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WORLD MARITIME UNIVERSITY

Malmö, Sweden

**COMPLYING WITH THE NEW MARITIME SECURITY
REGIME: TOWARDS A MODEL MARITIME LAW
ENFORCEMENT APPROACH**

By

DONNY MICHAEL

India

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

MASTER OF SCIENCE

In

**MARITIME AFFAIRS
(Maritime Administration)**

2004

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.

7 September 2004

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ABSTRACT

Title of Dissertation Complying with the New Maritime Security Regime:
Towards a Model Law Enforcement Approach

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The objective of this study is to bring about the fact that the shipping which required a great deal of attention for safety and environmental issues through actions from IMO and member states, now has to deal with the new issues related to maritime security for providing safe and secure maritime environment for betterment of trade and the world commerce. The recent security incidents and the events of 9/11 has changed the industry view about maritime security where maritime systems and infrastructure can be used as both targets and as weapons or as conduit for perpetrators of maritime crimes. While the aviation sector has tightened the security, the maritime sector has been lagging behind due to various reasons and has become most vulnerable. The IMO has periodically dealt with the security issues and adopted various conventions and resolutions, but the maritime security regime adopted by the member states varied from high priority national security agenda to a low level administrative issue in some other states. The recent amendments to SOLAS 74 and adoption of ISPS Code have brought about new awareness in the shipping sector. It has made the ships and ports to be more secure than before and brought about some level of commitment from the crew and the port officials. But the level of involvement of private players and the late rush to put in the mandatory security measures has turned it into a procedural exercise which in most cases involved measures that did not form part of sound maritime security strategies under the national or regional security policies.

But security is a serious issue and it is an ongoing and continuous process. This dissertation is intended to confirm the ground realities of the maritime security as prevalent today. Towards this objective, a questionnaire was sent to few selected

states especially emerging maritime nations spread all across the world to check their maritime security regimes and its efficacy to address the new security issues.

The existing maritime security legal regimes has been analysed and establishes that ISPS Code and SUA 1988 convention are adequately sound instruments but in terms of maritime security they vary between preventive security measures and punitive security measures respectively. However those two measures cannot provide total security unless the measures for protective and response security measures are also addressed together in a coordinated manner. It is found that the preventive part has been addressed well by the industry but the reactive part of the security, which needs action by the governments, has been left for the states to do the needful and it differs widely due to politico-socio-economic conditions.

In the absence of framework instrument emanated from international organisation, the existing legal regime for maritime security has not helped the states to integrate the security measures collectively and addressing them through sound security policies, strategies and contingency plans.

Certain proposals are made for establishing maritime security policies and strategy for the developing countries and also recommendations for the IMO for developing a framework convention in the same mould of the OPRC 90 for maritime security preparedness, response and cooperation and issues for global governance of maritime terrorism.

KEY WORDS : MARITIME SECURITY, SUA CONVENTION, ISPS CODE, PREVENTIVE SECURITY, SECURITY ENFORCEMENT STRATEGY, PIRACY, MARITIME TERRORISM

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ABBREVIATIONS AND ACRONYMS

CSR	Continuous Synopsis Record
CSI	Container Security Initiative
C-TPAT	Customs- Trade Partnership Against Terrorism
FATF	Financial Action Task Force
GISIS	Global Integrated Shipping Information System
IMB	International Maritime Bureau
ILO	International Labour Organisation
IMO	International Maritime Organisation
IMSTF	International Maritime Security Trust Fund
ISPS	International Ship and Port Facility Security Code
MOWCA	Maritime Organisation for West and Central Africa
OECD	Organisation for Economic Cooperation and Development
PSI	Proliferation Security Initiative
ROCRAM	Regional Operative Cooperation Among South American Maritime Authorities
SOLAS	International Convention for the Safety of Life at Sea, 1974
SUA	Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988
SSAS	Ship Security Alert System
SID	Seafarer's Identity Document
UNCLOS	United Nations Convention on the Law of the Sea 1982
VDR	Voyage Data Recorder

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CHAPTER 1

INTRODUCTION

1.1 The Threat to Shipping Today: How Serious is It?

Shipping is the embodiment of the free enterprise and entrepreneurial zeal that characterise the ebb and flow of modern global capital and is perhaps the most independent of economic activities undertaken on earth. Many of these ventures are without allegiances of any kind, swapping identities and nationalities at will and protected by registries, which in this age of info-commerce can be shopped through the Internet. Shipping is a free enterprise and at its freest, measures and strategies to exploit even marginal opportunities are taken to the extreme. A ship, legally speaking, is much like a floating embassy, an extension of the state whose flag it flies, with seamen aboard the ship subject to the same laws that govern their shore-based counterparts. It is also unsettling to be appraised of the fact that the laws, treaties, conventions, traditions, and organizations which, were meant to regulate the sea and the social, economic, ecological impacts emanating from it, have been exploited by ingenious individuals and corporate bodies of various nationalities. To aid and abet such nefarious intents, there is a prevailing culture in many jurisdictions, which tolerates convenience at the expense of strict legality. Ownership structures exist to diffuse responsibility and risk; illegal crew with dubious identity still man many vessels. The volatility of the insurance market has created a culture of under or non-reporting of security incidents and the very small profit margins of the industry are often used as an excuse to avoid adherence to the norms that are painstakingly made by the IMO and the Industry.

The maritime transport industry is the most economical means of transporting goods with ninety percent (90%) of the world annual trade by volume (WTO, 2003) being moved by the ships. In addition the efficiency of the maritime transport sector has

been improving day by day. But quests to achieve even greater efficiencies are often accompanied by problems like accidents and shipwrecks, pollution and death of crews, and the evolution of two perfectly adapted pathogens namely, a modern and sophisticated strain of piracy and its close cousin, the maritime form of the new stateless terrorism. Besides the *Santa Maria*¹ and *Achille Lauro*² incident, the timeline of the events from Oct 2000 onwards shows incidents such as the suicide attacks on *USS Cole*³, capture of suspected gun running ship *Al Murtada*⁴ by Indian Coast Guard, suicide attack on *Limburg*⁵ in Oct 2002, sabotage of *Super Ferry 14*⁶ by Abu Sayyaf group, explosion at port Ashdod⁷ in Israel by suicide bombers in March 2004 and terrorist acts at Umm Qasr⁸ near Basra in Apr 2004.

Continuing with the trends witnessed during the previous decades, pirate attacks worldwide increased in frequency and violence last year, with a total of 445 incidents being reported as compared to 370 incidents in 2003 with 21 seafarers being killed and 71 crew and passengers reported missing. It is alarming to note that the number of attacks using guns rose to 100 from 68 in 2002 and hostages taken nearly doubled to 359 seafarers. Ships were boarded in 311 instances and a total of 19 ships were hijacked (International Maritime Bureau, 2004). The important aspect to be borne in mind regarding the growth of piracy is not the quantity but the growing sophistication and brutal quality of these attacks.

¹ Portuguese Luxury liner was hijacked by own crew in 1961.

² *Achille Lauro* was a Italian cruise vessel hijacked on Oct 7 1985 by four Palestine gunmen in the eastern Mediterranean sea and one passenger was killed during the incident.

³ *USS Cole*, a US Naval vessel was attacked by a terrorist boat laden with explosives off Aden Harbour, Yemen on 12 October 2000 while it was refuelling offshore. 17 crew was killed in that attack.

⁴ *Al Murtada*, was a Lebanese flagged vessel was found abandoned in Indian waters with arms onboard. For further detailed information, see chapter 4.

⁵ French Tanker *Limburg* was attacked by a boat laden with explosives off Yemen on 06 October 2002 and one crew member was killed in the incident

⁶ The Abu Sayyaf said it had planted the explosive device that started the fire aboard the ill-fated *Super Ferry 14* that left one dead and 180 people missing according to Minda News 01 Mar 2004

⁷ A truck containing suicide bomber hiding inside the containers detonated themselves at Israeli port of Ashdod on 21 Jun 2004, killing 10 and injuring 18 port workers.

⁸ Suicide attackers detonated explosive-laden boats near oil facilities off Umm Qasir in the Persian Gulf on 25 April 2004, killing two U.S. Navy sailors

There are increasing signs that the piracy is becoming more organised, more intensive and ambitious and better coordinated (Armstrong, 2004)⁹. Aside from piracy, the other common forms of maritime crime include documentary and charter party frauds, container crime, insurance fraud, deviation and hijacking.

Contrary to common citizens perception or beliefs and on the basis of general information available in the public domain, the world is not a safe place. With the advent of international terrorism and maritime violence, it had in fact become more dangerous with the multibillion maritime industry that has neglected security for so long just beginning to understand the extent and ramifications of maritime security threats in its many myriad forms and hues. A combination of the several factors akin to maritime industry presents an opportune situation for both the unfeeling terrorist and the common, petty criminal alike to brutally exploit with the consequences having the ability to disrupt hundreds, thousands of lives and having the ugly but real potential to place entire communities at risk by seizing or sabotaging commercial vessels, port facilities and offshore installations. The perceived risks of the new threat ranges from disruption of crew and trained manpower supply by terrorizing the shipping industry, ransom can range above tens of millions of dollars (which are now realistically demandable) in return for refraining from destroying a US\$ 500 million drilling platform, creating a € 3 billion oil spill, or incinerating an entire port city etc. Alternative threat scenarios other than piracy and armed robbery could include containers being used as a Trojan Box either as the medium for delivery of weapons of mass destruction or as the weapon itself. Other scenarios could be chemical contamination, gas explosion, cruise manslaughter, oil pollution at choke points and cyber crimes.

Well before the horrifying September 11 terrorists attacks, transport sector had been the target of terrorist activities because of their relative easy accessibility and the potential for inflicting casualties on a large scale. The vulnerability of the transport

⁹ Dominic Armstrong is the Director of Research and intelligence of the Aegis Defence services Group

system highlights the susceptibility of international trade, which thrives on secure and efficient transport system, to terrorism having an enormous impact on the way we live and conduct trade and commerce.

Economic impacts

World trade moves through a number of choke points where decisive action could restrict or even block traffic. The world's overwhelming reliance on 'Just-In-Time' logistics systems and the innate volatility of markets and the shipping industry do not only present easy targets but also highly strategically important ones.

The impact of maritime violence and terrorism are not only limited to loss of life, damage to property and environment but also impact the underlying fibre that binds the global economic landscape together with its impact on the critical infrastructure, disruption to financial markets. There could also be significant costs to be borne by nation states in terms of rescue efforts and post attack crisis management as well as the costs of the remedial measures. In this context, it would be worthwhile to note that the threat of terrorist attacks has wiped out around half of the logistics productivity gains realised in the US over the past 10 years (OECD, 2003)¹⁰. Further, the ongoing threat of terrorism and maritime violence could also affect the world economic activity through its impact on business and investment decisions. The possibility of future terrorists acts creates uncertainty, which increases perceived risks and the risk premium demanded by the investors.

The maritime transport sector is particularly vulnerable to terrorism due to its diverse and large international labour force serving onboard ships, large number of intermediaries which provide support services from freight-forwarders to stevedores with its complex system encompassing different legal systems, maritime security systems, varying degrees of maritime emergency response preparedness, coastal

¹⁰ Organisation of Economic Cooperation and Development (OECD) formed in 1961 is a forum comprising 30 developed countries to discuss develop and refine economic and social policies

states preparedness to respond to incidents and different standards of port state control (PSC) inspections regime. The perceived regulatory regime with lowest common denominator approach poses a significant challenge to the maritime security situation.

1.2 Maritime security and the International Maritime Organisation (IMO)

Since its creation in 1958, the International Maritime Organization, as the United Nations' rule-making body responsible for the safety of life at sea and environmental protection, has adopted a great number of conventions and regulations. Concern about unlawful acts which threaten the safety of ships and the security of their passengers and crews has been addressed by IMO since the 1980s (IMO, 2004). If one were to revisit the milestones of the achievement of the International Maritime Organisation, it can be observed that the organisation has responded to the historic disasters that affected passenger and crew safety and to the marine environment by adopting conventions, such as the International Convention for the Safety of Life at Sea (SOLAS), 1974, and International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto. (MARPOL 73/78) In the field of maritime security, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 (SUA 88) was adopted as a result of the *Achille Lauro* incident while the ISPS Code was developed in response to the September 11 incident in New York.

It needs to be emphasised that maritime security has always had been an important agenda item at IMO long before the 9/11 incident and has been a permanent feature of the Maritime Safety Committee (MSC) since the early 80s. However, the incidents of 9/11 surprised a great majority of security agencies and international regulatory bodies and caught everyone flat footed. The impact was so overwhelming that it awoke the organisations dealing with international transportation of goods and passengers to react proactively so as to be caught by any new surprises. IMO did not lag behind and fast-tracked the development of an instrument, which provides

uniform global standard for the prevention of terrorists' attacks against ships and port facilities. While the "threat to maritime security" has now become synonymous to maritime terrorist act, it is actually a broad area that covers a wider range of issues than the terrorist attacks similar to that of 9/11. It encompasses piracy, armed robbery, high jacking, stowaways, illegal migrants, narcotics, arms smuggling, fraud and others (Mejia, 2002).

The chronology of IMO measures in respect of maritime security include:

- (a) In 1983, Assembly resolution A.545 (13) Measures to prevent acts of piracy and armed robbery against ships, to address the specific problems relating to piracy and armed robbery pursuant to the *Achille Lauro* incident.
- (b) In 1985, Resolution A. 584 (14) on Measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews.
- (c) In 1986, the MSC approved MSC/Circ.443 on Measures to prevent unlawful acts against passengers and crew on board ships, intended for application to passenger ships engaged on international voyages of 24 hours or more and the port facilities which service them. The measures encourage Governments, port authorities, administrations, shipowners, shipmasters and crews to take appropriate measures to prevent unlawful acts, which may threaten passengers and crews. The measures also stresses the need for port facilities and individual ships to have a security plan and appoint a security officer which make obvious that the measures as similar to that propounded in the ISPS code has been made as recommendatory measure by the IMO way back in 1986.
- (d) In March 1988, a conference in Rome adopted the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA). It includes provisions for the absolute and unconditional application of the principle either to punish or to extradite persons who commit or who

are alleged to have committed offences specified in the convention. A protocol extends the provisions of the Convention to unlawful acts against fixed platforms located on the Continental Shelf (Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988). The two instruments both entered into force on 01 March 1992.

The main purpose of the SUA treaties is to ensure that appropriate action is taken against persons committing unlawful acts against ships (and fixed platforms on the continental Shelf), which include the seizure of ships by force, acts of violence against persons on board ships, and the placing of devices on board a ship which are likely to destroy or damage it. The treaties oblige Contracting Governments to either extradite or prosecute alleged offenders. IMO's Legal Committee is reviewing the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 (the SUA treaties)

(e) In 2002, IMO has issued revised MSC circulars MSC/ Circ.622 and MSC/ Circ 623 recommending governments to prevent and suppress piracy and armed robbery and providing guidance to shipowners, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery.

(f) In November 2001, the IMO Assembly adopted the code of practice for the investigation of the crimes of piracy and armed robbery against ships (Resolution A.922(22)) as well as measures to prevent the registration of phantom ships (Resolution A.923(22)).

(g) Following the terrorist attacks on the United States of America on 11 September 2001, the United Nations, through Security Council resolution 1373 (2001), called on the international community to redouble efforts to prevent and suppress terrorist acts, including full implementation of the anti-terrorist conventions.

(h) A new, comprehensive security regime for international shipping entered into force on 01 July 2004. The mandatory security measures, adopted in December 2002, include a number of amendments to the 1974 Safety of Life at Sea Convention (SOLAS), the most far-reaching of which enshrines the new International Ship and Port Facility Security Code (ISPS Code).

Apart from evolving conventions, resolutions and circulars providing guidance to all concerned, IMO implemented an anti-piracy project in 1998. Phase One of the project consisted of a number of regional seminars and workshops attended by Governmental representatives from countries in piracy-infested areas of the world; while Phase Two of the project consisted of a number of evaluation and assessment missions to different regions. IMO is taking the lead in the proposed development of regional co-operation activities and agreements.

To assist in anti-piracy measures, IMO issues reports on piracy and armed robbery against ships submitted by member governments and international organizations. The reports, which include names and descriptions of ships attacked, position and time of attack, consequences to the crew, ship or cargo and actions taken by the crew and coastal authorities, are now circulated monthly, with quarterly and annual summaries.

The IMO efforts include, inter-alia, accelerated implementation of Automatic Identification System¹¹, coordination with ILO for a new Seafarer Identification document¹², transparency of ownership and control, ship security alarms systems and

¹¹ Automatic Identification System (AIS) is a shipboard radar display with a overlaid electronic chart data and includes mark of AIS fitted ship within VHF range and provides salient navigational and other data.

¹² The 91st conference of ILO in Jun 2003 adopted a new convention on Seafarer's Identity Document which replaces ILO convention 108 adopted in 1958.

control, marking of ships with an IMO number¹³ and installation on ships of the Voyage Data Recorder (VDR)¹⁴, and other issues regarding technical cooperation.

IMO's Global programme on maritime and port security

IMO launched its global technical cooperation programme on maritime security in January 2002, 11 months before the IMO Diplomatic Conference on Maritime Security adopted amendments to the SOLAS Convention and the related International Ship and Port Facility Security Code (ISPS) in December 2002. The aim of the global program initially was to raise awareness of maritime security threats and of the possible future regulatory measures that were being developed at that stage. The programme was aimed at helping governments strengthen maritime and port security especially in the developing countries. Activities carried out during 2002 included the development of lesson plans and manuals and the delivery of sub-regional seminars, workshops and advisory missions.

IMO's expenditure on the programme as of Jun 2004 is US\$ 2,525,304. (IMO, 2004) Worldwide activities have included 18 regional and 42 national seminars and workshops. Some 3,320 people have been trained across the ports of the developing regions and they are now putting into place the practical security mechanisms necessary to thwart terrorist attacks against ships and ports in their countries. The demand from member states for practical assistance in the implementation of the International Ship and Port Facility Security Code (ISPS Code) and other security measures adopted by IMO is a continuing demand. To facilitate the demands to be met adequately and appropriately, a new 'Train-the-Trainer' programme has been developed which is assisting governments to strengthen their maritime security

¹³ SOLAS Reg. XI -1/3 require ships identification number permanently marked on a visible area on ships hull or superstructure for easy identification.

¹⁴ From 1 July 2004 ships are to be fitted with Voyage Data recorders, which serve the purpose as black boxes for the ship. They are mandatory in accordance to Ch V of SOLAS 74

implementation through the provision of trained instructors capable of delivering quality training at regional and national levels using relevant IMO Model Courses.

Another initiative of the IMO is the establishment of International Maritime Security Trust Fund (IMSTF), on the basis of voluntary donations, and the IMO Secretary-General has appealed to Governments and industry to make contributions to the Fund, which will support the programme over the coming biennium.

It can be observed that the IMO has responded to security demands not only on an incident-based level but also proactively. The frequency of the IMO resolutions for security issues made over the past decade indicate that IMO is constantly aware of the evolving maritime security situation starting from measures to prevent piracy to prescribing offences in SUA Convention to the engagement of port facilities through the ISPS Code. The IMO is constantly aware of the convention law and its shortcoming and has periodically amended the conventions and resolutions to fit the current security situation. IMO is only a norm making body and constantly aligns its work and programmes to the relevant policies, objectives and procedures developed in the United Nations and other United Nations agencies. However, it needs to be borne in mind that IMO is not a supra-national body and it does not impose or enforce rules, it has no power or authority to do so. (Balkin, 2000). Therefore, the answer to establishing an effective maritime response system for global maritime security situation does not lie with the solutions made by IMO but by its member state, through their national administrations by implementing the conventions into national laws and enforcing them correctly and uniformly. Presently there is no way that IMO can supervise the implementation of conventions in any state unless the state volunteers. There are many maritime states, which have not faced any security threat in their ports or in their coasts, and there are other states whose national policy priorities are different and do not provide adequate resources for maritime security due to its high cost and intangible returns. In this situation the maritime security response system is left entirely with the state's willingness to implement the

convention in the true spirit and making concerted effort to enforce it through properly trained organisation.

1.3 Preventive and response environment

A closer look at the Jane's Fighting ships¹⁵ indicates the resources available with different countries with respect to their Navies, Coast Guard, Border police and maritime or port police. While some countries maintain resources for national security, and for the protection of resources in their jurisdiction, the mercantile marine is almost left to its own devices. This is most likely due to the infrequency of security incidents and the fact that the merchant vessels, which traverse the coastal state's waters, fly international flags. There is a conflict of jurisdictional regime, and of control and in many cases the national laws are not clear regarding who is to respond or react to security situations at sea during peacetime.

One must be circumspect when discussing the involvement of military forces in civil affairs. This is particularly true in the case of the control issues of ISPS Code. Even in the high seas there are more than a few merchant ships masters who view the need to share sea-lanes with the naval forces as somewhat of a nuisance.¹⁶

When dealing with the acts of terrorism, however, issues involving the protection of civil interests from criminal acts become merged with issues of national security. Under such situations the protection of civil property interests becomes secondary. This is one of the fundamental reasons why it is considered that the interests of the civil maritime community can be best served by emphasising precautionary and preventive measures as opposed to – after the fact – rescue or punitive measures. In

¹⁵ Jane's fighting ships is a comprehensive source of fighting ship information and is an authority on World Navies.

¹⁶ RAdm Bruce Harlow USN, -The role of Military force to protect ships and ports against terrorist attacks — Violence at Sea, ICC, 1986.

this regard, it is helpful to understand the distinction – between an act of terrorism on one hand and an act of piracy, mutiny or insurrection on the other.

Until recently or after September 11, the act of terrorism was viewed primarily as a criminal matter to be dealt with by civil authorities. When the level of violence is sufficient to impact on fundamental national interests, then the issue becomes one of national security. There are no international conventions, which specifically address the issues of terrorism at sea, albeit the SUA 88 convention does so to some extent, as preventive and response measures (Civil plus Military) and ISPS code as total preventive measures (Civil oriented only).

It can be seen that an appropriate response to an act of violence against a merchant ship may vary in accordance with the particular circumstances. The expected level of involvement of military forces of the flag state will likewise vary, in accordance with the circumstances surrounding each particular case.

There are various methods followed by different states, which have organised their maritime security infrastructure for the protection of ships and port facilities, and they are generally patterned in three forms. The first one exercising full control over the merchant marine issues as in the case of the US Coast Guard and Chilean Coast Guard. The second form is that of Greek national maritime administration (civil) having regulatory function for issuing ISSC and Greek Coast Guard overseeing the security issues. The third form is having full control of all maritime security issues with the civilian maritime administration like that of India which has the Coast Guard or Navy responding to security situations as required basis. The result is that in states having civilian oriented maritime administration dealing with maritime security, the law enforcement organisation who are to react on ad-hoc basis are not adequately made aware of the happenings at the IMO and the response system is one made on cautious approach. The spectrum of maritime security response is so wide in the sense that USCG conduct the audit and certify the International Ship Security Certificate and on the other hand a virtually nameless company having some security

credentials performs security assessment and certification for ships which are flagged in distant open registries run by countries which will or cannot bear any responsibility for their acts.

What the IMO security conventions require apart from the legal regime is the establishment of preventive measures and deterrence through risk based assessment and availability of some system for immediate response. The administrations have taken advantage of the provision of delegating security obligations to the Recognised Security Organisation (RSO)¹⁷ and the ready availability of RSOs mostly made of Classification Societies has made the task easier for the most administrations. The maritime security forces having took no part in the security assessment of the ships or the ports cannot join together its operational policies to effectively institute security measures and respond to security situations correctly. No matter how security conscious that maritime administration may be, for effective response, the non involvement of security forces will prove costly and the security forces even if dovetailed at a later stage into the system will not be effective as the process involve continuous training, exercise and readiness.

There are no measures that can be taken to prevent a terrorist attack. Well-planned and effective security measures will reduce the vulnerability of a facility or mode of transportation to a terrorist attack. The threat of terrorist attack adds a new dimension to security in the maritime industry Fighting terrorism requires a whole series of countermeasures in the political, diplomatic, legal, economic and military spectre, and the action of governments as well as private interests. The reliance on private military companies for point protection is not recommended because the fine line between protection and criminality is blurred. A strategy dependent upon identification and elimination of specific threats will have to be combined with another strategy focused on preventing larger threats of potentially catastrophic consequences.

1.4 Focus of this study

The theme for the IMO for the current year is “IMO 2004: Focus on Maritime Security”. Accordingly the study focuses on the present maritime security threat scenarios and the IMO’s effort to respond to the maritime security issues. The adoption of many security convention and resolution may be adequate but unless the national administration puts the measures into its national laws and enforces the laws uniformly, the convention, especially security convention does not serve its intended purpose. Even when the national laws are in place, it needs a sound policy and strategy and contingency plans. Even if plans are in place, it requires dedicated force and resources to enforce the laws. Even if the force and resources are adequate unless they are trained and exercised sufficiently, they don’t serve the purpose. For reaching a sufficient level of training, we need international and regional cooperation to achieve certain level of standards.

The study looks into the various maritime threats and primarily focuses on piracy and maritime terrorism and the state of affairs, as it is prevalent today. It goes on to analyse the international legal regimes with respect to UNCLOS, SUA 88 and its protocol and the amendments to SOLAS Chapter XI-2 and the ISPS Code. The dissertation’s central theme is to study, whether the national maritime administrations have woken up to the new maritime security reality and whether they can manage to respond to security threats alone or in cooperation with other entity. Due to paucity of time, a detailed questionnaire has been sent to few-selected developing maritime nation present in four continents of Asia, Africa, Europe and South America to analyse the national maritime infrastructure and the maritime security response system. The study makes a deep analysis of an important maritime nation, India, and its maritime security scenario. In addition, the paper will analyse the adequacy of the present security models in the developing countries as against the models being followed in the developed countries and whether some uniformity can be brought about to produce a global front against the maritime security threats.

¹⁷ IMO MSC Circular 1074 provides information on guidelines for authorisation of RSO

The study concludes by recommending states to adopt a new set of security procedures and proposes a standard security enforcement strategy for implementation. It also makes suitable recommendations as to what further efforts or steps could be taken by IMO and other international organisation in dealing with threats faced by the shipping industry.

1.5 Methodology

The methodology adopted for the study is to analyse the current security scenarios through published journals and books as well as the security reports in newspapers, web pages of the security related agencies and international organisations.

The study thereafter analyses the legal regimes through a survey of conventions and relevant published articles. The analysis of security issues in selected states is undertaken by sending questionnaires to their maritime administrations. Information has also been gathered from the IMO websites' Global Integrated Ship Information System (GISIS)¹⁸, which has provided valuable information of the status of the maritime security regimes being adopted in the selected states. Information was also provided by the Indian Coast Guard for the security related incidents, which have occurred in the past years and has been thoroughly analysed and integrated into the study to support the present situations described.

Since the study focuses on maritime security issues which are dynamic in nature, it is found that there are not many scholarly books written recently addressing the subject and the pace of writing has not kept pace with the sudden spurt of maritime security issues. The ideas put forward are basically drawn from the security related practices and the experiences gained by the author by serving in an organisation having

¹⁸ Global integrated shipping information System (GISIS) is a database which facilitates the communication of maritime security-related information by Contracting Governments, pursuant to SOLAS regulation XI-2/13

maritime security mandate and also studying maritime security issues at the World Maritime University.

1.6 The contents

The contents of the study therefore arranged in seven chapters which commences with a brief introduction to the threats to shipping and the work of IMO and the current security response environment. Thereafter, it discusses maritime threats in detail in Chapter Two with particular focus on maritime terrorism and piracy related issues.

The international legal regimes and the enforcement issues are discussed in Chapter Three while the maritime security regimes of selected states are discussed in Chapter Four with a deep focus on the study of Indian maritime security. Chapter Five deals with global maritime security regimes and the initiatives of international organisations and Chapter Six proposes a maritime security strategy for enforcement and Chapter Seven concludes by putting forth some recommendations

CHAPTER 2

THREATS TO SHIPPING

2.1 The General Maritime Threat

Maritime threats have existed ever since commerce went to sea. Now, with its existence accepted, the remaining task is to identify its impact and extent as well as in what capacity and in what dimension, to map and mitigate them wherever possible. There are threats, which occur directly to ships by acts of piracy, maritime violence, hijacking and capturing crew for ransom. There are also terrorist acts which affect crew and property and there are indirect threats which affect shipping operations by placing of devices, illegal migrants, drug and human smuggling, stowaways, container crimes, deviation, charter-party and insurance fraud (IMB, 2004). Conventional wisdom suggests that the indirect threats can be prevented through concerted action by the industry, the shipping companies and the ship themselves. On the other hand, the direct threats which usually occur at sea is most worrisome due to jurisdictional issues, unarmed ships crew tactics versus determined killers and also abject helplessness of seafarers when assistance is not forthcoming and eventually the crew's capitulation and subjugation to the demands of the perpetrators of such heinous crime. In this chapter, an attempt is made to identify and discuss the effects of two direct threats- terrorism and piracy, which includes armed robbery, maritime muggings, hijackings and kidnap for ransom.

The maritime environment by its very nature is an amorphous and opaque environment. It is an important conduit for global activity. High value cargoes sail with minimal protection. Often, seafarers with dubious qualification and with uncertain personal IDs are drawn from countries, which have internal conflicts with radical violence. They crew vessels sailing under flags whose administration has no physical or administrative wherewithal to carry out background checks. Un-policed

waters typify large sea areas and security arrangements reflect territorially based regional or local security arrangements. Under these situations, the two most serious security threats, that is piracy and maritime terrorism have propped their heads high and are threatening the safe and efficient conduct of the shipping industry today more than ever. Maritime terrorism is not a new phenomenon and has existed for several decades in its many hydra-headed manifestations. In 1985, Palestinian terrorists hijacked an Italian cruise liner, the *Achille Lauro* with a passenger being killed during the ensuing hostage crisis. Militants in Yemen blew a hole in an American warship, the *USS Cole*, in 2000, and another in a French oil tanker, the *Limburg*, in 2002. Abu Sayyaf, a terrorist outfit from the Philippines, bombed a ferry in Manila Bay earlier this year lending credence to the fact this inhuman form of barbarianism and bloodletting exists and threatens the entire global maritime community.

Whereas the international maritime law and enforcement regimes did address the security issues of the ships per se mainly dealing with piracy and maritime violence, the recent risk assessments of the security threats indicate that the targets for the terrorists are not material or monetary gains. Rather, terror groups are after the kind of publicity and media glare that can be generated by an attack against a ship or port facility.

There are more than 6,000 ports located all over the world serving international ships and other hundreds of thousands of minor ports, which interconnects national and international waters. A large volume of cargo is transported as well as millions of passengers moved each year. These ports are a likely target for terrorism, smuggling and other criminal acts because of their vast size, easy accessibility, location and proximity to large cities, roadways, bridges and petro-chemical facilities. In today's climate of political unrest and general uncertainty, the lack of security awareness amongst the personnel who work in and around ports and port facilities compounds the situation to more worrisome levels.

Over the last few decades and years, the shipping industry as a result of sustained regulatory efforts, is in the process of upgrading security awareness in the ships through IMO efforts and the industry's efforts instituted worldwide. However, from a security perspective, the maritime world still poses a significant challenge with the maritime world yet to wake up to the full implications and ramifications of this omnipresent and very real threat.

2.2 Maritime terrorism

The seizing of the cruise liner *Achille Lauro* was one of the several major terrorist incidents at sea. It was not the most violent, nor was it the most protracted episode of terrorism on the high seas. It lasted only two days. However, because it happened at a time of rising terrorism worldwide, and because it involved an international target that the public was not accustomed to associating with the acts of terrorism, the *Achille Lauro* hijacking had a special symbolic as well as substantive importance. Among the issues that arose after the incident was the speculation as to whether the maritime transport sector will become a continuous and soft target for hostage taking for ransom as well as for political reasons. The sharp decline in Mediterranean cruises following the sea jacking was but a natural reaction and the US\$ 1.5 billion law suit filed by the family of slain American passenger Leon Klinghoffer against the owners and operators of *Achille Lauro*, the tour operators, and the Italian port officials best illustrate the enormous financial risks that terrorism poses for the maritime community. The incident also exposed the issue of security in ports, onboard security risks, the legal vacuum, inadequate organisation and administrative mechanisms and lack of international cooperation, which eventually led to, strained relations between the interested states. (Jacobsson, 2002).

In view of the foregoing, it can be summarised that the terrorist threat is a function of the terrorist's will, the terrorist's capability, and the target's perceived importance. In the maritime sphere, some terrorist organisation with global influence has

transformed all three factors. In the modern sense, terrorism is imitative and adaptive, learning from other groups and wider trends to inflict barbaric suffering mostly on the unsuspecting and the innocent.

A precise definition of terrorism from the sufferers point is difficult to postulate. However, terrorism can be best defined as “as a premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents usually intended to influence an audience” (US Department of Defence, 2004). Organisations that employ terrorism as their principle means of action lack the capability to persist in open armed contest with regular government forces. They compensate for this weakness through stealth and by choosing ‘soft’, high value or strategic targets. Over the years, lack of awareness by maritime players and increased security awareness in other areas like aviation has made commercial shipping one such attractive target. Prior to the discussions on ISPS Code and amendment to SOLAS Chapter XI-2, there are already 12 international conventions in place addressing terrorism and also a number of regional conventions and they all call to address the terrorism issues pertaining to land based matters and aviation security (Jacobsson, 2002, p159).

As it becomes more difficult for terrorists to gain access to worthwhile targets on land and in the air, it is likely that they will consider attacking sea targets, especially commercial shipping. Unlike the counter-terrorism measures adopted in the Land-Air sector, the counter-terrorism operations in the sea sector is entirely a different tactic and needs a dedicated organisation, resources, training, awareness and cooperation and international support.

The issues of terrorism are much more relevant particularly to the developing maritime states which are planning to put in place an adequate response measures by establishing a new infrastructure or organisation for maritime violence or by re-

orienting their existing law enforcement agencies to establish response measures for maritime terrorism and other illegal acts at sea.

Terrorist tactics

The tactics used by the terrorists in the maritime environment can be roughly divided into two categories i.e.

- Causing damage to ships to cause a sensational event through loss of life and property.
- Causing damage to ships to block a navigational highway and bring about collective economic loss

Unlike attacking ships at sea, which is generally carried out by suicide bombers, stationary vessels at anchor or alongside can be attacked with relative ease employing low technology devices and in many cases may not require the use of a boat. With the coming into force of the provisions of the ISPS code, one might assume the port is now well protected at least for addressing the foreseeable risks. If the sea area from the anchorage or fairway to the general sea-lane areas which are risk prone are not protected, this particular area becomes vulnerable for terrorists for boarding high value targets like cruise liners, LPG/LNG ships or tankers and use it for their advantage. The most common method of terrorist attack on ships at sea is utilisation of fast moving, small craft, which do not have much endurance. These craft maybe armed with heavy machine guns or rocket or grenade launchers or have the capability to deploy mines in heavy traffic area.

The tactics adopted by terrorist organisations have other common characteristics that need to be understood and appreciated. First, terrorists control the venue of their attacks. Although isolated attacks may occur anywhere, persistent operations are more likely to be concentrated in regions where the terrorists enjoy some measure of popular local support in one form or the other.

Second, terrorist groups control the tempo of their activities and usually benefit from protracted, low level operations. This can pose a challenge to counter terrorism response measures because of the difficulty in maintaining the long-term political, operational and logistical support necessary to achieve meaningful success. Third, terror attacks are frequently intended to provoke an excessive response by the target government or military force. If an aggrieved government yields to this approach, it would unnecessarily place considerable strain on the transportation system and has the potential to cause more damage than the intended act of terrorism itself.

Fourth, surprise and deception are key elements in nearly all terrorist operations. This not only increases the danger to the target, but it also complicates the planned response measures.

Fifth, terror groups can improve the precision and effectiveness of their attacks by incorporating suicide tactics. It serves as a force multiplier in terrorist operations and compliments surprise and deception. The threat of suicide attacks also complicates the formulation of conventional rules and protocols of engagement, order of battle, etc., and can challenge the restraint of the law enforcement agency.

Sixth, terrorist organisations are known to sometimes finance their operations through organised crime, drug smuggling, and other illicit activities. In the maritime arena, these activities include piracy. Accordingly, maritime regions that suffer from high levels of violent organised crime are also vulnerable to overlapping maritime terrorist operations.

Seventh, the terrorist organisation work on a close knit level and never discuss or disclose their intent to any outsiders and they never use a particular conveyance or mode of transport so as to enable the establishment of routine, well crafted surveillance and intelligence gathering activities. This causes more deception and

invariably gives the terrorist and terrorist organisations the added advantage of the element of surprise.

Finally, geography and distance set limits on terrorist operations. This is especially significant in the maritime environment. It is very difficult for a terrorist to operate in the high seas undetected and to ameliorate this disadvantage; terrorist groups exploit the concept of restrictive geography, such as ports, harbours, straits, coastal waterways and archipelagos for undertaking and targeting their subversive activities.

2.3 Piracy and Armed Robbery

To provide an insight into the murky but extremely dangerous and deadly world of maritime piracy, relevant excerpts from the Aegis Defence Maritime Terrorism Report - June 2004¹ is reproduced, which states as follows:

The maritime industry faces a new threat. Piracy is growing at 20% per annum, thriving on a combination of vulnerable, undermanned ships carrying both dangerous and valuable cargoes sailing in un-policed waters. However, the threat is not from traditional commercial pirates, but from a new breed of maritime terrorist, whose skills evolve from a conventional piracy base, but whose aims and goals are more sinister, and whose potential to wreak havoc with the global supply chain is still largely unrecognised. The ISPS Code, coming into force on 1st July 2004, as well as CSI² and CTPAT³, all help raise awareness of the security issue, but cannot hope to solve this fundamental problem in their own right.

¹ Aegis- Defence Security services based at UK produces Maritime Terrorism Report every year for commercial use.

² Container Security Initiative (CSI) a preventive measure by US customs against terrorist threat against good imported through container into the US ports.

³ Customs – Trade Partnership Against Terrorism is a new effort by US customs for entailing stakeholders to participate in cooperative security initiatives for protecting the maritime supply chain.

The Rand Maritime Report 2003⁴ on the piracy issues of Africa states that in many ways the Horn and West coast of Africa represent the near perfect environments in which to engage in illicit maritime activities. There exists a ready supply of potential targets; ineffective mechanisms for coastal and port surveillance; economic underdevelopment; and limited opportunities for legal prosecution in the event that a group is ultimately compromised.

On issues affecting the Malacca strait the IMB Director⁵ states that large population, meagre fish catches and dwindling income for fishermen and unemployed seamen and fishermen and presence of narrow channels, shallow reefs, thousands of tiny get-away islands, and slow traffic with some 900 commercial vessels passing through each day make the waters around Singapore, Malaysia and neighbouring Indonesia a pirate's dream.

Merchant ships have always been vulnerable to piratical attacks, and today, as the number of seafarers on board ships is falling whilst the weapons available to attackers become more sophisticated, this vulnerability is steadily increasing. They often started as "maritime muggings" during which ships are boarded and the attackers seek cash and valuables. Then there are highly organised criminal gangs who hijack the ship and her cargo, selling the latter into the underworld and perhaps even trading the ship under a new name using forged papers. Both types of attacks are dangerous, often involving violence, which on some unfortunate occasions has involved whole crews being killed.

Incidence of piracy has shown a marked increase since the end of cold war numbering 2,375 actual and attempted attacks between the year 1991-2001 which equates to an average of 215 attacks per year and the 66 percent of the attacks

⁴ The RAND corporation is a non profit research organisation and focuses on issues of Security

⁵ Capt P Mukundan is the Director of International Maritime Bureau based at London

occurred in the South East Asian Region. In 2003 the attacks rose to 445 and this was the second highest number of attacks since the IMB Piracy Reporting Centre in Kuala Lumpur started compiling statistics in 1991. The highest number was 469 incidents in 2000. It stated that 21 seafarers were known to have been killed, compared with 10 the previous year - and 71 crew and passengers were listed as missing (IMB, 2004). The number of attacks using guns rose to 100 from 68 in 2002 and hostages taken nearly doubled to 359 seafarers. Ships were boarded in 311 instances and a total of 19 ships were hijacked.

The importance of the growth rate in piracy lies not in the quantity, but in the quality and sophistication of the attacks. There are increasing signs that piracy is becoming more organised, more intensive, more ambitious and better conceived, connected and implemented. The origin of piracy arises from three principal factors of economic, political and regulatory bases. These factors are not touched upon, as they are not found relevant here and hence not discussed. However, the regulation on piracy is discussed in chapter 3 in adequate detail.

Present day piratical attacks

While most incidents of piracy are considered short term (pirates often remain onboard for less than thirty minutes), incidents of long term (seizures which last for several days and eventually hijacking and theft of whole cargos) are becoming more frequent and represent the presence of more organised form of piracy. Piracy is likely to remain a persistent problem in many regions of the world especially around the developing maritime nations. Under reporting of incidents by the industry causes an inaccurate count of the true nature of the problem. For many, maritime piracy has not yet reached the level at which concerted action is generally seemed necessary. Financial losses to the industry have seemingly remained tolerable, so piracy has been so far viewed as a nuisance rather than as an imminent danger of substantial proportions and having an innate ability to bring the entire maritime industry to its

knees. Without a strong voice and concentrated impetus from the industry and the other maritime constituents, governments till now have been reticent to commit to the much-needed response measures.

2.4 The effects of the attacks on shipping

The ramifications and consequences of piracy are extensive. The immediate victims of pirate attack are the crewmembers aboard targeted vessels. They are normally threatened, often beaten, sometimes murdered. The fear of attack is very real and tangible in the minds of many seafarers. The shipping industry suffers financial loss, both directly and indirectly. More difficult to mend, however may be the tarnished reputations that repeated attack might cause. With the advent of the ISPS code, the ships may be tainted or black listed. This may cause the ships not to report pirate attack to the piracy reporting centre and thereby reducing the avenue to get accurate information about the exact attack and the extent. The potential exists also for the shipping industry to incur crippling losses. The effects of an underway collision occurring during or immediately after attack like that of incident of *Petro Ranger*⁶ could be catastrophic. In those instances where crewmembers are injured or killed during pirate attacks, negligent security or failure to comply with relevant security conventions litigation might be filed, charging shipping companies with failure to provide security. Perceptions of a local piracy problem might adversely affect the local economy. Levels of international investment may be influenced by the safety of regional shipping. Ports may suffer if trade is transferred to safer regions.

Maritime security impact on shipping economics

While the cost of unchecked piracy and maritime terrorism are significant for all economies, they can impose a disproportionately high cost on developing countries

⁶ *MT Petro Ranger* is a Malaysian registered ship which was attacked by pirate in the Malacca Straits in Apr 1998 and the ship's bridge was unmanned for many hours during the attack

trade and growth as most developing maritime states depend heavily on maritime trade flows with North American and Western Europe and other Organisation for Economic Cooperation and Development (OECD) economies. Many developing states rely on receiving foreign direct investment inflows and recent increase in maritime security issues could raise risk premiums and reduce Foreign Direct Investment (FDI) inflows to the economies, which are considered to be at risk. Insurance premiums could be higher on cargoes and vessels travelling to the ports of developing economies due to insurer's uncertainty of the security conditions. The new clauses under the voyage and time charterparty allocate costs and spread of risks to the shipowner for violations of ISPS code provisions and all other costs due to delay at ports for security on the charterers. (Todd, 2004) Many charters exclude the liability of either or both parties in the event of piracy and other perils. It is found that the pro shipowner clauses try to allocate risks to the charterers and the charterers especially oil majors try their bargaining power and try to move the costs under ISPS Code delays to the shipowner. There are some areas of delay, which can be enforced by the ports caused by neither shipowner nor charterer's fault. Here the ISPS inspired risks fall on the ship owner or charterer depending upon the interpretation of clauses and in some cases, both parties may share costs equally⁷. In this situation the commercial community may not give the due attention to the ISPS code requirements. When the matters finally fall on the lawyers lap for interpretation and claiming damages, it will have severe implication on the efficiency of maritime transportation. It is a forgone conclusion that present day modern and efficient maritime transport systems underpins international trade, business travel and tourism and thus impacts on world growth and economic welfare. Any interruption or collapse of the transport system would impose high costs on the world economy.

Having discussed the threats and its implication on shipping it is but natural to seek what measures that the public international organisations and the maritime sector has

⁷ INTERTANKO STB clause found at <http://www.intertanko.com/pdf/weeklynews/securityclauses2.pdf>.

taken to respond to the rising threats and the next chapter on international legal regimes will discuss on the adequacy and lacunae of the present legal regimes which directly address the maritime threats

CHAPTER 3

INTERNATIONAL LEGAL REGIMES AND ENFORCEMENT

3.1 General International Maritime Law

Apart from international agreement's concerning slavery and piracy and to a certain degree on the illicit carriage of drugs, unfortunately, presently there is no comprehensive existing international maritime law which has universal coverage and acceptance for maritime crimes. In this legal vacuum, there has, therefore, developed a complex web of coastal state jurisdictions, Fisheries Zone legislations, Exclusive Economic Zones legislation, Continental Shelf legislation and few others and these jurisdiction have been adopted by individual states varying from three miles to hundreds of miles from their own coast lines.

The situation is further exacerbated by the fact that, by common agreement, jurisdictions can 'overlap'. This has given rise to a situation whereby both flag states and port states can each exercise their own jurisdiction over the same vessel in the same place. As a result, there have been instances when these laws have been contradictory, and are subject to the discretion of local national law enforcement agencies. Nevertheless, in an increasingly complex world there is a growing sense of frustration with criminal activity at sea. After the world wars, society has become much more ordered and there is a consequent growing expectation of the need to establish and maintain good order and instil responsible governance all over the globe, with the seas being no exception.

As aware, the original threat to ships security came from pirates who tried to gain control of the ship and steal cargoes. Having taken into consideration of the seriousness of the problem, the 1958 Convention on High Seas Convention and the United Nations Convention on the Law of the Sea 1982 (UNCLOS) addresses the acts of piracy at sea and treated such crimes as to be universal crimes and deigned that these acts are

punishable under the laws of every state. Additionally, it set certain conditions before an act could qualify as an act of piracy.

The practitioners of maritime law will be aware of consequences because they have to both comply with and thereafter apply an ever-growing body of law, much of which is directly related to that Convention and all of which must now be consistent with it. Under UNCLOS, there are perhaps two central questions that needs clear answers and they are, primarily what crimes have been established by the LOSC 82 and secondly how does that law affect the way in which crime is tackled?

While a legal process and effective criminal justice system can be assumed to exist within most states, the oceans are not, for the most part, contained within states boundaries. Indeed, the only parts of them that which could be described, as falling within the territorial boundaries of states are the comparatively narrow coastal zones within the territorial sea limits. As the oceans fall outside the ambit of territory of a state and are by far international in nature, it may be prudent to presume that international law (LOSC 82) fulfils roughly the same function over the oceans as the way domestic or municipal laws does within states. Sovereign states benefit from an effective lawmaking process and the means and methods for enforcing it. While it appears there is an equivalent international law making mechanism and enforcement process, in reality there is not. International courts such as the International Tribunal for the Law of the Sea (ITLOS) do not try individuals. They essentially make legal rulings on disputes between states and do so only if the states concerned have agreed to be bound by the court's decision. Despite a resurgent UN in recent years there is no universally effective law enforcement body or set of arrangements capable of policing the sea except a few regional arrangements.

3.2 Law of the Sea Convention 1982

In the United Nations Convention on the Laws of the Seas 1982 (UNCLOS 82), there are two examples of reprehensible behaviour that have long been recognised in the International Maritime Law. Their existence in customary international law led to them being included as a matter of course, in both the 1958 Geneva Convention on the High Seas and in the UNCLOS 82. Article 99 of UNCLOS requires all states to “take effective measures to prevent and punish the transport of slaves” and Articles 100 to 107 of UNCLOS deals with “Piracy”. While the former is no longer a global problem, the latter is achieving a different status and it is growing tremendously.

Piracy is quite precisely defined in article 101; however, there have been problems with the definition because of what it excludes by implication. For example with regard to the *Achille Lauro* incident, the act could not be described as piracy as the perpetrators were passengers in the seized vessel and they were motivated by political conviction and not private gain. So, arguably, no politically motivated terrorist or piratical attack can be described as pirates and no such act would be covered by the UNCLOS provisions.

The principal significance of the above situation was that maritime terrorism, unlike piracy, could not be regarded as a crime for which all states are granted jurisdiction to prosecute. The intricacies and vexing nature of the matter was deliberated upon and addressed by the IMO and resulted in the adoption and bringing into effect the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988, the result of which was agreement to extend jurisdiction over such acts to all states that may be affected by them.

It is worthwhile to note that in the case of vessels engaged in either slave trading or piracy, the provisions now contained in 1982 UNCLOS extends jurisdiction to states other than merely the flag state of the offending or victim vessel. Apart from piracy,

which is subject to universal jurisdiction, there are two other forms of behaviour that are criminal in nature and are mentioned in UNCLOS namely, drug trafficking and unauthorised broadcasting. Perhaps the other maritime crimes did not obtain that much importance or seriousness during the discussions of the UNCLOS III as the maritime security was a non-issue and there were over hundreds of other jurisdictional issues, which kept them occupied during the negotiations. Undoubtedly, under UNCLOS, the maritime security is not about searching what provisions are prescribed regarding crime and security breaches, but it is about looking for adequacy of the jurisdictional framework that is in place to cope with it.

3.3 Law on Piracy

Piracy is defined in the 1982 Law of the Sea Convention, Article 101, as follows:

Piracy consists of any of the following acts:

- (a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft and directed:
 - (i) On the high seas, against another ship or aircraft, or against persons or property onboard such ship or aircraft:
 - (ii) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any state.
- (b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

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

In the past international community, at least in those states, which were affected by piracy, more and closer attention was paid to the legal definition of piracy and the alleged reasons behind the acts than to the nature of acts perpetrated. Statistics according to IMB for the year 2003 indicate that majority of the attacks has taken while ships was at anchor or in port. Further, the studies (Dubner, 1997) indicate that 61.8 % of the reported piratical attacks during the period from 1989 to 1993 occurred within the territorial waters of a country. The LOSC 82 have shrunk the high seas area and expanded the jurisdiction of coastal states and, therefore, piratical acts committed in waters as close as 3.1 miles would have suitably fallen under the category of piracy previously, are now categorised as armed attack, armed robbery, maritime mugging or petty theft by the National Authority under whose jurisdiction the act of piracy was committed. The situation becomes worse when the coastal states or port states tend to be recessive and put forward long and copious arguments as to why there is no problem of piracy or why they cannot respond in any meaningful way about it any way. (Abhyankar, 2004). Their general way of responding to such reports is to make the Master or responsible person to lodge a complaint with local police and thereafter delay the ship for collection of evidence and to complete other formalities related to criminal procedures.

Another problem area confronted in the definition of the piracy is the requirement of a private ship and use of illegal acts or violence against another ship or persons or property on a second ship. On analysis of the recent IMB statistics on the piratical attacks that took place recently, it is observed that the pirates either operated a local craft fitted with outboard motors or any other small craft having an endurance of a few hours. As such, it would be a wonder if any pirate ships were located on the high seas. Reports often point to the high profile hijacking gangs often boarding the ship illegally at the port or at an anchorage and thereafter overpowering the crew. This is another area

where the definition of piracy in accordance to UNCLOS does not fit the acts that are grave and dangerous.

The new maritime zones created under UNCLOS 82 have not taken the practical implications of the piratical acts (Mejia, 2003). Within the meaning of the definition of piracy in LOSC 82, many piratical acts which took place within some state's jurisdiction or which involved only a single ship would not have access to any public international organisations which can deal with the issue. Efforts by private international organisations like IMB, ISF, BIMCO, ITF and other maritime associations do not have any legal standing and they only provide recommendations to the ships and the shipowners. Real action is required from the government and only IMO can garner, coordinate and encourage universal governmental action in the maritime sector. However, the acts akin to piracy did not come under the purview or mandate of IMO discussions earlier because of the limiting factor of the definition of piracy under UNCLOS and in IMO if the appropriate committee accommodates the acts akin to piracy in their discussions, then it might become inconsistent with the IMO's status as a specialised agency of the United Nations (Mejia & Mukherjee, 2003b).

The term "armed robbery against ships" was defined by the IMO as any unlawful act other than piracy, which are directed against persons or property within the jurisdiction of State. This term was adopted as late as during January 2002 but nevertheless the resolution is only recommendatory in nature and it is left to the member states to incorporate the term "armed robbery" in their domestic legislation to prosecute offences which are piratical in nature but the jurisdictional issues prevented them from taking any action earlier due to the UNCLOS definition. By defining this definition, various acts having close similarity with that of piracy can be addressed if only all states legislate their remedial actions in their national laws.

3.4 The SUA 88 Convention

The *Achille Lauro* incident led to the culmination in the formulation and adoption of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) Convention of 1988. This was due in point to the fact that at that time there was nothing in UNCLOS that could adequately and meaningfully address the issue of terrorism at sea. It is also pertinent to note that the limitations of the piracy provision under the UNCLOS Convention have led to the evolution of the concept of “unlawful acts against maritime navigation.” The preamble of the convention brings out the important security situation that the worldwide escalation of acts of terrorism in all its forms has risen to and also underscores the need for developing international cooperation between states in devising and adopting effective and practical measures for the prevention of all types of unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators. The articles of the convention relate closely to the security provisions as provided for in aviation security.¹ At the same time, a number of international terrorism conventions had already been negotiated and concluded but none of them have addressed the issues and situations prevailing at sea at all, i.e., maritime terrorism. As States started to negotiate the SUA convention, which was an attempt by the IMO to go a little bit further than its mandate on safety of lives and ships and to environment protection, it was treading un-chartered waters in a new area of maritime security and there was no previous norm making convention addressing maritime security. It is also a new step for the IMO and in that situation it could not borrow any parallel legal support from the constitution of the oceans UNCLOS so far as terrorism and other crimes were concerned. But, the SUA 88 contradicted the then international law of using force at sea. (Jacobsson, 2002, p159).

As all of us are aware that there is a total prohibition by the United Nations on any country using force against another in accordance with Article 24 of the UN Charter.

¹ The Convention for the Suppression of Unlawful Seizure of Aircraft “The Hague Convention” 1970 and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation “Montreal Convention” 1971

The only time a State is allowed to use force against another state is when it is a matter of self-defence or if the UN Security Council has taken a decision and authorised military action. This translates into a situation whereby all other security situations at sea are basically excluded with the one very important exception being protection of national security. In such a situation the role of the state transforms and enters from a peacetime situation into a wartime situation and the rules and protocols of war apply here, which are different from the international law applied during peacetime.

A quick look at the Convention tells us that the detail of offences outlined in Article 3 in seven paragraphs covering seizure or damage to property, injury, death and related matters and also deals with attempts and abatement of offences. It also deals with the application and jurisdictional issues and puts responsibility on flag states and the offender receiving state and some procedures regarding handing over offender by the Master of a ship who had apprehended the offender onboard. The Convention also deals with the extradition and dispute settlement issues under arbitration or under recourse to the International Court of Justice (ICJ).

The Convention, which is presently ratified by 108 countries,² provides procedures and actions to be taken by the member states. However, this does not prescribe any preventive action but provides jurisdictional issues and legal clarity about the nature of offences. Further, the convention is silent about the response issues and the organisational or administrative set up required and also about the granting and allocation of resources. Common maritime threats such as armed robbery and thefts are not listed under Article 3 offences and, hence, the acts, which closely resemble piracy, cannot be addressed under SUA. Scholars also perceive the SUA convention as being too restrictive in some areas in the sense that it puts emphasis on the requirement that the unlawful act “endanger the safety of maritime navigation” (Mejia & Mukherjee, 2003b). It also raises some very vexing issues such as whether a ship, which is at anchor or port when attacked or in the sense “it is not navigating” would be

² Website of AMSA under IMO Documentation

covered under provisions of the SUA Convention. Can a member state adequately protect itself by simply ratifying the SUA Convention considering that the nature of offences under Article 3 is quite violent? The convention has come into force on 01 March 1992, but so far, there is only one prosecution under SUA 88 convention. The question could be raised as to whether the SUA 88 convention has made or can make any impact at all? The answer to the above question was only realised after the dastardly September 11 terrorist attacks at the World Trade centre in New York. In the aftermath of such horrendous and tragic consequences, the international community realised that the SUA 88 convention was not adequate to effectively deal with any conceivable terrorist attacks and other kinds of violent acts. The Legal Committee of the IMO embarked upon a revision of the SUA 88 Convention and its Protocol and the majority of the revised materials are the papers submitted by the US delegation. The proposals draw upon the language and text from other International Conventions, such as the UN Conventions against Illicit Traffic in Narcotic and Psychotropic Substances (1988), Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Aviation (1988), International Convention for the Suppression of Terrorist Bombings (1997) and International Convention for the Suppression of the Financing of Terrorism (1999) (Mbiah, 2002). The proposed scope of the work involve inclusion of a wide list of offences under Article 3 such as illicit carriage and use of biological and chemical weapons and radioactive material which are addressed in various UN conventions, so as not to leave any loophole for the commission of offences which had not been thought about. But the adoption of the revised SUA convention and its Protocol is not expected to come about easily as in the case of the ISPS Code. It involves sovereignty and jurisdictional issues, which the maritime administration alone does not want to delve into and find suitable recourse and remedies. The matter is more political and requires analysis and approval from the State Department, the External Affairs and Interior Ministry and other related departments and organisation. While the UN is having several Conventions under its aegis that deals separately with specific issues with a view to avoid any issue that is political, the amalgamation of all UN conventions in the revised convention of SUA could put tremendous pressure on the

contracting government, especially for the developing states and the approval, adoption and ratification seems like a long and arduous task.

3.5 SOLAS Chapter XI-2 and the ISPS Code

Analysis of criminal law content of the international laws stipulates two measure and those are preventive measures and the punitive measures. The punitive sanction as a deterrence measure is found relatively weak in the maritime sector as there are many reasons, like the high possibility of ship evading arrest or the perpetrators escaping punishment and there are no sanctions, which are high enough to offset the satisfaction. (Xu, 2004) What punishment can be given to a suicide bomber? So preventive measures became the norm for maritime security deliberations at the IMO and therefore became predominant in all the discussions.

Even though SUA 88 was in place to address all the foreseeable maritime security threats it was found very much in punitive in nature and the heinous events of September 11 has clearly demonstrated that existing measures are weak and additional measures are needed not only to prevent attacks that endanger ships and persons and property onboard, but also to prevent the ships themselves from being used as instruments or theatres of terrorist activities. (Mensah, 2003) Accordingly, it was felt necessary to consider and institute further and more radical changes in the legal regime in order to ensure maximum security for ships in all areas in which they operated by incorporating risk reduction methods and preventive actions. In response, the IMO took action on two separate but inter-related fronts: first through the revision of the relevant legal instruments and secondly by the adoption of appropriate technical and administrative measures to support the rules and regulations. The first was the revision of the SUA Convention as stated earlier and second is the additional practical measures to safeguard shipping from threats by amending the 1974 SOLAS Convention at the Diplomatic Conference on Maritime Security in December, 2002. The adoption of the SOLAS Amendments and the International Ship and Port Facility Security Code (ISPS)

constitutes the latest of the responses adopted by the international shipping community to counter the increasing threats posed by acts of terrorism, especially at the port ship interface where the terrorist can pose maximum casualty and damage to port and property. The ISPS Code contains detailed security-related requirements for Governments, port authorities and shipping companies in a mandatory section (Part A), together with a series of guidelines about how to meet these requirements in a second, non-mandatory section (Part B). The conference also adopted a series of resolutions designed to add weight to the amendments, encourage the application of the measures to ships and port facilities not covered by the Code and pave the way for future work on the subject.

3.5.1 The International Ship and Port Facility Security Code (ISPS Code)

The preamble to the ISPS Code states that, as threat increases, the only logical counteraction is to reduce vulnerability. The Code provides several ways to reduce vulnerabilities. Ships will be subject to a formal system of survey, verification, certification, and control to ensure that their security measures are implemented. This system will be based on a considerably expanded control system as stipulated in the SOLAS 74/78.

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

The process begins with each Contracting Government conducting port facility security assessments at ports where the international ship generally call. Security assessments to cover identification and evaluation of important assets and infrastructures that are

critical to the port facility, identifying the actual threats to those critical assets and infrastructure in order to prioritise security measures. The assessment must address the vulnerability of the port facility by identifying its weaknesses in physical security, structural integrity, protection systems, procedural policies, communications systems, transportation infrastructure, utilities, and other areas within a port facility that may be a likely target. This risk management concept will be embodied in the Code through a number of minimum functional security requirements for ships and port facilities and there is a requirement for the port facility to have security plans, port facility security officers, certain security equipment. In addition, requirements include monitoring and controlling access, monitoring the activities of people and cargo and ensuring security communications are readily available.

For ships, these requirements will include ship security plans, ship security officers, company security officers, and certain onboard equipment. In addition the requirements for ships include monitoring and controlling access, monitoring the activities of people and cargo and ensuring security communications are readily available.

3.5.2 Responsibility of Contracting Governments

In order to communicate the threat at a port facility or for a ship, the Contracting Government will set the appropriate security level. Security levels 1, 2, and 3 correspond to normal, medium, and high threat situations respectively. These levels are to be set by the contracting government, which shall then communicate this information to the port facility and ships concerned. The security level creates a link between the ship and the port facility, since it triggers the implementation of appropriate security measures for the ship and for the port facility

Additionally, regulation 3 of SOLAS Chapter V provides for ships to have a Ship Identification Number – A permanent 7 digit IMO number placed on the conspicuous part of the hull and regulation 5 of SOLAS Chapter V requires the ship to maintain a

Continuous Synopsis Record – intended to provide onboard record of the history of the ship with all ships particulars including the name and particular of the owners and charterers maintained in accordance with the guidelines made by IMO.

SOLAS Chapter XI-2 “Special Measures to Enhance Maritime Security” requires contracting governments to legislate the relevant provisions in SOLAS and ISPS Code and make rules stating the Designated Authority i.e. the authority responsible for implementing ISPS code for:

- Ship security assessment, plan approval, certification and verification,
- Setting security levels for own flagged ships, to port facilities and to other ships prior to entry into ports and updation of security level (Regulation 3),
- Setting requirements for Declaration of Security,
- Setting up procedures at Maritime Rescue Coordination Centre (MRCC) to receive Ship security alerts (Maritime Security Committee (MSC) Circular 1067),
- Setting up equipment at MRCC like Ship security alarms (Regulation 6), MRCC to pass information to Security Forces Authority (SFA) or to other MRCCs as appropriate,
- Setting up point of contact for ships to obtain advice or to pass information on security. (Regulation 7),
- Control and compliance measures which may involve inspection of ships by boarding (Paragraph 2.5, Regulation 9),

- Alternate security arrangements (Regulation 11),
- Providing information to IMO of the Designated Authority, the persons in charge for receiving alerts and the persons involved responding to such alerts.

3.6 Adequacies and lacunae

As stated earlier, the UNCLOS definition of piracy provide for any state to take action in the high seas³ but it has lacunae in the aspect regarding its application as most of the piratical acts occur within the jurisdiction of the state and also the two ship rule and motivation aspects prevent states from charging offenders who commits theft and armed robbery under piracy. In this context, IMO's efforts to clarify the definition of armed robbery is a welcome initiative, which aims to include all piratical acts that occur within state's jurisdiction as armed robbery, but their resolution is not mandatory and it is left to the member states to take appropriate action.

The SUA convention fills the gaps created by the UNCLOS definition on piracy and it has adequacy to prosecute several maritime offences. However, article 3 does not include armed robbery and theft and other list of threats that can possibly occur and this convention is basically oriented towards prevention of hijacking of passenger ships. So far, the application of this Convention for prosecution of offenders has been nil or minimal. The revision of SUA Convention including all possible offences is a welcome idea but it has inherent lacunae of being a very onerous, cumbersome and bulky convention by virtue of it amalgamating all other international security conventions into the maritime arena. Further, the swift adoption of the amended convention is not necessarily a foregone conclusion since it is more politically oriented, requiring substantial and broad based political consensus.

³ Article 105 of the UNCLOS 82 – “Seizure of a pirate ship or aircraft”

The amended SOLAS Convention and ISPS Code impose obligations not only on the administration of state parties but also on ships, shipping companies and port authorities. This brings about the adequacy of awareness of the seriousness of the security threats, which were never given enough or serious attention before. The placing of IMO numbers on ships and maintenance of continuous synopsis record is very welcome and can assist the authorities ashore to clearly identify a proper ship and a pirated or phantom vessel. The control of access and taking security actions through designated ship security officer by the use of ship security plans can help in thwarting a possible attempts of maritime offences to take place. But the ISPS code is totally procedural and it does not in any way relate to the tougher counterpart, the SUA convention. The actions envisaged are similar to that of ISM Code, and ship is expected to fulfil all the conditions as enumerated in the ISPS Code. This begets the question can a ship, which fulfils all the requirement of ISPS code considered to be safe from threats? It is pertinent to mention here that an anonymous Master was quoted in Lloyds List as wondering what it is that he is expected to do when a boat loaded with explosives approaches his vessel at high speed, except to throw the heavy ship security plan on the approaching boat. This situation reflects, apart from procedural discipline of the ISPS code, there should be a cooperative effort from the government forces, designated authority and the port to prevent a situation occurring in the first place. This means ISPS code should be able to reside with other security legislation, which provides total security to ships and to the ports and its approaches and other areas in accordance to the threat assessment made. To provide some alleviation of the situation to the anonymous master, the total security protective measures would have constantly monitored the high-risk area and would have maintained a secure zone for ships to operate. Additionally with sound intelligence and worked up and prepared force, the suspicious boat would find it tough to plan and conceive the mission in the first place.

Another perceived lacunae of the ISPS code is the delegation of authority to recognised security organisation⁴ (RSO) which in most cases are the Classification Societies who jumped into the fray for ship security assessment, approving ship security plans and issuing International Ship Security Certificates (ISSC) and auditing the security system on behalf of the government.

Maritime security is a concept which cannot be brought overnight by providing a short training or placing security equipment onboard ships. It requires continuous drilling and exercise and should become part and parcel of the sailor's everyday lives. The RSO carry out security related work for economic consideration and it is not known how much responsibility and liability they will shoulder should something go wrong with the ship for which they issued the ISSC. Like ISM Code there is a concern for conflict of interest issues with various organisations involvement in both consultancy and auditing aspects of ISPS Code. The fact is ISM audits are now termed as "surveys" and the days are not far when ISPS audits will be called another "survey" to be done in conjunction with other surveys.

Another visible lacunae are the speed at which the Statement of Compliance⁵ and the ISSC issued to the ships in the months of June and July 2004. The table 1 below is the reproduction of the code status obtained from the IMO website and it reflects the percentage of compliance vis-à-vis the earlier compliance date.

⁴ IMO, MSC Circular 1074- Interim guidelines for authorization of recognised security organisation acting on behalf of the administration

⁵ SOC issued to the port by the contracting governments for fulfilling the requirements in accordance with the provisions of the ISPS code

Table 1- ISPS Code status at 0900 on 30 June 2004

(Source IMO website <http://www.imo.org/Newsroom>)

SHIPS		
Governments (46 responses)		
Number of ships liable to the Code		53.2%
Ship Security Plans (SSP) submitted	22,539	(Up from 41.3% on 25 June)
International Ship Security Certificates (ISSC) issued	19,377	
	11,996	
IACS		
Number of ships liable to the Code		69.3%
Ship Security Plans (SSP) submitted	16,784	(Up from 60.8% on 25 June)
International Ship Security Certificates (ISSC) issued	13,005	
	11,639	
INTERCARGO		
Number of ships liable to the Code		56%
Ship Security Plans (SSP) submitted	916	(As reported on 11 June)
International Ship Security Certificates (ISSC) issued	769	
	513	
INTERTANKO		
Number of ships liable to the Code		71%
Ship Security Plans (SSP) submitted	2,175	(Up from 56% on 25 June)
International Ship Security Certificates (ISSC) issued	2,175	
	1,547	
IPTA		
Number of ships liable to the Code		99.0%
Ship Security Plans (SSP) submitted	429	(Up from 71.1% on 25 June)
International Ship Security Certificates (ISSC) issued	425	
	425	

ICCL		
Number of ships liable to the Code	118	100.0%
Ship Security Plans (SSP) submitted	118	(Up from 88.9%
International Ship Security Certificates (ISSC) issued	118	on 25 June)
BIMCO		
Number of ships liable to the Code	2,622	18.6%
Ship Security Plans (SSP) submitted	2,189	(As reported on
International Ship Security Certificates (ISSC) issued	488	11 June)
PORT FACILITIES		
Governments (86 responses)		
Number of port facilities	7,974	53.4%
Port Facility Security Plans (PFSP) submitted	4,688	(Up from 31.9%
Port Facility Security Plans (PFSP) approved	4,260	on 25 June)

Table 1: Status of ISPS Code as on 30 June 2004, from IMO website

The speed at which the plans and certificates were issued to the ships, in some cases within one month reflects that the effort looks more like a paper exercise and all interest is diverted to provide ISSC to the ships so as to make it compliant before the deadline of 01 July 2004. Fundamental and moral questions abound and remain unanswered as regards whether such a hurried certification processes, paucity of time etc. to justify the noble intentions of the persons who toiled hard to produce a convention with an important global objective.

Another area which ISPS Code exposes its weakness is the application - IMO has clearly stated that Part A is mandatory and Part B is recommendatory whereas different

contracting governments has made part A and B both mandatory and some made few parts of Part B as mandatory and from the figures above it is clearly visible that there are still many ships which are trading without ISSC. It is still very early in the day to comment any other existing serious lacunae as far as the ISPS code is concerned and only time will tell how effective is the code really helping to address the issues which it is intended for.

To sum up this chapter, reviewing the existing international legal regimes, it is apparent that there is no one all-encompassing legislation which covers the entire spectrum of security issues. To ameliorate this situation, the Comité Maritime International (CMI) coordinated Model International Law to assist the countries to legislate one umbrella maritime Law under which the piracy, armed robbery to the SUA type offences can be addressed. It removes all the complexities and restrictions found in the UNCLOS and SUA convention and enrich it with provisions from the existing international instruments and emphasises that states are the vital component in the response issues against offences that occur at sea. However CMI is a non-governmental organisation and they basically produce private international law and again the adoption of the Model Law needs considerable political will and broad based consensus as it transcends many other international instruments and also there is no compulsion for the states for its adoption, ratification and incorporation into domestic legislative framework. Having identified many differences in the existing legal regimes let us take a look at the prevailing situation on the ground by visiting the status of maritime security in few selected states, which have been elucidated in substantial detail in the next chapter.

CHAPTER 4

MARITIME SECURITY REGIMES

4.1 Security system of selected states

Overall, the IMO security conventions provide the broad guidelines for handling maritime security issues with responsibilities clearly delineated both to the governments and to the shipping industry. With a view to ascertain the adequacy of the security conventions and to identify the constraints at the policy formulation and implementation level, especially in the developing countries, a questionnaire, a copy of which is placed at Appendix 1 to this document, was forwarded to the Maritime Administration of India, representing the Asian continent, Chilean Administration representing the South American continent, Nigeria representing the African continent and Lithuania representing European continent. The questionnaire was also sent to bigger shipping companies like Maersk Lines of Denmark and Shipping Corporation of India and to the maritime law enforcement agency of India i.e. the Indian Coast Guard.

The Questionnaire basically contained queries for eliciting responses regarding the threat perception faced by the respective maritime administrations and shipping companies and to ascertain whether they are party to all of the IMO's security related conventions and also to ascertain as to how they are managing the security situation vis-à-vis the SUA related offences. It also asks about the local piracy situation if any as well as ships and port security in accordance to ISPS Code and SOLAS Chapter XI-2. The questionnaire also contained queries for eliciting information regarding the organisation and security infrastructure that are in place to tackle the security situation at sea and in ports and also regarding what assistance they look forward from IMO and the international community and what suggestion they would want to

put forward for consideration for better implementation, coordination and for international cooperation regarding maritime security.

Unfortunately, only Chile and Nigeria responded by forwarding their answers to the said questionnaire and also the Indian Coast Guard regarding the maritime security situation. Informatively, the sample size was kept to a reasonable level due to the reasons of severe time constraints allocated within which the proposed study had to be completed and also taking in to account of the inherent reticent attitude of the maritime administration's of contracting states in providing information, especially relating to security related questions and issues. Further, the Self Assessment Form of the Flag State Implementation Sub Committee¹ (FSI) of the IMO's experience indicates that information regarding the implementation and current security situation will neither be furnished easily and even if it furnished, the same cannot be checked for its veracity.

However, due to the availability of information on the World Wide Web especially IMO's Global Integrated Ship Information System (GISIS), regarding the subject under discussion, the lack of responses from the identified States' Maritime Administration's did not present itself as a major setback. However, it is true that the said information from the identified Maritime Administrations could have helped the author in analysing the ground level situation in a much better and informed way.

Details regarding the gist of information obtained from the various Administrations are as follows.

¹ The SAF received by the IMO indicates that only 50 out of 162 member states have submitted in 2003 and out of that 16 member states repeated the same information provided in the previous year.

Table 2. Maritime Security information of Selected States

(Source: Answer from questionnaire and website information)

Query	India	Chile	Nigeria	Lithuania
Level of Risk	Moderate / Low	Low	Moderate	No Information
Party to SUA 88 & SOLAS 74	Yes	Yes	Yes	Yes
Enactment of laws & regulations	Yes	Yes	Yes	No Information
Organisation responsible for coordinating SUA 88	Indian Coast Guard	DIRECTE MAR	Nigerian Navy	No Information
Guidelines and training for Law enforcement personnel	Yes, In-house with Coast Guard	Yes, with DIRECTE MAR	Yes	No information
Any identifiable difficulty or lacunae	No	No	Lack of communication facilities	No information
Assistance sought	Presently Nil	Assistance through ROCRAM	Latest communication facilities and training for port security	No information

Query	India	Chile	Nigeria	Lithuania
Is Art 3 offences of SUA 88 made extraditable	Not so far but provisions made which requires approval	Matters are dealt by judiciary	Yes	No information
Cooperative measures with other states for maritime security	Yes, exch. of info., exercise with Indian Ocean Region Coast Guards, All Asia Piracy Control, etc	Through ROCRAM and also with INTERPOL and DEA (US) etc.	No, due to lack of resources and cooperative efforts	Through European Community measures
Adequacy of SUA 88 and does it mandate revision	Yes	SUA 88 is adequate due to low level of maritime threats faced.	Yes	No information
Designated authority to coordinate ISPS code	Nautical Advisor to Government of India.	DIRECTE MAR	Nigerian Navy and Police	Ministry of Transport (GISIS)
Delegation to Recognised Security Organisation	Only Indian Register of Shipping has been authorised.	Only by DIRECTE MAR officers	By Nigerian Maritime Administration	Lloyd's Register, Russian Maritime Register, BV (GISIS)

Query	India	Chile	Nigeria	Lithuania
How much Part B of ISPS code has been made mandatory	Only part A	Entire Part A and part B has been made mandatory	Part A and Part B is mandatory	EU has made some parts of Part B mandatory.
Is there any ships and ports not covered under ISPS Code	About 300 Minor ports	Ports used for cabotage	Nil	No information
Exchange of ISPS information- how it is coordinated	Through Nautical Adviser's office RCC is not involved	Through ROCRAM network and RCC	Through RCC	No information
Any other information	Nil	All ships and ports are fully compliant with ISPS code	Provisioning of satellite communication system for sharing of information	No information

The selected states are important evolving maritime nations and it is felt that an intimate understanding and analysis of the background information of their geopolitics, economic and trading activities related to the seas and its participation in regional association activities should provide us with important information for undertaking a closer observation and analysis of their present security regime and their response structure.

4.1.1 Chile:

Background Information: Chile is a maritime nation on the west coast of South America, having a coastline of 6,435 kilometres. Its major trading partners are the US, Japan, China, Mexico, Italy, UK, Argentina and Brazil. Its exports include copper, fish, fruits, chemicals and paper and pulps and its imports include consumer goods, motor vehicles, industrial machinery and foodstuff. The major Ports are Antofagasta, Arica, Chanaral, Coquimbo, Iquique, Puerto Montt, Punta Arenas, San Antonio, San Vicente Talcahuano and Valparaíso and the Chilean economy depends heavily on the maritime trade. For years, the security concept has been firmly rooted in the Chilean ports. The Chilean Navy fosters the maritime conscience and the development of national maritime interests, and also contributes to the security of the activities that are developed in maritime territory. The Chilean Maritime Authority (DIRECTEMAR)² participates actively in the deliberations and proceedings at the IMO and at national level implements the maritime security for the Chilean registered ships and ports.

Regional Scope: In the regional scope, the Chilean Navy has an active participation in the Permanent Commission of the South Pacific (CPPS), which is a multilateral, closely integrated body with participation from Ecuador, Colombia, Peru, and Chile, with the purpose of improving the regional cooperation and information exchange to act as a forum that analyzes topics of operative character, on maritime security, and protection of the marine environment besides taking part in friendly naval exercises with Regional Navies and US Navy. The port state control measures of Viña del Mar and the Tokyo MOU Agreements are incorporated in this Regional Agreement. Chile is an active member of ROCRAM³ composed of all South American Maritime Administrations.

² DIRECTEMAR (Dirección General del Territorio Marítimo y Marina Mercante) is the Chilean Maritime Authority and is an organ under the Chilean Navy. It is also some times referred to as the Chilean Coast Guard.

³ ROCRAM - Regional Operative Cooperation Among South American Maritime Authorities.

Analysis: Chile with its vast Coastline is heavily dependent upon the seas for its economy, commerce and trade. There has been no reported incident of piracy or armed robbery in the Chilean waters. The coasts are well protected by the operating units under DIRECTEMAR and the Navy. It is no wonder that the Chilean ports had encountered no problems in respect of complying immediately with the requirements of the ISPS Code. The shipping activities are well regulated and they have adequate resources and modern communication facilities to exchange information. It is an active member in regional associations. Having the US as their major trading partner, it is prudent to assume that they will have no problem in participating with their layered security prescriptions.⁴ The DIRECTEMAR having a disciplined and trained manpower are adequately prepared to meet any security challenges at sea.

4.1.2 Nigeria

Background Information: Nigeria is a maritime nation in West Africa with a population of 133 million people. It is the second largest economy in the Sub-Saharan region after South Africa and is the tenth largest producer of crude oil with vast reserves of natural gas. Nigeria major trading partners and interests are the United States, France, India, United Kingdom, Spain, Germany and Brazil. Its major exports include crude oil, natural gas, cocoa, rubber, timber and its imports include petroleum products, food machinery and equipment and manufactured goods. It is a party to LOSC 82 and other important maritime conventions adopted by IMO. The major ports are Port Harcourt, Bonny, Apapa, and Calabar ports. The maritime matters are dealt by Nigerian Maritime Administration (NMA) and it has a maritime safety administration for regulatory matters related to shipping. The work of NMA includes implementation of IMO conventions, STCW issues and training. Nigeria is

⁴ The layered security measures by US include offshore, in transit and US waters security measure which explained in detail in chapter 5

on the so-called white list and the process of domestication of IMO conventions is a continuous and ongoing process.

Nigerian waters has been reported as most deadly in terms of piratical attacks according to IMB and it stated that half of the 30 deaths recorded in pirate attacks around the world between 01.01.2004 and 30.06.2004 occurred in Nigerian territorial waters. In terms of the number of attacks, Nigeria ranked third with 13 attacks, behind Indonesia (50) and the Malacca Straits (20). Analysts blame the proliferation of weapons in the coastal oil-rich Niger Delta region where armed gangs trade stolen crude and also perceive this as the primary reason for the increased incidence of maritime piracy in the Nigerian waters. Nigeria has a Navy comprising 15,000 personnel, safeguarding 853 kilometers of its coastline and other maritime interests under its jurisdiction.

The Nigerian Navy is involved in taking response measures relating to SUA 88 convention and the ISPS Code provisions

Analysis: Industry analysts like IMB state that decades of corruption and mismanagement by successive Nigerian regimes has left the oil-rich Niger Delta one of the most impoverished regions across the country. Massive unemployment is just one of the manifestations with a myriad of knock-on effects. Lax port security and a general lack of sophistication with regards off-coast resources have both fed into the scale, scope and incidence of piracy in this part of Africa. The Nigerian Navy is actively involved in responding to all the maritime security threats. Patrolling the coastal waters in four ships donated by the U.S. Defense Department had impounded more than 20 ships in the past year and arrested 90 people, including 37 foreigners, accused of dealing in stolen crude oil. The security forces say that without their crackdown on militia groups and other armed gangs in the Niger Delta over the past year, the tally of piracy deaths would have been considerably higher.

The Nigerian National Maritime Administration seeks the assistance of the Nigerian Navy to address all security related issues. But it is often the case that the security forces cannot respond adequately unless it has effective legislation, resources, modern communication facilities and training. The security forces don't have dedicated organisation and security infrastructure to deal with merchant marine security issues. The regional cooperation and exchange of information, which is very vital for implementation of ISPS Code and SUA convention is hardly present. Besides the Abuja MOU addressing port state control issues, there is another regional organisation, which deals with the matters related to West African maritime issues. It is the Maritime Organisation for West and Central Africa (MOWCA) established in May 1975, is Africa's only sub-regional body dedicated to providing a platform for handling all maritime matters common to its member states. Nigeria is a founding member. The matters handled by MOWCA cover the cost-effectiveness of the supply and demand for shipping services in the sub-region as well as maritime safety and environmental protection issues. Its project include sub-regional Coast Guard network and cooperation for combating piracy, enhancing maritime security and implementation of SUA convention and ISPS Code. The progress is being in coordination with IMO to address the issues as stated above.

Nigerian is a party to all IMO adopted security related conventions and ISPS code. However, it would be safe to assume that unless there is an effective organisation backed by strong legislation and enforcement powers, the situation in Nigeria is likely to remain the same and Nigerian Navy should be supported by all means to establish control over their waters by providing resources and other support by the Government and the international organisations and other developed countries having an interest in trade with Nigeria.

4.1.3 Lithuania

Background Information: Lithuania is a developing maritime nation with a population of 3.2 million people and situated on the south east of Baltic Sea and has

a coastline of 99 kilometers of which only 24 miles face the open Baltic Sea. Major ports are Butinge, Kaunas, Klaipeda and as on 01 Jun 2004 it has 51 merchant ships on its register of over 1,000 gross tons aggregating 3,28,000 DWT. Lithuania has gained membership in the World Trade Organization and has joined EU in May this year and has privatised the large state-owned utilities, particularly in the energy sector. Foreign government and business support have helped in the transition from the old command economy to a market economy. Trading partners are UK Russia, Latvia, Germany and Poland and chief exports are mineral products, textiles, machinery, chemicals, wood and wood pulp and foodstuffs and the imports are machinery, transport equipment chemicals and metals.

The need for Maritime Safety Administration in Lithuania was felt in the end of 1995, when Lithuania joined the International Maritime Organization and became its 154th member. Lithuanian Maritime Safety Administration, an independent maritime state institution, is responsible for the implementation of the compliance with the provisions of laws and other legal acts affecting the safety and security of the Republic of Lithuania.

Analysis: As the country has become independent as recently as 1991, their maritime security set up is adequate when considering the threat level, the assured support from NATO, size of their coastline. The 600-man navy uses patrol boats and former Russian corvettes for coastal surveillance. With its security guaranteed through NATO, Lithuania is creating a military that focuses more on contributing to international operations, rather than territorial defence. It has a Coast Guard under the Interior Ministry's supervision and is responsible for border protection, passport and customs duties, and share responsibility with the navy for anti-smuggling and drug interdiction (US Department of State, 2004, Background Note on Lithuania)

But threats do exist as Lithuania is considered as transshipment point for opiates and other illicit drugs from Southwest Asia, Latin America, and Eastern Europe to

Western Europe and Scandinavia (2003 CIA World Fact Book). But it is an internal problem with a maritime strain and can be addressed effectively by the government with support from the security forces. There are no perceived threats of piracy, armed robbery or terrorist acts. As Lithuania being a member of European Community, they are bound by all stringent maritime measures adopted by the European council. Regulation EC No 725/2004 of the European Parliament and the council of 31 March 2004 on enhancing ship and port facility security has been incorporated into Lithuania national legislation by Order No. 3-56 concerning the implementation of ISPS Code requirements. Hence it can be stated that due to layered legal regimes from EU to National to maritime administration to Coast Guard, the maritime security regime is very effective and Lithuania is considered to be ready to meet all the security challenges at sea.

4.1.4 India

Background Information: India is a maritime nation having 1.1 billion population and has a coastline of 7,500 km covering Arabian Sea, Bay of Bengal, Andaman Sea and Indian Ocean. It has an exclusive economic zone of 2.2 million square kilometers and has major shipping lane across which more than 70,000 ships cross the Indian waters annually and majority of those ships include those carrying the entire crude oil shipments to Japan and East Asia. India's economy encompasses traditional village farming, modern agriculture, handicrafts, fisheries, wide range of modern industries, and a multitude of support services. The chief exports include textile goods, gems and jewellery, engineering goods, chemicals, leather manufactures, software and the imports are crude oil, machinery, gems, fertilizer, and chemicals and its major trading partners US, UK Germany, Japan and Belgium.

India has 12 major ports and more than 300 intermediate and minor ports. It has over 305 ships of over 1,000 gross tons in its registry aggregating 9.16 million DWT. Estimates indicate that close to about 80% of the international seaborne trade by

volume is carried by ships and its major ports handle more than 280 million tonnes of traffic every year. Hence, India is very much reliant on the seas. The Directorate General of Shipping is an attached office of the Ministry of Shipping, Govt. of India and deals with all executive matters, relating to merchant shipping like matters concerning the maritime administration, maritime education and training, development of shipping industry and other related subjects.

Most of the major industries in the country are situated in close proximity to the various port localities. India has vital offshore assets, particularly oil and natural gas assets as a result of an ambitious exploration and production strategy that have involved an enormous amount of investment and are also vital to India's energy security. There are various types of threats to these offshore assets not only from other states but also from non-state actors in the form of maritime terrorism. The maritime threats include piracy and armed robbery. The IMB Report 2003⁵, indicates the port of Chennai as piracy prone. India has got nearly twenty-two neighbours across the sea and beside communalism and religious fundamentalism, there exists a plethora of maritime threats that can cause serious damage to the ports, shipping sector and to the general economy. This paper is not delving deep into the facets of maritime threats that India is experiencing due to the limited scope of discussion in this chapter.

4.2 Case Study: Indian Maritime Security

Prior to UNCLOS III, Indian Navy dealt all issues related to seas. In 1979 there was a felt need for examining the possibility of establishing a new institutional structure for looking after all matters relating to the sea. There were two reasons for this. In 1976 the Maritime Zones Act had been promulgated whereby a territorial sea of 12 nautical miles, a contiguous zone of 24 nautical miles and exclusive economic zone (EEZ) of 200 nautical miles, from the baseline had been established and second is the

proliferation of sea- smuggling and poaching activities and non existence of one central organisation coordinating all matters relating to sea. The Coast Guard was set up in 1977 to address the issues arising from the Maritime Zones Act and to carry out peacetime roles regarding anti-smuggling, search and rescue, assistance to fishermen, pollution response, scientific research assistance and maritime security. The Indian Navy previously addressed these issues, but it was found not cost effective and it would undermine the warship readiness and preparedness.

Coast Guard personnel are trained with the Navy and there is no specialised training provided to the CG personnel with the matters pertaining the safety and commercial operations of the merchant marine. The CG operates three Maritime Rescue Coordination centres (MRCC), through which it receives both distress alerts and piracy alerts. India is a party to SUA convention and CG has been entrusted to carry out the required roles when the situation arises and it has no powers vested in it to address issues relating to the ISPS code. Hence, it is observed that some issues in the maritime security area are addressed by CG and other ISPS related maritime security issues is dealt by the Directorate General of Shipping in India. There is no existing machinery or agreements to deal with the security situations unless it impinges on the national security. The maritime departments deal with the control measures in accordance to SOLAS Chapter XI-2/9. Nevertheless, the Coast Guard has always endeavoured to respond to all security situations at sea, regardless of its status or powers vested in it by careful situational analysis and support from national and international organisations dealing with shipping. It is pertinent to mention a few of the security related incidents which occurred in Indian waters and resulted in apprehending one pirated vessel, one phantom vessel involved in drug smuggling, one vessel involved in gun running and another one involved in stowaway issues. The events are not very spectacular but it provides valuable insight to the legal

⁵ As per IMB statistics, out of 445 incidents reported worldwide, India accounts for 27 cases, nine of them are from Chennai.

issues, security infrastructure, the importance of cooperation and other important lessons in maritime security.

4.2.1 MV Medstar - Stowaway Issue (Source: Indian Express June 14 2000)

The Indian Coast Guard received a alert from Kandla Port Authorities situated on the west coast of India on 09.06.2000 that the vessel *MV Medstar* scheduled to arrive at the port on 10.06.2000 has been hijacked by the stowaways comprising 10 Iranians and 4 Iraqis and they have diverted the ship to proceed to a different port and claim that they have a bomb onboard and threatened to use it if the ship did not obey their orders. The ship while it was in international waters, some 100 miles west of the Kandla port was intercepted by two Coast Guard vessels and was ordered to steer to Indian waters. Meanwhile the owners negotiated with the stowaways and the ship proceeded to Mumbai port under escort of the Coast Guard ships. On 12.06.2000 a specialist team boarded the ship with bomb disposal squad and a thorough rummaging was carried out and it was later found that there was no bomb onboard. The stowaways were there after handled by the shipowners, P&I club, charterers, UNHCR and other interested parties.

Analysis

Table 3. Analysis of Security incident of *MV Medstar*

a)	Was it a security situation	Yes,
b)	Did the flag state Jamaica request coastal state for assistance	No
c)	Did the coast Guard have authority to intercept at High seas	No
d)	What are the threats	The stowaways are more in number (fourteen) and

		informed that they have bombs and will use it to further their cause.
e)	What would have been the consequences	The ship would have been blown up at sea or could have forced into some port and caused much more damage
f)	Did Indian authorities have any jurisdiction and enforcement authority over <i>Medstar</i>?	To some extent under SUA 88 convention, but India was not an interested state and other national laws did not provide any legal support.

4.2.2 MV Gloria Kopp -Alleged phantom ship

(Source: The Hindu, Jan 25 2000, The Cargo letter 347)

MV KOBE Queen – I, also *Gloria Kopp*, a 1976 built 18,500 DWT vessel registered in Panama was captured by the Indian Coast Guard on 24.12.1999 after a hot pursuit in the high seas. The vessel had a cargo of 15,000 tons of finished steel worth US\$ 5 Million loaded from Istanbul and scheduled to deliver the cargo at Rio Haina, Dominican Republic in early August 1999. The vessel went incommunicado and was later declared criminal and was sought by world governments. A global sea chase had begun with US\$ 100,000 reward posted for information leading to arrest of the vessel. (Cargo letter 347)

Many governments including the US Coast Guard Law enforcement Detachment (LEDET), a dedicated drug enforcement wing, sought the vessel, as the master of the *Gloria Kopp* was involved in drug running case on a different ship earlier. The Indian Coast Guard after a short chase boarded the vessel and found the master dead by hanging himself in his cabin. The ship did not have any valid documents and the registration and other mandatory documents were also expired. The ship was thereafter escorted to Chennai harbour and handed over the Customs and Narcotics control bureau and the ship was thoroughly searched and found no signs of any drug consignment. The crew consisting of 24 Ukrainians claimed that they are innocent and knew nothing about the ships business and that they were not paid. The cargo interests claimed the cargo and no ship-owner turned up to claim the ship, which was sold through public auction at Chennai.

It is important to mention here, that the information about the chances of sighting *Gloria Kopp* was provided privately by an insurance agent and the Coast Guard apprehended the vessel on suspicion, that the vessel after giving a warning did not stop and tried to proceed towards the international waters.

Analysis

Table 4. Analysis of Security incident of *MV Gloria Kopp*

a)	Was there a security situation	To an extent yes, as the ship is not supposed to be in Indian waters and a general alert was already sounded for the ship.
b)	Did the Flag state request for any assistance	In this instance, although the ship was flying the flag of Panama, the ship's papers were expired and assistance was sought

c)	Did the law enforcement authorities have jurisdiction to board the vessel	Yes, to an extent that the ship was not on innocent passage as it was found anchored at a desolate location and tried to run away when encountered by coast guard.
d)	What other illegal matters found against the ship	The ships master was found dead while it was in Indian waters, the crew did not know about the shipowners or the charterers. The documents were not valid.
e)	What charges were made against the ship	Nil, as there are no provisions in the national legislation to arrest the ship. The ship was brought to Chennai port for rummaging, and the competent court thereafter arrested it when the cargo owner filed charges at Chennai court.
f)	What was the involvement of maritime administration	Initially they had no clue about the incident and there after, detained the vessel for un-seaworthiness.

4.2.3 MV Alondra Rainbow- Pirated Vessel

(Source: ICC- IMB-piracy and maritime violence, a global update, maritime security symposium at WMU, 2002 pp 12-14)

The Indian Coast Guard apprehended the *Alondro Rainbow*, an incident, which is well known to everyone in the maritime field, in Nov 1999 through coordinated efforts from IMB Piracy reporting centre at Kuala Lumpur. The pirated vessel initially sighted at 70 nm on the west coast of India was finally caught at high seas

approximately 300 nm from Mumbai after a hot pursuit of 30 hours. The 15 member Indonesian crew was later arrested and was jailed in Mumbai prison and it took a while to make a charge sheet against the alleged offenders. It is notable that although India is a party to UNCLOS, the piracy provisions were not incorporated into national legislation. The all-encompassing Indian Penal Code did not address the offence of piracy or hijacking of ships. Furthermore, at the time of arrest of the alleged pirates, India was not a party to the SUA convention either. The only alternatives left, which was revealed much later by the experts was the provision under the 1861 Indian Admiralty Act and under Indian Law of notion of *jure gentium*, i.e. offence against all nations, the pirates could be prosecuted in any competent courts in India.

Analysis

Table 5. Analysis of Security incident of *MV Alondra Rainbow*

a)	Was there a security situation	No, it was only a general alert given by IMB.
b)	Did the Flag state request for any assistance	In this instance, the IMB representing shipowners and the Flag interest coordinated with coast guard for apprehension.
c)	Did the law enforcement authorities have jurisdiction to board the vessel	Initially No, as it was not certain whether the vessel was pirated or not and the vessel was operating in the Indian EEZ. But under UNCLOS and under law of <i>jure gentium</i> , the Indian Coast Guard was in a position to apprehend the vessel at high seas.
d)	What charges were made	Many charges under Indian penal

	against the ship	code from theft to criminal attacks on crews
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4.2.4 *Al Murtada* – Alleged gun running ship?

(Source: Press Information Bureau, Government of India, 10 July 2002)

MV Al Murtada, a Lebanese registered 70 meter general cargo vessel was found adrift in the Indian waters and was later boarded by the Indian Coast Guard and found the ship abandoned with two AK-47 assault rifles along with 74 live cartridges. The ship was entirely ransacked and did not have any navigation or communication equipment. On extended search and analysis it was found that the ship was hijacked by the Somali warlords in March 2002 and was kept as ransom and later the crew of the ship overpowered the Somali militiamen and set sail towards the Gulf. The ship ran out of fuel and water and thereafter was adrift for weeks and their distress calls were responded by US Naval ship *JF Kennedy* and the crew was rescued and placed onboard *MV Stolt Spray*, which was proceeding, towards Indian port Kandla. The crew was disembarked at the Indian port and was later repatriated to respective countries as seaman in distress. The crew consisted of two Lebanese, four Syrians, six Somalis and four Indians. No crew member had any valid papers or documents to prove themselves as seamen and after prolonged interrogation of the Indian crew it was revealed that the repatriated person include two Somali militiamen also.

Analysis

Table 6. Analysis of Security incident of *Al Murtada*

a)	Was there a security situation	To an extent yes, as the abandoned
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		ship was found with guns and live cartridges.
b)	Did the Flag state request for any assistance	No
c)	Did the law enforcement authorities had jurisdiction to board the vessel	Yes, the vessel was not under command and is a ghost ship, which posed danger to navigation in the Indian territorial waters.
d)	What other illegal matters found against the ship	the ship was found totally un-seaworthy and did not have IMO number and its name cannot be traced to any register.

It may be seen from all of the above incidents, that the Coast Guard did respond effectively but in certain cases, it did not have the necessary mandate to respond due to jurisdictional issues and it is a known fact that how an ill conceived operations by a law enforcement agency, without proper training and information can lead a government to the International Tribunal of the law of the Sea (ITLOS). A case in point would be the unfortunate experience encountered by the Republic of Guinea who have been charged for the violation of the UNCLOS provisions and were made accountable to pay compensatory damages to the fishing vessel *SAIGA* belonging Saint Vincent and the Grenadines. The Indian Coast Guard has been fortunate not being caught on the wrong side of the fence and in these days of tussle between sovereignty and jurisdiction rights of the coastal or port states versus the right to navigation of the ships, the law enforcement agencies have to be doubly sure and be within their rights to board a ship at sea for verifying any violations of their laws or else, starting from the UNCLOS to all other international agreements are loaded with provisions for payment of damages if the action of any law enforcement agency proves to be wrong.

4.3 Security Models and deficiencies

On analysis of all the four cases which occurred in the Indian waters and also from the answers received from the selected developing maritime nations, it can be observed that responses for tackling maritime security issues cover the entire spectrum. From one end there is a clearly defined security regime, with regional control like that of EU. On the other end the security aspects are dealt by the Navy like that of Nigeria. In most of the cases there is a clear indication that different security models are being followed and many occasions. The procedures are randomly applied and also most of them maintain a law enforcement agencies at sea for multifarious role and maritime security situation is addressed as the situation develops. Though all the four countries are party to the IMO conventions dealing with maritime security, the implementation level is dependent on the national will and the maritime administration's ability to coordinate efforts within its defined parameters of the bureaucratic system that is being followed. The lack of basic resources like communication is clearly evident in some cases and so is the effective regional system for information exchange. While IMO does not have much mandate to oversee its implementation of its convention, the regional systems like that of ASEAN Regional Forum (ARF), MOWCA and ROCRAM has been effective to somewhat addressing the issues of preventive action for piracy and armed robbery. It can also be seen that all of the developing countries discussed above are dependent upon transportation of oil as import and export and the oil movement has a fundamental and vital importance to their energy security and to the overall economic and trade growth of these countries and it is also well known how vulnerable the ships and ports can be when criminal would utilize the tanker or storage facilities to his advantage, however nefarious these might be.

From the inferences drawn from the trading partners of these selected states, all of them have significant trading relations with United States, United Kingdom and other EU and OECD countries which have adopted strict maritime security measures and will expect the ships and cargo arriving from these developing countries to be safe from security lapses. Those developed countries will not refrain to term the ports and ships “blacklisted” from security point of view, even for minor lapses like ineffective ship security alarm systems, for carrying stowaways without their knowledge or not updating the continuous synopsis record (CSR) etc.

With the coming into force of the ISPS Code there is a much greater general awareness amongst the major players of the maritime industry and the maritime administration on the aspect of maritime security issues. The member states in accordance to the requirement of the SOLAS Chapter XI-2, regulation 13, regarding communication of information has forwarded their detailed information to IMO and a closer look at this information reveals the administrative setup and the response system envisaged by the respective member states.

Take for example of India, wherein there is a already existing response organization for maritime emergency the Coast Guard with its three Maritime Rescue Coordination Centers acting as alert receiving post has not been dovetailed into the requirement of ISPS Response system. The table 7 obtained from GISIS gives a clear example of how one person is nominated to coordinate all the requirement of ISPS Code. This is not a dig at the capability of that person or of his office, but it just reflects the state of affairs where sharing of legal powers leads to more dilution of authority. With more than 100,000 ship passages in the Indian coastal waters and 20,000 ship visits to the major ports annually, can a administrative organ without the necessary security background deal with any emerging situation, perhaps it needs a major security incident to shake up the system.

Table 7. Global Integrated Ship Information system on India

(Source: IMO website <http://www2.imo.org/ISPSCode/ISPSInformation.aspx>)

ID	organisation name	first name	surname	contact country name	contact name	type	add similar	edit	view	delete
355	The Directorate General Shipping	Man Mohan	Saggi	India	National authorities responsible for port facility security		add similar	edit	view	delete
367	The Directorate General Shipping	Man Mohan	Saggi	India	National authorities responsible for ship security		add similar	edit	view	delete
751	The Directorate General Shipping	Man Mohan	Saggi	India	Proper recipients of SSAS alerts		add similar	edit	view	delete
753	The Directorate General Shipping	Man Mohan	Saggi	India	Proper recipients of maritime security related communications from other contracting governments		add similar	edit	view	delete
754	The Directorate General Of	Man Mohan	Saggi	India	Proper recipients of requests for assistance with		add similar	edit	view	delete

Shipping					security incidents						
755	Indian Register of Shipping	Sudesh	Kumar	India	Names of recognised security organisations (RSOs) approved by the state	add similar	edit	view	delete		

4.4 International efforts and its standing

Though IMO adopted many conventions and resolutions to address the security situations, it can be observed that the measures recommended and actions envisaged in most cases, are not residing in the right organization in the right place and in right time so as to respond to the emerging security situations correctly and adequately. These are just minimum measures and as can be seen from the efforts made by the Chilean and Lithuanian authorities, the maritime security has been accorded high priority even though those countries don't face serious security threats to their ships and in their ports.

From the piracy point of view, the efficacy of anti-piracy efforts is shaped by the international institutional context. There exists many regional associations and private international organization like IMB and it has aided in attracting considerable attention from the governments, military experts and the media. At a regional level, in the Caribbean Region, Dutch, French, American and British, Venezuelan naval and coast guard vessels are working together to confront drug trafficking and piracy. A similar regional effort to combat piracy is underway in South China Sea under ASEAN Regional Forum (ARF). Joint patrols of the Coastguards of Japan, India, South Korea and Malaysia were instituted following an Anti-Piracy Conference in

Tokyo in 2000. But the flip side is that the problems related to the provision of maritime security by a third country and the territorial integrity do not go hand in hand. The US initiative to position the Pacific Command Forces in the Malacca Straits was fiercely opposed by Malaysia and caused considerable angst and unease in the region for cooperation between US and the ASEAN nations.

For tackling effectively the terrorism and other maritime security issues, maritime industry associations and national administrations are backing the ISPS Code provisions and other regulations under SOLAS Chapter-XI-2 and there are no regional associations which have sprung up for countering maritime terrorism except the associations involved in anti-piracy programs which have include maritime terrorism in their agendas. But certain states' law enforcement agencies under strict provisions of their national acts established on the lines of ISPS Code intends to board ships at sea for example, the United States Coast Guard says it intends to board every ship that does not comply with the rules on its first entry to an American port from July 1st 2004. This will be quite some task, given that there are 60,000 calls at American ports each year by ocean-going ships. With NATO's credibility undermined by its member countries' differences over Iraq and their failure to provide adequate troops to pacify Afghanistan, the alliance's leaders are keen to demonstrate that NATO still has a valuable role to play in the 21st century. The co-ordination of international anti-terrorism efforts should be part of that role. NATO has already begun joint anti-terrorism naval patrols in the Mediterranean Sea including the boarding of suspect vessels and escorting vulnerable shipping through the Gibraltar straits. (The Economist Aug 2004, *Global Agenda*). America is also pressing other countries to sign up to its container-security initiative, launched four months after the 2001 September 11th attacks. Other issues involve supporting the work of the Financial Action Task Force (FATF) of the US- EU agreement on all issues regarding the financing of terrorism.

Hence, it can be seen that the anti- terrorism efforts in the maritime domain is mainly a initiative of the US and EU led forces and it remains to be seen that whether their prescriptions to counter terrorism will become a uniform standard in the days to come, but it involves cost and proper coordination from the organisation which has global mandate and that is IMO. Having seen the maritime security regime of the developing countries in this chapter, it is imperative to take a look at the higher end of the spectrum of counter terrorism initiatives and security infrastructure and to analyse its effects on global maritime security. This analysis is provided in the next chapter.

CHAPTER 5

ANALYSIS AND ASSESSMENT

5.1 What constitutes Maritime Security?

After analysing the legal regimes and the maritime security initiatives and its effectiveness, adequacy and sufficiency in the previous chapters, this chapter intends to characterise the maritime security perspectives from the point of view of the maritime security analyst or interpreter and bring out the pros and con of the present maritime security regimes. Maritime security can be defined as those measures employed by owners, operators and administrators of vessels, port facilities, offshore installations and other maritime organisations or establishments to protect against seizure, sabotage, piracy, pilferage, annoyance or surprise of their assets both movable and immovable, properties, operations, lives etc (Mejia, 2002, pp28). It can be considered as embracing all measures taken to prevent hostile interference with lawful operations. The purpose of maritime security is to make access to the target so difficult so as to discourage the attempt, if attempted, minimise the damages. Factors affecting the degree and type of security required by any ship or any facility depends upon the size of the area, the nature and sensitivity, the mission for the law enforcement agencies in that area, the vulnerability of the area, the economic and political situations, the proximity of external support and the capabilities of potential attackers. Proper maritime security creates a condition, which establishes and maintains certain protective and preventive measures. These protective measures which may vary in its application in different states and regions, must be capable of all instances of performing two important tasks that is timely and accurate warning of an impending threat and the response for removing or neutralising that threat by repelling, capturing or eliminating the perpetrators (Hawkes, 1989, p09).

The threats to shipping are comparatively a new development and many developing countries has not faced any real threats. Hence there are hardly any measures taken for providing adequate warning. For example, Nigeria does not have modern communication facility to exchange security information and other developing countries have not established any local or regional network for exchanging warning information. For timely reaction they have always kept their faith on their overburdened Navy, Coast Guard or police to react. Adequate warning and timely reaction are achieved only through proper security awareness training to the crew and the personnel concerned. This calls for awareness of security for their ships, in the ports, in their internal waters and territorial seas and waters beyond. Awareness and knowledge can only be gained through proper indoctrination and training, which is the function of enlightened security management. It may happen that due to the prohibitively high cost of physical protective measures, in terms of money and manpower, maximum security may not be achieved under all circumstances. However, the specific areas of vulnerability must therefore be determined and resources apportioned accordingly for providing, at least, timely and accurate warning to ships and to its port and to establish minimum response measures within the high-risk area.

Without adequate warning the best security force may fail to protect its interest and conversely, without the ability to respond, the adequate warning is useless. **Adequate warning** and are addressed through the provisions of regulation 3 of SOLAS 74 Chapter XI-2, instructing administration to set security level and ensuring that the security level information is passed to the ships that fly their flags and also to set security levels to port facilities and to ships that is entering the port or whilst it is in the territorial waters of that port state. Information as to how the administration is going to set the security levels and what are the criteria are not clearly mentioned. The guidance provisions provided in the Part B of the ISPS Code (Section 4.8, setting the security level) is very sketchy in this regard. This would effectively mean that the means to obtain the protective measures for maritime security viz. the

accurate warning has not been addressed and it is left for the national administration to fend for themselves. Some private companies displaying opportunistic entrepreneurial zest has entered the fray and are offering solutions for bridging the lacunae through Internet like SeeThreat¹ etc.

The second pillar of protective measure is the **ability to respond** and it is entirely left to the member states to take measures as they deem fit. Many states have institutionalised the maritime security response measures by authorising the law enforcement agencies to react to emerging situations and they are trained accordingly. In some cases, the states just wait for incident to occur and then seek the assistance from the law enforcement agencies for responding to that incident. In an approach like this, several questions and issues abound and remain unanswered such as can a shipmaster be assured, that the impending threat will be responded in all cases when he is not sure what to look for and when the help will arrive even after making SSAS alerts in accordance to the regulations. It depends on which area and which jurisdiction he is seeking help. The variations are aplenty.

5.2 Maritime security regimes in developed countries

In addition to the security measures envisaged for the maritime transportation and port facility security by the IMO, there exists a number of security measures all around the world which are taken unilaterally but do complement the IMO measures to a certain extent. These other additional extreme measures taken by the developed States cannot be set aside unless the other developing state does not want to trade in that region. Just as how Oil Pollution Act 1990 of the United States had its tremendous and all pervasive effect on shipping, the Maritime Transportation Security Act (MTSA) 2002 is having a much more deeper and significant impact on the shipping industry. The new concept of the United States Maritime Security

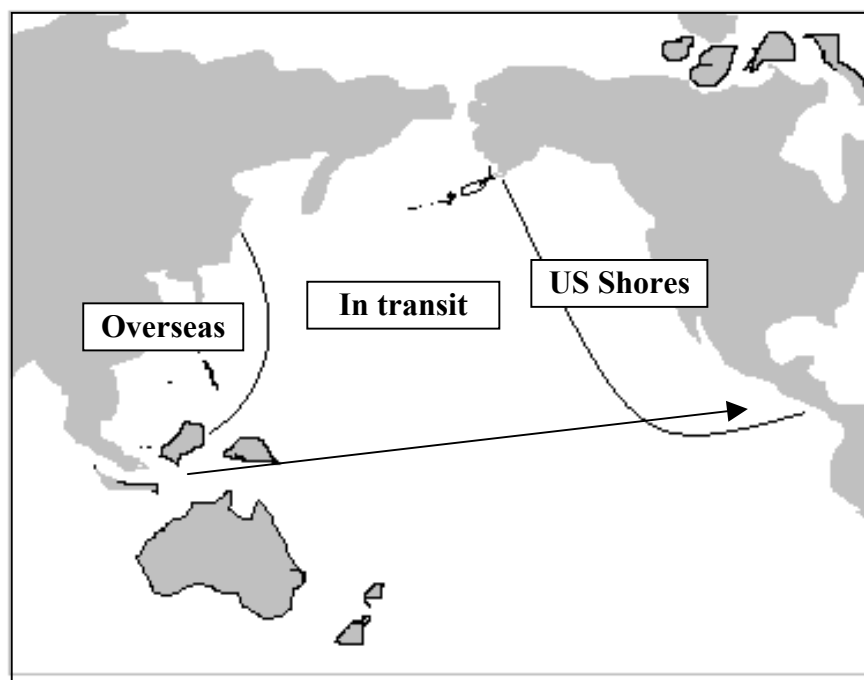
¹ SeeThreat, a new web-based risk assessment tool launched by Lloyd's Register, which helps ship operators and their company security officers (CSO) to assess the security threat to their ships. It constantly monitors maritime security news information for locations and threats specified by the operator to meet its own needs and the relevant ISPS Code threat levels.

programme is to keep the threat away from its shores and the Department of Homeland Security (DHS) which has the maritime security mandate merge the various maritime security aspects under one integrated system for the capability to anticipate, pre-empt and deter threats to its ships, ports or its coasts whenever possible, and the ability to respond quickly when such threats do materialize.

The new maritime security measures, envisages to build upon the layers of security that are already in place at the US ports. The US Coast Guard is the implementation and overseeing authority for the maritime security measures across the US. By taking a layered approach to security, the DHS has utilized the expertise of other agencies like Customs and Border protection, the private sector and state and local authorities, to create a system of different security measures that ensure that there are protective measures in place from one end of the sea based journey to the other. The layered security measures are designed to protect the three phases of the journey: **overseas**, **in transit**, and **on the US shores** as elucidated in the figure 1.

Figure 1. Three layers of US Maritime Security programme

(Source: Department of Homeland Security- redrawn by author)



For example if the ship leaves from Singapore and is destined towards a US west coast port, then it undergoes three phases of security regime, starting even before the cargo has been loaded at Singapore port. It is important to examine the details of the security, so as to analyse the impacts of this security on the world shipping and on the other security regimes followed by the world in general.

5.2.1 OVERSEAS STRATEGY OF THE DHS

- ◆ **24- Hour Advanced Manifest Rule Security measure: Awareness:** All sea carriers with the exception of approved bulk carriers are required to provide proper cargo description and valid consignee address 24 hours before cargo is loaded at the foreign port for shipment to the United States through the Sea Automated Manifest System. Failure to meet the 24-hour advanced manifest rule results in a “do not load” message and other penalties.

- ◆ **Container Security Initiative (CSI) Security Measure: Awareness and Prevention:** Under the CSI program, the screening of containers are accomplished by a team of US customs and Border protection in concert with host nation counterparts. So far 18 countries have joined CSI. Through CSI, potential suspect containers are targeted and identified before being loaded onto vessels.

- ◆ **Customs–Trade Partnership Against Terrorism (C-TPAT) Security Measure: Awareness and Prevention:** Customs- Trade Partnership Against Terrorism (C-TPAT) is a joint government-business initiative to build cooperative relationships that strengthen overall supply chain and border security. Through the C–TPAT, many importers, carriers, brokers, forwarders, and buyers and sellers and manufacturers take necessary steps to secure their supply chains.

- ◆ **International Ship and Port Facility (ISPS) Code Security Measure: Awareness and Prevention:** On July 1, 2004, member states of IMO around the world have implemented the first International Ship and Port Security standard ever created. As discussed earlier, the ISPS Code establishes a standard for security and requires governments, port authorities, companies and ships to take certain responsibilities for preventive and risk reducing measures. The ISPS Code is just a small part of the overall security measure taken by the US.

- ◆ **International Port Security Program - Security Measure: Awareness and Prevention:** Under this effort, the US Coast Guard and the host nation will work jointly to evaluate the countries overall compliance with the ISPS Code. USCG intends to work at least with 45 countries every year apart from positioning international port security liaison officer at important ports to share information on best practices and provide assistance to the travelling team.

- ◆ **Operation Safe Commerce (OSC) – Security Measure: Awareness and Prevention:** This program will analyze the security in the commercial supply chain and tests solutions to close security gaps. Technologies are available to enhance maritime and cargo security, to protect global supply chain and facilitate the flow of commerce.

5.2.2 IN TRANSIT - STRATEGY

- ◆ **Smart Box Initiative- Security Measure Prevention:** It is an effort by CSI for identifying “tamper evident” containers. It is the Smart Box coupled to an internationally approved mechanical seal affixed to an alternate location on the container door with an electronic container security device designed to deter and detect tampering of the container door.

- ◆ **Ship Security Alert System – Security Measure Response:** SSAS enables a vessel to send a covert alert to shore for incidents involving acts of violence, indicating the security of the ship is under threat or has been compromised. The SOLAS Chapter -XI/6 requires that all ships to be fitted with SSAS by July 1, 2004.

- ◆ **Automated Targeting System – Security Measure Awareness:** Automated Targeting System serves as a main tool for performing transnational risk assessment and evaluating potential national security risks posed by the cargo and passengers arriving by sea, air, truck and rail. Using pre-arrival and intelligence input, this rules-based system identifies high risks targets before they arrive in the US.

- ◆ **96- Hour Advance Notice of Arrival - Security Measure Awareness and Prevention:** Ships must notify United States Coast Guard (USCG) 96 hours before arriving on a US port and provide detailed information on the crew, passenger, cargo and voyage history. This information is analyzed using the databases and intelligence information. Part of the analysis involves identifying of previous security related problems in the previous port of calls. US Coast Guard will thereafter determine what course of action to be taken, including boarding at high seas or providing escort to and from the port.

5.2.3 STRATEGY IN US WATER AND ON US SHORES

- ◆ **National Targeting Centre (NTC) – Security Measure Prevention and Response:** The main mission of the NTC is to provide tactical targeting and analytical research support for Customs and Border Protection anti-terrorism efforts. NTC will operate around the clock and utilize tools like Automated Targeting System (ATS). The NTC also supports operations in the field

including the Container Security Initiative (CSI) personnel stationed at critical foreign ports throughout the world.

- ◆ **Maritime Intelligence Fusion Centre - Security Measure Prevention:** Before any vessels is allowed to enter port, all vessels are screened for the security risk they pose to the US based on the information about the vessel's cargo, security history and any intelligence information. Those identified as higher risk are targeted for offshore boarding to ensure potential security issues are addressed prior entry into ports. In addition USCG randomly selects vessels for security boarding to ensure an element of unpredictability and thus deterrence.

- ◆ **Operation Port Shield - Security Measure Prevention:** Operation Port Shield focuses on the implementation and enforcement of the new security measures implemented under the MTTSA 2002. Under this verification program, the Coast Guard will be boarding every vessel, at sea or at the dock, on its first visit to a US port to ensure that the vessel comply with the US security requirements.

- ◆ **Automatic Identification System - Security Measure Awareness:** AIS is a vessel tracking equipment that automatically sends detailed information to other ships and shore based agencies principally to aid navigation and simultaneously for vessel tracking and monitoring, increasing security and safety in the shipping channels.

- ◆ **Area Maritime Security Committee – Security Measure Awareness, prevention and Response:** The USCG has established committees in all the nation's ports to coordinate activities of all stakeholders, including federal, state and local government agencies and industry and the boating public.

- ◆ Other onshore measures include:
 - Port Security Assessment program - Awareness
 - Port Security Grants – Awareness, Prevention and Response
 - Non-Intrusive Inspection Technology- Prevention
 - Maritime Safety and Security Teams (MSSTs) – Prevention and Response
 - Guarding In-Between the Ports – Prevention
 - Operation Dry-dock – Awareness and Prevention
 - Transportation Workers Identity Card (TWIC) – Awareness and Prevention

5.2.4 Initiative by other developed states

Usually, the other maritime security initiatives taken by any state generally involve following some of the US initiatives mentioned above. For example, presently there are about 18 countries, which have signed a pact for the CSI and it covers 22 largest ports of the world, including four EU Member States against the wishes of the EU. (DHS, 2004). In fact, the European Union has dropped legal action against four Member States that broke rank by signing the bilateral maritime security deals with the United States to fight terrorism, in April this year after European Union reached its own agreement with the United States on container security. Another security measure, which attracted much participation from the US national and other international trading companies, is the Customs - Trade Partnership Against

Terrorism (C-TPAT). So far about 5,700 companies have submitted the application for their consent to participate in the programme.

The EU proposals extended the ISPS Code requirements to Class A passenger vessels which are engaged in domestic voyages that travel more than 20 nautical miles from the port and also to all vessels of 500 Gross tons engaged in domestic voyages to have Ship Security Plan and make number of ISPS Code part B provisions as mandatory requirement to their vessels. It also proposes to exempt the control provisions to the vessels engaged in trade activities between the member states, which cuts across the IMO requirements. The major aspect of the proposals is to maintain the security regime amongst the member state's vessel through a inspection role through European Maritime Safety Authority (EMSA).

5.2.5 Proliferation Security Initiative (PSI): The Proliferation Security Initiative (PSI) is another response to the ever-growing challenge posed by the proliferation of weapons of mass destruction (WMD), their delivery systems, and related materials worldwide. Under the Law of the Sea Convention, PSI allies are only allowed to board and inspect a vessel in the high seas with the agreement of the state under whose flag it sails. Over half the world's shipping sails under flags of convenience and the US and other powerful countries are relying on PSI to board and prosecute the ships which un-authorisedly carry WMD and other destructive materials. Panama and Liberia have agreed to allow the those countries (10 countries in all namely Australia, France, Germany, Italy, Japan, Netherlands, Poland, Portugal, Spain and UK) that are part of the US-led Proliferation Security Initiative (PSI) to board ships sailing under their flags in the high seas if they are suspected of carrying weapons of mass destruction. The PSI was launched in May 2003 by the world's major maritime powers and so far 50 countries have taken steps towards joining the alliance. Informatively, the revised protocol to the SUA convention has some part, which give powers to the parties to take action similar to that of PSI measures. But PSI has inherent risks, as it is not a normal security initiative and there is no UN

authorisation or sanction. The actions of those maritime powers at high sea and the consequent delay for ships could open another litigation strata for claiming damages and prolonged deliberations at UN and many other international forums for redressing issues which are not internationally governed.

5.3 IMO maritime security initiative and its adequacy

As discussed earlier in Chapter 1, IMO security initiatives were aimed predominantly at providing preventive measures. The preamble to the ISPS Code states that, as threat increases, the only logical counteraction is to reduce vulnerability. The Code's prescription for the reduction of vulnerability are the ship security assessment and ships security plan (SSP), Port Facility security assessment and Port Facility Security Plan (PFSP), appointment of Ship Security Officer, Company security officer, Declaration of Security, setting Security Level, identity checks for the visitors of the ship and port, cargo monitoring and access control and communications. The Ship Security Plan is designed to ensure that the ship always operates at minimum-security level of security level 1 and so is the Port Facility Security Plan. The security measures taken onboard ship will be checked at the international ports through the control provisions but there are no control provisions for the port security measures taken by the port but only by their national authorities and the ships have been given the choice to stick to the security level set by the port authorities or to operate at a higher security level by making an agreement with the PFSO for the Declaration of security. In light of the above provisions, there is an area where the clash of interest is anticipated or is likely to have a negative impact.

While it is accepted that through the IMO adopted security measures, the necessary preventive measures are put in place in both at ships and at port to reduce vulnerability, it is essential to confirm whether the IMO adopted measures and other similar measures will be able to provide a total solution of protective measures as described in the earlier paragraph, that is the measure of adequate warning and the

ability to respond. The protective measures provided in the SOLAS 74 are segregated into two categories of warning and ability to respond and are tabulated below for easy understanding.

Table 8. SOLAS 74 – Maritime Security Protective Measures

Information Gathering and Warning			Ability to Respond
Measures	Regulations	Availability	
AIS	SOLAS Chapter V/19	Commercially available	Security forces can access data and respond, but requires coordination
VDR	SOLAS Chapter V	Commercially available	
CSR	SOLAS Chapter XI-I/5	Company Policy	Data will assist to establish credentials
SSAS	SOLAS Chapter XI-2/6	Commercially available	Security Forces can respond when they receive the alert in time and assets kept ready
IMO Number	SOLAS Chapter XI-1/3	Through shipyard - Commercially available	The availability of IMO database is crucial and again requires coordination
SSP	ISPS Part A – 9	Commercially available- through RSO	No access to security forces for SSP information
PFSP	ISPS Part A- 16	Can be hired commercially for	Security forces may have limited access to

		port facility Assessment	the PFSP
DOS	ISPS Part A- 5	Agreement btw ship and port, private security available commercially	Out of purview of Security forces unless there is an arrangement for providing point security
Training of crew	ISPS Part A-13	Training commercially available	Training on maritime security for security forces is totally in- house.

From the table 8 above, it can be observed that the items on the left for the warning section are equipment based and are commercially available and the measures on the response section are the possible courses of action a security forces is likely to take, but they are not addressed in the IMO adopted resolutions. But the information to be gathered and shared in accordance to the regulations of SOLAS CH XI-2 has security connotations and the present communication infrastructure is open ended and unsecured and can be accessed by anyone who is interested. How the international community is going to address this situation is another area of concern. If it is envisaged to use encryption methods and how are the maritime administration who have taken the task of communicating the security information is going to involve themselves and to what level is yet to be defined and ascertained.

The IMO has issued a MSC Circular 1073 in Jun , 2003 regarding the directives for maritime rescue coordination centres (MRCC) on acts of violence against ships. MRCC apart from being first point of contact for distress coordination and for receiving alerts for piracy and armed robbery has extended the role of MRCC to handle the ship security alerts for acts of violence and terrorism. The alert may be

received directly by ships or through security forces authority (SFA)², other MRCC or other ships or agencies. The alerts may be overt or covert. MRCC should have immediate access to call SFA for the operational application of countermeasures. If the alert is outside the SRR relay the alert to the appropriate MRCC. Some MRCC has shown reluctance to handle such messages and some shipping companies want the message to be passed on to the coastal state's Ministry of Defence and state of affairs regarding how the member states have addressed the issue can be checked in the IMO's GISIS database. The SSAS alert reception centres varies from MRCC to Military operation centres to Maritime Administration office.

Another handicap being faced is that how can a law enforcement agency expected to respond in consonance with the ship security plan or port facility security plan when they are made by civilian organization which may conflict with the military response plan as the two organization may never have sat together to draw up the ship security assessment or the ship security plan. Another important area of lacunae is when the coastal state receives intelligence information that the ship poses an immediate threat to the security or other scenarios where the contracting governments may take steps outside the SOLAS Regulation XI-2/9 for national security or defense, even if the ship is fully compliant with the ISPS code.

It is the considered opinion that all of the above lacunae can be addressed by the contracting states if the national administration has sound national security policy or other maritime security contingency plans and has some component of law enforcement agencies or maritime security agency in their maritime security systems and IMO should provide some broad, overall framework for achieving this aim.

² IMO Circular MSC 1073 of 10 Jun 2003 defines Security Forces Authority (SFA) as an organisation, national or regional command of a public agency such as Navy, Coast Guard or Police in charge of providing the response to security incident.

5.4 Initiatives by other organizations and agencies

The industry and the association involved in maritime transportation has taken many initiatives for complementing security measures, and they are as follows

5.4.1 Seafarer's Identity: Because of the unique character of seafaring, most maritime countries have special laws and regulations covering this occupation. Consequently, the International Labour Organisation ILO³, since its founding, has had special "machinery" for seafarers. Since 1920, the International Labour Conference has adopted over 60 maritime labour standards. Seafarers standards cover a multitude of areas including minimum age of entry to employment, recruitment and placement, medical examination, articles of agreement, repatriation, holidays with pay, social security, hours of work and rest periods, crew accommodation, identity documents, occupational safety and health, welfare at sea and in ports, continuity of employment, vocational training and certificates of competency. The most significant convention, which has maritime security connotation, is the Seafarer's Identity document. The earlier convention regarding seafarer's identity document was convention No. 108 which was adopted in 1958 and ratified by 61 countries. The convention No 108 has been now replaced by new convention No.185 adopted in 2003 as Seafarer's Identity Document Convention (SID). An international labour standard designed to create a new biometric identity verification system for the world's 1.2 million maritime workers has received sufficient ratifications to go into force in February 2005. The new identity document for seafarers allows for the use of a "biometric template" to turn two fingerprints of a seafarer into an internationally standardized 2-D barcode on the Seafarer's Identity Document. It has

³ The International Labour Organization (ILO) is the UN specialized agency which seeks the promotion of social justice and internationally recognized human and labour rights. It was founded in 1919 and it became the first specialized agency of the UN in 1946.

been hailed as a major step toward strengthening security measures on the high seas and in the world's ports. At the same time, it is also designed to ensure the rights and freedoms of maritime workers and facilitate mobility in the exercise of their profession-for example when they board their ships to work, take shore leave or return home. But despite acceptance by shipowners and seafarer's unions, US authorities have made it plain that it will be years before the technology will be considered a workable alternative to visas. (Lloyd's List -31 Aug 2004). The question of seafarer's shore leave at international ports has been addressed through many forums including IMO (ISPS Code preamble No.11), it may take a while before better sense prevails. Meanwhile the new SID convention gives governments, shipowners and seafarers the benefit of a reliable system of identification and is a pioneering and sophisticated response to the security concerns in the modern world, while safeguarding the individual rights.

5.4.2 Threat Reports: Office of the Naval Intelligence (ONI) of the United States Navy provides worldwide threats in their shipping report every week and is disseminated through the World Wide Web.

The Maritime Security Council (MSC) is another organisation that works closely with United States and provide security related information to member agencies concerned with commercial vessel security. It is the principle clearinghouse for the exchange of information between its members, and acts as liaison with regulators and governments providing vital information and governments offering vital intelligence on crimes at sea and in ports. Members are kept informed on international maritime security news, issues, and events via the MSC's exclusive Maritime Security Alert e-mail newsletter service, which provides timely

information on such matters as hostile vessel seizures, incidents or reports of piracy, and hazardous port conditions.

International Maritime Bureau's (IMB) Piracy Reporting Centre located at Kuala Lumpur, Malaysia is a 24-hour information centre acting as the focal point against acts of piracy and armed robbery and publishes weekly piracy report and also provide daily piracy alerts to the ships operating in vulnerable area through Inmarsat EGC Network.

The Lloyd's Register Group's new web service, SeeThreat, continually scans the news network and provides you with specific maritime security information so that you can make critical security decisions cost effectively. SeeThreat filters this information for the locations and threat levels one chooses.

5.4.3 Ship Security Alerts: There are many companies, which are providing the Ships security Alert Systems (SSAS) solutions using satellite technology and they include Inmarsat, and Iridium. Another alerting device is the ShipLoc system, which provides permanent tracking of the ship to its ship-owner in nominal mode, and provides immediate alerts in case of panic button activation to the IMB, the ship-owner and to the competent authorities. Since 1999, ShipLoc has successfully proven its effectiveness several times in specific cases where hijacked ships were recovered In case of an alert; information is provided simultaneously to the IMB and to the competent authority, as well as to the ship owner.

5.4.4 Vessel surveillance through AIS: Automatic Identification System besides providing valuable information on course speed and other navigational details can also provide additional information regarding last port of call, the next port of call, cargo carried etc. It is felt that the

additional information can provide some security advantage for the authorities, of whatever form, having access to this amount of detail. Further, Vessel Traffic Systems (VTS) can interrogate any vessel approaching ports and can inform the law enforcement agencies (rapid action force) to deal with the ships not responding to VTS calls. Paramilitary forces can search out suspect vessels on their own. Another problem, which is being faced by many VTS Centres are transmission of redundant data by ships with many ships failing to update the data, which is being communicated. The downside of the AIS is the information, which can be gathered by people with evil intent and can be used to pinpoint their intended targets with deadly and precise accuracy with disastrous consequences. To ameliorate this weakness, it is essential that the critical data should be encrypted by internal software of the AIS equipment and this encrypted data be allowed to be accessed by approved authorities (Safety at Sea, Jul 2003, pp17).

5.4.5 Other international organizational efforts

OECD: The Organisation for Economic Cooperation and Development⁴ (OECD) had prepared its final report on Maritime Security during Jun 2004 titled Maritime Security - Ownership and Controls of Ships: Options to Improve Transparency. The report suggests that the progress in increasing transparency will require the co-operations of administrations that may consider it appropriate, and commercially beneficial. The report also provides a wide range of measure for the consideration of administrations and of shipping registers that would make it more difficult for terrorists and criminals to operate and it includes:

⁴ The OECD groups 30 member countries sharing a commitment to democratic government and the market economy. With active relationships with some 70 other countries, NGOs and civil society, it has a global reach. Best known for its publications and its statistics, its work covers economic and social issues from macroeconomics, to trade, education, development and science and innovation

- Coordinated actions against jurisdiction that provide corporate mechanisms that facilitate anonymity
- Encourage flag states to address transparency of ownership
- Target ships where beneficial ownership is obscure
- Target ships from flag states that promote anonymity
- Restrict access to ports only to flags and ships where ownership and control is known

The Report concludes by suggesting a genuine and substantial move towards greater transparency to reduce the burdens on security agencies and governments charged with the protection of their citizens and their assets.

International Maritime Bureau (IMB): International Maritime Bureau, was founded in 1981, by members consisting of shipowners, insurers and other interested parties. IMB's task is to prevent fraud in international trade and maritime transport, reduce the risk of piracy and assist law enforcement in protecting crews. IMB combats all types of maritime and trade crime, including documentary credit fraud, charter party fraud, cargo theft and the deviation of ships. IMB's Regional Office situated in Kuala Lumpur, Malaysia is also the home of the Piracy Reporting Centre, which responds immediately to acts of piracy and collects evidence for law enforcement agencies.

INTERPOL: Interpol's⁵ involvement in the fight against international terrorism commenced in 1985 when a specialized group within the then Police Division of Interpol Headquarters to 'co-ordinate and enhance co-operation in combating international terrorism' was created. The Public Safety and Terrorism (PST) Sub-Directorate within the Interpol deals with matters relating to Terrorism, Maritime Piracy and Weapons of Mass Destruction. Interpol collects stores, analyses and exchanges information with its 181 member countries through its secure global police messaging system. Intelligence is shared about suspect individuals, groups and their activities. Interpol co-ordinates the circulation of alerts and warnings by means of specific tools such as its colour-coded international notices system. The widest possible co-operation and exchange of information is made through international and national coordination and the PST makes maximum use of Interpol's communication network and central record capability to ensure that all information it receives is treated to maximize subsequent analyses or responses to queries from member countries. In addition to the work done in terrorism information management, it also maintains liaison with a number of international organizations and organizes various symposia and working groups for people involved in the fight against terrorism. It regularly coordinates its activities with International organisations dealing maritime piracy like IMB and Maritime Security Council.

In conclusion, it can be seen that the maritime security has been addressed in one context universally through IMO for which the member states have made strenuous and untiring efforts to comply uniformly, and the second set of maritime security measures adopted are the ones which are initiated and prompted by the United States which are very stringent and even the ISPS Code and its various provisions and

⁵ INTERPOL is a pre-eminent police organisation based at Paris coordinating with all organisations and governments and other authorities to provide services relating to detecting, preventing and suppressing international crimes

measures just form one of the measures included in the enormous swathe of measures being implemented. The third set of maritime security measures adopted is the measures being addressed by the private international players and the commercial vendors. It goes without saying that the protective measures envisaged for the shipping industry is a combination of accurate information and ability to respond and we have experienced firsthand the issues affecting the provisioning of accurate information and its drawbacks and also the aspect of the ability to respond which have been left entirely to the national authorities to decide in which form and structure it wishes to adopt.

From the available information and by an astute analysis of the security systems of the selected states in the previous chapter, it indicates a near even lack of uniformity in the international maritime security response system and this no doubt will leave a gaping hole for the unwanted elements to exploit causing untold damage not only to the maritime industry but to the global way of life which we have over the centuries sought to protect and maintain. The next chapter intends to propose few ideas, which if implemented correctly would hopefully assist in the closing of the yawning gap which exists in the maritime security landscape and endeavour an humble attempt in contributing to the creation of a global maritime security system, which will be effective and that one which can be easily implemented and maintained for the betterment of shipping and maritime transportation as a whole.

CHAPTER 6

MARITIME SECURITY ENFORCEMENT STRATEGY

6.1 Era based security policy

If we revisit the history of maritime security policies practiced over the last century it had a clear and distinctive era characterized by the policies established by the world maritime powers. The early part of the last century had been period of domination of the sea and naval power was the deciding factor in the outcome, and that control of seaborne commerce was critical to that domination. This led to two world wars. But during the post World War II period, efforts were directed towards the establishment of humanitarian law and the most important piece of legislation to come out was the 1949 Geneva Convention and their 1979 additional protocols. The role of naval powers then changed to the requirement of that era and the centre of attention was to protect their national territory and their political independence. Some states maintain a naval presence to consolidate their friendship and cooperation with friendly and allied countries, thus conforming the definition of naval presence as a tool of foreign policy. A number of crises have been settled by timely naval manoeuvres. The continuous deployment of naval forces can have a general stabilising effect in a region. Similarly, the withdrawal of naval forces can be a confusing signal leading to instability, as was demonstrated by the increase in piracy in South China Seas and Malacca Straits region (Abhyankar, 2004).

During the discussions of the Law of the Sea Conference III in the early seventies, the maritime community woke up to the new realities of protecting their Territorial Sea, Contiguous Zone, Exclusive Economic Zone and the Continental Shelf and eventually many countries formed their own Coast Guard or Maritime Police or extended the peace time protective roles to the existing Navy and a more graduated system of control over the use of force by governments was executed by means of

Rules of Engagement. It is a formal process in which the detailed restraints on use of force, and the circumstances within which it may be used by an operational commander, are laid down. This formed another era where the security forces mainly focussed on issues relating to EEZ, marine resources, smuggling, customs, fiscal matters and immigration.

The present trend of globalization is often being described as the third wave of the ongoing multi-dimensional process of trade utilizing the oceanic highway. Along with the globalization, the risk of maritime threats of terrorism and piracy is increasing as discussed and established in the earlier chapters. This has led to a situation whereby application of security strategy established for peace time roles for guarding natural resources and protecting the coasts earlier will not be in a position or would be considered adequate enough or be able to respond to the current threats effectively. In this context, it may be observed that the defensive measures adopted so far by many countries have not deterred the attacks on commercial shipping in its incidences nor in its severity. By and large, the measures adopted till now are designed to discourage small-scale piracy and are not effective against the actions or nefarious intents of determined pirates and terrorists. What the new era demands- is a new set of rules and a new set of framework for the law enforcement agencies to establish order and control of the sea.

There is an old adage which states that without force there is no enforcement. Since the last several decades, the shipping and maritime community has addressed the issue of security through the IMO, for establishing stringent national laws for piracy and illegal acts against ships and to establish preventive and protective measures. The shipping industry and the maritime community in general has responded adequately to the requirements of taking all the necessary preventive measures and the contracting members have responded well by making national legislation for SUA 88 Convention and for the ISPS Code and new SOLAS provisions. However the protective measure taken so far has not been uniform as discussed in the earlier

chapters due to several constraints outlined. The role of government controlled law enforcement agencies has been sidelined and a new breed of private maritime security specialists have emerged and have become the mainstay in providing security assessments to security training. In this context, it would be worthwhile to take note of Professor Barnett's (of the Naval War College, USA) statement i.e., 'globalization is splintering the concept of national security as also generating new markets for both supra and sub national security providers' which is very clear and eloquent in describing the dichotomy that exists in the management of national security issues.

In the developing country point of view, having a maritime force structure greatly influenced by collective security requirements, most countries face the problem of finding an answer to the vexing question of as to what form its maritime forces should take in the future. Several interrelated issues are likely to dominate the process through which developing countries should develop new maritime strategies and force structures for the new era dominated by globalisation and terrorism. These include

- The use of maritime forces for coastal and high risk area security;
- The restructuring of forces to address the growing threat of terrorism and maritime violence at sea and integrated approach for dealing with SUA related offences and ISPS Code security situation
- The increasing significance of environmental and other non-military threats to maritime security
- Cooperative security: internationalism or regionalism

Many of the maritime security regimes are in a state of transition and it is but natural to incorporate the maritime security forces in the mainstream maritime security policies as governments control them. They can be multitasked, can be trained effectively and can be made available at all times all round the year. But to put in

place a maritime security policy there should be clearly defined national security policy and needs a very high degree of top-level commitment and enhanced level of interdepartmental coordination and cooperation. Maritime security issues are usually an integral part of the broader national security picture, and must be considered as part of the bigger picture. These issues are so closely intertwined that it is very difficult to discuss them in isolation. The real and rising terrorist threats world over has caused nations to carefully review and improve their national security arrangements. There are certain basic conditions that make this a decisive time for the future of maritime security policy, both its development and implementation. There are Cabinet Committees and other Working Groups in place now to deal with the response to the threat of terrorism. As such, maritime security policy development cannot be looked at it in isolation. There are other national, bi-national and international considerations, which must be part of the policy development.

It takes time to get policy right and governments cannot always be developing policy only in reaction, and never in anticipation or proactively. Governments can ill afford the luxury of the reactive policy making and implementation taking into consideration the ramifications and the extremely high and expensive levels of real and collateral damage that can result from inaction. As brought out in the preceding chapter, some aspects of maritime security are highly technical or complex in nature. Policy makers and decision makers must have informed, expert advice on how this affects policy development and implementation. Above all, however, this thesis argues in favour of a maritime security policy. Such a policy needs a firm and committed government authority that can continue to assess, interpret, review and guide key decisions in its development and implementation.

6.2 Maritime security enforcement strategy

Any security scheme entails permanent measures such as drawing up of strategic plans, the designation of the responsible authorities and the installation of certain

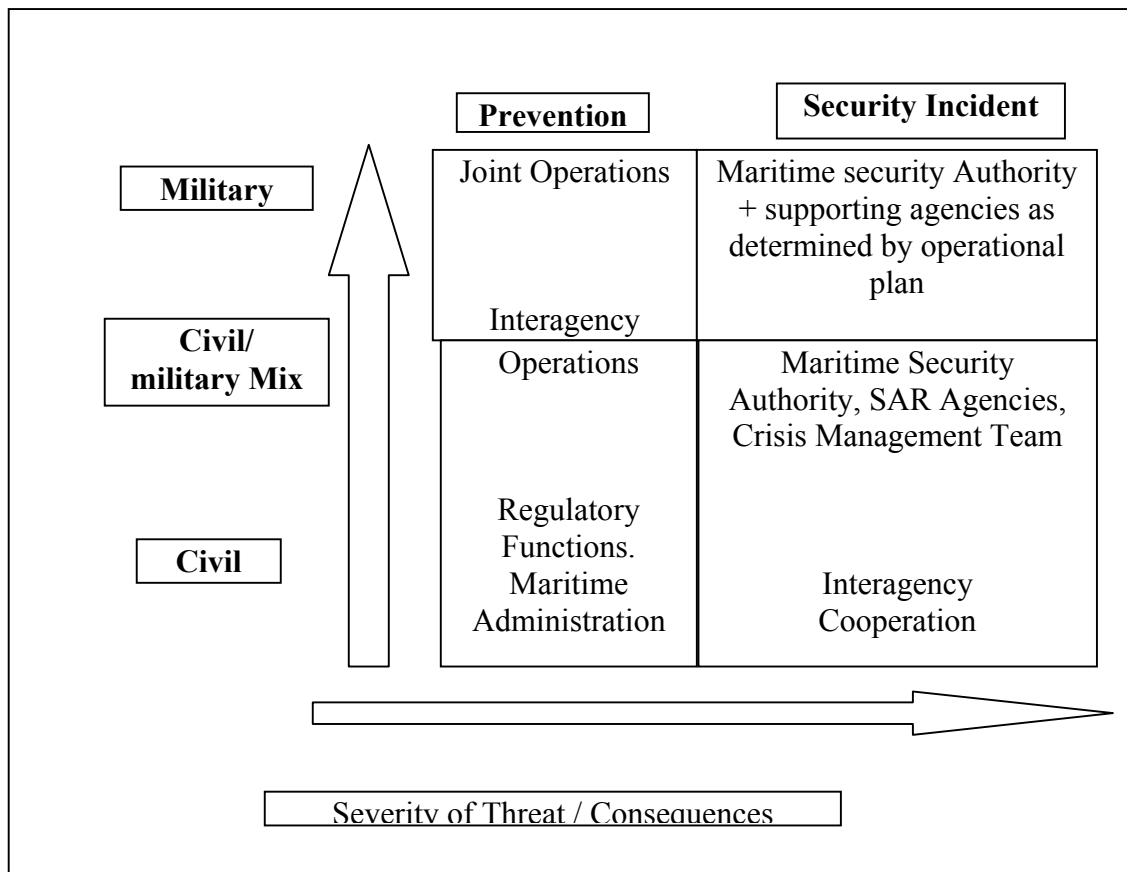
technologies, but it also includes variable provisions only implemented in the context of sound risk management when the situation so justifies. Oftentimes, additional measures take up the greatest amounts of resources for a developing nation against the risks envisaged. These should therefore be properly justified. This approach characterizes the measures adopted by the International Maritime Organisation. The development of sound maritime security policies and designation of authority for enforcement aided by sound maritime security management will without any doubt incorporate the risk analysis methods and cost benefit analysis to implement the right security strategy.

6.2.1 Designation of Security Forces Authority (SFA)

The designation of the Maritime Security Force Authority for dealing with all kinds of security issues should consider the factors whether there is a force, which is both an armed force in nature and a law enforcement agency. This is due to the fact that the security challenge is made more difficult since terrorism and maritime violence can neither be classified as either criminal act or an act resembling Low Intensity Conflict (LIC) in other words act of war which needs military action. The security enforcement authority having mandates will fit into the security strategy envisaged. Most of the world's Coast Guards have both mandates for both as law enforcement agents as well as seagoing Armed Force. As such, they are appropriately positioned to take over the responsibilities of the maritime security. Providing authority to different security forces for dealing with different security situations will lead to numerous command and control problems. It is also felt that the sudden insertion of a security force into the civilian oriented maritime administration in many countries will provoke a lot of debate and questions. This thesis is not recommending that option but only suggesting that if there is an existing law enforcement agencies having an armed force character like that of a Coast Guard or maritime police, they will fit perfectly into the maritime security enforcement functions suitably. The illustration as provided in the US Coast Guard's Role in Homeland Security is

adapted to provide the important information of how security situation demands the civil and military mixture is provided in the figure 2 below.

Figure 2. Civil/ Military Mixture for addressing maritime security
 (source: USCG National Maritime Security Strategy- adapted by author)



6.2.2 Maritime security strategy

Once the maritime security force authority is identified, the maritime strategy should provide definite and un-ambiguous direction and a specific framework for action to the national designated authority (Security Forces) and other departments (Maritime Administration) that have a role in the overall national maritime security domain. This maritime security strategy should follow the direction of higher national maritime security policy and other international considerations associated with the

UNCLOS provision. The adopted strategy should also consider leveraging the existing security forces with multi-mission assets and partnering with both public and private stakeholders. By adopting this strategy, the security forces of a developing country can maximize their resources and save on the much-needed financial resources for training and installing other modern security infrastructure.

Maritime Security Strategy should place a premium on identifying and intercepting threat well before by surveillance, through national inter-agency coordination, international cooperation and strengthening ship and port security. The strategy should balance the law enforcement agency responsibilities for securing the seas for safe maritime transportation and the need to preserve the economic imperative for the efficient and reliable movement of ships, cargoes, and passengers through their ports. The strategy should focus on detection, prevention, protection and deterrence as well as response or consequence management. It should provide direction and a framework for action to the all departments and agencies involved in providing maritime security. Another step to the strategic plan could be operational plan or contingency plans, which will state how the security force or the appropriate department will respond to a maritime threat or incident.

6.2.3 Operational plans

Operational response consists primarily of law enforcement measures to identify, anticipate and prevent threats as well as measures to apprehend the perpetrators. This plan also should provide measures and back-up resources for restoring essential government service and emergency relief services and also detailing which Agencies are responsible towards it. Hence, the maritime security strategy direction should flow from the positions as indicated in the figure 3 below

Figure 3 : Flow of Security Policies

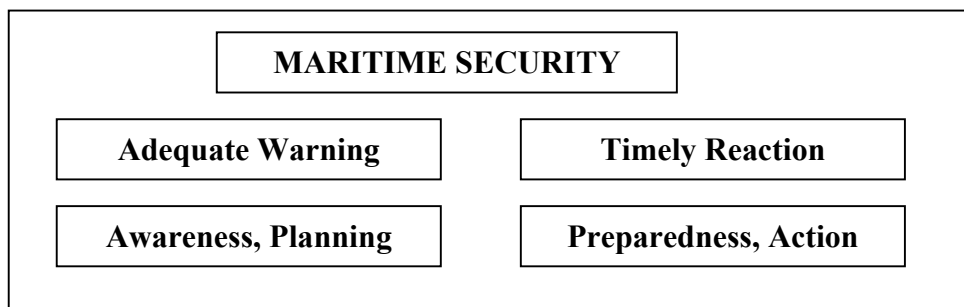


As indicated in the above figure, the operational plans should consider having two elements of response measures one for dealing with terrorism and another for dealing with all other types of maritime offences ranging from small mugging to hijacking situation. Under counter-terrorism plans, there are two elements, one is offensive strategy involving political, diplomatic and military measures and the other element is the defensive strategy, involving preventive and response measures as elucidated in the ISPS Code provisions and various IMO recommendations. The operational plans for piracy and maritime violence should consider primarily the national provisions for piracy and other offences and it is advisable to follow the general guidelines provided by IMO. It should also provide scope for regional cooperative measures and strict enforcement measures involving the intelligence and police organization to track the pirate base and apprehending them well before

contemplating attack as the chances of apprehending pirates during the course of their act is minimal and extremely risky in its scope and intent.

Coming back to the basic requirement of the IMO security conventions, regarding preventive and protective measures. We have seen that the preventive measures are already in place through ISPS Code and regional measures, and what is required is effective continuation and prolongations of those measures and close monitoring as required. But for the protective measures, regarding the early warning of the impending security situation and the ability to respond, it is imperative that the protective measures are clearly identified and included in the security strategy document and also in the operational plans. Once the overall operational plans are developed, it should include contain four basic elements of the protective measures of Adequate Warning, Awareness and Planning, Timely Reaction and Preparedness and Action as indicated in the figure 4 below.

Figure 4: Elements of Maritime Security Protective Measures



Due to paucity of time and taking into consideration the extremely broad scope of the four elements of maritime security protective measures, each meriting individual attention is far beyond the scope of this study. These four elements are basically determined by the security infrastructure like operational centers, effective communication facilities, rapid action resources like fast boats, and attack crafts and helicopter insertions, training of personnel, interaction with other agencies providing intelligence and operational readiness of the force. Most of the factors affecting those

elements are addressed through national organizations and private maritime security providers. But there are many developing countries, which are not in a position to put in place the resources for the four basic elements. The development of operational plans or contingency plans will at least help identify what are the resources required, which they are lacking.

Once the basic resource requirements are identified, it is suggested that it should be pursued vigorously through IMO Technical Cooperation measures, regional security cooperative measures or through the other developed country international assistance program. Maritime security response plans are more effective when they are adopted universally. Without effective and meaningful cooperation, individual economies face higher economic costs and it is in the interest of the developing economies to ensure that there is a practical and designated framework with requisite authority and resources in place for facilitating greater cooperation.

6.3 Role of IMO for international coordination

The International Maritime Organization is the only international agency responsible for coordinating actions, involving seaborne commerce, on a worldwide basis. Beyond any state's territorial sea, the IMO provides the means for an effective global implementation strategy. But the basic division of responsibilities are very clear in all IMO resolutions that industry takes preventive measures and if a reaction is required then it should be the responsibility of governments acting both the national and international levels.

As IMO does not have any oversight role for checking the implementation level of the protective measures for maritime security, it can however, proactively participate in coordinating in establishing a global maritime security system.

6.3.1 Coordinating Information Exchange: The equipment carriage requirement of the maritime industry in the post '9/11' period has increased tremendously namely AIS and SSAS. These equipment are going to transmit data which needs to be monitored closely with regard to security and these functions vary from area to area depending upon the priority and the importance attached to it. Just like in the case of Search and Rescue Alert System prevalent today, wherein, there are still many coastal states which do not have even the basic alert receiving system and they need to be provided with communication assistance from other RCCs present nearby or elsewhere, it is feared that a same or similar situation is going to be repeated for SSAS alerts. Also taking into account the prevailing situation whereby some contracting states has designated RCCs for receiving SSAS alerts and in some other cases the maritime administration offices (as observed in chapter 4) are designated as the alert receiving centres. The importance of reacting to SSAS alerts will get diluted when the information gets passed around and in some cases the first RCC or the Operational Centre receiving the SSAS will have no alternative but to inform IMO or IMB's Piracy Reporting Centre. The ships are entirely dependent on the companies to provide them security information and the companies are entirely dependent upon private security agencies to supply them information. Establishment of an international maritime security information exchange through a international body and dissemination of information to the concerned agencies though electronic media will provide much needed succour to the developing countries which do not have the requisite capability nor the resources to gather or receive intelligence or security information.

6.3.2 Requirement of international framework for cooperation in maritime security:

Another area where attention is critically required is in the coordination of international cooperation for maritime security. The situational demands in the late eighties called for the adoption International convention for Oil pollution Preparedness, Response and Cooperation (OPRC) in the 1990, even though there

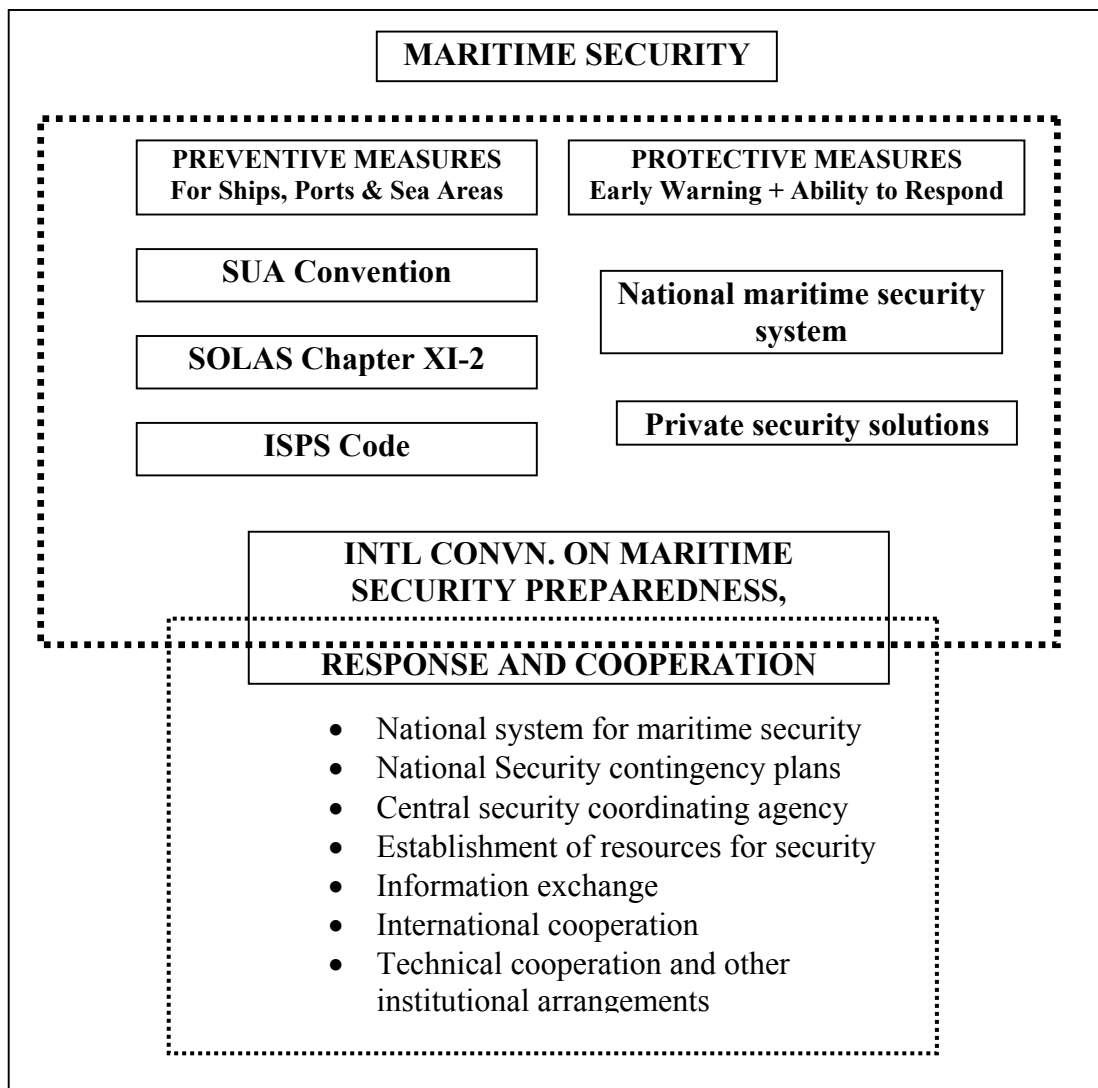
were many international conventions, which were in force addressing the preventive measures and compensatory issues with regard to oil pollution. This convention assisted the developing countries firstly to bring about awareness of the effects of the oil pollution and consequent environmental damage and helped them to adopt certain measures like establishing national response system, developing contingency plans, emergency plans for ships, stockpiling pollution response equipment, creation of reception facilities and developing international and regional cooperation. This one convention single handedly brought about global uniformity in establishing oil pollution response measures, even though there was MARPOL and other conventions relating to oil pollution preventive measures. In view of the foregoing and taking into consideration the positive and unifying effect and impact of coordinated action it is felt that the IMO should not wait any further for any major security incident to occur and should step forward to adopt an international convention for Maritime Security Preparedness, Response and Cooperation (MSPRC). It is felt that the convention should be evolved and defined along the lines of the OPRC 90, incorporating provisions and mandates such as establishment of national system for maritime security for taking preventive and protective measures, nomination of central maritime security coordinating authority, establishment of resources for immediate response, national point of contact for reporting incidents, development of maritime security contingency plan, both at national and regional level, protective measures for ports and ships, responsibilities for governments for action on receiving an SSAS alerts, promotion of bilateral and multilateral cooperation in preparedness and response, technical cooperation and institutional arrangements.

Certain provisions have already been addressed, like ship security plan and port security plans that are akin to contingency plans, which are addressed under the aegis of the ISPS Code. Also there are existing international cooperation for security issues especially for developing nations like that of ROCRAM for South America, MOWCA for West and Central Africa, ASEAN Regional Forum for South and South East Asia region. Development of regional agreements for addressing maritime security issues is vital for

sharing of intelligence, training issues and operational commitments in the perceived risk area as global agreements tend to stagnate due to bigger infrastructure needs and coordination

Under this convention the cloud which is obscuring the clarity of the intents and purposes of the IMO regarding the aspect of maritime security can be cleared by integrating all maritime security convention to address the maritime security issues under one umbrella and also will act as a medium or vehicle to strengthen the national commitment of the developing countries and also help in unifying the actions worldwide as illustrated in the figure 5.

Figure 5: Framework Convention for International Maritime Security Cooperation.



In conclusion, the security enforcement strategy depends primarily on the states legal system, the political processes, dependence on seas and maritime transport, the threats and vulnerability and its endeavor to adopt the maritime security system as enumerated in the preceding paragraphs. The uniform application of contingency measures for providing preventive and protective measures through a global convention will ensure that the help will come to a requesting vessel or vital information will be provided to a threatened port or to a coastal state through institutional measures. Towards fruition of this goal, the IMO and can play a very vital role.

CHAPTER 7

CONCLUSION

7.1 Conclusion

Having taken a detailed look at the security threats and its effects both on the industry and the economies, it was observed that the maritime security threat is real and imminent and it is here to stay. Recognising the calamitous extent and scope of the impact, IMO has taken substantial steps periodically and adopted conventions and provided many detailed guidelines with respect to the issues of maritime security. Those guidelines were implementable only to the extent the where national legal instruments and structures incorporated those provisions and allowed them to establish jurisdiction and control over the security incidents. The analysis of the legal regimes of the developing countries as an integral part of this study also provided an intimate insight into the prevailing maritime security laws, existing more like a patchwork quilt and their sufficiency to address the current trend of maritime violence. The adequacy of security system practised by the developing nations provided information of varying degrees of implementation level and their level of preparedness.

It also provided information on the *ad hoc* nature of the measures being practised to address the security issues and non-integration of agencies and lack of coordination and in most areas, the complete absence of maritime security policy. The impact of unilateral measures being practised by the US in particular on the global maritime security regime has been discussed and it was observed that the ISPS Code forms only a small part of that regime. It is also observed that the developing countries are proceeding alone in their quest to address the security issues through bilateral and multilateral treaty with some targeted countries like that of the Proliferation Security Initiative and Container Security Initiative, etc. The importance of the role played by

the private security providers was also analysed and has provided insight into the grasp of the entrepreneurs in the maritime security arena providing technological solutions to consultancy services to shipping companies and port authorities.

These are found to be general procedural issues and the industry is apprehensive that the ISPS Code should not turn out to be a administrative monster. Meanwhile, it was also observed that the maritime security forces are reacting in standalone mode, and await instructions for response through various higher channels and do their own intelligence gathering and prepare themselves to react to the security incident. The basic questions identified are - can the civil maritime administration manage the security issues on their own and how to marry the civil maritime security procedures with the law enforcement maritime security procedures and bring about uniform maritime security strategy to effectively address all maritime security issues.

Chapter six present the importance of maritime security strategy for providing preventive and protective security to the passengers, ships, crews and ports and to the vulnerable areas. It was found as a matter-of-fact that the course usually adopted for the development and implementation of national maritime security strategy is drawn from the higher national security policy imperatives. The importance of establishing maritime security operational and contingency plans were studied and it revealed that coordination between national agencies and prioritising of the responsibilities would enable all the security requirements under the international conventions and national legislation could be met adequately and effectively.

The examination of SOLAS Chapter XI-2 provisions and ISPS Code regarding the communication of security information revealed the woeful absence of institutional framework for collection and dissemination of information and international cooperation. Finally, it is found that the industry has prepared itself for the security requirements and the action by national government for providing preventive and protective maritime security needed a coordinated approach and establishing or

reorienting an existing organisation capable of addressing all the security needs. Most developing countries look for directions in the sense either to find out as to whether any other developing country has implemented those actions and how did they manage to do it, or to find whether it is coming from a superior organisation responsible for global governance of maritime security. Can IMO step forward and address this burning but silent issue?

Maritime Security Governance: There is no doubt, that the impacts of maritime violence and terrorist attacks are appreciated as well as their influence on trade and maritime industry by all the member states. The question that is on everybody's mind is whether the solution to maritime terrorism can be addressed adequately and measures undertaken to tackle this growing menace by the IMO as the global maritime forum under the new concept of UN's Global Governance? The ideal IMO response will involve numerous tasks involving decisions on long-term strategic goals, agreement among the nations, tactical solutions that involve identifying the correct and appropriate responses within the parameters of the international law and avoiding unnecessary or excessive trade security barriers.

Globalisation poses many challenges to the world communities and to the functioning of the national governments as true representatives of these global interests. As globalization changes, shipping changes and becomes even more internationalised than it was before. An example of this change is the extensive use of forum shopping of registries by the ship owners. All these challenges of change in structures have been taken advantage of the perpetrators of maritime crimes with the element of uncertainty.

The global governance may provide some answer to the problem and IMO is the only international organization dealing with maritime issues and it is the only agency, which has the mandate for the global governance through their complete grasp of the issues affecting shipping and maritime security. The problem here is

finding the answer to the question - Does IMO has complete grasp of all matters affecting the global shipping and maritime industry?

The governance of response to the emerging security scenario involves issues of the governance of the maritime sector within international governance regimes. Governance is crucial in the situation of maritime terrorism and is the commencing point of physical protection measures and response actions and therefore a threat to governance ranks highest in risk and priority (Salonio, 2002). The question here is what is governance and how to bring about the governance in the maritime sphere. The concept of global governance as expressed by the United Nations Commission on Global Governance (UNCGG) Report, 1995 as the “sum of the many ways individuals and institutions, public and private, manage their common affairs”.

Say for example, the global governance on maritime security is the sum of many ways the industry, the national governments, the shipping companies and ports and others affected by the maritime security has implemented the ISPS Code and other security convention provisions. Interestingly enough, we may find that many have implemented fully and some have just started and few have not implemented the requirements of the ISP Code at all. It is clear that the global governance of security is the sum total of implementation level and their maintenance status. The failures at the governance level will lead to problems like, not being able to respond to situations in time, acceptance of piecemeal solutions, reliance on local efforts which may be excessive and not conforming to global policy and several other problems leading to unwanted management problems. Therefore, the threat to maritime governance put simply, means the threat of not being able to deal with the problem. This weakness is to be eliminated at all cost and should not reside in regional pockets around the developing states. IMO should establish maritime governance concepts for the member states, apart from developing and adopting conventions and through international organizations and NGOs can integrate them to the IMO’s integrated policy on maritime security.

Therefore IMO requires an umbrella policy for the maritime governance of maritime security networked with all other conventions of maritime security and interlinked with the UN security council policies in order to assist national governments to frame their national policies in a uniform and harmonized manner. Once this framework is kept in place, IMO is to develop Maritime security Preparedness, Response and Cooperation Convention along the lines of the International Convention on Oil Pollution Preparedness, Response and Cooperation 1990 as recommended in Chapter 6 and pave the way forward for the developing countries to meet all the security needs.

7.2 Recommendations

In the developing countries, the implementation of the IMO requirements should form part of their national maritime security policy and towards this end, the developing country, if not already done, should wholeheartedly attempt to completely revamp their policies in a time bound manner so as to integrate them and make them in tune with the new era of globalisation and terrorism. First step towards this reform is a sound national legislation, preferably one consolidated legislation addressing all issues of maritime security. Further, those states should take steps to focus the vision, intent and purposes and integrate the agencies, organisation and departments concerned to collectively address the security issues through national maritime security strategic plans. They should also designate an appropriate authority having a armed force and law enforcement capability to take control of the maritime security issues and implement the international security requirements, under the existing maritime security regime and the various international and regional initiatives to provide a comprehensive protective security regime for their ships and ports. The administrative issues of preventive security as required by Part A of the ISPS Code can reside with the existing set up of the maritime administration if they are civilian based. However, certain elements of ISPS Code control provisions like

extended investigation, boarding of ship and responding to security incidents should be integrated with the professional security authority having armed forces structure. This would bring about some accountability and all the security incidents whether it is small scale armed robbery or a higher end hijacking of chemical tanker and using it as weapon or any other form of threats would be dealt by a professional security organisation.

The law enforcement agency or the armed forces do regularly exercise their resources and inclusion of merchant ships security in their portfolio will bring about a overall security consciousness. Here the commercial interests may get affected. But regular meeting and discussions among the interested organisations will help weed out the shortcoming and practising security will become a second nature in the long run. The states should be proactive in participating in regional agreements for coordination of maritime security in their respective regions and develop security infrastructure accordingly. These agreements should not deviate from the general guiding principles covering the maritime security adopted by IMO.

IMO has a vital role to play in the uniform application of its conventions and Global Governance is the foundation for the successful response to security incidents. The IMO should step forward and implement an umbrella convention for maritime security preparedness, Response and cooperation and coordinate the implementation through technical cooperation programme and provide financial assistance through the International Maritime Security Fund and other international efforts. Towards this end, half of the groundwork has been already done through ISPS Code for vulnerability assessments and putting into place some preventive measures. What it needs to do is to closely observe and depute or nominate professional team to establish national maritime security system and provide necessary infrastructure to the developing countries. The maritime training provided at WMU has to incorporate maritime security as main subjects and also provide capsule course to maritime security forces as and when required. Maritime universities and other maritime

training centres should have maritime security as one of the mandatory subjects for qualification.

Failure to act and coordinate global governance by the IMO will enable the developed countries to take the mantle and implement the unilateral security initiative and use the carrot and stick method for ensuring implementation of their own security strategy. Such an arbitrary approach would prove very costly and IMO will lose its credibility and standing as a true representative organization for protecting the interests of the global maritime community and will lead to chaos and the mushrooming of fragmented security regimes and this is the last thing which should happen in a uncertain world.

Meanwhile, the developed countries, whose security measures are accepted as a strategy for responding to the future security incidents, should know that the element of surprise for creating a catastrophic incident is always omnipresent and no amount of money or technology can deter a determined terrorist to carry out the attack as the recent incidents worldwide indicate. Alternatively there are avenues available to the developed countries especially, the US which should take a serious look to implement programmes for addressing the socio-economic and other welfare issues of the nations, wherein, its nationals has potential to transgress the normal order and involve in maritime crimes. The example of such programme is the Marshall Plan, wherein General George C. Marshall who was in charge helping with the reconstruction of Europe post world war II, stated that there could be “no political stability and no assured peace" without economic security, and that U.S. policy was “directed not against any country or doctrine but against hunger, poverty, desperation, and chaos”. As Marshall's words so plainly suggest, finding the terrorists should be part of a much more ambitious campaign, one in which the rich countries approach the appalling inequities of the world with the same boldness and determination that the United States brought to bear in Europe under the Marshall Plan.

Globalization has raised expectation levels, even as modern communications make the rising inequality between a rich, powerful, and imposing west and the rest of the world visible to all. Poverty and deprivation do not automatically translate into hatred. But people whose hopes have worn thin, whose aspirations have been thwarted, and whose discontent is rising, are far more likely to succumb to the siren song of extremism. This is particularly true for the swelling ranks of young people whose prospects for the future are bleak.

The United States and the other industrial nations should launch a global "Marshall Plan" which would have at its core the laudable aim to provide everyone on earth with a decent standard of living. A good beginning to this effort is the meeting of the representatives of economics, politics, science, media and non-governmental organizations around the world and across all party lines in 2003 to launch the Global Marshall Plan Initiative. The group included representatives from the Club of Rome, the Eco-Social Forum, UN Organizations, the European Parliament, and many other national parliaments. Under this plan, the goal was to establish a worldwide economic, political and civil system for a new era of cooperation, which will achieve global security, peace and prosperity for everyone. The support of the United Nations and international organizations such as the WTO, IMF and ILO are sought for the realisation of the objectives of the Global Marshall Plan.

Meanwhile we do not live in a perfect world. There is a clear and present danger to marine transportation system and the maritime threats are real and it is serious. There has been an awakening within the international maritime community that the acts of terrorism and other forms of violence could cause politico-socio-economic destabilisation of tremendous proportions and that its effects could reverberate far beyond the point of occurrence. In the age of globalisation the market forces will determine where the ship sails and which port it will enter. It is of vital interest to the developing nations to manage their security issues so as to compete as equals in the

global market and the national maritime security strategy will provide some basic security foundation upon which different layers can be built up depending upon the threat level and capability. Safety and security are the fundamental priority for maritime transport and can be achieved by comprehensive and integrated action.

Preventing maritime crime and terrorism on the seas should not be an unreachable possibility, but a reality!

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QUESTIONNAIRE SENT TO MARITIME ADMINISTRATION AND SHIPPING COMPANIES FOR ASSISTING THE DISSERTATION

Questionnaire - General

1. What is the level of risk and maritime threats that your country /company's shipping environment is now facing or is likely to face in the future? (Company maritime risk assessment - against piracy, maritime violence, terrorism or other threats to ships and ports) (Please check the boxes)

Very high High Moderate Low None

2. Has your country /company made/received National Legislation(s) or Regulation(s) on IMOs SUA 1988 Convention and its Protocol and to the SOLAS Chapter XI- 2 provisions relating to ISPS Code?

3. Has your administration /company faced any difficulties in the past with complying with National Laws and Rules in enforcing the provisions of SUA 1988 and ISPS Code? If, yes, could you provide some details.

4. Have you created a separate Department within your organisation to deal with security related issues for implementing National Regulations on SUA 88 Convention and ISPS Code provisions. If so, could you provide the relevant details?

5. Do you find the law enforcement personnel in your country are trained and structured adequately to coordinate the implementation of IMO Security Conventions and adequately equipped and empowered to assist the shipping operations?

6. What kind of assistance do you expect from the Government and the International Shipping Community to address any of the constraints encountered regarding the implementation of preventive measures related to maritime security.

7. Would you like to offer any suggestions / comments on the issue of maritime security?

Part B - The IMO Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988

1. Which is the lead agency in your country nominated to coordinate SUA related security measures.

2. Has the National Legislation been drafted in such a way so as to instruct your company regarding security measures that needs to be instituted to prevent Article 3 of SUA 88 offences taking place

3. Are there provisions established in the Administration /Company's Rules & Regulations related to SUA 88 Convention to instruct the Master of the Ship regarding his role after identifying and apprehending an offender onboard your ship as enumerated in Article 8. If so, could you furnish the relevant details?

4. Has your Company's Security Officer been trained for SUA related security issues? If not, what assistance do you expect from the Industry and the Maritime Administration.

5. Does your administration /company feel that the SUA 88 Convention is adequate enough to cover all the maritime threats, if not please specify the lacunae?

Part C – Chapter XI-2 of the International Convention for the Safety of Life at Sea, 1974 and International Ship and Port Facility Security (ISPS) Code

1. Has your Country enacted Legislation or amended any Act to incorporate Chapter XI-2 provisions of the SOLAS 74. If so, could you furnish the relevant particulars?

2. Which is the Designated Authority or Organisation in your Country designated to coordinate the implementation of the ISPS Code

3. Has your country drafted any Rules, Regulations or Guidelines for implementing the provisions of the ISPS Code regarding setting of security levels, declaration of Security (DoS) etc.?, If yes, could you provide the necessary details?

4. Has the Maritime Administration of your country possess the capability for approving and certifying the Ship Security Plans for your ships. If not which Agency or Agencies has been nominated as Recognised Security Organisation.

5. Are there any ports, which your ship regularly visits, which do not require ISPS compliance and how do you intend to address the security issues?

6. What extent of the Part B provisions of the ISPS code has been made mandatory in your company's Rules & Regulations?

7. How do you intend to obtain information regarding the security threats and what are the mechanisms adopted to convey such information to your

registered ships for setting security level. Is there any proposal to obtain commercially available information?

8. Does your administration /company coordinate with your Rescue Coordination Centres (RCC) to sent and receive ship security alerts and AIS information? Which is the agency nominated to respond to ship security alerts. What measures are available to react to such alert?

9. I your opinion, do you think that the compliance with ISPS Code has burdened the safe operation of ships and is there any intention to increase the manning level in your ships?

10. Does the implementation of the ISPS code in your country/company sufficiently address the existing maritime threats, if not, could you kindly state the reasons?

11. What sort of assistance does your Company seek from the Maritime Administration of your country or any other International Organisation for enabling you to fully comply with the provisions of the ISPS Code?
