he targets ships primarily flagged with open registries as he is aware of such flag states inability to respond assertively worldwide (Abhyankar, 2005, p. 23, Table 12). Well-planned

¹¹ The attack on the oil tanker *Limburg* resulted in the death of one crew member who drowned whilst abandoning the flaming ship. Some ninety thousand barrels of oil was also spilled into the Gulf of Aden.

and effective security measures will reduce the vulnerability of a facility or mode of transportation to an infiltration or terrorist attack.

2.3 Paradigm shift

It is often said that what the sinking of the *Titanic* did for safety, 9-11 has done for maritime security that is, to increase governments' focus on the issue. There is no doubt that the world's population is living in a vastly different world from the one which was faced by the founding members of IMO in the late 1940s. We live now in a world with high geopolitical volatility consequently; the political factor is usually never far removed from security. Which is to say that the line between shipping, security and politics is straight, as terrorism is not only limited to loss of life, damage to property and environment. Terrorism also impacts the underlying fibres that binds the global economic landscape and directly adversely affects states in terms of post attack crisis management as well as the cost of remedial and confidence building measures. Governments, which had seemed quite unperturbed about the actions of pirates, have started to pay greater attention to the issue of maritime security once the word 'terrorist' is used as the states themselves feel threatened.

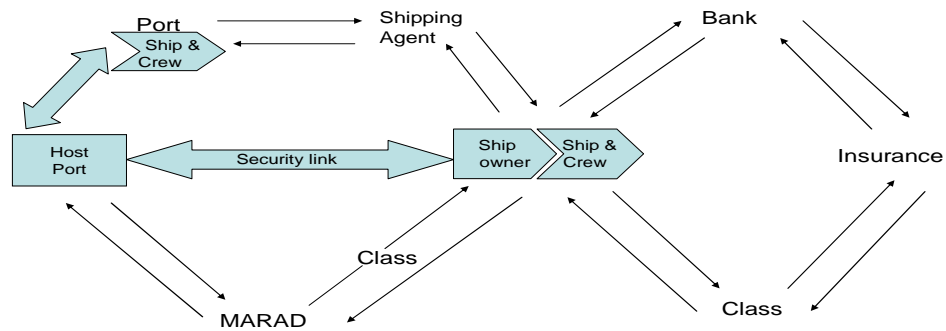
In seeking to achieve a socially and economically feasible solution towards achieving maritime security, the implementation of appropriately worded laws is paramount. Law, whether international or national in scope, is critical to provide deterrence and where deterrence fails effect a prosecution. Post 9-11 security measures have emerged from two levels, namely internationally through the IMO and International Labour Organisation (ILO) by conventions and nationally by states upon acceding or ratifying an IMO or ILO Convention and subsequently incorporating it into their domestic laws. Following the events of 9-11, the maritime community had been forced to look very closely at the way it conducts its affairs in almost all realms of human activity which is indicative of the IMO's new theme 'Safe, secure and efficient shipping on clean oceans.' Although aircraft were the chosen weapon of the 9-11 terrorists, the IMO's particular concern had not been so much which state might be the terrorists' next target, but instead which mode of transport would catch the fancy of their interest in the future.

Recognizing that unscrupulous persons could employ similar tactics in the maritime field, the IMO took a unique approach and initiated proactive measures to address security and related matters as it affects shipping activities. This approach is considered unique as most IMO instruments are usually subsequent to some very unfortunate maritime incident, hence it would normally have taken the *Limburg* incident to act as a catalyst for action with regards to security. The results of these undertakings represent Salonio and Sinha (2002, p. 239)

categorization of post 9-11 international security measures which are embodied in the amendments to the International Convention for the Safety of Life at Sea 74 (SOLAS) which was completed and came into effect in record time on July 01, 2004; the Protocol of 2005 to SUA 1988, adopted on October 14, 2005 and the joint effort of the IMO and ILO in the changes to the ILO Convention on Seafarer's Identity Document (SID).

The sphere of influence of the IMO relates to ships and shipping, not to ports. Ports are the sole prerogative of the host state. However, ports are also likely targets for terrorism because of their easy accessibility, location and proximity to large cities, bridges and petro-chemical facilities (Franson, 2005, p. 11). This particular issue exercised the minds of delegates attending the various meetings leading up to the amendments to the SOLAS Convention at the IMO Conference in December 2002 as to how to link ship's security with ports. This is due to the fact that not all ports are owned or operated by governments; thus, it would require national laws to ensure that ports comply. Further, the delegates anticipated that privately owned port operators would complain about the cost as they were aware of the inability of governments to help foot the bill. In the end, it took the creative intellect of the delegates to resolve the issue by referring to it as the ship-port interface by associating the risk to people on shore, population in port areas as well as to ports, offshore terminals and the marine environment due to a shipping catastrophe. Thus, instead of the stakeholders revolving around the ship and there being a disconnect as in Figure 1, the ship becomes merged to the host port and thus the ship, the ship-owner and its crew as is illustrated by *Wright's Security Relation Link* in Figure 2 are within greater and direct influence of the host state.

Figure 2 - Wright's Security Relation Link (Post 9-11)



2.3.1 SOLAS security requirements

The series of amendments to SOLAS included a new Chapter XI – 2 which solely addressed ship security and a new ISPS Code which consists of two parts. Part A, which is mandatory, details measures to be taken by contracting governments, ship-owners and ports, and Part B, which is advisory, lists measures to enhance maritime security. The US has decreed that Part B of the ISPS Code will also be mandatory for all US-flagged ships and foreign flagged ships that visit US ports. Strangely enough, despite the fact that terrorist attacks on the US warship *Cole* and more recently the *Limburg* involved small boats laden with explosives, the ISPS Code is applicable only to ships of 500 gross tonnage (gt) or more, engaged on international voyages and port facilities serving such ships.¹² Notwithstanding, up to 50,000 ships, 1,500 port facilities globally, all Maritime Administration (MARAD) and seafarers are affected directly by the actions or lack thereof by the ship's host port. Host ports are empowered through the ISPS Code to utilize control measures such as detention, suspension of operations, denial of entry into port, expulsion from port if a ship poses an imminent security threat or fails to comply with the requirements of the ISPS Code.

The ISPS Code is designed to address security shortcomings in the maritime world, and if these are fully implemented, could lead to a significant tightening up of security in the shipping industry. Such measures are expected to result in eradicating fraudulent certificates, pre-screening of ships' crews through positive and verifiable identification cards, long range identifying of ships before their entry into national jurisdictions and a raft of port security measures designed to prevent unauthorized persons gaining access to ships thus ensuring the integrity of container cargo while they are in the port. Therefore, the four principal elements of the ISPS Code are:

1. The need to address the security and tracking of ships 500gt and above.
2. The need to address the security at ports.
3. Integrity of the ship's cargo.
4. The need to verify and identify seafarers.

Hence, IMO has clearly identified the four security risk factors of the industry as the ship, ports, cargo and the tainted seafarers and hence the need for targeting all four simultaneously whilst ensuring the smooth flow of trade. In essence, the ISPS Code is basically a risk management and assessment regulatory framework aimed at ensuring the security of ships and port facilities. Thus, by complying with the ISPS Code governments, ports and ship-owners would be able to reduce the vulnerability of such a threat and should

it occur, its consequences to ships and port facilities. On July 1, 2004 more than 86% of ships and 69% of port facilities had their security plans approved by their respective governments and MARAD signalling the commitment of all major stakeholders to improving the standard of the maritime security (IMO News, 2004, Issue 3, p. 19).

2.3.2 IMO's anti-piracy programme

The SUA Convention is as a consequence of the 1985 incident in which four extremists of the Abu Abbas Palestine Liberation Front hijacked the Italian cruise ship *Achille Lauro* and killed an American passenger. The subsequent failed attempt by the US to apprehend the extremists and the millions of dollars lost in the passenger/cruise ship sector of the shipping industry, resulted in the IMO crafting and implementation its first criminal convention, the SUA Convention (Jacobsson, 2002, p. 158). The SUA Convention was the first ever internationally agreed regulatory framework addressing the crucial issue of maritime security and representing the international maritime community's contribution to the global resistance against terrorism at sea. Actually, it was not until 2002 during the increased security awareness that the IMO saw a 100% increase in the number of parties to the SUA Convention and its Protocol compared to its initial fifty two state parties prior to 9-11.

The Protocol of 2005 to the SUA 1988 Convention and Protocol culminated after three years of negotiations and was adopted during an IMO Conference on October 14, 2005.¹³ SUA 2005 is the second post 9-11 maritime security measure; its intent is to ensure that anyone committing unlawful acts against safety of navigation will not be given shelter in any country but will either be prosecuted or extradited to a state where they will stand trial. The Protocol has broadened the list of offences made unlawful under the SUA Convention and introduces provisions for the boarding of merchant vessels within a coastal state's exclusive economic zone (EEZ) or on the high seas, by authorized foreign states to prevent an offence or to detain suspects onboard.¹⁴ SUA 2005 introduces a legal frame work for boarding of foreign ships, where there are reasonable grounds to suspect that the ship or a person on board the ship is, has been, or is about to be involved in, the commission of an offence, thus filling a legal vacuum which initially existed and thus strengthens the means of combating unlawful acts.¹⁵ Being only recently adopted its full repercussions are yet to be felt.

¹² A small boat loaded with explosives rammed into the American warship at a Yemeni port, killing seventeen sailors on October 12, 2000

¹³ The SUA Convention, originally adopted on March 10, 1988, became the first anti-terrorist convention to be adopted specifically for international shipping. The Protocol of 2005 to the SUA 1988 Convention and Protocol is referred herein as SUA 2005.

¹⁴ SUA 2005, boarding provisions, Article 8bis. A states' EEZ and the high sea are consider international waters as they are outside a state's territorial waters.

¹⁵ The SUA 2005 was tabled by the US. During Feb 2004, the US and Liberia signed a Bilateral Agreement with regards to the new boarding and inspection provisions. Similarly in May and August 2004 the US signed such agreements with Panama and Marshall Island respectively.

The SUA 1988, Article 3, is considered to address the short comings of UNCLOS 100-104 on piracy; thus, SUA is often seen by many in the industry as the ideal anti-piracy and armed robbery convention as it speaks of no specific territorial zone, no two ship requirement, and no motivation. Hence, SUA 1988 and 2005 will complement the ISPS Code, by providing a legal basis for the arrest, detention, extradition and punishment of suspects in the unfortunate event that a terrorist attack against or using a ship(s) to perpetrate the act of terrorism should occur. Although, the ISPS Code and SUA Convention were developed primarily in response to a terrorist attack against the US, certain provisions facilitate the fight against piracy. Therefore the SUA Convention is a preventative and responsive measure and the ISPS Code a preventative measure which seeks to reduce the threat of a security incident by deterring the potential of such acts away from the maritime field.

2.3.3 ILO security initiative

The ship is the home of the seafarer for the duration of his assignment. Each seafarer plays a role in the drive for improved security of his home. However, since 9-11, this function has been formalised as the seafarer is now considered to be a critical link in the shipping industry security chain. In addition to his normal alongside ship board duties, the seafarer is now required to provide continuous gangway watch, an added responsibility with usually no additional financial compensation and possibly at the expense of his shore leave. Hence, according to a recent International Transport Workers' Federation (ITF) Survey (2005, p. 5) most seafarers are annoyed with the increased workload and the enhanced port facilities security and immigration control, which increasingly consider and treat them with suspicion.¹⁶ This is due to the fact that the ISPS Code considers the seafarer a risk factor, as there is a possibility that a terrorist could pose as a seafarer or be an accomplice or a member of a terrorist group. Understandably, the concept of a SID is a post 9-11 security measure to alleviate both the seafarer and states' concerns with regards to the seafarer being categorized as a security risk factor. Hence, the MARAD in Panama is in the process of investing US\$13 million to implement almost 300,000 SID and improve its systems which support its registry.

Due to its wider implications, the matter of the SID was forwarded to the International Labour Organization (ILO) for consideration and they in turn, adopted a new Convention on Seafarers' Identity Documents thus replacing the old Convention of 1958, with ILO Convention 158 (No.108) which requires a government to issue a SID to each of its national

¹⁶ The ITF is the largest and global trade union for seafarers.

who is a seafarer.¹⁷ The industry's intent is for the SID to replace the 'crew list visa', which was disbanded as a consequence of 9-11 on December 13, 2002 by the US. This intent however is contrary to the Enhanced Border Security and Visa Entry Reform Act, 2002 (EBSVERA), a US national post 9-11 security measure. Although UNCLOS gives states the right to implement its national maritime laws, the US by passing this Act has placed the IMO in an uncomfortable position as although legally correct, it is an immoral act; as in its jurisdiction there is a law which says all seafarer has a fundamental right to shore leave and another law which says there is an obligation to hold a US visa.¹⁸

The action of the US is about to start a new and grim precedent, as Australia is now in the process of introducing a visa requirement for foreign seafarers as confirmed by Andrew Tongue, Deputy Secretary of the Department of Transport and Regional Services¹⁹ (Lloyd's List, 2006, May 22). There exists the possibility that the European Union (EU) might, for political reasons, also follow suit. Although ILO Convention 158 came into force on February 9, 2005, it is still subject to each state's national legislation, as ultimately it is the prerogative of the host state to say whom it will or will not allow within its borders. This therefore raises doubts if the US or Australia will become a party to this ILO Convention notwithstanding the fact that they are both signatories to Convention on the Facilitation of Maritime Traffic, 1965 (FAL), thus substantiating Canon Ken Peters' claim that "We trust seafarers to bring our food, fuel and raw materials, but we do not trust them to walk down the high street".²⁰

2.4 Distinction: safety and security

Flowing from the ISPS Code are the four identified security risk factors of the industry, namely the ship, ports, the tainted seafarer and cargo. A security risk factor is an element which can create adverse consequences due to intentional and unpredictable human actions; hence, the difficulty to apply statistical methods to it. This is contrary to a safety risk factor, which is caused by an ecological and other quantifiable event (Schröder, 2005, p. 108). Simply put safety incidents are accidental and security incidents are not; hence why a security incident is synonymous to a criminal action in the legal field. Curiously enough, whilst ISPS Code kept the basic words 'safety of ships' in the Assembly Resolution A.924 (22) (November, 2001) title, the provisions are so security specialised that one would hardly know that they belong to the SOLAS Convention.²¹ Regarding this, Professor Proshanto

¹⁷ The SID would function as a visa; however, in the ILO Convention's present form it is the individual states which would be responsible for the issuance and the security database of their seafarer.

¹⁸ When the US signed the Convention on the Facilitation of Maritime Traffic 1965 they did so with the appropriate reservation (Standard 3.19.1), which makes the EBSVERA legally correct. The US is the only state with such a reservation.

¹⁹ Australia plans to introduce this special new maritime crew visa with effect from January 2007.

²⁰ Canon Ken Peters is a member of the Mission to Seafarers.

²¹ The SOLAS Convention, which was adopted as a consequence of the *Titanic* sinking, addresses primarily ship construction, ship safety and navigational equipment, carriage of dangerous cargo and the human element in relation to ship safety.

Mukherjee, a legal authority on maritime safety and environmental protection, said “It is nevertheless undeniable that concern for human life is at the centre of both safety and security. But despite this common *genre*, it is submitted that the two phenomena are conceptually different because they have different fundamental characteristics” (2006, p. 2). This is due to the fact that although safety actions are typical of security action it is not the same. Consequently, Mukherjee concluded that safety and security do not necessarily correlate in this particular case.

Although maritime security in respect of terrorist threat falls within criminal law, the rationale for the amendments to SOLAS appears to be the relatively long time it takes for an IMO Convention to come into force, thus the political expediency to appease the anxiety and emotions of the affected states to prevent unilateral action. Understandably, the former IMO Secretary-General, William O’Neil, refers to safety and security as being synonymous; however, the difference between these two concepts is of practical significance despite the inclusion of the ISPS Code in the SOLAS Convention. The writer is of the view that the anxiety and emotions of the affected states ought to have been used as a catalyst to craft a completely new convention as the IMO did with the Ballast Water Convention 2004, instead of merging it to MARPOL. A separate convention would be more focused, protect the seafarer’s rights and politically feasible. Another option, if the intent is not to craft a new legislation, is to amend the SUA Convention accordingly as both are correlated with regards to their ultimate aims. The option utilised, by linking safety to security, allows some states to have their globalisation cake and eat it.

2.5 Initiatives of the US

By the turn of the 20th century, the US became the world’s largest economy and also expanded its political sphere of influence throughout the world. Underlying all US economic strategic reasoning in the 21st century is intensifying global economic competition. Vibrant international trade, predominantly by the seas, is vital to US sovereignty and power retention. Although a ship is considered a floating extension of a state, whenever it enters the port and/or offshore terminals of another state the responsibility for its security lays with the littoral state (Churchill & Lowe, 1999, p. 65). Therefore, in accordance with Article 2 of UNCLOS, a host state has the authority to enforce its national laws upon all foreign flagged merchant vessels within its internal waters. Hence, foreign vessels usually perform the maritime tradition of flying the host state’s flag, known as a complimentary flag, along with their flag state’s flag as a courtesy gesture and to denote the sovereignty of the host state.

A state's government has no higher duty than to protect its citizens. Hence, whenever a state has suffered a significant number of loss of lives on its home soil, such as 9-11, the pressure can be so great at home that the government is obligated to take appropriate actions which will prevent or reduce the possibility of a recurrence. The US Maritime Transportation Security Act of 2002 (MTSA) and the EBSVERA, are two such national efforts to put in place appropriate maritime security measures to reduce the possibility of terrorists turning the vehicles of peaceful transportation into deadly implements of destruction within the US again. The MTSA, which implements the ISPS Code, mandates a system of foreign port security assessment to ensure compliance of the US's trading partners with the ISPS Code.²² Thus, the US Coast Guard (USCG) intends to visit one hundred and thirty five states over the period March 2005 – March 2008 to verify if they adequately comply with ISPS Code. The results of these visits are subsequently used as a basis to decide if increased security checks are warranted of ships coming from these ports which can lead to eventual adverse financial consequence for the ship.²³

Such visits by the USCG are possible as the ISPS Code neither defines what is meant by 'security measures' or when is a port considered 'compliant', nor does it stipulate what consequences ought to follow where a state is not compliant and by whom. Countries which fail to successfully address the identified inadequacies within a prescribed time will be placed on the USCG 'black list' which will result in ships flagged with or visit this country's ports of being subject to intensified inspections upon visiting US ports or territories. (See Appendix B, § 70110) Only upon this state providing evidence to IMO that they are compliant will they be removed from this black list.²⁴ The countries visited by the USCG will have the right to make their own checks on US port facilities; however, this provision gives rise to two questions: If these states find deficiencies within the US ports can this state place the US on their 'black list'? Secondly, what recourse is available where there is conflict between the meaning of 'compliant' by the state and the US? No direct answer to these questions is provided in either the ISPS Code or the MTSA.

Container shipping has made the world smaller and the world economy bigger by dramatically lowering the cost and facilitates the shipping of non-bulk goods from one place to another whilst reducing damage and theft. On the other hand, these uniform metal boxes, present an ideal platform for would-be attackers to use as a "Trojan box" either as the

²² SUA Convention and the ISPS Code are not considered self-executing therefore although the US utilizes the monistic methodology of implementation it is still necessary to implement domestic legislation to give effect to both.

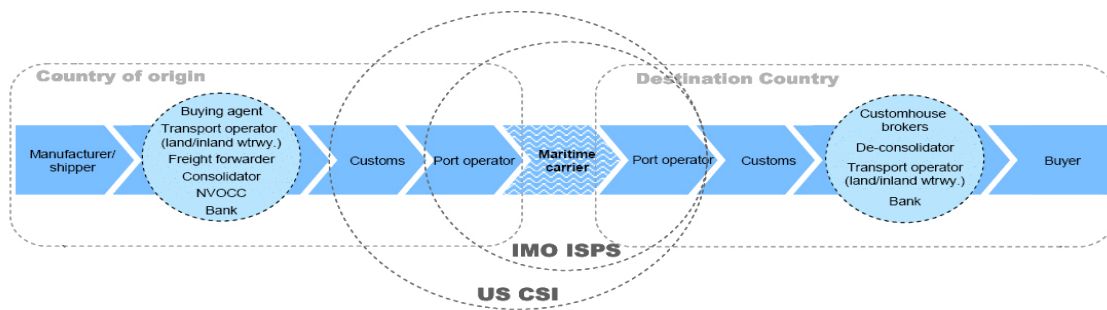
²³ The US CG visit, called the International Port Security Programme is reinforced by the MTSA sections 70108 through 70110 (Appendix C). More than forty countries have been visited to date.

²⁴ This requirement is in accordance to SOLAS, Chapter XI -2, Regulation 13.

medium for delivery of weapons of mass destruction or as a weapon. Clearly, there is rich potential for exploitation; hence, the concern of the government and security officials in the US.²⁵ Although the US has approached the maritime security issue primarily through the ISPS Code, they have also proceeded alone in their quest to address other related security issues through bilateral and multilateral treaty with selected states. One such approach is the improved security of containers through the Container Security Initiative (CSI), launched in January 2002.

There are a number of points at which the supply chain can be compromised as law enforcement agencies know from their attempts to crack down on narcotics trafficking. Globally, it is estimated by the Bureau International des Containers that over 48 million full containers move between seaports annually. It is also estimated that only 2% of containers are inspected worldwide and this is an improvement since 9-11. At CSI ports, local government customs agents do cargo scanning and inspection; however, US Customs inspectors work alongside them. The aim of the CSI therefore is for US Customs personnel to assist in the inspection of US bound containers before they leave its port of origin thus, reducing the risk an attack on US coast areas or mainland and improve the ‘fluidity’ of global trade.

Figure 3 - Impact of ISPS Code and US CSI on shipping



Source: OECD - Security in Maritime Transport: Risk Factors and Economic Impact Directorate for Science, Technology and Industry, Maritime Transport Committee, p. 50, © OECD 2003 (modified with permission)

Therefore as illustrated by Figure 3, the CSI complements the ISPS Code by expediting containers through the security process overseas thus saving time at the receiving end.

²⁵ This fear was substantiated on October 18, 2001 when Port Authorities at the Italian the port of Gioia Tuaro discovered a smartly dressed stowaway, Mr Rizik Amid Farid, within a well equip container carrying sophisticated communication equipment, a laptop computer, airport security passes and airline mechanic’s certificates valid for four major US airports. The container was loaded in Port Said, Egypt and had a final destination of Canada, the said country’s passport was found on Mr. Farid.

There are more than one thousand, five hundred port facilities globally serving international ships and thus the US can not afford to post its customs agents in every port worldwide. Presently, they work at only forty four foreign ports helping to inspect and scan cargo with the permission of foreign governments through the CSI programme.

The CSI has secured a broad international acceptance in a very short time considering the sovereignty issues involved with regard to ports and the misgivings some parts of the world have about US personnel operating within their borders. The concept of ship-port interface comes to the fore again as not many states are able to allow foreign law enforcement personnel to work at their ports due to sovereignty and security concerns. The Dubai deal touched on such security concerns, which, even if over blown in this case, can be justified in view of the fact that ports regardless if they are government or privately owned are strategic national assets. The US cannot patrol every coastline, inspect every ship, screen every passenger, or examine every container crossing the globe. To foster stronger partnerships within the maritime community, there ought to be a coordinated and consistent approach to building international support and cooperation to reinforce global maritime security. While each of these domestic measures is separate, they function together to provide Hawkes' defensive layers in container, port and vessel security.

2.6 Absolute contra proportionate security

Is there such a thing as absolute security? Kenneth Hawkes, the noted author of *Maritime Security*, has his doubts. He posits that "There exists no vessel, facility, or installation that is so well protected it cannot be seized, damaged, or destroyed" (1989, p. 11). Hawkes may well be right, for there is one sure way to prevent terrorist attacks by using a ship or against a ship; this is through stopping the sailing of ships. However, when one considers the fact this industry feeds and fuels the globe, such an option is impractical. The very nature of international shipping requires a continuous flow and faster cargo movement with minimum disruption, whilst on the other hand states require more secure maritime borders. Whenever speed is increased, security is usually a casualty and the implications can be grave. The goal is to make it difficult so as to deter an attempt, and if such an attempt is made, to reduce its impact. Therefore, depending on the perceived threat to the state, the role of the government is to ensure the right ground rules exist to facilitate sustainable development of its shipping industry and security, and to reasonably adjudicate between the conflicting demands.

The fact is that today we live in a global society which is supported by a global economy. This economy simply cannot function effectively if it were not for ships and the use of

specific routes, such as the Strait of Malacca, to optimize time and money despite the security risk. Similarly, it would be an act of folly to check every container or package entering the US using traditional security approaches. In order to implement secure maritime supply chain governments are faced with the prospect of balancing trade with the increased importance of security. The ports and bona fide seafarers of a trading partner state are the friendly force not the enemy. Lest one not forget, there can be no security without trust and scope for verification. And without trust there can be no unity of thought, purpose or action.

According to Professor Rohan Gunaratna, the world's foremost expert on Islamist terrorism, "With the hardening of US targets the threat is shifting to both government and population targets of allies and friends of the US". The group that attacked the French tanker *Limburg*, off the coast of Yemen in 2002 was in fact waiting for a US warship that never came and on seeing the slow moving tanker, decided to hit it instead (Gunaratna, 2003, Statement to the US National Commission). As long as individuals are willing to give their lives for what they consider an honourable and worthy cause, this particular type of attack is difficult to prevent. Following the attack on the *Limburg*, underwriters tripled the insurance premiums for vessels calling in Yemeni ports. This resulted in most shipping companies removing Yemen from their schedules and proceeding to neighbouring countries. A ship can be attacked anywhere on the high seas, territorial waters or in a port. If Yemen was a SAEMDS, such actions by shipping companies would be completely devastating for Yemen. Recognizing that the security risk is the product of vulnerability and threat, the threat as Gunaratna highlighted is always there. However, in terms of risk, measuring the number of recorded incidents against the number of vulnerable ships, the probability of a terrorist attack on a ship is ridiculously small. There is statistically greater probability of a ship and her crew being attacked by pirates than falling victim to a terrorist attack; however, the consequence to the ship, environment and the area of the occurrence of the incident are entirely different.

The shipping industry, unlike the aviation industry has a tradition of being secretive. This secrecy concerns the actual ownership of the vessel, misrepresentation about the content and value of cargo, the contracts and about MARAD perks to their ship-owners. This tendency has come back to haunt the industry as with secret comes the lack of understanding of how shipping works and credibility with most governments. However after 9-11, as illustrated by *Wright's Security Relation Link*, the ISPS Code has brought the seafarer and the ship-owner in closer contact with the host state's government sphere of influence resulting in some maritime unacquainted governments demanding more than necessary security requirements. In this new security driven age, the fundamental principle of transparency and proportionality enshrined in improved intelligence gathering capacity

and alert crews, should provide the foundation for how to integrate the protection of the state with the concerns of the shipping industry. The principle of proportionality should be the guiding star of all governments in their critical national security role. Speed and security are important instruments of long term profits as it will depend on how secure governments want shipping to be, and what is the acceptable inconvenience for the security of maritime transport.

2.7 Conclusion

Academics and journalists often argue about whether people shape history or whether historical forces shape people. Post 9-11 has given plenty of ammunition to both sides considering the IMO self-imposed make over. The IMO found itself in an uncomfortable position after 9-11 in that if it did not act promptly, high risk states would have taken unilateral actions, to protect themselves. Legal instruments from the IMO, ILO and states have created post 9-11 security measures for convention sized ships and their ports, their cargo and seafarers. With shipping being global and ports being local, the concept of absolute security within the maritime industry is indeed a bedtime story for the naive, as there has to be some trade off between economics and national security. Improved security is necessary within the maritime industry as we now live in an age of unprecedented incidents; thus, security at best has to be proportionate not absolute.

Linguistically, the words safety and security have basically the same meaning in some languages although they are different in the English language and shipping sector.²⁶ Mejia (2002, p. 28) supports Mukherjee's arguments with regards to the insertion of the ISPS Code in SOLAS by highlighting that in the shipping sector SOLAS by name and content primarily address regulatory safety issues at sea whilst the SUA Convention tends to focus on security issues. ISPS Code is really targeting criminal issues rather than accidents, thus the ideal option of crafting an entirely new convention which addresses security in territorial waters and ports to complement the SUA Convention.²⁷ Suffice it to say, the ISPS Code is indeed misplaced in the SOLAS Convention and thus represent a conflict between safety and security. It is also a manifestation that reforms can be adopted quickly if they are supported by the necessary political will and influential states.

In a globalized world, post 9-11 maritime security measures have proven that targeted states' security and prosperity are linked directly to that of other states. It would be folly for

²⁶ In the French and Spanish languages the words 'safety' and 'security' when translated increases the possibility of terminology confusion.

²⁷ The SUA Convention speaks to primarily maritime security at sea.

one to advocate that states ought not to pass the appropriate laws to protect their borders from those who wish to harm them. However the trend exists, in matters related to ocean resources and jurisdiction, that even where international obligations exist, that local courts attempt to resolve matters using local domestic law, in particular the US. Notwithstanding, this does not mean that such legislation cannot incorporate some form of mechanism whereby it does not encroach entirely on the traditions and achievements within the industry.

The visa requirement for seafarers by states who are signatory to the Facilitation Convention 1965 sets a dangerous precedent for international law. In addition to these implications on the levels of international law and multilateral organizations such as the IMO, the 9-11 has served to further strengthen the US hegemony far beyond the western hemisphere. Without explicit recognition of the potential tradeoffs and a structured legislative framework, governments can inadvertently increase overall security risks for increases in short term absolute security. An important element in all this is to realize the need for balance, not just in the cost/benefit equation but also in other aspects. On the security issue, targeted states are wrestling with two equally valid facts which justified their reaction to the 9-11 and reinforce the notion that maritime security must be a team effort of all major stakeholders including seafarers.

CHAPTER 3

MARITIME GOVERNANCE: THE SMALL STATE PERSPECTIVE

Risk perception, like beauty, is very much in the eyes of the beholder - Technical Committee, International Civil Aviation Organization.

3.1 Maritime governance

Ships exist primarily for the transportation of cargo and passengers. Consequently, most ships spend their life primarily operating in international waters.²⁸ Due to this particular characteristic, shipping has a long tradition to be left free and most attempts made by an individual state to regulate shipping has been a challenge and gets complicated when another state has a significant interest subsequent to an incident. This situation is made more complicated when one includes the location of the incident, the flag state of the ship, the type and magnitude of the incident, the ship or the crewmember(s) involved²⁹ (Özcaryir, 2004, pp. 11-12). Hence, the necessity for international law, as it outlines and regulates the rights and duties of states as they interact with each other, organisations and individuals. International law has a public and private component. Public international law consists of the principles and rules which states are obligated to observe in their relations with each other, individuals and companies whilst private international law regulates the relationship between individuals and companies (Farthing & Brownrigg, 1997, p. 2).

The IMO is a specialized agency of the United Nations (UN), which has the responsibility for the regulation of shipping and consequently the development of regulatory and private maritime law conventions.³⁰ The IMO provides a forum whereby member states can discuss and implement measures to develop a global consensus thereby providing uniformity of standards and laws governing the maritime industry. Hence, in principle affected states would refrain from implementing unilateral legislation, driven by frustration (Balkin, 2000, p. 11). The IMO was founded on principles and policies designed to ensure equal opportunity for all through the international democratic system of governance; consequently, the IMO is as effective as its member states want it to be.

The rights and responsibilities of states with interest in maritime affairs are embodied in a regime of UNCLOS, which provides the umbrella framework.³¹ UNCLOS affirms the right of states to participate in maritime affairs and balance those rights with duties and

²⁸ There are hundreds of ships operating on the Great Lakes, Mississippi River, St. Lawrence River, Volga River and Caspian Sea which rarely sail in international waters.

²⁹ The *Erika*, which broke in two and polluted the coast of France, was chartered by a French company, managed in Italy, mortgaged by a British bank, crewed primarily Indians and flagged and owned by a brass plate company in Malta.

³⁰ The International Maritime Consultative Organisation, which has been in existence since 1958, was renamed the IMO in 1982. With both organisations have the same mandate; thus, the IMO can be considered to be in existence since 1958.

responsibilities for maritime safety, protection and security of its ships, ports and maritime territory. By becoming party to an IMO Convention, a state is obligated to implement the convention whenever it enters into force (Özcaryir, 2004, p. 54). Similar to the Spanish ships of the 15th century, when a ship is registered to a state it attains the right to fly the national flag of that specific state; however, it is important to highlight that the states with large ship tonnage on their books have greater influence over IMO instruments' entry into force. This is the case as the entry into force of IMO instruments are usually conditional on not only the number of state's acceptance but also the percentage of total world tonnage represented.³² Hence, the political and the economic spin-offs of registered tonnage are just too much to enumerate.

The implementation of an IMO Convention requires legislative or executive action by the state party to ensure appropriate legislative enforcement within its jurisdiction when it enters into force. After being signed and ratified, the state is required to give domestic legislative effect thus ensuring that its obligations are implemented by its ports and ships along with foreign ships visiting its ports. This action will facilitate the enforcement and persecution process within its jurisdiction. However, if the monistic method is provided for by the state's domestic constitutional law, then as a consequence of the state ratifying or acceding to an international convention it becomes immediately a part of the state's domestic law. Such a system prevails in the US³³ (Mukherjee, 2002, p. 72). On the other hand, some states' domestic constitutional law subscribes to the dualistic method, which requires the dual actions of ratifying or acceding to an international convention and subsequent passage of it through their legislature. This system originated in the United Kingdom (UK) and is still used by most of its former colonies.

3.2 Interest and activities of an aspiring and export-dependent maritime state

By setting political, economic, social and military objectives, a state is able to satisfy the socio-economic needs and aspirations of its citizens. The achievement of these objectives, by IMO member states, usually hinge on the maritime industry which provides cheap transportation of large quantity of goods and port services for host states; financial benefits and political clout through effective regulatory capacity, administrative agencies and maritime court for flag states; employment and edification of its population as a crew-supplying and maritime training states; ship architecture, engineering expertise and naval

³¹ UNCLOS provides a comprehensive framework for the regulation of all ocean space and thus considered the blue print for all maritime conventions.

³² This tonnage does not include warships.

³³ Other examples of states are Belgium, Netherlands, Spain and France. It must be stressed that for this method to be effective the convention to which the state becomes party to ought to be 'self executing' or of 'direct effect or application.'

clout by specialising in ship construction and the attributed financial benefits for states which specialised in ship repair, technology and construction. These characteristics of a maritime state can be described under four broad headings namely operational services, commercial services, legal services and technical service (Ma, 2005, p. 4).

The term embedded maritime state (EMS) as used herein is borrowed from Professor Anthony Lane (2000, p. 8) and has a particular meaning. This relatively new concept refers to states which provide all four maritime services of the industry and is representative of all the founding members of the Organisation for Economic Co-operation and Development (OECD) and the first three subsequent members Japan, Finland and Australia.³⁴ These states shaped the world of shipping until the late 1960s by dominating all four of the maritime services of the industry for decades; thus, providing them with significant wealth through their ship-owners who relied on the naval power of their home state, basing their claim on ties of blood and on uncommonly strong commercial interests.

The 1970's saw the emergence of a new type of maritime state called the Aspiring Maritime State (AMS). Robin (2002, p. 1) describes the term AMS as "States which over the last 30 years have become involved in the provision of maritime services in particular ship registration, and marine insurance and ship financing".³⁵ Most of these states were inspired by the economic successes of Panama, Liberia and Bahamas and thus exercised their right by capitalising on the vague term 'genuine link' in UNCLOS.³⁶ In doing so, they took advantage of the ship-owner state's stricter registration or regulation standards, higher taxes or conservation agreements in the case of fishing vessels. Thus, states which allow ship-owners or crew regardless of their nationality to register or man their ships respectively are classified as flags of convenience (FOC) by the ITF. However, a FOC may also be referred to as an open registry, an international or second registry depending on who you speak to and which organization or state they represent³⁷ (Metaxas, 1985, p. 14). Hence, the concept of a ship's flag represents more than a ship-owner's security or nationalistic choice as in the 15th century, as it now has profound political and economic consequences for both the flag state and the ship-owner. Thus, both types of states are interested in the economic spin-off of maritime activity resulting in pressure on the EMS employment rate and related maritime industry.

³⁴ The founding members of the OECD are Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, UK, and the US. Japan, Finland and Australia joined on April 28, 1964, January 28, 1969, and June 7, 1971 respectively.

³⁵ AMS includes semi autonomous overseas territories of EMS which engage in flag registry and have responsibility for their own financial affairs.

³⁶ Article 91 of UNCLOS has given each state the prerogative to fix the conditions for granting a ship the authority to fly its flag by use of the term "genuine link".

³⁷ The terms 'FOC', 'open registry' and 'second registry' are used interchangeably throughout this dissertation.

No one goes into business unless they see an opportunity to make a profit. That is the essence of business and the same relates to the business of shipping and MARAD. As Mukherjee (2005c) confirms, the MARAD of a state is organized in relation to their particular maritime services of interest. The interest of an AMS may lie in establishing a viable ship registry, whilst the interest of others is in the field of maritime education and training with a view of facilitating work for their nationals. Others focus on providing a transshipment hub based on their geographic location. Therefore, in order for a state to protect its maritime investment and interest it is required to make meaningful contributions and participate effectively in the IMO. This is achieved by being continuously and properly represented in committee and general assembly meetings; however, with the IMO Headquarters being located in England, such participation can prove very costly. This is particularly applicable to AMS, most of which cannot afford to have their maritime representative(s) travel regularly to England or to reside there permanently. This distinction is clearly illustrated when considering the participation and influence of western European states most of whom are OECD members compared to states from the Caribbean, South Asia and Africa.³⁸ This disparity in distance drives its imbalance.

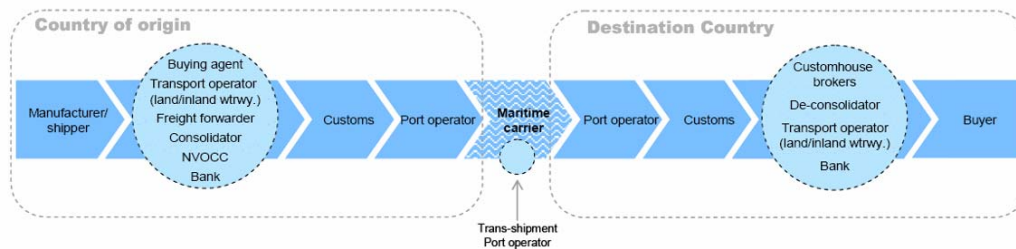
Most EMS and the AMS share historical ties, but the cause of their at times inharmonious discourse lies in something less obvious: who shapes and benefits more from the world of shipping. More worrying are the actions or lack thereof, of some AMS which have led the EMS to perceive the AMS as an economic predator concerned solely about its own financial welfare. This at times is attributed to the lack of experience, expertise and sufficient human resource of the AMS, which is indicative of the first great contrast between the two types of the states (Starke, 1989, p. 97). No less decisive is the second point of contrast, whereby the EMS is united financially, politically and through Memoranda of Understanding (MoU) and the OECD, unlike most AMS. Thus, additional pressure from all directions is now being exerted to ensure that flag and host states, in particular the AMS, properly undertake their international obligations. Be that as it may, most AMS do not deny their main goal is economic benefit for their own population, as any legitimate governments would seek to do, but they assert that in a global economy, maritime ancillary business and development are essential for their economic prosperity and globalization. Disturb the former, they stress, and you disrupt the latter.

Shipping has long been considered essential to trade and a vital interest of states, as this medium of transport is convenient and economical. Further, it provides employment for

³⁸ The records of the 75th Meeting of the Maritime Safety Committee, which deliberated on the draft of the ISPS Code, reflected fifty nine of the then one hundred and fifty eight IMO member states were not in attendance (IMO, 2002, May 22).

customs, immigration, security and port operators all of who play an important role as the cargo leaves from the country of origin to the destination country as illustrated by Figure 4. Therefore, maritime trade may be considered as being the engine of economic growth and shipping its fuel especially in the case of island states.

Figure 4 - Movement of cargo from the export country to destination country



Source: OECD - Security in Maritime Transport: Risk Factors and Economic Impact Directorate for Science, Technology and Industry, Maritime Transport Committee, p. 25, © OECD 2003.

Every state takes advantage of the economic opportunities which shipping and globalization provide. Consider for example, the cost to ship a television from Asia to the US or Europe is US\$10.00 per unit resulting in a typical shelf price of US\$700.00.³⁹ The evidence of globalization is everywhere, from the rising price of steel caused by China's rapid economic growth to the furore in the US Congress over the possibility of a firm owned by the Dubai Government operating six US ports. Globalization has smoothed out much of the volatility in world markets by creating tighter linkages between economies. Actually the world's economic downturn in 2001 was considered to be a direct result of deceleration of the US economy and the effects of 9-11, the impact of which was manifested by a reduction in exports, investments and consumption. Hence, any interruption or collapse of the maritime transport system would have an adverse effect not only on an export dependent state (EDS) but on the world's economy.

3.3 A small, aspiring and export-dependent maritime state defined

Since time immemorial, every state has been involved in the process of selling what it produces and acquiring what it lacks. States quickly realise that by trading and exchanging their goods and services with the outside world that it resulted in prosperity. Today, foreign trade of goods, services, technology and capital, has evolved to a point where most states are not fully self sufficient. As suggested by Churchill and Lowe (1999, p. 433) despite air, rail and trucking, the largest proportion of international trade by tonnage travels by sea,

³⁹ This cost was confirmed by the Round Table of International Shipping Associations pamphlet (2005, p. 5) on the low cost of maritime transport.

consequently coastal states routinely are more prosperous than interior landlocked states.⁴⁰ Many maritime states, due to weak economic foundation, have serious difficulties in meeting very basic human needs; therefore, any disruption of their ports and marine terminals would have tremendous ripple effect on their economies and their ability to attract shipping companies to their port. Therefore, the term EDS is used to describe states whose economic growth depends crucially on the export of their commodities by sea throughout the globe (Worrell, 1987, p. 1).

One may be tempted to perceive a small state as simply a scaled-down version of a large state and therefore does not warrant preferential treatment. After all, small states have the same one vote as all states in the IMO; therefore, one may implicitly believe, as does the World Trade Organisation (WTO), that small and large states ought to be treated uniformly.⁴¹ There is no widely accepted definition of a small state despite the fact that the size of a state can be easily observed and objectively measured. The size of a state may be measured by three different, although interdependent parameters namely land area, population and economic resources (Starke, 1989, p. 97). However, by defining a state as small, based solely on economic performance, one would include a land-endowed giant such as Ukraine, as well most African and Central Asian states. On the other hand, the physical magnitude of a state, measured by either population size or land area, would not.

A small state tends to have smaller markets and therefore is more dependent on external trade; thus, making them EDS (Shah, 2006, p. 8). Consequently, they have a small market, which results in a more unstable economy and less ability to achieve scale economies. Therefore, a small state for the purpose of this dissertation is defined by the size of its land area only. Most previous definitions have been based primarily upon arbitrarily chosen cut-off values of selected criteria; thus, this dissertation shall use the cut-off land size of states below 20,000 km². As illustrated in *Appendix C*, on this basis forty three states are classified as 'small states' of which only thirty four are members of IMO and thus would be considered as SAEDMS.⁴² Further, in accordance with this selected criterion, ten of these small states are located in the Caribbean.⁴³

⁴⁰ 6.6 billion tonnes of cargo were transported by ships in 2005 alone.

⁴¹ Because of a WTO ruling, the protected market and price for Caribbean sugar and bananas in the United Kingdom is effectively a thing of the past.

⁴² The term "Small state" was first used by the Secretary-General of the UN in the introduction of his Annual Report of the work of the Organisation 1966-1967, p. 20. Before then they were described as "Lilliputian states" by the League of Nations.

⁴³ Antigua and Barbuda, Bahamas, Barbados, Dominica, Grenada, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.

CHAPTER 4

THE CARIBBEAN

We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human dignity. Unless all these causes are advanced, none will succeed - Kofi Annan, UN Secretary-General

4.1 Significance of the US-Caribbean relationship

The Caribbean Basin covers approximately 3 million square kilometres, most of which is water. The Basin consists of a large number of islands, rocks and reefs and stretches in an arc of more than 4000km from Jamaica, near Cuba and Haiti, to Trinidad near Venezuela (Smith, 1965, p. 9). The Caribbean is unique due to its cultural and political diversity as a consequence of the existence of British⁴⁴, Dutch⁴⁵, US⁴⁶ and French overseas territories⁴⁷ within it. Most states in the Basin are former colonies of the British Empire and thus their legal and judicial system is firmly based on the English common law and practice.⁴⁸ The island states are exceptionally small in size, with small economies and populations ranging from less than 100,000 to 2.7 million. The Caribbean contains political, economic, and environmental challenges similar to states in the Pacific and Indian Oceans such as active volcanoes, earthquakes and annual hurricanes which can have devastating effect on local economies by affecting trade flow and destroying infrastructure. However, over the past thirty years there is an overall disparity in the level of maritime development among the individual states, in that some have progressed significantly while others are still constrained by the traditional approach to security and economic development that is characterized by a short term development planning defined by the five year term of political office.

The states of the region, in particular the northern Caribbean consisting of Jamaica and the Bahamas, are physically close to and integrated with the US through people contact, trade and investment flows. Tourism, a main source of foreign exchange, is well established within the region particularly in Jamaica, Antigua and Barbuda, Grenada, and Barbados and to some extent Trinidad and Tobago. The 2006 Travel Trends survey awarded the Caribbean as the top international destination for American travellers with 76.3% of the votes followed by Rivera Maya in Mexico with 51.2%.⁴⁹ Thus, by virtue of its geographic proximity to the US, the Caribbean offers a potentially attractive staging area for the drugs/arms trafficker

⁴⁴ British territories are Anguilla, the British Virgin Islands, Cayman, Montserrat and Turks and Caicos.

⁴⁵ Under a new political structure, agreed with the Dutch government in late 2005, the federation of the Netherlands Antilles will be dissolved by July 2007. Curacao and St. Maarten will each become autonomous territories of the Netherlands. Bonaire, St. Eustatius and Saba will become 'Kingdom islands', a newly created status that has still to be defined in detail. Aruba was already a state apart from the Federation with its own status.

⁴⁶ US territories consist of Puerto Rico, Navassa Island and the US Virgin Islands of St. Thomas, St. Croix, St. Johns and Water Island.

⁴⁷ The French territories are Martinique and Guadeloupe.

⁴⁸ The English common law and practice utilizes the dualistic legal system.

⁴⁹ This survey was conducted over the period November, 28 – December 16, 2005.

and terrorist as it is often considered the third border of the US. Therefore, it seems reasonable that the US would want to preserve the integrity of its third border and the Caribbean its main source of foreign investment and trade.

The dependence and proximity of Caribbean states' to the US makes compliance with post 9-11 maritime security measures a foregone conclusion however burdensome and financially painful this may be. This stark fact was driven home during the 33rd Caribbean Shipping Association Annual General Meeting in Montego Bay, Jamaica on October 20, 2003, when the Political and Economic Officer of the US Embassy, Rebecca Kimbrell-Patrick warned that failure to comply with the provisions of the ISPS Code could be "deadly for a country's livelihood" (Caribbean Shipping Association News, 2003, October 21). Recognizing that a chain is only as strong as its weakest link, it can be argued that what is being demanded by the US, as part of its own protective measures, are ultimately beneficial to everyone in the global supply chain, especially states with which it share borders. Equally of concern to the Caribbean is the apparent ease with which weapons leave the US shores and turn up on their streets. Therefore, as the security environment evolves and as relationship between the US and the region grows, and becomes increasingly linked in a complex interdependence, so too will the importance and conflict of national interests.

Interestingly, for a region which is considered the third border of the US it was only on June 20, 2006 the first Container Security Initiative Agreement between a Caribbean state and the US was signed.⁵⁰ With markets being globalized, trading opportunities can be improved by the implementation of such a security initiative to facilitate access to major international markets through the use of secure CSI hub centres and interface points. Thus, with the establishment of the Caribbean Community (CARICOM), which provides for the free movement of labour, goods and capital within the Caribbean, it is in region's best interest that more CARICOM states gain a CSI Port to facilitate exports from the region into the US.⁵¹ Thus, this cargo would be treated as an imported cargo from Puerto Rico.⁵² Such an initiative would satisfy the US concern about the 'Trojan box' effect and equally, the Caribbean States' concern about small weapons leaving from the US and appearing on their streets.

⁵⁰ This Agreement was signed between the US and Jamaica.

⁵¹ Treaty of Chaguaramas established CARICOM in July 4, 1973. The Treaty provides for the free movement of labour, goods and capital, also the coordination of agricultural, industrial and foreign policies. Members of CARICOM includes Antigua and Barbuda, Jamaica, Bahamas, Montserrat, Barbados, St. Kitts and Nevis, Belize, St. Lucia, Dominica, St. Vincent and the Grenadines, Grenada, Suriname, Guyana, Trinidad and Tobago and Haiti.

⁵² Puerto Rico is a US dependent state.

4.2 The strategy of alliance

Historically, states co-exist on the basis of association. Most states belong to one or more regional or global organisation whose unification is cemented by linear distant, political, social or economic interrelations. Global forces of competitiveness, information technology and socio-cultural dynamics impact and shape the shipping industry significantly. The global economy is being transformed by forces of regional trading blocs, global alliances, deregulation, new technologies, the internet and electronic commerce. Notable examples of such alliances is the regional entity the EU and on a larger scale the OECD both of which actively advance the causes of financial unity and the development of law and security. As a unified entity, states of these organizations acquire increased clout within the maritime industry and the world affairs in general. Incidentally, whilst the European states in the 1950s were focusing on unity of money and security, most Caribbean states were on the threshold of independence which subsequently resulted in the break up of the West Indian Federation in the early 1960s (Smith, 1965, p. 21).

However, in this new globalized environment preferential treatment on the world market for goods and services is rapidly disappearing. Small states cannot expect, individually, to fend off the negative forces in a hostile environment driven by the desire of the industrialized states to extend their influence globally through trade and diplomacy. What became certain is that by acting together Caribbean states had an increased likelihood of protecting their interests; thus, the decision in 1989 to establish a regional economic bloc the CARICOM Single Market and Economy (CSME).⁵³ The CSME seeks to convert its fifteen member states into a single, enlarged economic entity as near to a single market and single economy as possible, without political integration. However, for any single market to operate effectively there must be safe, adequate and affordable transportation for goods and people within its region.

Unlike Europe, the Americas and Africa where exports can be moved by road and rail, the Caribbean states rely completely on air and sea-borne transportation for the export of their produce. Similarly, compared with the ships in the Mediterranean, the number of ships involved with intra-regional trade is minimal hence; the farmers in the main agricultural-based economies in the Caribbean are deprived of the real benefits of exporting their produce within the region. In the absence of suitable vessels, St. Lucia and St. Vincent bananas will not reach the tables of the homes and hotels in the Bahamas, Antigua and

⁵³ In January 2006, Barbados, Belize of Central America, Guyana of South America, Jamaica, Suriname and Trinidad and Tobago signed on to the CSME. However, the smaller islands are expected to sign by July 2006.

Barbuda and Barbados. Thus, shipping is the lifeline of these states; however, without adequate and sufficient vessels they will be deprived of real benefits from a single market region. The CSME is now entering the cocoon stage as only recently some states have ratified their membership while the remaining ones have declared their intention to sign.

4.3 The Caribbean MoU on PSC

Highly publicized tanker spillage of crude oil on the coastline of EMS brought the shipping industry to the attention of governments. This led to the formation of the first and largest Port State Control (PSC) regime - the Paris MoU in 1982.⁵⁴ This agreement is between the MARAD of the participating states who consent to a programme of ship inspection within their ports aimed at ensuring compliance with IMO Conventions with the intent of ridding their region of substandard ships and shipping. The agreement covers the exchange of information about ships, results of prior inspection and actions taken by each participating MARAD. MoUs tend to sharpen the teeth of IMO Conventions by obligating compliance of shipping companies and crews of foreign flagged vessels who are desirous to continue trading to or from their particular region. There are currently nine regional MoUs worldwide, including the US, which operates its own equivalent PSC regime. (See Appendix D) The Paris, US and the Tokyo MoU, by virtue of their size and available resources, have established themselves as the leading PSC regimes.

CMoU marks another established alliance of the Caribbean states. Established on February 9, 1996, it comprises independent and dependent territories of the region.⁵⁵ Due to the presence of British, Dutch, and French overseas territories, the Caribbean MoU (CMoU) has aligned itself and works closely with the Paris MoU. Notwithstanding, similar to the IMO, the effectiveness of a MoU is dependent on how powerful its MARADs want it to be. This is made easier when most of the members are experienced, have the legislative, financial and human capacity to carry the mandate of their MoU. This is clearly evident in the US and Paris MoU, which publish regular blacklisted ships and flag states through their websites⁵⁶ (Farthing & Brownrigg, 1997, p. 192). The high seas of cyberspace are open for all to roam, hence by posting statements on their websites MoUs are able to communicate with ship-owners, classification societies, government agencies, insurers and charters on their performance and that of others on a continuous basis. This the Italian ferry Commercial Director, Claudio di Mare, found out to his dismay when a statement on an official British

⁵⁴ As of July 1, 2006 the Paris MoU comprises of twenty five members most of whom are EU members.

⁵⁵ Anguilla, Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Cayman Islands, Commonwealth of Dominica, Cuba, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles (Curacao, St. Maarten), Suriname, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Turks & Caicos Island and Trinidad & Tobago.

⁵⁶ The Caribbean MoU website does not published detained ships and is limited in scope compared to the leading MoU's website.

Foreign and Commonwealth Office's travel advice website published erroneously that two of the company's ships did not meet international stability standards and thus are unfit for travel.⁵⁷ Hence, detentions can become very controversial issues, as certain vessels by nature of their flag are exposed to detailed inspection resulting in delays thus affecting their schedule.

Inspired by the economic success of the Bahamian Registry and seeking avenues to meet legitimate aspirations for socio-economic development, Caribbean states have exercised their right by opening shipping registries, with some achieving relative success. The maritime services which the region's MARAD are interested in are narrow and include a mixture of what is regarded primarily as ship registries' such as Bahamas, St. Vincent and Grenadines, Antigua and Barbuda and Barbados, crew-supplying states such as Trinidad and Tobago and Jamaica and states that are interested in creating transshipment hubs such as Jamaica, Trinidad and Bahamas. However, with no inherent sense of maritime orientation or heritage in the society, the national governments are usually not under much public pressure to fulfil their maritime mandates. This is further entrenched by the fact that there are few maritime issues on the political agenda, which result in a lack of widespread public appreciation of the linkage of maritime degradation with social and economic issues. Invariably, most of the region's MARADs tend to be under funded and lack sufficient human resource as they were established by their governments with the intent that the MARAD, like their Port Authorities, will be self sustainable and provide additional monies for the government's consolidated fund.

Delegates of the Caribbean MARADs, despite the unification of their states by CARICOM, tend to attend most IMO meetings without a regional plan or vote *en bloc* similar to other foreign policy matters.⁵⁸ This individualistic approach on maritime matters is evident as each state attempts to strategize with a purely domestic landscape in mind resulting in uncoordinated efforts between the individual states. Prior to attending IMO meetings, the EU states, most of whom are EMS, meet to formulate a common position on policy matters resulting in a unified approach when making proposals and voting at IMO; hence, their dominance and influence over the shipping industry compared to other regions. Similarly, the CMoU has the potential to be a leverage to facilitate the cohesion of the maritime sphere of the region by facilitating meetings to discuss issues of interest amongst the states to achieve a unified approach. *Appendix E* indicates that the Caribbean states would have a

⁵⁷ The two vessels, which sail regularly between Naples and Palermo, had recently changed flag from the Red Ensign to being registered with Madeira. They are the SNAV Sicilia and SNAV Campania — then known as Norland and Norstar.

⁵⁸ CARICOM in 2005 defied the desire of the US when they voted *en bloc* backing the election of former Chilean Foreign Minister Jose Miguel Insulza as Secretary-General of the Organization of the American States.

combined tonnage of 7.2% of the world's total tonnage and thus would have a greater impact on IMO matters if they were to speak and vote *en bloc*.

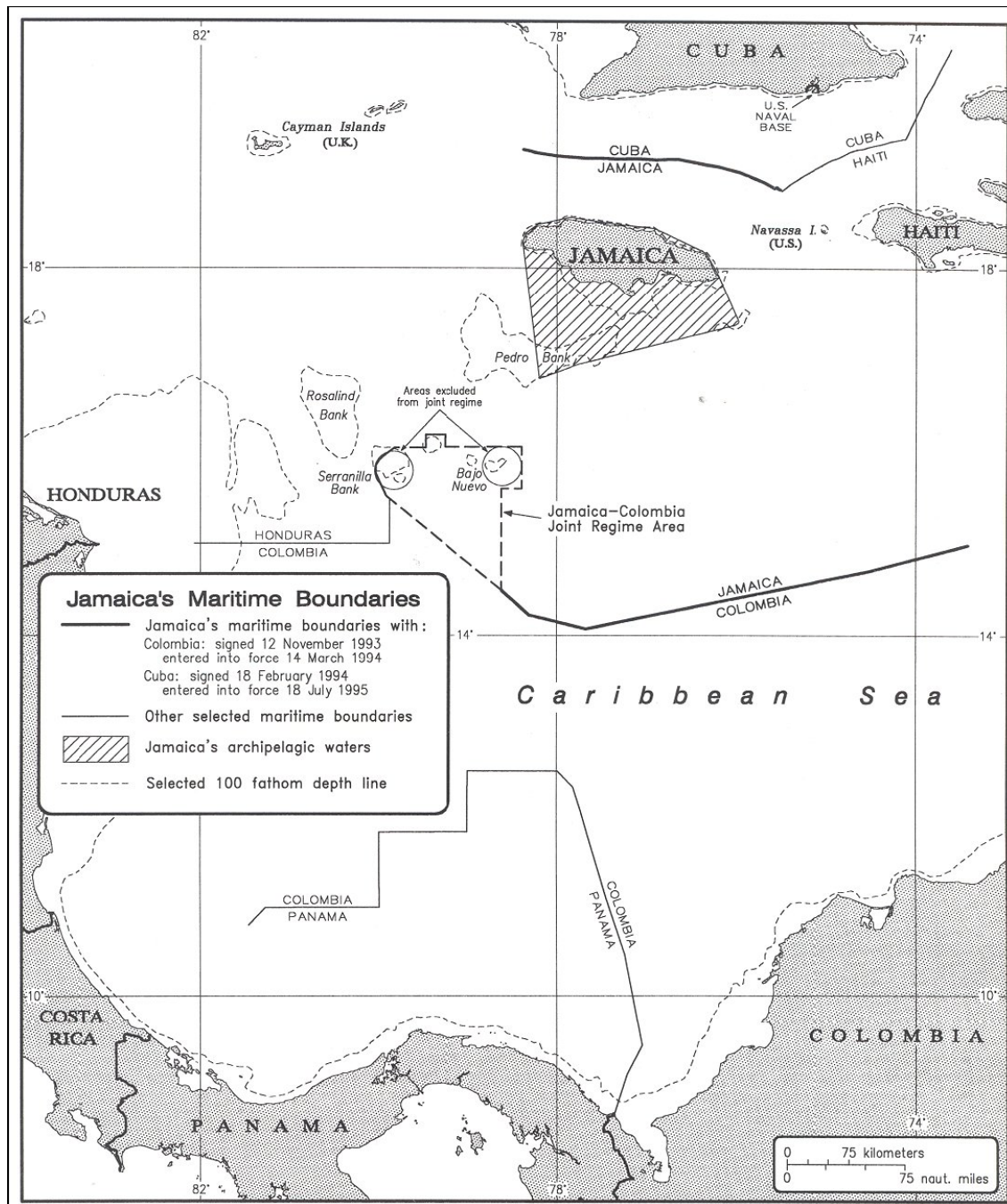
4.4 Impact of post 9-11 maritime security measures – Jamaica case study

Jamaica was amongst the first block of states to be visited by the US delegation in keeping with the MTSA to ascertain the state's compliance with the ISPS Code. This visit was conducted over the period March 29-April 5, 2005 by a delegation comprised of USCG representatives, the US Transport Security Administration, US Customs and the US Embassy Staff based in Jamaica, accompanied by the island's National Accreditation Committee (NAC) (The Jamaica Gleaner, June 14, 2005). Subsequent to this inspection, the APM Terminals Jamaica facility was approved as 'significant compliant' as it had surpassed the standards required by the ISPS Code resulting in it being published on the USCG website as an international port with best practices in the field of maritime security. This meant that this small island has made an impact on the world stage with regards to maritime security measures and compliance with the ISPS Code. However, to understand how such an achievement is possible and the impact of the post 9-11 maritime security measures on Jamaica, it is useful to be acquainted with its geographic, social, maritime and economic circumstances.

4.4.1 Geography and the socio-economic milieu

Jamaica's location in the Caribbean is critical to understand her role in the region's shipping industry. Jamaica, the third largest island in the Caribbean, is located northwest of the Caribbean Sea at approximately in 18° N and 77° W, almost midway between the North and South American Continents. As indicated in Figure 5, Jamaica's closest neighbours are the Republics of Cuba and Haiti, located 145 km to the north and 160 km to the east respectively. Hence, by virtue of its location, Jamaica straddles many shipping lanes for both tanker and liner traffic. The mainland of Jamaica is approximately 235 km long in an east-westerly direction and 82 km wide at its widest point. There are seven main offshore cays to the south of the mainland and these form the Pedro Cays and Morant Cays which results in Jamaica having a total area of 11,424 km².

Figure 5 – Jamaica's maritime boundaries and neighbours



Source: Office of Ocean Affairs, US Department of State

Jamaica's main source of foreign exchange is gained from its tourist industry; over 70 % of the visitors are from the US. Jamaica has an estimated population of 2.66 million people (Statistical Institute of Jamaica, 2005) with an average growth rate of 0.5 %, which has been the average since 2000. In October 2005, the unemployment rate stood at 10.9 %. The

Gross Domestic Product (GDP) of the state increased by 2.6% in 2004 to US\$3304.0 million in 2005. The island has a fairly diversified economy to include mining, alumina and bauxite, agriculture through banana and coffee, and the manufacturing sector in the rum, sugar, cement, and flour and poultry production. Jamaica's major trading partners include China, Brazil, Canada, Colombia, Germany, Venezuela, Japan, the UK, CARICOM and the US. Jamaica being an island, its external trade is heavily dependent on the maritime sector as 90% of Jamaica's trade takes place on ships and of that 90%, about 60% goes to its main trading partner, the US. Considering the geographic and socio-economic condition of Jamaica, it is evident that it is a small export dependent state upon which its ports and shipping play a significant role in the state's progress and development.

4.4.2 Maritime status

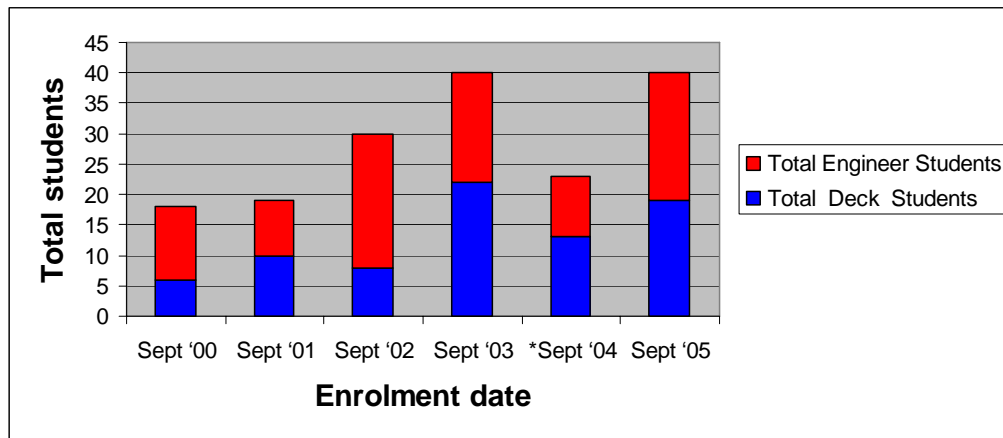
Jamaica has the honour of being the home to the International Seabed Authority, the Secretariat of the CMOU and the state where the seminal maritime convention, UNCLOS 82, was signed by delegates from 119 states. It was through the provisions of this very convention that in August 1996 Jamaica was declared to be an Archipelagic State, having satisfied the criteria required by Articles 46 and 47. The government, through the Maritime Areas Act, 1996 (MAA) declared the state's archipelagic status, which resulted in Jamaica gaining jurisdiction over an adjacent sea of about 25 times the size of mainland Jamaica.

On July 1, 2004, only fourteen local ports were certified as ISPS compliant by the Jamaican Government to continue operating as a trade conduit to the US; subsequently this increased to its present figure of twenty two. According to Mr. Noel Hylton, President of the Port Authority of Jamaica (PAJ), "Jamaica has more than 3,000 vessel calls per year, directly employing more than 3,000 Jamaicans and generating many thousands more jobs indirectly, both on and off its ports" which demonstrates the significance of the ports (The Jamaica Gleaner, June 22, 2006). The ports in Jamaica are owned both by private institutions and the PAJ. The Kingston Harbour, the world's 7th largest natural harbour, is the home of the one of the Caribbean's largest container transshipment hub, the Kingston Container Terminal (KCT), with San Juan, Puerto Rico being the only other port handling more volume of cargo in the region. The KCT is ranked 63rd in the top 100 ports in the world handling up to 1.1 million twenty foot equivalent units (TEU's) containers annually.

Although Jamaica has a rich maritime history, its registry is relatively new having been only formally launched in 2000 as an open registry. Thus, the Maritime Authority of Jamaica's (MAJ) ship registry is in its early stages of development and is determined to attract quality tonnage to its books resulting in for every one ship it accepts, a further ten are rejected

(Jamaica Maritime, 2004, p. 26). As of January 2006 the registry's book reflected twelve ships above 500gt compared to seven ships in January 2005. This goal of quality is not only confined to the enlargement of its ship registry, but extends to encompass a wide range of maritime activities, including training of seafarers. The island is also the home of the Caribbean Maritime Institute (CMI), the only maritime academy of its kind in the English speaking Caribbean. Since 9-11, the CMI has realised a 67-100% increase in its number of applicants and greater ease in finding placement for the final year students onboard ships to conduct their twelve month sea time which prior to 9-11 proved to be a challenge (Newman, personal interview, January 11, 2006). Hence, both the MAJ and the CMI have seen positive growth in tonnage and seafarers enrolment respectively thus contributing to Jamaica's economic and social development.

Figure 6 - Students enrolment in the CMI three year programmes



Source: Newman, D. (2006, January 11). Director, Marine Division, CMI.

* September 2004 saw the commencement of a more stringent CMI entrance requirement for students and uncertainty of its start due to the passage of hurricane *Ivan* on September 11 – 12, 2004.

To implement maritime security measures within a SAEDMS and simultaneously safeguard its national economic interest require a multi-pronged approach which invariably will cut across the different ministries within the government. Salonio and Sinha (2002, p. 234) describe these as regimes which are necessary to implement security measures. These regimes are legal regime which speaks to national legislation, the protective regime which captures the policy and ability of a state's navy or coast guard to ward off threats; preventive regime with regards to international control standards to be implemented on ships and ports; and finally the cooperative and information sharing regime amongst trading partners and their appropriate agencies. With the global nature of shipping, these four regimes are indicative of the same area which will be directly impacted by post 9-11 security measures within a state.

4.4.3 Legal regime: Impact on state's maritime security legislation

Being a former British colony, Jamaica has a national legislation process based on the dualistic system, thus parliamentary approval is required before legislation has the force of law. Once it is passed and signed by the Governor General, it is then called an Act. The Jamaican laws provide for regulations to be issued for interpreting the law and in order to apply the general principles in the law to the real world. It is also worth mentioning that regulations make it much easier to comply with laws and avoid penalties as they give Acts form and definition, but mostly they fill in the blank spaces. As alluded to by Mukherjee (2002, p. 85) it is an essential step insofar as the application of the SUA Convention and ISPS Code within a state's jurisdiction regardless if the state's domestic constitutional law subscribes to a monistic or dualistic method as both are not self-executing instruments.

Jamaica's maritime security is regulated by three pieces of legislation, namely the MAA, the Port Authority Act of 1972 and the Maritime Drug Trafficking (Suppression) Act of 1998. However, these legislations are general in scope and not particularly related to the security of the vessels or the port facilities specifically. Although the state has made a large investment as a direct consequence of the requirements of post 9-11 maritime security measures it is yet to implement the necessary national legislation to give the required statutory effect in Jamaica's domestic law. This situation prevails in most of the region's significant maritime states with the exception of Trinidad and Tobago and St. Lucia which have implemented the ISPS Code in to their respective Shipping Regulations.⁵⁹ On the contrary, all EMS have given effect to the ISPS Code through the appropriate legislation and in some cases governments incorporate the provisions of the ISPS Code directly into their national legislation whilst others went a bit further such as the US. With economic prosperity projected to become even more dependent on trade in the future, there is rationale for Jamaica to implement such promptly.

Jamaica, as illustrated by *Appendix F*, has a commendable reputation in signing and acceding to international conventions; however, in contrast, it has been lukewarm about giving them effect through national maritime legislation. This hesitation may be attributed to the cost associated with implementing legislations, as legal and administrative staff will have to be engaged to formulate applicable statutes and regulations to conform to the stipulations of the ISPS Code. Another reason is possibly the effort required by the legal and administrative staff, in the absence of a Model Act, to interpret and subsequently reword the instrument's content to capture and reflect the local peculiarity thus facilitating parliamentary

⁵⁹ Bahamas and Jamaica are still working on their domestic legislation to give effect to the ISPS Code.

approval. A large part of the answer may lay in the fact that there is not sufficient appreciation by most Jamaicans of the role of the maritime industry as it relates to the economy of the state. Be that as it may, a common trend is clearly discernible.

4.4.4 Protective regime: Impact on maritime security culture

Surprisingly, unlike the other larger Caribbean islands, most of Jamaica's military forces are infantry by specialization.⁶⁰ Jamaica's naval forces, the Jamaica Defence Force Coast Guard (JDFCG), account for less than 10% of the total number of Jamaica Defence Force (JDF) personnel. The JDFCG is the state's only maritime law enforcement agency which has a credible blue water capability and is responsible for the security of Jamaican registered ships. In theory the Jamaica Constabulary Force, through its Marine Police Division, ought to be responsible for the security of the island's harbours and the JDFCG outside the harbours, however to date there is no official documented policy to affirm this.⁶¹ Due to the national significance of the ports and by virtue of Section 2 of MAA, all JDF personnel are marine officers; thus, both forces have an overlapping responsibility within the harbours. With this in mind, both forces represent Jamaica's front line uniformed maritime law enforcement organizations.

Jamaica's geographic position in the Caribbean lends itself particularly well as a favourable hub for the transshipment of not only commercial cargo but also narcotics from its main ports of Kingston and Montego Bay as well as from and to its offshore cays. This coupled with the island's infamous reputation as a marijuana producer, its strategic location between the top producers and the top consumers of cocaine, its longstanding trading links with North America and Europe and its diaspora connections coupled with the easy acquisition of small arms in the US have made the complete identification of inbound and outbound cargo necessary. Consequently, with a large portion of the trade to and from Jamaica bound for the US, Jamaican exports have traditionally been plagued by contamination of legitimate cargo with illicit narcotic substances, whilst imported cargo are used as a cover for the shipment of small arms⁶² (The Jamaica Observer, 2005, July 21). The illegal importation of small arms into the island has caused the security situation on the island to deteriorate thus threatening the citizens and visitors alike. Therefore, the Jamaican authorities and port operators have always had stringent port security systems in place to stem the flow of these

⁶⁰ Trinidad and Tobago naval and infantry forces are approximately balanced numerically, whilst Bahamas military force is dominated significantly by its naval force with only a small infantry component.

⁶¹ The Governments' National Security Strategy which was tabled in Parliament on January 7, 2006, is expected to provide a mechanism for co-ordination and implementation of maritime law enforcement between the JDF and the Marine Police Division.

⁶² Sixteen high-powered weapons and more than eight hundred rounds of ammunition were found in a false compartment in a container at Kingston Wharves in February 2005 after it was scanned by high-powered x-ray machines which were installed at the ports in 2003. The guns and ammunition were sent from a shipping port in Florida, US.

illicit activities therefore, the basic requirements of the ISPS Code was not found to be overly challenging to implement.

Due to the ISPS Code's emphasis on the integrity of export cargo, the Jamaican port operators established sterile areas and invested in state-of-the-art non-intrusive gamma-ray cargo checking equipment which replaced the time consuming manual checks. The new basic requirements of the ISPS Code therefore were not found to be too disruptive as increased security and undue delays were usually a part of the daily life of visitors and staff of the ports albeit for different reasons. On the contrary, the cruise shipping industry on which Jamaica relies heavily experienced the most intensive change since 9-11 as passengers were now required to be scanned; all cruise ships are required to be met and escorted into and out of each port inclusive of continuous seaside security presence by the JDFCG and the Marine Police Division whilst the vessel is in port. Notwithstanding the fact that these new directives placed further burden on the existing maritime security resources and functions, the Jamaican authorities utilised the post 9-11 maritime security measures as an opportunity to address some of the more formidable security challenges which had beset its major ports for a long time.

4.4.5 Preventive regime: Economic impact of security measures

Most maritime policies which stem from governments will have an impact on the economics of shipping, especially policies that pertain to security. Improved security typically has associated costs for the eventual implementation or enforcement. Undoubtedly, it is more expensive to operate a non ISPS compliant port and ship than a compliant port and ship. Whilst being interviewed, Superintendent James Forbes, Jamaica's ISPS Code Coordinator, stressed "if there is no security investment in preventative and appraisal measure, then there is no way to gain compliance and to continue operating, hence the final cost will be higher" (Personal interview, January 11, 2006). He went on to explain that the Government of Jamaica, through the PAJ, has spent approximately US\$90 million and the private ports an additional US\$5 million, to enhance security at the island's four international cargo and cruise ports to comply with US anti-terrorism measures and the ISPS Code.

Although the ISPS Code does not make the use of technological security equipment mandatory, Jamaica has invested over US\$22 million in buying the latest technological security systems to inspect trucks, containers, cargo and passenger vehicles for explosive

devices and contraband.⁶³ (See Appendix G for details) This equipment was bought to meet port and transshipment competition in the Caribbean and internal security, as well as to meet the terms of the CSI network, especially in light of the heightened terrorist risk. Interestingly, this equipment now plays an important role in fighting manifest fraud by confirming the exact contents of cargo within the container and therefore the amount of import duty payable. The Jamaican Customs have realised an increase of some JA\$1 billion (US\$16.3 million) in revenues since the implementation of this equipment due to their improved capability to inspect goods imported into the country (The Jamaica Gleaner, June 16, 2005). Therefore these savings over a short period will compensate for the investment in purchasing the equipment, training and recruitment of additional staff to implement the security measures at the ports. The concept of “quality security” has the twin facts that “it has a price” and “it commands a price”, which SAEDMS such as Singapore have shown. Ship-owners, agents and masters of ship who fail to comply with the ISPS Code can be fined up to US\$10,000 in accordance with Singapore’s Maritime Transport Security Act, 2002⁶⁴ (Brewer, 2005, p. 3). Therefore, the overwhelming evidence is that post 9-11 maritime security measures are very costly; however with time, it can actually prove to be a source of additional revenue and employment.

4.4.6 Cooperative regime: Impact on government strategies

The PAJ is the organization delegated to supervise the ports across Jamaica to ensure that they comply with the required ISPS Code standards. The PAJ maintains and chairs the NAC, which is responsible for reviewing Port Facility Security Plans of all ISPS ports, recommended certification and contract a team of dedicated auditors who continuously monitor the compliance of the port facilities on a year-round basis. The NAC membership are comprised of representatives from all government agencies and departments that are responsible for preserving and improving the security of the island's coastline, port facilities and marine transportation systems. On the other hand, the MAJ is responsible for ensuring that the ships flying the Jamaican flag are compliant with the relevant ISPS Code regulations and also the maritime security oversight and regulatory functions consistent with the ISPS Code. This is Jamaica’s approach to ensure its port facilities and ships gained and maintain compliance since July 1, 2004.

However, for international maritime law to meet its objective of regulating shipping and ship activities, national legislations and enforcement are necessary. Hence, national legislations

⁶³ These machines were purchased from Advanced Research & Applications Corp (ARA-COR) and Science Applications International Corp and are located at its two main terminal facilities – KCT and Port of Montego Bay.

⁶⁴ Singapore’s Maritime Transport Security Act, 2002 which gives effect to the ISPS Code states that “the owner, agent, master, operator or person in charge of a vesselis responsible for compliance”.

are necessary and ought to reflect the ISPS Code's provisions with regards to the role and function of the NAC and provide control mechanism for audits, inspection and certification to ensure compliance with standards by ports. Additionally, there is a need for the appropriate legislation for the establishment of security measures and the creation of offences for breaches by ships operating within Jamaican waters. However the NAC, which is tasked to oversee the implementation, the auditing and maintenance of the ISPS Code, obligations have not been enshrined in the state's domestic legislations to facilitate compliance by port operators and ship within Jamaica's ports. Hence, although the government strategy to implement the ISPS Code is commendable, there still exist loopholes which need to be plugged.

With Jamaica being classified as "significant compliant" and its signing of the CSI Agreement on June 20, 2006, both events have afforded the government the opportunity to cooperate more closely not only with its trading partners but also shipping companies.⁶⁵ By complying with both the IMO and the US post 9-11 maritime security initiatives, this has acted as a catalyst on Jamaica's strategy to create one of the major trans-shipment and logistics centre points in the region in partnership with the Israeli shipping firm, Zim.⁶⁶ Such a venture will also offer the potential for reducing the impediments and cost for shipping companies operating within the US by providing them the option of using Jamaica as a feeder base for their cargo to and from the US in a hub-spoke pattern as described by Ma (2005, p. 49). Hence Jamaica's post 9-11 maritime security measures have provided a menu of opportunities and will prove beneficial to local and regional exporters who have in the past complained that their perishable goods are sometimes ruined at US ports while awaiting inspection.

4.5 Conclusion

From the foregoing it is abundantly clear that going it alone is not an option for the small states of the Caribbean, particularly within the context of the harsh realities of today's global environment. The governments of the Caribbean are in the process of integrating the economies of the member states of CARICOM into a single market in which people, cargo, services and capital can move without hindrance through the CSME by co-ordinating and harmonising economic policies and legislations. Whilst it can be argued that Caribbean States tend to organise themselves as a unit based on the prevailing circumstances and condition, they have not fully maximised the true potential of the CARICOM and the CMoU.

⁶⁵ The Jamaican Cabinet approval on the CSI programme was affirmed through Parliament Decision 12 of 2005, dated April 04, 2005.

⁶⁶ For example, companies may export containers filled with television sets and computers for the region; these items would be unpack, repackaged, consolidated and sent off to the respective destination countries from Jamaica.

Both organizations agenda combined, can provide a platform whereby CSME cooperation can truly be multidimensional in form and nature; from monetary, trade and foreign affairs issues of CARICOM to the shipping and maritime security issues of the CMoU all of which ought to be merged together to forge a regional agenda.

The improved maritime security comes at a high financial cost; however, they bring benefits which go beyond mitigating the intended threat. It must be stressed that the Caribbean region forms an extensive third border of the US, and each Caribbean state has an obligation to secure and monitor their waters and ports. Like Jamaica, other Caribbean Governments have diverted increasing amounts of their budgetary resources to providing the necessary security at the expense of their social and economic programs yet fail to implement the national legislations to facilitate some form of remuneration. The use of maritime security conventions for financial gain is still in the early stages in the Caribbean region, even though their potential for promoting and creating sustainable economic development has been recognized by the Jamaican Government through their tentative collaborative partnership with Zim Shipping Company. Whilst such development offers welcome employment opportunity that can alleviate the financial burden and in turn spur economic activity within Jamaica and the Caribbean region, there is still a tendency for some SAEDMS to shy away from legislations due to its tedious requirements and cost implications for themselves and ship-owners. Safeguards through the appropriate national and regional legislative framework are necessary in order not to diminish the efforts of committees such as NAC, port's security and maritime law enforcement personnel by failure to gain a prosecution or extradition because of the absence of the appropriate Act.

If it is true, as Sir Francis Bacon would have us believe, that “adversity doth best discover virtue”, then the post 9-11 security measures may well prove his point.⁶⁷ Post 9-11 security measures act as a catalyst on the development and the improved security of Jamaican ports. Instead of doing just enough to be ISPS compliant, Jamaica saw it as a source of great dynamism and opted to go beyond the minimum requirement resulting in its agreement as a CSI port along with the prospect of becoming a logistics port centre in the future. Sir Francis Bacon's concept also applies to EMS, which found that the increasing dependency of states on international maritime trade and the resultant dilemma arising from ISPS non-compliance, that their competitors have exercised increased tolerance of certain maritime issues in the name of security. It is therefore understandable, considering what is at stake, that Chai (2005, para. 2) pointed to a number of states which are suspicious about some of

⁶⁷ Sir Francis Bacon, (January 22, 1561 – April 9, 1626) was an English philosopher, King's Council, statesman and essayist.

the more stringent maritime recommendations which have been suggested and in some cases implemented in the last four years.⁶⁸ It is a very delicate road to travel; this premise which presupposes the politics of security and the security of politics which dovetails into the subtle plan by EMS to reclaim control of the all four services of the shipping industry and subsequently the industry through post 9-11 maritime security measures.

⁶⁸ Professor Lee Chai, during his presentation at WMU on November 21, 2005, indicated that India, Pakistan and Iran constantly raised questions and objections during the Legal Committee's deliberations of the revision of the SUA Convention in October 2005.

CHAPTER 5

MEASUREMENT OF IMPACT: TRICK OR TREAT?

Everything is vague to a degree you do not realise till you have tried to make it precise - Bertrand Russell, Author - *The Philosophy of Logical Atomism*

5.1 Shipping and global power

Most persons in business, politics, and sports tend to see every action and every outcome in terms of power. Since time immemorial, the sea was utilised by man to improve his standard of living through trading or extending his power over neighbouring and eventually outlying states. Control of the seas and the trading routes were thus necessary in order to improve and protect his standard of living. Therefore, the protection of a state's maritime commerce became the cornerstone upon which the wealth and strength of states were built. This paradigm has not changed with time; instead, time has only brought the world's states closer due to technological advancement and globalization. In fact, maritime commerce and its tributaries combined with the shrinking world have placed the world's EMS in ever more intimate contact with the world's SAEDMS. The current most acute manifestation of the resulting shrinkage is the flagging-out of vessels and employment of seafarers by the owners of EMS to AMS.

There is an intrinsic link between the maritime industry and the power of a state. According to Robin (2002, p. 33), there are three pillars of power, political, economic and military, which enable nations to achieve their goals internationally. Military and economic pillars are directly dependent on the maritime industry, because economic power, a direct derivative of maritime power, is usually needed to underpin military power. Equally, military power is usually needed to acquire and safeguard a state's wealth. The US understandably used its economic, political, and military power to influence the global security agenda after 9-11 by signalling its intent to prevent ships being used by organised syndicates to inflict harm to its citizens, environment and infrastructure. Although acceptance of the UN Charter constrained states in the method used to defend and secure their national interest, new techniques of warfare have been employed from states' toolbox of tricks with a view to accomplishing their aims by simply substituting 'gunboat diplomacy' for 'paper diplomacy' – legislative method⁶⁹ (Mahan, 1965, p. 1). The purpose of this chapter therefore is not merely to repeat the issues, but to integrate them in a meaningful way to analyse whether some states benefit more than others as a consequence of post 9-11 maritime security measures.

⁶⁹ Chapter VI, Article 33, Charter of the UN.

5.2 Burden sharing

Oil spill and human factor related incidents have resulted in the development of the International Safety Management (ISM) Code and the subsequent formation of PSC regimes with the associated authority to conduct checks for inept management in shipping and for sub-standard ships.⁷⁰ As pointed out in Chapter 4, signatories to the respective MoUs agreed on a programme of ship inspection aimed at ensuring compliance with IMO Convention. This agreement provided a framework for signatories to fulfil a predetermined percentage of inspections of all foreign ships calling at their individual ports.⁷¹ However, a ship is normally exempted from being checked twice within six months after being checked by a member state of the same MoU. This resulted in an overall reduction of inspection cost for each member state whilst ensuring a high standard of shipping within its region.

One of the Paris MoU states with the greatest challenge in meeting its inspection target is Ireland (Paris MoU, Annual Reports, 1997 – 2004). This is so partly because of its geographic location, relative to the other member states, within the MoU. Most foreign vessels arriving in Ireland have been checked by other member states of the Paris MoU within the last six months, rendering further inspection unnecessary. This resulted in Ireland being able to reduce the probability of substandard ships sailing within its waters, and have the other states within its MoU supplement its PSC bill and inspection effort. A similar comparison may be made with the ISPS Code and high risk states. The US, which has 361 public ports, has become the main target for terrorist attacks because of its prominent role in international affairs.⁷² It would be a very costly endeavour for the US to unilaterally attempt to provide adequate resources for security at all of its seaports. Thus, similar to Ireland with the ISM Code, post 9-11 maritime security measures reduce the probability and, consequently, the risk to the US of an attack by having other states supplement its maritime security funding.

It takes citizens to make a state; finding food and shelter, as Abraham Maslow mentioned in his now famous hierarchy, are the most pressing drivers behind human behaviour and thus, invariably, the state's behaviour. With terrorism having some form of political roots, some states face a relatively higher degree of terrorist risk than others (Sandler, 2003, p. 783, Table 1). Therefore, if a state does not see itself at risk, the most fundamental needs, such as food and shelter, Maslow's physiological needs, will naturally take precedence as illustrated in *Appendix H*. A starving person, or a state that suffers from scarcity of funds,

⁷⁰ The ISM Code is Chapter IX of SOLAS.

⁷¹ In the Paris MoU, which comprise mainly of EMS, the percentage is 25% whilst the CMoU is 15%.

⁷² Al Qaeda's communiqués revealed that the group's principle aim is to financially and physically harm the US and its allies.

will not be easily motivated by the next level of Maslow's hierarchy, which involves safety needs, the desire for protection from physical danger. Most will acknowledge the vital importance of security and safety, but who pays, or provides the money to satisfy the needs at the different levels? Should it be the state that is more likely to be at risk or all states whose survivability depends on the stability and prosperity of the targeted state? When a state is small and export dependent, shipping is essentially an activity led by the importing state, consequently the capacity of the SAEDMS to make or resist certain proposals is weakened compared to other states. It is a vicious circle for the SAEMDS because of its size and lack of economy of scale; hence, the inequalities in most fields are manifested in exactly the same manner as in maritime security.

The US initiatives to reduce the risk by pushing its borders into its trading partners' ports is similar to the ISM Code environmental risk reduction and the post 9-11 maritime security risk reduction. In both instances all states invariably will share the bill, thus reducing the risk of the targeted state. Understandably, each state is motivated to pay accordingly to avoid sanctions despite their economic situation and the fact that they are not directly threatened is indicative of O'Bein's (2000, p. 58) concept of "Burden sharing". The findings of a US three year study, *Operation Safe Commerce*, further substantiate this concept, as it reveals that a US warehouse in Maine, was graded as being less secure than any in Pakistan, Turkey, or Brazil.⁷³ Thus, one can perceive that US facilities benefit from superior security protection measures of other states at those states' expense, resulting in ships, seafarers and cargos being checked a number of times before reaching a US port.

Burden sharing is also evident within the SAEDMS of the Caribbean region, as the ISPS Code Coordinator of Bahamas, Lieutenant Commander Herbert Bain, indicated that "at present there are two government owned and operated port facilities, manned by Royal Bahamas Defence Force (RBDF) Marines. The decision to use RBDF personnel to provide security at these facilities was to reduce the financial burden on the government. The marines naturally transitioned into this role thereby reducing the training cost" (Electronic interview, May 12, 2006). Similarly, Superintendent James Forbes highlighted an equivalent technique used in Jamaica, with regards to the JDFCG operating jointly with the Marine Police Division in the island's harbours (Personal interview, January 11, 2006). Therefore, burden sharing is necessary to facilitate Hawkes' (1989, p. 11) "security in depth" mentioned in Chapter 2; not only at the international level but also nationally, at the ports and onboard

⁷³ This US Homeland Security Department study is expected to be completed in 2006 and uses satellites and experimental monitors to trace roughly 20,000 cargo containers out of the millions arriving each year from Europe, Asia and the Middle East.

ships. More than any recent event, the terrorist attacks of 9-11 underscored that working together is the only way to detect, deter and destabilize terrorist and other criminal entities.

5.3 Impact of post 9-11 maritime security measures on a state's tonnage

One of the important decisions of a ship-owner upon acquiring a ship, if he intends to use it for international voyages, is his ship's flag state.⁷⁴ The use of the vague term 'genuine link' in UNCLOS has widened his options and given states flexibility to determine what they consider to be this 'link' between them and the ship-owner. Thus, recalling from Chapter 3, by conferring nationality on a ship, a state has much to gain; this 'link' is a moving target and is characteristic of the element of freedom of the shipping industry. Consequently, the ITF has classified such states as FOCs. The ITF has declared thirty two countries as FOCs. Of these, seven are second registries⁷⁵, and thirteen of the remaining twenty five states are small states, five of which are in the Caribbean. (See Appendix C) Therefore, the core of SAEDMS, which are FOCs, are located in the Caribbean with Bahamas being the largest in tonnage.

Shipping is a free enterprise and at its freest, measures and strategies to exploit even marginal opportunities are taken to the extreme to include the flagging of one's ship (Metaxas, 1985, p. 11). Open registries were developed formally between the periods of the two world wars.⁷⁶ In 1950, their tonnages stabilised; with Liberia and Panama accounting for 6% of the total tonnage; however, during the oil crises of the 1970s not only did the tonnage of these registries increase but their numbers also rose. It is important to emphasise that ship-owners are usually concerned with the problems of that particular moment in time and most allegiance is not to any particular state but to their wallet; that is, the overall profit made by registering a ship in a particular state compared to another. This 'wallet allegiance' was manifested clearly during the Iraq/Iran war of the 1980s where ship-owners promptly switched flags to avail their ships plying the war torn waters of US and British naval protection as they fulfilled their lucrative contracts in the Middle East.⁷⁷

In the late 1980s, the ship-owners conducted another assessment due to the IMO, in particular the EMS, mounting concern about poor management standards in shipping. Consequently, a large number of ships reflagged with open registries because most of these

⁷⁴ Registration serves three aims: the ship gains the nationality of the flag state, prima facie evidence of ownership of the ship and finally public record of proprietary interest.

⁷⁵ French International Ship Register, German International Ship Register, Bermuda, Cayman Islands, Gibraltar, Netherlands Antilles and Comoros.

⁷⁶ Honduras, Liberia and Panama registries were amongst the first due in part to US ship-owners attempting to escape the then regimental US alcohol laws.

countries lacked the experience and human resources of the EMS and thus were unable to carry out their international maritime obligations effectively (Ehlers, Mann-Borgese & Wolfrum, 2002, p. 39). Most open registries, with assistance from institutions such as the WMU, gained the ability to provide the same all-round regulatory competencies characteristic of the EMS; however, they were constrained by their limited number of personnel and high turnover.⁷⁸ Between 1990 to 2001 there was a further shift in ship registration from EMS to open registries, especially to new registries such as Jamaica. Although the number of ships in the world fleet increased by 16%, during the same period, the number of ships registered with open registries increased by 70%. Consequently as at the year 2001, 62.4% of the world shipping was registered with open registries; hence leading up to 9-11, the EMS was still left with considerable residues of skills and experience in seafaring and the politics and procedures of regulation, but with greatly diminished fleets (Damas, 2002, p. 62).

5.3.1 The flag factor

With most PSC regions' having their respective MoUs there has been a reduction in the number of substandard ships visiting host states especially those within the Paris MoU. A ship's flag is one of first indicator as to the probability of it being inspected by PSC Officers. Although inspection is essential for improving and maintaining standards, most shipping companies and seafarers are not overly fond of being inspected repeatedly. The World Wide Web is a powerful tool for communication and transmitting information throughout the global community thus facilitating the tighter integration of the shipping community. Continuous information on the flow of cargo, detentions and tonnage listings influence the decision of ship-owners. The Internet acts as a vehicle thus taking EMS strategies to full-fledged dialogue with their ship-owning citizens. The Internet is tailor-made to host such dialogues, because it provides scope for EMS to integrate their interactions with ship-owners, customers and enables EMS to discover and exploit the individual interests of the target audiences. Hence ship-owners are constantly aware of the fact that ships which fly the flag of countries listed on the MoUs' website as 'Target flag' are more likely to be boarded and inspected near or in US and EU ports (Seapower, 2004, p. 8).

There is a well known Jamaican proverb, 'the pastor christens his children first', which means one tends to look out for and take care of their own first. Similarly, states whose

⁷⁷ Each combatant state attacked the cargo ship sailing from the other ports with fast gunboats. The British registry was increased by more than 3 million tonnes between August 1987 - March 1988 as Chevron, Exxon, Mobil, KOTC and other ship-owners added some of their fleet to British registry to gain protection from UK's 'Armillar Patrol'.

⁷⁸ The WMU, established in 1983, provides training for students primarily from developing states with a view of improving the competence of maritime administrators worldwide. As of May 2006, students from 148 countries have attended the university.

regional interest is inextricably linked to those of their maritime allies by political, economical and cultural ties tend to look out for interest of each other and thus tend to be less tolerant with states outside their family (Ma, 2005, p. 19). Therefore, notwithstanding the state of citizenship of the ship's owner or where the shipping company headquarters is located, provided it is flagged to a particular state within the PSC Officer's MoU, then the ship will be highly favoured to expect less scrutiny.⁷⁹ In other words, in today's security conscious world, the flag of a ship and the probability of being inspected are inextricably bound. Indeed, there is the politics of security and the security of politics, depending on which side of the coin one is looking. This is indeed the case, as inspections ought to be based largely on the record of a particular vessel and its shipping company; however, the ship's flag is also used as states tighten the security of their borders. For most persons the end justifies the means, hence since 9-11 there are no longer hard and fast rules by which we should enjoin our lives and society; instead there is a subtle relativism which dilutes and even wipes out almost every moral standard it touches.

5.3.2 The means

Post 9-11 has seen an increased attempt by the EMS to assertively regain their lost tonnage by the implementation of perks to seduce their nationals to reflag their ship back home. The introduction of the second registries and amended shipping taxation policies has given way to new innovative methods to lure the ship-owners back home. For example, Japan is utilizing security issues combined with an amended tonnage tax system to sway their ship-owners to reflag home. Japan's ingenious approach is due in part to the perceived terrorist and piracy threats within the Strait of Malacca and the known inability of most of their ship-owners' flag states to provide effective maritime security in these waters.⁸⁰ The inability for the prompt and effective intervention of the Japanese Coast Guard is being sold to their ship-owners to reflag, as on the high seas merchant ships are subjected to the exclusive jurisdiction of its flag state.⁸¹ According to Lloyd's List (2006, May 23), the Japanese Government will be submitting to Parliament in 2007 a revised law whereby Japanese ship-owners have the option of reflagging and instead of paying the 40% tax will enjoy preferential tax treatment reduction to as low as 10% and any other benefits they are receiving from their present open registry.

⁷⁹ Captain Ole Wang, Managing Director of Dubai Company International Tanker Management Holding expressed surprised at ships his company had taken over from Europe and how they were allowed to trade within Europe.

⁸⁰ 85.5 % of the Japanese owned tonnage is registered under the Panamanian flag.

⁸¹ In the *LOTUS* case, the Permanent Court of International Justice (PCIJ) held that "...a ship on the high seas is assimilated to the territory of the state the flag of which it flies, for just as in its own territory, that state exercises its authority upon it, and no other state may do so" See (1927), PCIJ. Series A, No.10, p.25. This was later affirmed by UNCLOS, Article 92, para. 1.

Many OECD states have relaxed or virtually abolished crew nationality requirements. Thus, despite the urging of the Trades Union Congress, the British Government has not closed the loophole in the law that allows shipping industry employers to pay migrant seafarer much lower wages than British crews.⁸² The intent clearly is to allow shipping employers to keep their costs down by employing migrant workers thus giving the ship-owner the option of employing both national and non national seafarers. The EMS is indeed quite optimistic about their efforts as in Denmark, Germany, the Netherlands, Norway and UK, great effort has been expended towards increasing the training of national citizens as seafarers. In these states the governments' maritime policies are primarily focused on retaining these infrastructures which improve their employment percentages as they are substantial earners of foreign currencies and thus make important contributions to their respective state's balance of payments.

5.3.3 The end result

With these perks in the face of the European ship-owners, who currently own more than 64% of the world's ship, and the Japanese shipping companies, who register 95% of their ships owned and operated overseas, it begs the question 'Why have these ship-owners not rushed back home in droves?' Equally, in an age of transparency and technology, registering in a foreign state does not shelter one from the eyes of all. Similarly, due to mandatory record keeping requirements and defined lines of responsibility, legal consequences go straight through the door of shipping company's designated person(s) to the ship-owner's living room. This is presently the situation should the company face litigation regardless of the ship's flag state, as most states observe the IMO minimum standards on record keeping.

As explained earlier, the ship-owner holds no patriotism when it comes to making a profit for his company. However, during the late 1990s, although the open registries became better regulators, the ship-owners still remained with their respective registry as it would cost them just as much if they had reflagged with their state of citizenship despite the existence of a second registry and the perks offered. Thus, the effort to reflag, having built a relationship with his registry over the years, was not necessary. However, the new deciding factor is the additional hassle and targeting of his ship since 9-11 due in part to the flag flown resulting in increased cost paid to PSC authorities of the respective EMS, additional cost incurred due to delays and loss of credibility with customers. Combined, this has eventually led to the reduction of the ship-owner's competitive financial edge and profit. Thus, some ship-owners with a view to protecting their competitiveness simply reflag with their nation of citizenry to

⁸² British Race Relations Act contains an exemption allowing payment rates on the basis of nationality.

avoid the hassle and enjoy the same tax option and guaranteed naval security, in the case of the Japanese.

Ship-owners are quite aware that registering under certain flags will result in less scrutiny from PSC officers; hence, it makes good business sense to avoid targeted or blacklisted flags. A recent UN report substantiates this as it reveals that the volume of the world fleet operating under open registries has fallen for the second time in a row. The percentage tonnage of the open registries stood at 45.1% at the start of 2005, down from 46.6 % and 47.2 % respectively in the preceding two years. At the same time, according to the January/February issue of *The Sea* (2006, p.1), the proportion of the global merchant fleet registered in EMS went up to 27% from 25.7 % in 2003.⁸³ The report ascribes this change to the introduction of tonnage tax breaks in some EU States; however, no reference was made to the fact that ship-owners are concerned about the “special attention” their vessels have been receiving upon visiting EMS ports. Some open registries, however, will remain cynical about the EMS efforts, having grown from experience not to trust such stirrings due to the outcome of the EMS second registry attempt. However, when combined with the post 9-11 maritime security measures the rising maritime power of the EMS is another thing entirely as it may trigger a potential tonnage shift of cataclysmic proportions from the open registries.

5.4 Impact on the state’s seafarer

Post 9-11 maritime security measures have financial, political and legal implications not only for ports and their operators but also the civil society in general. It affects not only the rights of citizens in the states which the US perceives wish to harm them, but also US citizens and the citizens of states that define themselves as allies of the global superpower. Up until thirty years ago, most of the world’s seafarers were citizens of the states represented by their ship’s flag and port of registry; however, this changed with the inception of open registries creating the single most globalized and traditionally deregulated occupation. This global labour market for seafarers has opened the door for AMS in the creation of jobs for large number of people in particular the Filipinos, Indonesians and Indians as well as Caribbean citizens who serve mainly on the cruise ships which ply the Americas. The result of this globalized profession is a better standard of life for the families of seafarers especially those from AMS. However, there is another issue at play; as AMS seafarers have become the backbone of the shipping industry the benefits they bring have arguably not been widely dispersed evenly as their presence depresses the wages and vacancy of EMS seafarers.

⁸³ These figures are further confirmed by a recent study carried out by the Policy Research Corporation which revealed that the Belgian fleet was fifteen times higher in terms of brute tonnage last year than it was in 2001.

5.4.1 Some seafarers are more equal than others

9-11 transformed the landscape of global security, especially in matters relating to borders and immigration. Prior to 9-11, the traditional practice was for a shipping company to provide the ship's crew list prior to the arrival its ship in a port. The port authorities in turn would issue a 'Crew list visa', which was a blanket issuance of a visa to each seafarer. This traditional practice is being challenged as an increasing number of states bolster their maritime security level and their borders. Consequently, each seafarer is now required to be in possession of a valid personal passport and in some cases, such as in the US, a D1/ D2 type visa in order to proceed on shore leave.⁸⁴ However, a ship's route is as unpredictable as the sea, thus without prior notice a ship maybe deviated from its intended port or regular route for medical reasons, force majeure or to facilitate ship-owner's financial expedience. Hence, at times not all seafarers onboard may have a valid visa, or even qualify for a visa exemption or waiver for the intended port. This situation is further complicated as some states require the seafarers to obtain their visa from the particular embassy or consulate in the seafarer's country of citizenship. This is not always practical or convenient as most small states do not normally host all diplomatic missions and thus the seafarer is required to travel to the relevant state at his own expense to apply.⁸⁵

All US Embassies and Consulates have different procedures for processing a D-Visa depending on the applicant's state of citizenship. Whilst the D-Visa is the particular type issued to seafarers, it can be very difficult to obtain, particularly for seafarers from a state whose economy is in transition, on the US watch list of nations or have the presence of Al Qaeda or the Abu Sayef terrorist groups such as Indonesia and the Philippines respectively.⁸⁶ A citizen's visa application from such states receive greater scrutiny from the US consular, which tend to be stricter about granting D-Visa and especially B1/B2 Visa for business or pleasure. On the contrary, since 1986 citizens of all EMS, with the exception of Turkey and Greece, do not require a visa prior to travelling to another EMS. (See Appendix I) They have the option to fly or sail to another EMS without any prior visa approval and present a valid machine-readable passport for entry into participating states in the Visa Waiver Program (VWP).⁸⁷ This entry, which is reciprocated between all the participating states, enables citizens of these states to enter each other's states for stays up to ninety days for each visit without obtaining a prior visa. This is more than three times the duration

⁸⁴ The cost of a US visa has increased from US\$45/seafarer to US\$100/seafarer in November 2002. This will have adverse repercussions for seafarers and ship-operators visiting the US.

⁸⁵ US Embassy and Consulate are located in Barbados, Bahamas, Jamaica and Trinidad amongst the small Caribbean states only. Similarly, in 2005 there were no embassy or consulate which issued Schengen visas in Jamaica; hence Jamaicans were required to travel to Cuba where the nearest Schengen state had an embassy.

⁸⁶ Both states are the world's largest supplier of seafarers.

⁸⁷ Although not intended for travel by private aircraft or other non-signatory air or sea carriers to the US; transit through the US is generally permitted.

of stay of a seafarer with his D-Visa and is reminiscent of George Orwell's (1945, p. 90) fairy story *Animal Farm* amended seventh commandment "All animals are equal, but some animals are more equal than others".⁸⁸

Considering the fluid nature of the shipping industry and the increasing number of countries which are now requiring a visa to be issued to seafarers, this disparity in immigration procedure drives the imbalance between seafarers and their possibility for employment and shore leave. It is to be borne in mind that every state has the prerogative to decide who it will allow to visit its territory. Hence, although an individual has a valid visa, it is not a guarantee that the individual will be allowed ashore.⁸⁹ US Immigration officials have the authority to issue an order to 'detain on board' any seafarer they deem a high security risk or is a national of a country listed on the US authorities' high risk state.⁹⁰ In the case of a seafarer, the ship would be required to pay for the services of at least two security guards at a cost of US\$3,500 daily to ensure that the individual does not leave the ship (Shah, 2003, p. 4). In a liberalised and globalized economy, 'total cost' is really the amount the producers will offer a product for sale and the amount of money and hassle which the consumer is prepared to pay for the product which in this case is the seafarer. Once choice exists, and it usually does, the ship-owner will shop around and get value for money. To avoid this problem, some ship-owners had decided not to employ seafarers of certain nationalities, with Arabic sounding names or religion.⁹¹

5.4.2 The ITF perspective

Humans are creatures of habit. Although change is inevitable, humans dislike changes to their routine, more so if the change is implemented quickly and it takes a while for them to benefit or the benefits are not easily apparent to them. As with any pending change, people are increasingly committed to probing motive of actions and asking reasons for changes in most things. Whilst the opportunity for benefit is substantial, change is always difficult, especially in the maritime industry, which is steeped in tradition. The resistance is usually a complex mix of historic, factual and emotional issues, which are very difficult to unravel. Similarly, most seafarers proceeded on the assumption that the protection of their rights constitute one of the main functions of their flag state and the ship-owner, and therefore both are obliged to take appropriate measures to ensure the fulfilment of this particular function.

⁸⁸ D1/ D2 Visa is valid up to twenty nine days.

⁸⁹ The Arab owned chemical tanker, *NCC Asir*, and its Swedish captain led crew were not permitted to go ashore in Philadelphia in 2003.

⁹⁰ This list forms part of the USCG Customs and Border Protection memorandum of agreement and standard operating procedures regarding the detention of certain high-risk crew members.

⁹¹ On some foreign flagged ships Indonesian seafarers, most of whom have Arabic sounding names and of the Muslim faith, are losing their jobs because their country is on the security blacklist drawn up by the US.

But there is sometimes a slip between the cup and the lip, that is, what states and ship-owners say they believe about seafarers rights do not always match by what they do; hence, the need for the ITF.

The ITF, whose headquarters is in England, supported the international post 9-11 maritime security measures as they pre-empted it would increase the number of seafarers within the industry and provided another platform to voice their concerns about the FOCs' facilitation of foreign owner's vessel registry. The ITF perceives FOCs' facilitation of foreign owner's vessel registry provide greater scope for criminals as well as terrorist to infiltrate and control shipping companies (Gillis, 2002, p. 61). Being aware of the fact that ship's manning was already stretched and with 50,000 convention sized ships, each requiring a Ship Security Officer (SSO) onboard, the ITF was looking forward to approximately 50,000 additional jobs for seafarers. A few shipping companies have increased the size of their crews by one or two to cope with the extra work.⁹² However, what time has revealed is not many shipping companies increased the complement of their ships' crew and the seafarers were not usually remunerated for the additional security related tasking.

Whilst both issues may come across as common workplace related grouses, being told that one is apart of a process and being treated as a threat to that very process is duplicitous and detrimental to the process all together. Reynolds (2005, p. 1) alluded to this point when he wrote "In order to achieve a mutually acceptable resolution for all interest groups, therefore, the balance has to be struck between the implementation of (regulatory) security measures and other means of avoiding exposure to the various threats". In an ITF Survey (2005, p. 7) US ports were cited as the most problematic with regards to ability to go ashore where crews have been denied shore leave in New Orleans by an Immigration Officer because "the Captain was not co-operative with Immigration Control". Shore leave denials were also reported in northern European ports and by Chinese seafarers visiting Taiwanese ports. There has to be a balance with regards to maritime security measures, as the seafarer is a critical link in the strength of the maritime security chain.

During the deliberations of the ISPS Code, upon becoming aware that the tainted seafarers were a risk factor, the ITF ought to have put the necessary mechanism in place to effectively insulate the legitimate seafarers from the risk of undue and inappropriate immigration influence. Ironically, the IMO and ITF thought that paragraphs 10 and 11 of the ISPS Code's Preamble would be sufficient to protect the rights of the seafarer when compared to a state's

⁹² The Taipei based Evergreen Marine, placed two additional seafarers on each of its 115 vessels as did the German tramp owner Leonhardt and Blumberg.

security.⁹³ Although the SOLAS amendments were complex, thus making it difficult to comprehend all the variables, the ITF is an organisation which is not far removed from the political and ship-owners 'runnings'. Alas, as a trade union, the ITF ought to have known the ISPS Code, a criminal legislation, was also a recipe to fuel some states' own political and financial ambitions considering it was not formulated by the Legal Committee but the Maritime Safety Committee and a Maritime Security Working Group of the IMO.⁹⁴ Be that as it may, there has to be a meeting ground, and the seafarers ought to be able to depend on the ITF and their flag state to find it whilst negotiating with EMS on the implementation of the SID.⁹⁵

Interestingly, the ITF has not come out strongly or stressed that the issue of 'security concerns' ought not to be accepted as valid enough reason to ignore SID programmes. The intent in essence is not to prevent what the seafarer will do when he comes to a foreign port, but to confirm that the particular individual is indeed the seafarer assigned to a particular flagged ship and the individual is appropriately qualified and certified to do his assigned job onboard. Hence, the SID is indeed the ideal document as it achieves this aim. No form of biometric identification inclusive of the SID, machine-readable passports or a US visa can protect against a state's home grown or the suicidal terrorist because they rarely match any profiles contained in maintained database systems.⁹⁶ Failure to acknowledge the limited usefulness of these documents will only foster a false sense of security as they are but layers in the security mechanism which is being slowly eaten away due to the uncertainty of shore leave after a seafarer's long voyage. Shore leave was rarely an issue prior to 9-11, in fact Dacanay's (2003, p. 25) thesis on seafarer rights spoke only of the rights to life, payment of wages and maritime lien, healthy, safe and decent working conditions and repatriation. Were such a thesis to be written today, shore leave would certainly be added to this list.

One can easily argue that the SID issue is not really between EMS and security concerns. It is between EMS and their ship-owners where the seafarers are, as described in the January/February issue of *The Sea* (2005, p. 1) by the Secretary-General of the IMO, Efthimios Mitropoulos, "pawns in political and legal games". The fact is that there has been the lack of political will by the EMS governments to push harder for seafarers' rights with

⁹³ Paragraph 10 speaks to whenever seafarers are at sea for extended periods and are unable to proceed on shore leave that it has implications for welfare and fatigue. Whilst Paragraph 11 of the Code's Preamble admonishes Contracting Governments to bear this fact in mind when dealing with the admittance of crew members in port.

⁹⁴ The Legal Committee is a body of the IMO charged with the task to formulate conventions and to advise other Committees on legal questions.

⁹⁵ ILO Convention 158 (No.108), which requires a government to issue a SID to each of its nationals who is a seafarer, has been ratified by only four countries; France, Hungary, Jordan and Nigeria.

regards to the SID because they would, in effect, be undermining their own ability to manipulate the return of their tonnage and increased vacancy for their nationals. According to a Union Leader quoted by Fairplay Magazine, “being on the blacklist has caused a 30% drop in overseas employment for Indonesian mariners; a loss put at 9000 jobs annually” (The Sea, Jul/Aug 2005, p. 2). Ship-owners are reluctant to hire them because they were not allowed ashore in the US. In a security environment where costs to operate are rising and terrorist activities are forcing authorities to monitor closely the sources and movement of funds across various jurisdictions, ship-owners have started to look actively at sourcing eastern European, selected Asian and Caribbean states seafarers. This has resulted in an increase in the demand for seafarers from SAMEDS, as they are not considered a financial threat by the EMS or a security liability, which is indicative of their seafarers’ increased access to employment on ships and of the CMI’s rapid progress since September 2002.

5.5 Measuring maritime security measures

Globalization, industrial and technological developments have conspired to rapidly change world trade and the scope of functions of ports. One of the concerns which have consumed the thoughts of most states’ ISPS Code Coordinator is a 9-11 type of attack on an American trade interest being replicated in ports which maybe attributed to a container or ship which is explicitly linked to their state. Such an incident would not only cripple the particular state’s ports and cause a chain-reaction effect to the entire maritime supply chain, but it would inflict the kind of damage to world trade and economies in the manner the 9-11 attacks achieved (Schröder, Ketchum & Mejia, 2004, p. 2). Understandably, after 9-11, SAEDMS went through the struggle and self-assessment to assert their ever-changing purposes and to fit into the great security expectations of post 9-11. In doing so, some states showed that the measures are far from being a dead hand and were actually a source of great dynamism.

During the writer’s research process, personal and electronic interviews were conducted with the ISPS Code Coordinators of Jamaica, Bahamas, and Trinidad and Tobago with a view of gaining their thoughts on the progress of the post 9-11 maritime security measures within their respective states.⁹⁷ During these interviews it came to the fore that each port exhibited unique dynamics over a range of time scales, and that the impact cannot be quantified but could best be captured by separating these dynamics into short-term port operations and simultaneously linking it to the internal dynamics of the particular state. In the long-term, the impact was dependent on the particular state stakeholders’ ability to mitigate each others

⁹⁶ Richard ‘shoe bomber’ Reid was travelling with a valid British passport under the VWP when he tried to ignite plastic explosives hidden in his shoes during his flight.

⁹⁷ The ISPS Code Coordinator of Jamaica, Bahamas, and Trinidad and Tobago are Superintendent James Forbes, Lieutenant Commander Herbert Bain and Lieutenant Commander Gregory Walcott respectively.

risk. The consensus was that overall the impact of post 9-11 maritime security measures, thus far, has been a positive one; however, the challenge is to maintain the standards achieved. To achieve this, ports must cut the security cloth to fit to their own capacity for resources, tolerance for delays, business obligations and relationships with their users recognizing that the main objective of all business is to make a profit on their investment.

Ultimately, in most research, it is the numbers that truly matter as it is they that objectively tell the whole story. However, to turn a piece of data into a meaningful scientific research one ought to put it in context. When it comes to matters involving security issues, this aim may prove elusive as one of the essences of a terrorist action is unpredictability. Schröder (2005, p. 108) alluded to the difficulty this presents, which is the limited scope to utilise numbers to determine intentional and unpredictable human actions, when he wrote “it can be stated that the most important difference between maritime safety and security risk assessment is that intelligence information replaces statistics in a number of circumstances”. That said, a reasonably quantifiable measure of the efficiency of post 9-11 maritime security measures, although their implementation is still at the infancy, is the fact that, with the exception of the assault on the Israeli port of Ashdod, no terrorist strike has occurred at major ports since 9-11.⁹⁸ This alone gives ground for all states’ ISPS Code Coordinator and proponents of these measures to claim victory in the effectiveness of the initiatives implemented to protect ports. Ports and offshore terminals serving ships engaged on international voyages are undoubtedly becoming more secure, or at the very least give the impression of being so.

5.6 Mixed blessings

Huge sums of money have been spent worldwide by the major stakeholders within the industry with a view of complying with the requirements of the post 9-11 security measures which under normal circumstances would not have been spent. In an interview with Lieutenant Commander Gregory Walcott, the ISPS Coordinator of Trinidad and Tobago, he observed that security companies and ports that were downsizing their security personnel had to revisit their policy, train and hire new staff since the implementation of the ISPS Code.⁹⁹ These monies facilitate large number of citizens gaining employment and the infusion of that money into the economy has already begun to make a difference in the lives of many people, in particular SAEDMS, where even the additional employment of two hundred persons is considered significant relative to their size. In the Caribbean, the new

⁹⁸ The successful infiltration by Palestinian terrorists into the Israeli Port of Ashdod, fifteen miles south of Tel Aviv, resulted in the death of ten port workers on March 14, 2004.

⁹⁹ These security companies and ports include Atlantic LNG, Phoenix Gas Processors, Petrotrin and Mittal Steel.

maritime security measures have had distinct additional benefits that are not directly related to their anti-terrorist task, such as improvement of the overall crime-prevention programs as theft, illegal trafficking of drugs, arms and people and other forms of offences which affect cargo security. The overall security consciousness of the states has increased as these security measures impact the average Caribbean citizens who are the users of their port's facilities due to the fact that access to the ships and ports are drastically reduced.

Notwithstanding, there are cautions to be observed even as one revels in the prospect of more employment for persons directly involved in the industry in the Caribbean. By virtue of the US visa requirement and the intention of Australia to implement such a requirement for seafarers, this may impact adversely on the other EMS desires to invest in the SID programme and would simply dovetail into their desire to bolster security. If a seafarer does not hold a valid US visa, it reduces his ability to gain employment on an international seagoing vessel. Therefore, it is more advantageous for EMS to disregard such a programme and help defray the cost to finance their overseas embassies and consulates by requiring all seafarers to apply and to pay for a seafarer visa.¹⁰⁰ Such an action would slowly facilitate all EMS to control the global seafarer market as unified they can decide how many seafarers' visa they will issue or renew annually and thus improve the opportunity for EMS citizens to gain employment on vessels. This is possible as within a ten year period, all visas will require renewal at some stage and even if the seafarer is in possession of B1/B2 Visa such does not allow one to be engaged in gainful occupation whilst within EMS borders. Thus, flowing from the above is the point that EMS may actually be waiting to see how the industry reacts to Australia's visa requirement for foreign seafarers before they follow suit.

Secondly, tourism is a main source of foreign exchange within the region in particular the northern Caribbean islands such as Jamaica and Bahamas. By virtue of their proximity to the US, in less than two hours a US tourist could be in either state's immigration hall requiring only an official US picture identification document, to regain access from and to both states and the US. This approach by Caribbean states makes it easier for the US citizen to travel for vacation in the region whether by airplanes or cruise ships. While salivating over the prospect of increased earnings as a result of the diversion of tourists from high risk destinations such as North Africa and South East Asia to the Caribbean, local officials ought to be reminded that in accounting there are two sides to the equation. Although the assets are undeniable, there are liabilities also, as the US as part of its strategy against terrorism, announced in 2006 it would require its citizens returning from trips to Latin

¹⁰⁰ The application cost is non-refundable regardless if their request is approved or not.

American and Caribbean countries to travel on valid US passports with effect from January 2007 for air travellers. This new passport regime for US citizens travelling abroad by cruise ships; however, will not take effect until June 2009. With more than 80 % of US visitors to Jamaica doing so presently without passports, Jamaica would be the hardest hit Caribbean state by this new passport rule as it accounts for over 30 % of the total income gained by the region from US tourists (The Jamaica Gleaner, June 15, 2006). Therefore, this new US passport requirement will have an adverse impact on cruise ship numbers and tourism eventually if the appropriate actions are not taken to cushion its effect.

Whilst enhanced security can be viewed as inconsistent with the need for speed and could impede international trade, the very opposite can be the effect with security in fact becoming a driver for trade facilitation. Post 9-11 maritime security measures have acted as a positive catalyst on the major stakeholders of the industry by forcing them to confront their inefficiencies should they wish to see their goods seamlessly dispatched to the US, modernise their procedures, upgrade staff quality and generally become efficient and proactive to everybody's benefit. These measures, however, presented mixed blessings for the SAEDMS in particular Caribbean states. On the one hand, they will increase employment opportunities for their seafarers and port staff, reduce cargo crime, better port assets control, and improved port viability. However, on the other hand, the states in the distant future will realise a slow reduction in the merchant ship tonnage on their books in relation to the total number of ships in service and a reduction in the US tourist arrivals by cruise ship leading up to June 2009 upon the activation of the US new passport regimes in 2007.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

This is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning – Winston Churchill, Speech given at the Lord Mayor's Luncheon, Mansion House, London, November 10, 1942

6.1 Conclusions

Enhancing maritime security has, in many respects, brought ship-owners, seafarers, shippers, intermediaries and governments closer together in addressing a common threat and dilemma - security. The net effect of post 9-11 maritime security measures is the transformation of the existing security environment to an improved level and the increased influence of the seafarer and ship-owner, as indicated by *Wright's Security Relation Link*, by the host state because of the ship-port interface. Thus, some states with resident terrorist groups have seen a reduction in the demand for their citizens to be employed as seafarers whilst others have realised an increase.¹⁰¹ The most dramatic effects of the post 9-11 maritime security measures on a state are the ones that would take years to reveal themselves. There is no doubt that these measures have given a new lease on life to EMS, as they provided an opportunity for certain actions conceived decades ago by EMS to be taken subtly under the pretext of security. This includes the boarding of foreign ships on the high seas, regaining their share of world tonnage, increased employment of their seafarers, imposed restrictions and in some cases a total ban on seafarers' right to shore leave and to inveigle other states to supplement their maritime security costs.

A large part of the answer lies in the fact that the EMS are united and thus harness and maximise their individual strengths through programmes such as VWP, whilst providing many perks to their ship-owning citizens and unwavering application of the ISPS Code penalties, especially towards non-EMS flagged vessels. Hence, beneath the surface ripples of improved security are the deeper currents of the resurgence of the EMS within the maritime sphere, as open registries and crew-supplying states cannot offer their flag or a service for an extended period if that product or service is not being sold or demanded. Therefore, in view of the foregoing, the following conclusions are derived:

- The first, which is real, is that the US feels unsafe, and so her passion to protect herself from those who wish to harm her can neither be rejected nor taken lightly; hence, the need for urgent counter-measures. The paradigm shift in the IMO due to 9-11, with the adoption of the ISPS Code and SUA 2005, has watered down FAL and UNCLOS foundation of facilitation and freedom of the seas, respectively,

¹⁰¹ Indonesia has realised a decrease whilst the Philippines and Caribbean states an increased demand for their seafarers.

because of the reduction of the seafarer privilege to shore leave and the consensual boarding of foreign-flagged vessels on the high seas.

- The writer agrees with the viewpoints articulated by Mukherjee (2006, p. 2) and Mejia (2002, p. 28) that the ISPS Code is misplaced in SOLAS and hence some of the underlying issues faced by seafarers. The silver lining to the dark clouds of 9-11 is that there is some windfall profit for the seafarer as the need for governments to comply with these measures has directed new energy into tackling the closely related problem of piracy and armed robbery at sea. The recent formation of the Malaysian Maritime Enforcement Agency is one example, of states' seriousness about addressing maritime security issues when their respective interests and security are threatened.¹⁰²
- Global issues, such as maritime security, require global solutions. Notwithstanding, international problems also have specific national manifestations which require different policies that will differ from one state to another. The implementation of the post 9-11 maritime security measures will entail systematic changes in certain organizations and national legislation and in some extreme cases a complete change in the operational philosophy. Absolute security is impossible, and any state that tries to achieve it will compromise the essential flow of maritime commerce. Be that as it may, it ought to be swiftly recognised that the post 9-11 maritime security measures are far from the complete answer to maritime security needs considering the size of the flotilla of small vessels and the necessity for speed.
- Good-will alone and self auditing will not ensure compliance and hence the necessity of the USCG inspection of their trading partners' maritime security standards and ISPS compliance. Failure to enforce laws and regulations, once legislated or adopted, will tend to create a situation where the requirements will be implemented on an ad hoc basis and eventually are simply ignored. Hence third party confirmation is necessary.
- Post 9-11 security measures have brought mixed blessings to SAEDMS, in particular states within the Caribbean. While these measures provide new challenges for sustainable SAEDMS development, they also offer new opportunities

¹⁰² The Strait of Malacca is renowned for its unlawful seizure of ships. Since 9-11, figures from the Piracy Reporting Centre has shown that such incidents have declined dramatically. There were twelve attacks in the Strait of Malacca in 2005, against thirty eight in 2004. Also, globally total of 276 in 2005, against 329 in 2004.

for long term success. Adverse impacts such as the tentative visa requirements for seafarers, passport requirement for US citizens to visit Latin American and Caribbean countries, and the relatively small increase in tonnage are noted.

While the canvas available to today's strategies is large and new, small states need to understand global maritime forces, react quickly and become innovative with issues relating to shipping. The overall impact of post 9-11 maritime security measures on SAEDMS in particular Caribbean states has been a positive one, however, at the expense of larger AMS which were in fact benefiting from the previous arrangement at the expense of the EMS. Security is a serious and essential issue as the other end of the spectrum is far more dangerous and expensive. The writer is of the view that there is a concerted effort on the part of EMS to regain complete control of the shipping industry by using security measures as leverage and in their quest to do so, SAEDMS stand to realise mixed benefits.

6.2 Recommendations

Foresight is a process intended to capture the dynamics of change by placing today's reality within the context of a range of potential futures and seeks to add new dimensions to one's thinking by exploring a range of possible ways in which the future could develop. These recommendations ought to enable the SAEDMS to decide what decisions need to be taken immediately to create the best possible future based on the requirements of the new maritime security measures. An important element is to realize the need for balance, not just in the cost/benefit equation but in other aspects as well. The aim is to achieve the right balance between the need to implement the new maritime security regime, strictly and robustly, and yet to ensure minimum disruption to global trade, as a consequence of the measures. With a view of structuring the recommendations explicitly and succinctly, they are noted in terms of implementation duration and feasibility.

6.2.1 The US CSI implementation

Post 9-11 maritime security measures do place additional burden on SAEDMS to finance the implementation of the new measures. However, Caribbean states ought to use this as an opportunity to create and maintain their special relationship with the world's largest import market and turn their geographic location to the US to their advantage. The way forward lies in developing lasting partnership with the US provided that both parties are prepared to accept a joint sense of responsibility and reciprocity. The CSI arrangement will help not only Jamaica but other states in CARICOM to weather the punishing storm of the globalization and equally tend to the Caribbean concern about weapons and illegal items leaving the US for the region. Thus, immediate passage of the appropriate Jamaican domestic legislation to

give effect to the CSI Agreement and prompt implementation of the CSI programme is recommended.

6.2.2 National legislation and policies

Caribbean states ought to implement national solutions which take into account their own domestic interests and constraints through regional co-operation. A strong regional legislative programme would facilitate the prevention of small states being swallowed up by the EMS, larger AMS and the terrorist. To facilitate proper enforcement by the maritime and port security forces, policies and legislations ought to be put in place in order that the general public and the shipping industry are aware of what constitutes breaches. Understandably, national maritime and port security forces have their own interest to protect; hence, such legislations would provide adequate statements of authority and demarcate terms and areas of responsibility among the agencies.

National legislations to give effect to post 9-11 maritime security measures ought to include strong and reasonable penalties for breaches, incentives for self-regulation or compliance, and provide adequate authority for persons involved in enforcement. The type of sanctions can be administrative for minor breaches of the legislation which maybe administered by the state's Port Authority or judicial for more serious breaches. Only by implementing national laws can the contents of an international agreement be binding for its nationals and foreign port users. It is therefore recommended that Caribbean states establish apt rules and standards through appropriate maritime legislation for the security of its ports, visiting vessels and the implementation of the SUA 2005. Such implementation may be facilitated by re-investment of some of the financial gains realised through the reduction of manifest fraud as a consequence of the new security measures.

6.2.3 Bilateral agreement – On signing SUA 2005

Consider immediately for adoption and implementation the SUA 2005 to address the issue of international terrorism. With the US recent signing of SUA 2005, it is futile to fight the inevitable, hence each SAEDMS ought to be prepared to sign accordingly and implement the provision domestically. Maintaining an amicable working relationship with large importing nations is essential as a small state, bearing in mind that if you want someone to be concerned about your problems, you ought to be concerned about theirs. As a small state there will always be occasions when they cannot do anything about the wind of change, but as a captain of their ship they can set the sails accordingly and achieve their homebound objective. Thus, reviewing and re-evaluating national and regional legislations, and making the appropriate changes to facilitate integration and observances of the requirements of the

SUA Revision are recommended. This ought to be done in a similar method as the model legislation for a Shipping Act which was useful for the Caribbean region and ought to include provisions for the consensual boarding of vessels flagged in Caribbean states (Mukherjee, 2005a, para. 6.1).

Concurrently, as the Caribbean states facilitate the consensual boarding of their merchant fleet by EMS in accordance with SUA 2005, it is recommended that the region's negotiators insist on a unique Regional SUA Boarding Agreement document which will cooperate with the counter terrorist efforts of SUA 2005, but would also provide worldwide security of their flagged ships against piracy. In order to augment its bargaining power, Bahamas ought to throw its support behind such a regional initiative and hence not allowing the EMS to utilize a divide and conquer concept on the region by negotiating with Bahamas only.¹⁰³ By acting in concert, such an action would benefit Bahamas by facilitating its legal team additional time to study the proposal and domestic debate, providing itself with some insulation against larger and more powerful maritime states and finally motivate the EMS to seriously consider the region's suggested world wide ship security option, from which Bahamas stands to benefit the most compared to the other states due to its large tonnage.

Therefore, the same energy expended by EMS to gain access to the region's flagged ships for boarding purposes ought to be equally expended in protecting them on the high seas against piracy and armed robbery. This will improve security for their flagged ships and the crew, as SAEDMS lack the ability to effectively protect their merchant ships worldwide, in particular Bahamas. Such ships, would be permitted to fly a 'supplementary flag' of the signatory EMS to this unique Regional SUA Boarding Agreement on the same halyard they would the complimentary flag whilst in high security risk areas such as the Strait of Malacca (See Appendix A for an explanation of a supplementary flag). This flagged ship would be entitled to the same security assistance from the signatory EMS as any ship in its port. (Farthing & Brownrigg, p. 185). Consequently, it will reduce the possibility of open registries of the region from losing their tonnage due to their inability to provide world wide security.

6.2.4 Maintenance of security standards

The new maritime security requirements cannot be treated as contingency but rather as a new way of life. There is no doubt that security is significantly higher than it was before 9-11; however, the emphasis must now be placed on ensuring that it remains a high priority throughout the region, especially after additional trade impetus, such as CSME, is thrown

¹⁰³ The Bahamas has been approached recently by the US to sign an agreement to facilitate the boarding of its merchant ships in keeping with the SUA 2005.

into the mix. Initiatives to promote regional economic reform, legislation and integration, have underscored the importance of free trade as an engine of economic growth and development within the region. They are all intrinsically linked; hence, it is recommended that the Caribbean's Regional Maritime Advisor (RMA), being the region's IMO representative and subsequent to the appropriate national and regional maritime legislation, be authorized to conduct separate scheduled checks on the status of the ISPS Code implementation in the respective states in the region, not only the US authorities.¹⁰⁴

6.2.5 Seafarer identification document

Measures are necessary to reduce the possibility of stowaways, criminals and terrorist from gaining access to ships and port facilities by posing as seafarers without innocent seafarers being unfairly penalized. Apparently most EMS are observing the US strategy with regards to the SID before they go ahead and make any investment in this regard especially considering that their seafarers are not directly affected due to the VWP. The IMO, large crewing-supplying states and the ITF, have an important role to play as seafarers are looking to them to make the SID function in its initially intended manner. Therefore, until the SID is accepted as a visa by most EMS and issued by larger crew-supply states, in view of its financial ramifications and their relatively small number of seafarers, it is recommended that no SAEDMS sign ILO Convention 158 (No.108) or invest in SID for their seafarers. Such efforts ought to be utilised instead to ensuring that their citizens obtain a machine-readable passport, their passport application process has the confidence of all diplomatic missions based in their state and their seafarer profession are clearly indicated in the passport.

6.2.6 Regional representation at IMO

Although the interests of the smaller states in the Caribbean do not normally coincide with those of the larger Caribbean (Gold, 1988, p. 4), the writer is of the view there is a need for greater maritime integration within the Caribbean region. This is due to their size and the close proximity of the states as almost every national maritime related action taken will have a regional impact. Rivalries and centres of power amongst the Caribbean states do exist, hence there is a tendency amongst some states occasionally to look for individual short term, unilateral gain which facilitates the unified EMS to use a divide and conquer technique on the region.¹⁰⁵ The challenge therefore is to channel the energies of these centres into working together and implementing national solutions through regional cooperation; thus, facilitating the security and prosperity of all the states in the region. The habit of regional

¹⁰⁴ The Caribbean's RMA is Lieutenant Commander (retired) Curtis Roach of Trinidad and Tobago.

¹⁰⁵ One such example is the US Model Ship Rider Agreement, an American drug interdiction effort, amongst the individual Caribbean states during the mid 1990's. This agreement allows US officials considerable authority in some of the states' waters.

cooperation, although only in the rudimentary stages has started within the Caribbean; bearing in mind it took the EMS over fifty years to get to the stage they are at today.

The Caribbean's IMO representatives have constantly seen EMS performing as one unit at IMO meetings with one common purpose which is to maximize their united interest and control over the direction of the shipping industry. The EMS achieves this by meeting together prior to the opening of all IMO official sessions; consequently, the EMS whilst at the official sessions, gives the impression that the SAEDMS are a spectator to their own destiny, over which the EMS have been called to preside. Hence, regional representation is recommended at IMO not only based on the financial implications of individual states but it offers valuable benefit to small maritime regions such as the Caribbean, giving them a stronger voice unified and greater influence over their destiny. This then begs the question: How should this be done?

Irrespective of the intended aim for the creation of maritime MoU throughout the world, there needs to be a direct lineage between the CMoU and CARICOM on maritime matters affecting the individual states. The IMO sends out documents three months before its Committee meetings, consequently, it is suggested that first there ought to be meetings within the Caribbean where most states can arrive at an understanding of the maritime issues and discuss the pending IMO Committee meeting. The grouping at this level should consist of all CARICOM representatives and the Secretary of the CMoU and the RMA. At each state's domestic-level there should be an interest-group forum with government officials. This should be led by the affected MARAD that facilitates discussion, clarification and feedback on the issues, its possible implications, and the implementation processes of that the particular state. Lastly, there ought to be discussion using the Internet among individual state's representatives attending the next IMO meeting and those who can not so as to gain consensus on issues, confirm who will attend which IMO Committee meetings and the way forward.

Hence, although they may not be able to physically fill all the available seats allocated for each individual Caribbean state, their voice will be heard from the representatives present at that particular meeting and at IMO Committee meetings. While such a recommendation of regional unity and speaking with one voice at IMO may stimulate much spirited debate in the Caribbean, if pursued skilfully, it can take hold and change the individualistic mindset in the Caribbean and build a durable maritime security system that will support prosperity and improve the standard of living within the basin. This is a worthy goal for those who live in, are engaged in and care about the region.

The writer holds the view that their imperfections notwithstanding, the ISPS Code and SUA 2005 represent the international community's best efforts towards deterring and penalizing maritime terrorism and piracy, whose goals can be realized if given the requisite support. In the end, most participants in the maritime field will agree that the post 9-11 maritime security measures are necessary, highly burdensome on seafarers and SAEMDS, but they are not unendurable. These measures bring about benefits that go beyond their mitigating impacts on terrorism, particularly to EMS who will benefit the most compared to other states. However, it ought to act as a motivating force on other states to improve efficiency and unite together, all of which will prove to be expensive initially but beneficial to these states in the long term. SAEDMS, in particular the ones located in the Caribbean, have come a long way, and must continue to be conscious, vigilant and discerning flag and host states. Not only will they uncover bargains to supplement their limitations, but also their decisions can translate into ensuring that the products and services that are presented to their ship-owners represent value for money. The region has the power; they only need to utilize it in a unified manner.

It is easy to forget that post 9-11 maritime security measures are still in its infancy stages. This is the essence of this chapter's theme provided by Sir Winston Churchill, "This is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning." Even though maritime security has been an issue in one form or another since time immemorial, it has really only started to significantly affect the way we live and do business. What we have seen so far is just a toddler banging into walls and learning, usually the hard ways, about the way things are. July 1, 2004, of course, was a big lesson, and maritime security has settled down a bit since then. But despite the school of hard knocks, maritime security has not stopped growing for an instant. Every day, more states slide quietly into the new maritime security-oriented world and taking advantage of opportunities it offers. Change is happening fast and quietly, so SAEDMS cannot afford to wait for the writing on the wall to be seen by all.

References

- Abhyankar, J. (2005). *Piracy and armed robbery at sea an overview*. Presented on November 22, 2005, at the International Symposium on the new regime for the Suppression of Unlawful Acts at Sea, 21-23 November 2005. World Maritime University, Malmö, Sweden, 6-24.
- Australia plans to require visas for foreign seafarers. (2006, May 22). *Lloyd's List*, 6.
- Bain, H. (2006). Electronic interview, ISPS Code Coordinator (The Bahamas), May, 12 2006 & July 17, 2006.
- Balkin, R.P. (2000, July). *The Legal framework of the International Maritime Organisation*, Unpublished lecture handout, World Maritime University, Malmö, Sweden, 7-12.
- Baylis, N. (2006). Personal interview, Assistant Vice-President in Charge of Security at the Port Authority of Jamaica, Conducted January 11, 2006 at Jamaica Port Authority Administrative and Marketing Office.
- Bennett, L. (2006). Personal and electronic interviews, Secretary of the Caribbean MOU, Conducted over the period January 7 – July 14 2006.
- Brewer, J. (2005, September 23). Agents suffer from harsh ISPS rulings, *Lloyd's List*, p.3.
- Brooks, M. (1989). *Seafarers in the ASEAN Region*, Institute of Southeast Asian Studies, Singapore.
- Brown, M. (2006). International Port Security Program, Implementation of International regulations. *The Coast Guard Journal of Safety at Sea, Proceedings*, Volume 63, Number 1. 45-48.
- Brown-Humes, C. (1988). *After the Gulf War*, Lloyd's List international December 1988, London.
- Cargo pact with US to boost exports. (2006, June 21). *The Jamaica Gleaner*. Retrieved June 21, 2006 from the World Wide Web: <http://www.jamaica-gleaner.com/gleaner/20060621/lead/lead3.html>
- Caribbean MoU on Port State Control. (2006). St. Andrew, Jamaica: Caribbean MoU Secretariat. <http://www.caribbeanmou.org/Links.htm>
- Caribbean Shipping Association News, (2003, October 21). Caribbean countries need to work together for ISPS Certification. Retrieved July 22, 2006 from the World Wide Web: <http://www.caribbeanshipping.org/archway/news/2003-isps-together.htm>
- Caricom Single Market Economy. Retrieved June 16, 2006 from the World Wide Web: http://www.caricom.org/jsp/single_market/single_market_index.jsp?menu=csme
- CARICOM Single Market to be launched today. (2006, January 30). *The Jamaica Gleaner*. Retrieved January 30, 2006 from the World Wide Web: <http://www.jamaica-gleaner.com/gleaner/20060130/lead/lead2.html>
- Celmer, M.A. (1987). *Terrorism, US Strategy, and Reagan Policies*, Greenwood Press, Westport, Connecticut.

- Chai, L.S. (2005). *The Revision of the SUA Conventions: A brief look ahead by a maritime lawyer*. Presented on November 21, 2005, at the International Symposium on the new regime for the Suppression of Unlawful Acts at Sea, 21-23 November 2005. World Maritime University, Malmö, Sweden.
- Churchill, R.R. (2000). *The meaning of the "genuine link" requirement in relation to the nationality of ships*. A Study prepared for the International Transport Workers' Federation. Retrieved June 3, 2006 from the World Wide Web: <http://www.oceanlaw.net/hedley/pubs/ITF-Oct2000.pdf>
- Churchill, R.R. & Lowe, A.V. (1999). *The Law of the Sea* (3rd ed.), Juris Publishing, Manchester University Press.
- Cunningham, M. (2006). Asymmetric Migration: Stowaways, absconders, and deserters. *Proceedings*. Volume 63, (1), 60-62.
- Dacanay, J. S. (2003). *The shift of seafaring from traditional to emerging maritime states*, Unpublished master's thesis, World Maritime University, Malmö, Sweden.
- Damas, P. (2002). Foreign-flag fleet grows: switch to open registries continues among western nations. *American Shipper*. (August, 2002), 62-63.
- Dixon, R. (2004). *The Management Task* (3rd ed.), The Institute of Management, Butterworth-Heinemann Publications, Surrey.
- DP World agrees to sell off P&O's port interests in US. (2006, April). *Containerisation International*, 31.
- Eastburn, R. (2005). Merchant Mariner Security Services: September 11, 2001, necessitated better screening for government-issued Merchant Mariner's Credentials. *Proceedings*. Volume 62, (2), 44-45.
- Ehlers, P., Mann-Borgese, E., & Wolfrum, R. (2002). *Marine Issues: From a scientific, political and legal perspective*, Kluwer Law International, The Hague.
- Farthing, B. & Brownrigg, M. (1997). *Farthing on International Shipping* (3rd ed.), Business of Shipping Series, London.
- Fitzpatrick, D. & Anderson, M. (2005). *Seafarers' Rights*, Oxford University Press, Great Clarendon Street, Oxford
- Forbes, J. (2006). Personal interview, Vice-President in Charge of Security (ISPS Code Coordinator for Jamaica), Conducted January 11, 2006 at the Jamaica Port Authority Administrative and Marketing Office.
- Franson, J. (2005). Formulating the ISPS Code: a general background. In M.Q. Mejia (Ed.), *Proceedings of the Workshop-Symposium on the Practical Implementation and Critical Evaluation of the ISPS Code on August 11-15, 2003 (pp.10-15) on Contemporary Issues in Maritime Security*. Malmö, Sweden: World Maritime University Publications.
- Furukawa, R.J. (2005). *Why Change Merchant Mariner's Documents?* The Coast Guard Journal of Safety at Sea, *Proceedings*, Volume 62, Number 2. 51-53.

- Gibson, A. & Donovan, A. (2000). *The Abandon Ocean: A History of United States Maritime Policy*, University of South Carolina Press, Columbia. South Carolina.
- Gillis, C. (2002). Congress eyes vessel flagging practices: Some fears flags of convenience serve as conduit for terrorist activities. *American Shipper*. (August, 2002), 60-61.
- Gold, E. (1988). *A new Law of the Sea for the Caribbean: An examination of marine law and policy issues in the Lesser Antilles*, Springer-Verag, Berlin.
- Gold, E. (2001). World Shipping: A Global Industry in Transition, In E. Mann- Borgese, A. Chircop & M. McConnell (Eds.), *Ocean Yearbook 15 (pp, 267-269)*. University of Chicago Press, Chicago and London.
- Grinter, M. (2006, May 23). Security concerns likely to have motivated Japanese flag rethink, *Lloyd's List*, p.3.
- Gunaratna, R. (2003, July 9). *The Rise and Decline of Al Qaeda*, Statement to the National Commission on Terrorist Attacks upon the United States. Retrieved July 21, 2006 from the World Wide Web: http://www.globalsecurity.org/security/library/congress/9-11_commission/030709-gunaratna.htm
- Hand, M. (2005, November 30). Singapore terrorism expert says maritime threat is overplayed, *Lloyd's List*, pp.1-2.
- Hawkes, K.G. (1989). *Maritime Security* (1st ed.), Cornell Maritime Press, Centreville, Maryland.
- Hawkes, K.G. (1993). Maritime security: what is it really? *Maritime transport International*, 1993, 82-88.
- Heileman, S. (2005). *Caribbean Environment Outlook*, Greenleaf Publishing Ltd, Italy.
- High marks for Port security. (2005, June 14). *The Jamaica Gleaner*. Retrieved June 14, 2006 from the World Wide Web: <http://www.Jamaica-gleaner.com/gleaner/20050614/shipping/shipping1.html>
- Hill, H. (2006, May 25). Europe can rule maritime world says Belgian shipowners' leader, *Lloyd's List*, p.2.
- Huge boost in Customs' income - New port security measures boost surveillance power. (2005, June 16). *The Jamaica Gleaner*. Retrieved June 16, 2006 from the World Wide Web: <http://www.jamaica-gleaner.com/gleaner/20050616/news/news5.html>
- Hutchinson, D.E. (2006). Personal and electronic interview, Deputy Director (Inspections and Surveys), The Bahamas Maritime Authority, over the period May 5-7 2006 at the IMO Headquarters', London, England.
- IMO. (2002). *International safety management (ISM) code*. London: Author.
- IMO. (2002, May 22). *Maritime Safety Committee 75th Session*. List of participants: MSC75/INF.1. London: Author.
- IMO. (2003). *Safety of Life at Sea (SOLAS), Chapter XI-2 and ISPS Code*, London: Author.

- IMO 2004: Focus on maritime security. (2004). *IMO News*. (3),13-24.
- IMO to tackle security issues in wake of terrorist atrocities. (2001). *IMO News* (4), 5.
- Indonesian Seafarers lose work. (2005, July/August). *The Sea*, (176) p.2.
- International Maritime Organization, Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, London, 1988.
- International Transport Workers' Federation. (2005). *Access Denied, Implementing the ISPS Code*, ITF Questionnaire on Maritime Security Report September 2005, pp.4-9.
- International Transport Workers' Federation, 32 countries have been declared FOCs by the ITF's Fair Practices Committee Web site. Retrieved May 29, 2006 from the World Wide Web: <http://www.itfglobal.org/flags-convenience/flags-convenience-183.cfm>
- Jacobsson, M. (2002). Terrorism at Sea. In P.K. Mukherjee, M.Q. Mejia & G.M. Gauci (Eds.), *Proceedings of the International Symposium on August 26-30, 2002 (pp.157-159) on Maritime violence and other security issues at sea*. Malmö, Sweden: World Maritime University Publications.
- Jamaica Information Service, September 20, 2005, Gov't spends \$5 billion to strengthen Maritime Safety and Security. *The Jamaican Gleaner* Retrieved June 2, 2006 from the World Wide Web: http://www.jis.gov.jm/trans_works/html/20050919t100000-0500_6822_jis_govt_spends_5_billion_to_strengthen_maritime_safety_and_security.asp
- Jamaica Maritime 2004, (2004) *Setting the right quality standards*, Annual Magazine of the Maritime Authority of Jamaica, 25-27.
- Joshi, R. (2006, March 2). Chaplain made leave a shore thing for foreign crews, *Lloyds List*, 2006, p.5.
- Keohane, R.O. & Nye, J.S. (2000). *Globalization: What's New ? What's Not (And so What ?)* National Executive Decision Making and Policy making and implementation. Class 61/62, US Naval War College, Rhode Island, US. 104-119.
- Lalis, G. (2001). Challenges facing Shipping from an EU viewpoint. *BIMCO review* 2001 (pp. 37-38). London: Book Production consultants for BIMCO.
- Lane, A. (2000). *The Global Seafarers' Labour Market: Problems and Solutions*, University of Wales, Cardiff October 2000, 7-10.
- Lloyd's Shipping Law Library. (1990). *The Ratification of Maritime Conventions*, Convention of Facilitation of International Maritime Traffic, 1965 as Amended, Lloyd's of London Press Limited, page II 5-114/30, paragraph 3.19.1.
- Local Cops consult with US on Arms find at Kingston Wharf. (2005, July 21). *The Jamaica Observer*. Retrieved June 17, 2006 from the World Wide Web: http://www.jamaicaobserver.com/news/html/20050720t220000-0500_84547_obs_local_cops_consult_with_us_on_arms_find_at_kingston_wharf.asp
- Ma, S. (2005). *Maritime Economics*. Unpublished lecture handout, World Maritime University, Malmo, Sweden, 4-19 & 49.

- Mahan, A.T. (1965). *The influence of Seapower upon history 1660-1783*, University paperbacks, Methuen, London.
- Maritime safety and security now inextricably linked. (2001). *IMO News*. (4), 4.
- McDonald D and McDonald G, *Treasures of the Atocha and her sister ship the Santa Margarita*. Retrieved June 2, 2006 from the World Wide Web:
http://www.atochajewelry.com/treasures_of_the_atocha_and.htm
- McNair, J. (2003). *Terrorism took a toll on insurers*, The Cincinnati Enquirer September 11, 2003. Retrieved June 30, 2006 from the World Wide Web:
http://www.enquirer.com/editions/2003/09/11/biz_911insurance11.html
- Mejia, M.Q. (2002). Defining maritime violence and maritime security. In P.K. Mukherjee, M.Q. Mejia & G.M. Gauci (Eds.), *Proceedings of the International Symposium on August 26-30, 2002 (pp.28-35) on Maritime violence and other security issues at sea*. Malmö, Sweden: World Maritime University Publications.
- Mejia, M. Q. (2003). *Maritime Gerrymandering: Dilemmas in Defining Piracy, Terrorism and other Acts of Maritime Violence*, Journal of International Commercial Law 2(2) Ashgate Publishing Limited, 153-175.
- Metaxas, B.N. (1985). *Flags of Convenience: A Study of Internationalisation*. Aldershot, Hants, UK & Brookfield, Vermont, US: Gower Publishing Company Limited.
- Mukherjee, P.K. (1993). Flagging options: Legal and other considerations. *Mariner*. (1), 31-38.
- Mukherjee, P.K. (2000). New horizons for flag states, *Maritime Review*, 2000 (pp.110-114).
- Mukherjee, P.K. (2002). Transformation of conventions into national legislation: piracy and suppression of unlawful acts. In P.K. Mukherjee, M.Q. Mejia & G.M. Gauci (Eds.), *Proceedings of the International Symposium on August 26-30, 2002 (pp.72-85) on Maritime violence and other security issues at sea*. Malmö, Sweden: World Maritime University Publications.
- Mukherjee, P.K. (2005a). *Implementation of Maritime Conventions through National Legislation*, Unpublished lecture handout, World Maritime University, Malmö, Sweden.
- Mukherjee, P.K. (2005b). *An Introduction to Maritime Law and Admiralty Jurisdiction*, Unpublished lecture handout, World Maritime University, Malmö, Sweden, (2 -10 & 21).
- Mukherjee, P. K. (2005c). *Maritime Law*, Lecture at the World Maritime University on June 30, 2005, Malmö, Sweden.
- Mukherjee, P.K. (2006). *The ISM Code, the ISPS Code and the SUA Convention in Perspective*. Unpublished manuscript of his presentation to the 9th Maritime Seminar for judges in Abuja. Nigeria, courtesy of Author. World Maritime University, Malmö, Sweden.
- Mykoo, W.A. (2003). *The Role and responsibility of Minor stakeholders in the elimination of Substandard shipping: A critical Analysis*, Unpublished master's thesis, World Maritime University, Malmö, Sweden.

- Nelson, R. (2005, Aug). A tropical issue, *Containerisation International*, 73-79.
- Newman, D. (2006). Personal interview, Director of the Marine Division, Caribbean Maritime Institute, Conducted January 11, 2006 at the Caribbean Maritime Institute.
- O'Brien, D. (2000). The search for subsidiary: The UN, African Regional Organisation and humanitarian Action (2000) 7 (3) *International Peacekeeping*, 58.
- OECD. (2003, July). *Security in Maritime Transport: Risk Factors and Economic Impact*, Directorate for Science, Technology and Industry, OECD.
- O'Mahony, H. (2005, November 11). Inspectors "turn blind eye" to substandard ships in Europe, *Lloyds List*, 2005, p.1.
- Orwell, G. (1945). *Animal Farm*, Penguin books in association with Martin Secker and Warburg (1987 Edition), London.
- Osler, D. & McLaughlin, J. (2006, June 7). UK Ferry Safety warning prompts angry SNAV denial, *Lloyd's List*, p.3.
- Owners' survey reveals ISPS Code problems. (2005, January/February). *The Sea*, (173) p.8.
- Özcaryir, Z.O. (2004). *Port State Control*. London, Singapore, Lloyds of London Press.
- Panama to renew ID papers. (2006, May/June). *The Sea*, (181) p.2.
- Paris MoU on Port State Control. (2006). *Annual reports 1997-2003*. The Hague, Netherlands: Paris MoU Secretariat.
- Revised treaties to address unlawful acts at sea adopted at International Conference. (2005). *IMO News*. (4), 6-8.
- Reynolds, G. S. (2001). *The regulation of international shipping: systematic issues facing states in the administration of maritime affairs and the eradication of substandard shipping*. Unpublished master's thesis, World Maritime University, Malmö, Sweden,
- Reynolds, G. S. (2005). *The Role of Intelligence in Ensuring maritime security*. Presented on November 21, 2005, at the International Symposium on the new regime for the Suppression of Unlawful Acts at Sea, 21-23 November 2005. World Maritime University, Malmö, Sweden,1.
- Richardson, M. (2005). *The terrorist threat to shipping*. Presented on November 21, 2005, at the International Symposium on the new regime for the Suppression of Unlawful Acts at Sea, 21-23 November 2005. World Maritime University, Malmö, Sweden, 6-8.
- Robin, D. V. (2003). *The impact of competing interests and pressures on Maritime Administrations in Aspiring Maritime States: A critical analysis*, Unpublished master's thesis, World Maritime University, Malmö, Sweden.
- The Round Table of International Shipping Associations. (2005). *The Low costs of maritime transport*, International Shipping Carrier of the World Trade, 5.
- Russell, B. (1998). *The philosophy of logical Atomism (7th ed.)*, Open Court Publishing Company, Illinois.

- Salonio, L. & Sinha, R. (2002). International, regional and national approaches towards maritime security issues of terrorism. In P.K. Mukherjee, M.Q. Mejia & G.M. Gauci (Eds.), *Proceedings of the International Symposium on August 26-30, 2002 (pp. 233-235 & pp. 239-247) on Maritime violence and other security issues at sea*. Malmö, Sweden: World Maritime University Publications.
- Sandler, T. (2003). Collective Action and Transnational Terrorism, *World Economy*, Volume 26, June 2003, p.783, Table 1.
- Security: alert! Comprehensive measures set to enter force in 2004. (2003). *IMO News*. (1), 8-12.
- Schröder, J.U., Ketchum, J. & Mejia, M.Q. (2004). Maritime security: an overview of the new requirements. *Proceedings of the Conference on Background to Shipping on March 9-12, 2004 (pp.1-15)*. Lloyd's Maritime Academy, London.
- Schröder, J.U. (2005). An introduction to shipboard security assessment. In M.Q. Mejia (Ed.), *Proceedings of the Workshop-Symposium on the Practical Implementation and Critical Evaluation of the ISPS Code on August 11-15, 2003 (pp.101-115) on Contemporary Issues in Maritime Security*. Malmö, Sweden: World Maritime University Publications.
- Shah, A. (2006). *A Guide to Port Management*, Institute of Business Administration Karachi, Pakistan.
- Shah, S.B. (2003). *An overview of the recent US and IMO maritime security measures*, Maritime Institute of Malaysia, Volume 10, Number 1, 3-4.
- Shipping industry honours Prime Minister P.J. Patterson. (2006, March 22). *The Jamaica Gleaner*. Retrieved June 28, 2006 from the World Wide Web: <http://www.jamaica-gleaner.com/gleaner/20060322/news/news1.html>
- Smith, L. S. (1965). *The Caribbean, Who, What, Why*, Drukkerij, Holland N.V. Amsterdam.
- Smith, R.W. (2004, Feb 5). United States Department of State bureau of oceans and International Environment and Scientific Affairs. Limits in the Seas, Number 125, Jamaica's Maritime Claims and Boundaries - Map of Jamaica.
- SOLAS Security amendments and ISPS Code now in force. (2004). *IMO News*. (3), 7-8.
- Soper, R. (2006). *50 years of Containerization*. Presented by Malia, G on behalf of Professor Richard Soper, Presented June 2, 2006, World Maritime University, Malmö, Sweden
- Spurrier, A. (2005, June 27). Shipowners blast smaller ports over ISPS Compliance failures, *Lloyd's List*, pp.1-2.
- Srivastava, C.P. (1989). Safer ships and cleaner oceans: thirty years' work of the IMO, *Transport Review*, Volume 9, (1), 45-54.
- Starke, J. G. (1989). *Introduction to international law* (10th ed.), Butterworths, London.
- Statistical Institute of Jamaica, Jamaican statistics. Retrieved June 17, 2006 from the World Wide Web: <http://www.statinja.com/stats.html>

- Tonnage fall in Open Registers. (2006, January/February). *The Sea*, (179) p.1.
- United Nations. (1945). The Charter of the United Nations, 1945, Chapter VI, Article 33.
- United Nations. (1969). Vienna Convention on the Law of Treaties, New York: United Nations.
- United Nations. (1983). *The law of the sea: United Nations Convention on the Law of the Sea*. New York: Author.
- Urquhart, C. (2004, March 15) Suicide bombers kill 10 at Israeli port, Sharon cancels summit with Palestinian PM after blasts. *The Guardian*. Retrieved August 24, 2006 from the World Wide Web: <http://www.guardian.co.uk/israel/Story/0,,1169496,00.html>
- US Coast Guard, Targeted Flag List for ISPS / MTSA. Retrieved June 4, 2006 from the World Wide Web: <http://www.uscg.mil/hq/g-m/pscweb/FlagSecurity.htm>.
- US Coast Guard, Targeted Flag List for Safety. Retrieved June 4, 2006 from the World Wide Web: <http://www.uscg.mil/hq/g-m/pscweb/FlagSafety.htm>.
- US Coast Guard Targets Certain Flags of Convenience. (2004, Oct 10). *Seapower*. Volume 47, (10), 8.
- US Coast Guard to inspect ports and terminals in 135 countries. (2005, January/February). *The Sea*, (173) p.8.
- US Customs and Border Protection (2005), Fact Sheet dated January 7, 2005. Press Office, US Department of Homeland Security.
- US Department of State, Countries participate in the Visa Waiver Program (VWP). Retrieved May 14, 2006 from the World Wide Web: http://www.travel.state.gov/visa/temp/without/without_1990.html#1
- US Department of State, Immigration Classifications and Visa Categories. Retrieved July 4, 2006 from the World Wide Web: <http://www.uscis.gov/graphics/services/visas.htm>.
- US passport regime may cripple tourism. (2006, June 15). *The Jamaica Gleaner*. Retrieved June 15, 2006 from the World Wide Web: <http://www.jamaica-gleaner.com/gleaner/20060615/lead/lead3.html>
- US Study says lapses by Port Companies could allow terrorist attack. (2006, March 11). *The Jamaica Observer*. Retrieved March 12, 2006 from the World Wide Web: http://www.jamaicaobserver.com/news/html/20060311t200000-0500_100441_obs_us_study_says_lapses_by_port_companies_could_allow_terrorist_attack_.asp
- Walcott, G. (2006). Electronic Interview, ISPS Code Coordinator (Trinidad and Tobago), Conducted March 30, 2006 & May 17, 2006.
- Wallis, K. (2005, November 7). Governments “break IMO rules” over shore leave, *Lloyd's List*, p.3.
- Wallis, K. (2006, March 22). Malaysia seeks war risk review on strait, *Lloyd's List*, p.3.

Watts, D. (1987). *The West Indies: Patterns of development, culture and environmental change since 1492*, Cambridge University Press.

Wikipedia, The free encyclopedia, List of countries and outlying territories by total area.
Retrieved June 1, 2006 from the World Wide Web:
http://en.wikipedia.org/wiki/List_of_countries_by_area

Worrell, D. (1987). *Small Island Economies*, Praeger Publishers, New York.

Zachcial, M. & Heideloff, C. (2006). *Total Merchant Fleet*, Shipping Statistic Year Book 2005, Institute of Shipping Economics and Logistic (ISL), Bremen, pp.23-25.

Explanation of terms

Burden sharing - an exchange of resources amongst authorities to realize common objectives.

Complimentary flag - a flag flown from a prominent position on a merchant vessel as a matter of courtesy when visiting a foreign port.

Country - a geographical territory.

Designated person – an individual responsible to ensure the safe operation of each ship and to provide a link between the shipping company’s highest level of management and those onboard.

Embedded maritime state – a state which provides all services of the maritime industry namely: operational, commercial, legal and technical service.

Flag state – a state which maintains a register and allows the registration of vessels under its flag.

Host state – a state in whose ports and/or offshore terminals foreign ships voluntarily and routinely visit. Commonly referred to as a port state.

Maritime Administration - an agency responsible to the government to oversee the maritime administrative, technical and social matters concerning ships flying its flag in keeping with the national interest through policy development, formulation of legislation and the provision of maritime services.

Port state control - the inspection of foreign-flagged ships in a host state’s port or offshore terminal to verify its compliance with international maritime conventions.

Security in depth – multiple security perimeters or lines of defence through which an attacker, saboteur, hijacker, or other criminal must penetrate.

State - an independent territory with a government, a population and sovereignty over these. The United Nations is a body made up of states.

Supplementary flag – a flag flown, whilst in the high seas, from a prominent position on a merchant vessel, to indicate which state is authorized to conduct approved security boarding and assist with security.

Twenty foot equivalent unit – a basic unit for expressing the capacity to carry containers on cellular, part-container, or ro-ro vessels.

Maritime Transportation Security Act of 2002
§ 70108 - § 70110

Sections Public Law 107–295—Nov. 25, 2002

“§ 70108. Foreign port assessment

“(a) IN GENERAL.—The Secretary shall assess the effectiveness of the antiterrorism measures maintained at—

“(1) a foreign port—

“(A) served by vessels documented under chapter 121 of this title; or

“(B) from which foreign vessels depart on a voyage to the United States; and

“(2) any other foreign port the Secretary believes poses a security risk to international maritime commerce.

“(b) PROCEDURES.—In conducting an assessment under subsection (a), the Secretary shall assess the effectiveness of—

“(1) screening of containerized and other cargo and baggage;

“(2) security measures to restrict access to cargo, vessels, and dockside property to authorized personnel only;

“(3) additional security on board vessels;

“(4) licensing or certification of compliance with appropriate security standards;

“(5) the security management program of the foreign port; and

“(6) other appropriate measures to deter terrorism against the United States.

“(c) CONSULTATION.—In carrying out this section, the Secretary shall consult with—

“(1) the Secretary of Defense and the Secretary of State—

“(A) on the terrorist threat that exists in each country involved; and Regulations.

116 Stat. 2080 Public Law 107–295—Nov. 25, 2002

“(B) to identify foreign ports that pose a high risk of introducing terrorism to international maritime commerce;

“(2) the Secretary of the Treasury;

“(3) appropriate authorities of foreign governments; and

“(4) operators of vessels.

“§ 70109. Notifying foreign authorities

“(a) IN GENERAL.—If the Secretary, after conducting an assessment under section 70108, finds that a port in a foreign country does not maintain effective antiterrorism measures, the Secretary shall notify the appropriate authorities of the government of the foreign country of the finding and recommend the steps necessary to improve the antiterrorism measures in use at the port.

“(b) TRAINING PROGRAM.—The Secretary, in cooperation with the Secretary of State, shall operate a port security training program for ports in foreign countries that are found under section 70108 to lack effective antiterrorism measures.

“§ 70110. Actions when foreign ports not maintaining effective antiterrorism measures

“(a) IN GENERAL.—If the Secretary finds that a foreign port does not maintain effective antiterrorism measures, the Secretary—

“(1) may prescribe conditions of entry into the United States for any vessel arriving from that port, or any vessel carrying cargo or passengers originating from or transshipped through that port;

“(2) may deny entry into the United States to any vessel that does not meet such conditions; and

“(3) shall provide public notice for passengers of the ineffective antiterrorism measures.

“(b) EFFECTIVE DATE FOR SANCTIONS.—Any action taken by the Secretary under subsection (a) for a particular port shall take effect—

“(1) 90 days after the government of the foreign country with jurisdiction over or control of that port is notified under section 70109 unless the Secretary finds that the government has brought the antiterrorism measures at the port up to the security level the Secretary used in making an assessment under section 70108 before the end of that 90-day period; or

“(2) immediately upon the finding of the Secretary under subsection (a) if the Secretary finds, after consulting with the Secretary of State, that a condition exists that threatens the safety or security of passengers, vessels, or crew travelling to or from the port.

“(c) STATE DEPARTMENT TO BE NOTIFIED.—The Secretary immediately shall notify the Secretary of State of a finding that a port does not maintain effective antiterrorism measures.

“(d) ACTION CANCELED.—An action required under this section is no longer required if the Secretary decides that effective antiterrorism measures are maintained at the port.

List of small states
(Total area below 20,000 km²)

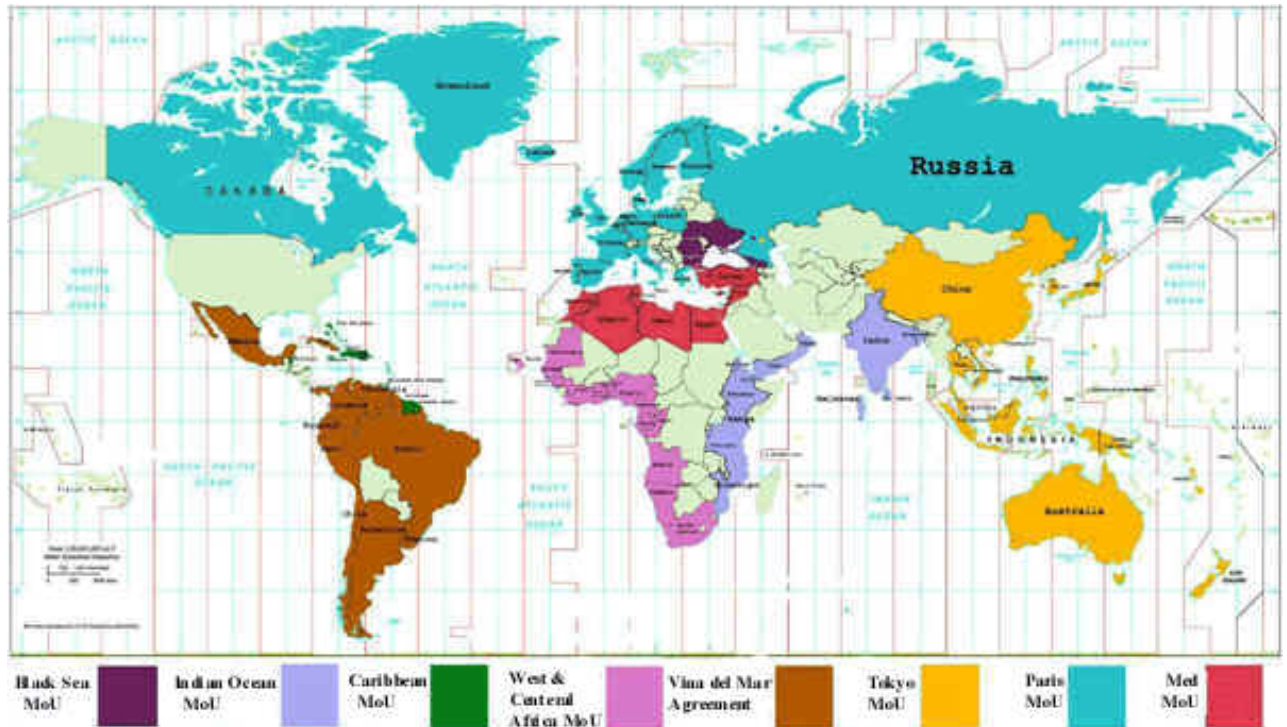
Serial	Name of State	Size (km ²)	Status
1	Fiji	18,274	IMO member state
2	Kuwait	17,818	IMO member state
3	Swaziland	17,364	
4	East Timor	14,874	
*5	Bahamas	13,878	IMO member state; declared FOC by ITF
6	Vanuatu	12,189	IMO member state; declared FOC by ITF
7	Gambia	11,295	IMO member state
8	Qatar	11,000	IMO member state
*9	Jamaica	10,991	IMO member state; declared FOC by ITF
10	Lebanon	10,400	IMO member state; declared FOC by ITF
11	Cyprus	9,251	IMO member state; declared FOC by ITF
12	Brunei	5,765	IMO member state
*13	Trinidad & Tobago	5,130	IMO member state
14	Cape Verde	4,033	IMO member state
15	Samoa	2,831	IMO member state
16	Luxembourg	2,586	IMO member state
17	Comoros	2,235	
18	Mauritius	2040	IMO member state; declared FOC by ITF
19	Sao Tome and Principe	964	IMO member state; declared FOC by ITF
*20	Dominica	751	IMO member state
21	Tonga	747	IMO member state; declared FOC by ITF
22	Kiribati	726	IMO member state
23	Federated States of Micronesia	702	
24	Bahrain	694	IMO member state

25	Singapore	683	IMO member state
*26	Saint Lucia	539	IMO member state
27	Andorra	468	
28	Palau	459	
29	Seychelles	455	IMO member state
*30	Antigua & Barbuda	442	IMO member state; declared FOC by ITF
*31	Barbados	430	IMO member state; declared FOC by ITF
*32	Saint Vincent & Grenadines	388	IMO member state; declared FOC by ITF
*33	Grenada	344	IMO member state
34	Malta	316	IMO member state; declared FOC by ITF
35	Maldives	298	IMO member state
36	Saint Kitts & Nevis	261	IMO member state
37	Marshall Islands	181	IMO member state; declared FOC by ITF
38	Liechtenstein	160	
39	San Marino	61	IMO member state
40	Tuvalu	26	IMO member state
41	Nauru	21	
42	Monaco	1	IMO member state
43	Vatican	0.44	

Source: Wikipedia, the free encyclopaedia

* Caribbean state

Global MoUs on Port State Control



Source: The Mediterranean MoU

Western Europe and Canada; South America; the Asia –Pacific region; the Mediterranean; the Indian Ocean including East Africa; West and Central Africa; the Persia Gulf, Black Sea and the US.

Appendix E

Tonnage of Caribbean states

dwt-rank Jan, 1 st		Flag state	No of Ships Jan 1 st		1000gt	dwt% -share
(04)	'05		(04)	'05	'05	of total
(3)	4	Bahamas	(1097)	1113	33539	5.1
(19)	18	St. Vincent & Grenadines	(786)	762	6038	1.0
(24)	21	Antigua & Barbuda	(898)	978	6702	1.0
(65)	63	Barbados	(45)	58	516	0.1
(125)	78	Dominica	(8)	35	35	0.0
(98)	97	Jamaica	(5)	7	82	0.0
(137)	133	Trinidad & Tobago	(6)	7	13	0.0
(151)	153	St. Kitts & Nevis	(1)	0	0	0.0
(152)	154	Grenada	(4)	4	2	0.0
-		St. Lucia	-		-	0.0
		Caribbean total		2964		7.2
		*15 EU Total (Embedded states in EU)				14.8
(1)	1	Panama				22.0
(2)	2	Liberia				9.4
(4)	3	Greece				6.2

Source: Figures obtained from Shipping Statistics Year book 2005 (ISL) for ships of 300gt and above

* Figure represents the total percentage of the 15 EU embedded maritime states - Finland, Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the UK.

IMO Conventions to which Jamaica is a state party

- International Convention for the Safety of Life at Sea 1974 amended, & 1988 Protocol.
- Convention on the International Regulations for Prevention Collisions at Sea, 1972.
- International Convention on Load Lines, 1966 & 1988 Protocol.
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1995.
- International Convention on Maritime Search and Rescue, 1979.
- International Convention on Tonnage Measurement of Ships, 1969.
- International Convention Relating to Intervention on the High Sea in cases of Oil Pollution Casualties, 1969.
- Protocol relating Intervention on the High Seas in cases of Pollution by Substances other than Oil, 1973.
- International Convention for the Prevention of pollution from Ships, 1973 & 1978 Protocol.
- International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990.
- International Convention on the establishment of an International Fund for Companies for Oil Pollution Damage, 1992.
- International Convention on Civil liability for Oil pollution Damage, 1992.
- International Convention on the Prevention of Marine Pollution by Dumping of Wastes and other matter, 1972 as amended.
- International Convention on civil liability for bunker oil damage, 2001.
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 & 1988 Protocol.
- Convention on Limitation of Liability for Maritime Claims, 1976 & 1996 Protocol.

Source: IMO - http://www.imo.org/includes/blastDataOnly.asp/data_id%3D14919/status.xls

Estimated costs for maritime security equipment in Jamaica

Closed circuit television (CCTV) surveillance system

Kingston Container Terminal
Montego Bay Cargo &
Cruise Ship Terminals **Total - US\$795,265.00**

Used for round-the-clock surveillance, monitoring of the ports, access gates, container station, port basin, ships at port and perimeter areas.

Underwater cameras

Montego Bay
Ocho Rios **Total - US\$26,738.00**

Used to inspect the hull of ships on arrival and before departing the port.

Floating barriers

Ocho Rios **Total - US\$43,800.00**

Used to form a cordon around cruise vessels in port. Jamaica Harbours Rule of 2001 – “No person shall enter into or remain in the sea within a distance of 100 metres from any vessel.”

Patrol boats

Two (2) patrol boats **Total - US\$161,412.00**

Used by the JDFCG to escort cruise ships in and out of the port. While vessels are in port, the patrol boats remain in the basin in order to patrol the waterside. This is supplemented by patrols by the Marine Police.

Passenger x-ray system

Montego Bay cruise ship terminal

Ocho Rios cruise ship pier

2 Hi-Scan 9075 **Total - US\$136,227.00**

These x-ray machines will be used to inspect cruise ship's passengers and crew luggage.

Gamma/x-ray imaging equipment

Pallet machines – US\$1.2mil. X 7 = **US\$8,400,000.00**

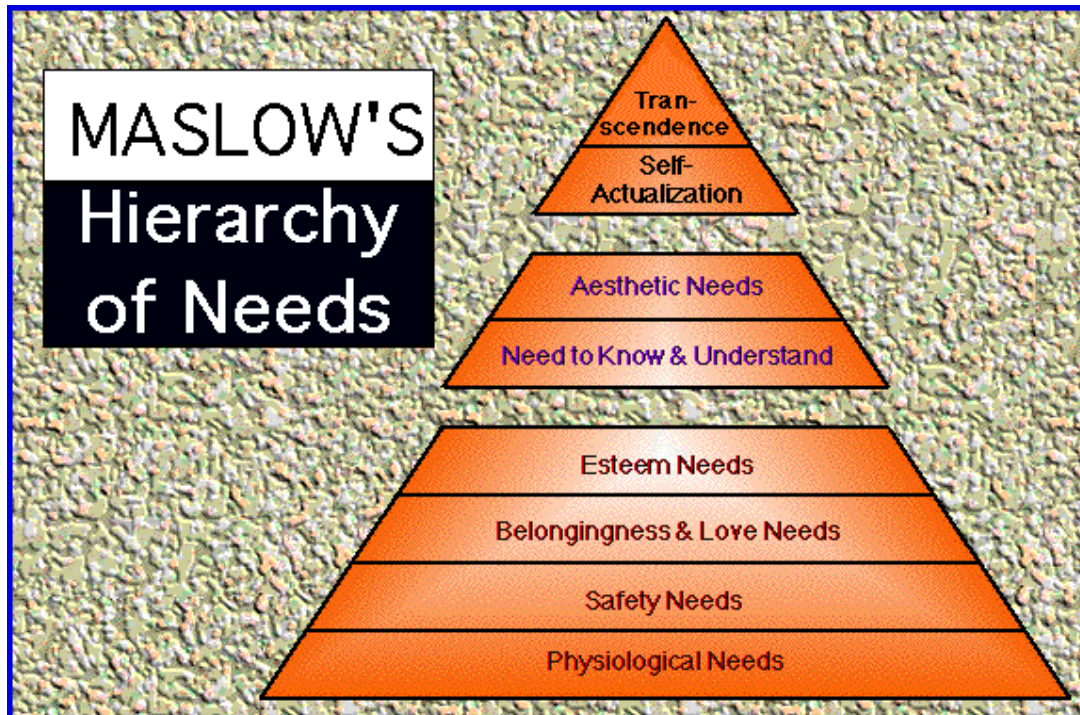
Vacis machines – US\$2.1mil. X5 = **US\$10,500,000.00**

Aracor machine – **US\$5,500,000.00**

Total estimated equipment cost: **US\$25,563,442.00 (JA\$1,559,369,963.00)**

Source: Baylis, N. (2006, January 11). Assistant Vice-President in Charge of Security, PAJ.

Maslow's Theory of Human Motivation



Source: <http://chiron.valdosta.edu/whuitt/col/regsys/maslow.html>. [June 04, 2006]

Participating states in the Visa Waiver Program

Serial	Name of State	Remark
1	Andorra	
2	Australia	Embedded maritime state
3	Austria	Embedded maritime state
4	Belgium	Embedded maritime state
5	Brunei	
6	Denmark	Embedded maritime state
7	Finland	Embedded maritime state
8	France	Embedded maritime state
9	Germany	Embedded maritime state
10	Iceland	Embedded maritime state
11	Ireland	Embedded maritime state
12	Italy	Embedded maritime state
13	Japan	Embedded maritime state
14	Liechtenstein	
15	Luxembourg	Embedded maritime state
16	Monaco	
17	The Netherlands	Embedded maritime state
18	New Zealand	
19	Norway	Embedded maritime state
20	Portugal	Embedded maritime state
21	San Marino	
22	Singapore	
23	Slovenia	
24	Spain	Embedded maritime state
25	Sweden	Embedded maritime state
26	Switzerland	Embedded maritime state
27	United Kingdom	Embedded maritime state
28	United States	Embedded maritime state

Source: US Bureau of Consular Affairs, US Department of State

* Canadians and Americans currently cross the US/Canadian border simply by using their driver's licence or birth certificate. The new security initiative, which will be phased in before 2008, will eventually require a passport or other accepted secured document instead. This will be reciprocated between both states'.