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WORLD MARITIME UNIVERSITY

Malmö, Sweden

**THE ROLE OF NAVAL FORCES IN THE NON-MILITARY
MARITIME DOMAIN**

By

AL-FALEH, FALEH ABDULRAHMAN M.

Kingdom of Saudi Arabia

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

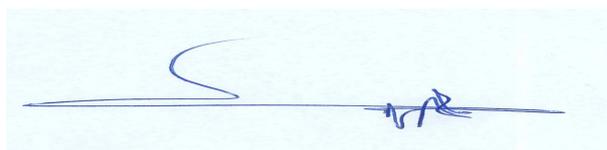
MARITIME AFFAIRS

**(MARITIME LAW AND POLICY)
2010**

DECLARATION

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

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



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ABSTRACT

Title of Dissertation: **The Role of Naval Forces in the Non-Military Maritime Domain**

Degree: **Master of Science**

This dissertation evaluates the role of naval forces in the non-military maritime domain by considering their general role in non-military operations along with their history and evolution. The protection of coastal interests is considered through an evaluation of the navy's enforcement role in matters including 'hot pursuit' leading to a comparison with coast guard operations allied to the differences between military and non-military operations. An examination is undertaken of the role of naval forces in maintaining state sovereignty in terms of the security and control of their maritime domain through consideration of matters including a coastal state's jurisdiction over the adjoining seas, Exclusive Economic Zones (EEZ) and the continental shelf is. In addition, this dissertation considers the value of convoy protection in the context of the United State of America's (USA) supply of convoys to Britain in the Atlantic before the US entered World War II and also examines 'safe zones of transit' in the Gulf of Aden.

Naval forces role in non-military operations is also considered in the context of humanitarian concerns such as Non-combatant Evacuation Operations (NEO) along with their response to natural disasters, and issues of anti-smuggling, hydrography and salvage. This entails defining both the issues of maritime violence and security before considering examples such as the utilization of navies to combat terrorism including the current debate in relation to interdiction of ships. Finally, this dissertation undertakes a case study of the Saudi Arabian navy in terms of the way it has looked to combat smuggling and implement task force 151/152 to provide for convoy protection, sea mine disposal and other humanitarian operations including combating terrorism. This study, further, considers the example of the North Yemen blockade that disrupted Al-Houthi's resupply and to bring about greater protection through the provision of natural disaster humanitarian assistance.

Key Words – Role of Naval Forces, Non-Military Operation, Royal Saudi Naval Forces, Royal Navy, Maritime Domain, Maritime Security, Piracy, Armed Robbery.

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LIST OF ABBREVIATIONS

CTF	Combined Task Force
COTP	Captain Of The Port
C3	Command, Control, and Communications
DHS	Department of Homeland Security
EC	European Community
EEZ	Exclusive Economic Zones
EU	European Union
FEMA	Federal Emergency Management Agency
FOC	Flags Of Convenience
GDP	Gross Domestic Product
HAS	Homeland Security Act
IHO	International Hydrographic Organization
IMO	International Maritime Organization
IRA	Irish Republican Army
ISPS	International Ship & Port Facility Security Code
JTF	Joint Task Force
MARSEC	Maritime Security Committee
MOD	Ministry Of Defence
MSPA	Maritime Security Patrol Area
MTSA	Maritime Transportation Security Act
NATO	North Atlantic Treaty Organization
NEO	Non-combatant Evacuation Operations
PLO	Palestinian Liberation Organization
PSI	Proliferation Security Initiative
RAF	Royal Air Force
RCC	Rescue Coordination Center
RN	United Kingdom Royal Navy
RNLI	Royal National Lifeboat Institution
RSNF	Royal Saudi Naval forces
SAGMaS	Stakeholder Advisory Group on Maritime Security
SANG	Saudi Arabian National Guard
SAR	Search And Rescue

SNEP	Saudi Naval Expansion Program
SOLAS	Safety Of Life At Sea
SUA	Suppression of Unlawful Acts Against the Safety of Maritime Navigation
TFG	Transitional Federal Government
UK	United Kingdom
UKHO	United Kingdom Hydrographic Office
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNSC	United Nations Security Council
USA	United State of America
USS	United State Ship
USVs	Unmanned Surface Vehicles
WMD	Weapons of Mass Destruction

Chapter 1 - INTRODUCTION

1.1 Background

To critically evaluate the role of naval forces in the non-military maritime domain, this dissertation will first look at the general role of the navy in non-military operations and discuss the history and evolution of the navy to set the purpose of this dissertation. World commerce has been facilitated by merchant shipping as it carries more than 90% of trade internationally. Additionally, continued growth of maritime trade in the last few decades has been attended by a corresponding increase in the threat of piracy. Therefore, although today's navies have evolved to operate the latest and most advanced platforms to carry out a mainly war fighting role, they still play important non-military roles in the maritime domain to safeguard nations commercial interests.

This study will then consider how coastal interests in maritime zones are protected so there is a need to evaluate the navy's enforcement role in terms of 'hot pursuit' leading to a comparison with operations undertaken by the coast guard allied to the differences between military and non-military operations. It is also necessary to examine naval forces role in maintaining individual states sovereignty in terms of the security and control of their maritime domain through consideration of matters including a coastal state's jurisdiction over the adjoining seas, territorial seas, contiguous zones, Exclusive Economic Zones (EEZ) and the continental shelf.

The discussion will also consider the value of convoy protection in the context of United State of America (USA) supply of convoys to Britain in the Atlantic before the US entered World War II and also looking at the matter of 'safe zones of transit' established by Combined Task Force (CTF) units in the vicinity of Gulf of Aden.

The role of the navy in non-military operations will also be considered in the context of humanitarian concerns such as Non-combatant Evacuation Operations (NEO) along with how natural disasters have been dealt with by reference to humanitarian assistance along with issues of anti-smuggling, hydrography and salvage.

The discussion will then focus on the role of the navy regarding matters of maritime security and combating of piracy through the adoption of a naval anti-piracy programme. To achieve this there is a need to define both the issues of maritime violence and security before considering examples in the context. For example, it will be shown how the navy has been used to combat terrorism in view of the problems posed through the attacks on vital trading ports and matters associated with

problems of hijacking and hostage taking along with specific cases including the *Achille Lauro* case. This study will also evaluate the problems with ship boarding under the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) 1988 (as amended).

There is a need to examine the current debates relating to interdiction of ships regarding the contradictions recognised between various practices and instruments in international law including the United Nations Convention on the Law of the Sea (henceforth, the UNCLOS) 1982 (as amended) and elucidate the key differences between the boarding provisions of the SUA Convention 1988 in Article 8 and UNCLOS 1982 Article 110.

With the above in mind, this dissertation will also consider the SO-SAN case involving a North Korean ship that arose in 2002 along with the Proliferation Security Initiative (PSI) of 2003 relating to ships' freedom of movement in the context of the ship boarding agreement between USA and Panama to evaluate whether there is a need for the US Navy to act as a global police force.

It will also be necessary to determine how naval forces can be utilised in the non-military domain to combat the problems associated with armed robbery.

Finally, before concluding with a summary of the key points derived from this discussion and making recommendations for reform, this dissertation will also undertake a case study of the Saudi Arabian navy in terms of the way it has looked to combat smuggling and implement task force 151/152 to provide for convoy protection, sea mine disposal and other humanitarian operations including combating terrorism.

This study will also consider the example of the North Yemen blockade that disrupted Al-Houthi's resupply and to bring about greater protection through the provision of natural disaster humanitarian assistance.

1.2 Object and Purpose

To critically evaluate the role of naval forces in the non-military maritime domain, it is necessary to consider the following objectives of this dissertation. There is a need to evaluate matters including the interception of ships by naval forces to board, search and carry out law enforcement functions since it has been inherited from state practice and customary law for dealing with individual nations' laws along with public order. It is also necessary to consider how the process of ship interdiction and boarding serves to effectively reflect not only the primary notion of deterrence, but also the first line of defence and ultimately law preservation to guarantee maritime security both nationally and

internationally since it has become part of the law.

Some problems to be examined include combating sea piracy and armed robbery against ships among other matters which have arisen from inadequate international law regarding navy's non-military activities related to matters of maritime security. Recommendations will then be made for determining whether there is a need to reform the law. This will involve considering matters including the piracy provisions of the UNCLOS 1982 as well as the definition of armed robbery under International Maritime Organization (IMO) Resolution A.922(22) 'Code of practice for the investigation of the crimes of piracy and armed robbery against ships' adopted on 29th November 2001. There is also a need to analyse the SUA Convention 1988 (as amended) by evaluating the concept of unlawful acts against the safety of maritime navigation along with security incidents since it is not yet in force.

In terms of methodology, it is necessary to consider both academic literature along with examples from around the world because achieving this study's objectives requires the undertaking of classical or pure legal analysis and, to draw reasoned conclusions, the law of formal logic needs to be followed. The value of this dissertation could enrich the pure legal analysis undertaken for the purpose of this discussion through the conscious application of the rules of formal logic. Formal logic's application then permits the examination of the internal interconnection of reasoning by moving from the particular content of ideas under discussion to examining the structure of reasoning through orderly thinking. The reason for this is well-ordered thinking is considered useful always and especially when many similar concepts are utilized in a quite chaotic manner. Moreover, this discussion looks to use several aids adopted from the process of formal logic such as, for example, regarding the knowledge of rules for defining relationships between concepts.

Chapter 2 PROTECTION OF COASTAL STATE INTERESTS IN MARITIME ZONES

2.1 General background to Role of Navy in non-military operation

Although navies, internationally, have been significant in resolving conflicts since World War II, they have since developed their non-military role through humanitarian and law enforcement activities. For example, in August 2005 the United Kingdom (UK) Royal Navy rescued seven Russians stranded in a submarine off of the Kamchatka peninsula using the Scorpio 45 remote-control mini-sub to free the Russian submarine from the fishing nets and cables it was stuck in.¹ The same navy also counteracted an attempt at capturing a civilian vessel involving Somali pirates in November 2008.² This is despite the fact that the United Kingdom Royal Navy (RN) more commonly protects British interests internationally by executing the government foreign and defence policies³ and contributing to the North Atlantic Treaty Organization (NATO) by – (a) maintaining the Nuclear Deterrent; (b) providing two medium scale maritime task groups with organic air assets; (c) delivering the commando force; (d) contributing assets to Joint Force Harrier; (e) contributing assets to Joint Helicopter Command; (f) maintaining standing patrol commitments; (g) providing mine counter measures; (h) providing hydrographic services; and (i) protecting EEZs.⁴ Naval activities for all nations the world over including the UK's usually involve achieving maritime security through the prevention of intentional damage undertaken through – (i) Port Security (i.e. to reduce the risks and mitigate the results of an act threatening personnel, facilities, vessels, and the public's security); (ii) Vessel Security (i.e. owners or operators of vessels must designate security officers, develop security plans based on security assessments, implement security measures specific to the vessel's operation to comply with Marine Security); and (c) Facility Security (i.e. the security of any facility located in, on, under, or adjacent to any waters subject to the US' jurisdiction and used, operated, or maintained by a public or private entity).⁵

Several Acts have been passed to regulate the role and responsibilities of the US Navy. The Espionage Act 1917 provides for the Coast Guard making regulations to prevent damage to harbours and vessels during national security emergencies in the US. The Magnuson Act 1950 provides for implementing permanent port security regulations and broad powers to search vessels

1 Naughton. P 'UK submarine rescue leader says 'grown men do cry' Times Online (9th August 2005).

2 Evans. M & Crilly. R 'Royal Navy in firefight with Somali pirates' Times Online (12th November 2008).

3 Royal Navy 'Joint Operations (RN, Army, RAF, NATO)' Royal Navy (2009).

4 Royal Navy 'Fleet Deployments' Royal Navy (2009).

5 *Ibid.*

found in US waters and also control foreign vessels' movement. The Ports & Waterways Safety Act 1972 followed as a result of a number of major groundings and oil spills that included provisions for port safety authorities beyond the Magnuson Act 1950 to safeguard the use of port transportation facilities and enhance efforts undertaken against the marine environment's degradation. More recently the Maritime Transportation Security Act (MTSA) 2002 was implemented as a result of the 9/11 terrorist attacks against the US to provide for the application of sweeping new authority to prevent acts of terrorism in the maritime domain.⁶

Nevertheless, it is not only the US where significant efforts have been undertaken regarding the enhancement of the navy's role in non-military operations in recent history to move the law forward. For example, policy makers within the European Union (EU) have also improved maritime security in non-military operations through the provision of laws. Regulation (EC) No 725/2004 on enhancing ship and port facility security provides for measures to improve the security of ships used in international trade and associated port facilities against potential unlawful acts including piracy. Additionally, Regulation (EC) No 725/2004 on enhancing ship & port facility security offers a basis for the harmonised interpretation, implementation and European Community (EC) monitoring of special measures to enhance maritime security through the IMO in 2002.⁷ The IMO amended the International Convention for Safety Of Life At Sea (SOLAS) 1914 and also established the International Ship & Port Facility Security Code 2002. Finally, Regulation (EC) No 725/2004 on enhancing ship and port facility security also made it mandatory for a number of specific recommendations to be introduced into Part B of the International Ship & Port Facility Security Code 2002 to enhance maritime security.⁸

The Port Security Directive 2005/65/EC also enhanced port security in the EU to complement the security measures introduced by Regulation (EC) No 725/2004 enhancing ship & port facility security by making an entire port in any given nation subject to a security regime.⁹ Additionally, the Port Security Directive 2005/65/EC sought to claim maximum protection for both maritime and port activities. There is a need for specific measures to cover all ports in an EU Member State.¹⁰ The Port Security Directive 2005/65/EC was also implemented to ensure security measures in keeping with Regulation (EC) No 725/2004 to enhance ship and port facility security to benefit

6 Hoge, J, Jr & Rose, G 'How Did This Happen?' Public Affairs (2001), at p.186.

7 Anyanova, E 'The EC & enhancing ship & port facility security' 2(1) Journal of International Commercial Law & Technology 25-31.

8 *Ibid* at pp.25-31.

9 Butcher, L 'Ports: Security' House of Commons Library (15th June 2009).

10 *Ibid*.

individual Member States with enhanced security.¹¹ Such measures are meant to apply to all ports where one or more facilities covered are based and also provides for mechanisms for implementing these measures and checking they conform to the Directive. Therefore, on the 20th January 2009, the European Commission submitted a report that assessed the Port Security Directive 2005/65/EC's implementation founded upon the information derived from monitoring this Directive.¹²

Regulation (EC) No 324/2008 on procedures for conducting European Commission inspections in the field of maritime security was meant to monitor EU Member States' application of maritime security legislation.¹³ This is because the European Commission (EC) undertakes inspections to verify how effective national quality control systems and maritime security measures, procedures and structures are in a given Member State's jurisdiction along with more specific individual port facilities and relevant companies. The European Maritime Safety Agency also involves itself in these inspections led by the European Commission within the EU and also provides the Commission with technical assistance regarding inspection of ships, relevant companies and Recognized Security Organizations. Reflecting back upon the Port Security Directive 2005/65/EC, the European Commission needs to monitor Member States' implementation jointly with the inspections regarding both ships and port facilities.¹⁴ Therefore, Regulation (EC) No 324/2008 on procedures for conducting European Commission inspections in the field of maritime security established procedures for monitoring Directive 2005/65/EC's implementation.

The European Commission is also helped by a Regulatory Committee (Maritime Security Committee - MARSEC) that acts according to the regulatory procedure under Article 11 of Regulation (EC) No 725/2004 and Directive 2005/65/EC.¹⁵ This Regulatory Committee is chaired by the European Commission and includes experts representing all Member States' interests with an ongoing periodical exchange of information in the EU. Therefore, best practices and indications regarding national instructions have been shared through this forum and it was also recently agreed on the need to establish a mechanism to secure mutual information from EU Member States. The European Commission also meets regularly with the Stakeholder Advisory Group on Maritime Security (SAGMaS) to provide a forum for stakeholders to provide guidance regarding the

¹¹ *Ibid.*

¹² *Ibid.*

¹³ European Commission Mobility & Transport '*Maritime Transport – Maritime Security*' European Commission Mobility & Transport (2010).

¹⁴ Butcher. L '*Ports: Security*' House of Commons Library (15th June 2009).

¹⁵ See Anyanova. E '*The EC & enhancing ship & port facility security*' 2(1) *Journal of International Commercial Law & Technology* 25-31 & Butcher. L '*Ports: Security*' House of Commons Library (15th June 2009).

MARSEC's work.¹⁶ But the European Commission has also considered inviting any stakeholder organization with a demonstrable professional interest to offer added value to the subjects under discussion.¹⁷

2.2 Comparison with Coast Guard Operations

When comparing the navy's role with the coast guard, the US Coast Guard's activities may be considered supplemental or, at the very least, complementary to the navy's work as part of the Department of Homeland Security (DHS) for maintaining maritime security in the US.¹⁸ Section 888(a) (2) of the Homeland Security Act (HSA) 2002 which established the DHS also specifies five homeland security missions as being the Coast Guard's predominate focus in its arguably supplemental role to the navy being - (a) the monitoring and patrol of ports, waterways, and coastal security; (b) drug interdiction; (c) migrant interdiction; (d) defence readiness; and (e) other law enforcement purposes. But then section 888(a)(1) has also defined the US Coast Guard's non-homeland security missions in support of the US Navy as being focused upon - (i) safety, (ii) search and rescue, (iii) aids to navigation, (iv) the protection of living marine resources; (v) marine environmental protection, and (vi) ice operations - although in its proposed 2007 budget the US Coast Guard excluded drug interdiction and other law enforcement from the homeland security missions it was to undertake.¹⁹

Under the Ports & Waterways Safety Act 1972 and the MTSA 2002 the Coast Guard is responsible for protecting ships and harbors from subversive acts in the US so the navy can then base its activities in other areas.²⁰ As for port security, the Coast Guard is responsible for evaluating, boarding, and inspecting commercial ships looking to approach American waters, countering terrorist threats in American ports and helping protect US Navy ships. Therefore, a US Coast Guard officer in each port is appointed Captain Of The Port (COTP) for the security and safety of both ships and waterways. But there are also likely to be issues regarding the Coast Guard's homeland security operations including sufficiency of funding, assets, and personnel levels for performing security missions.²¹ It is also necessary to consider how the Coast Guard assesses security risks to various ports and prioritises these for allocating port-security funding, implementing a long-range

¹⁶ *EU Legislation on Maritime Security* (2010).

¹⁷ *Ibid.*

¹⁸ Gray, C. S. *The Coast Guard & Navy: It's Time for a 'national Fleeer'* (2001) 54(3) *Naval War College Review* 112.

¹⁹ US Department of Homeland Security *'US Coast Guard [FY]2007 Budget in Brief'* Washington (February 2006), at p.B-2 (Table 1)..

²⁰ Frittelli, J. F. *'Port & Maritime Security: Background & Issues for Congress'* CRS Report RL31733 (2003).

²¹ *Ibid.*

vessel-tracking system required by MTSA 2002 and inland waterway security along with response plans.²²

The MTSA 2002 charged the US Coast Guard with many maritime homeland security responsibilities in support of the navy's maritime non-military regime including assessing port vulnerabilities and ensuring vessels and port facilities have adequate security plans.²³ However, although the Coast Guard has taken some significant steps, opportunities for improvement still remain to be explored.²⁴ For example, the Coast Guard has undertaken efforts to enhance mission performance including a new coastal communication system with the 2006 budget request in the US including \$101 million to help almost all US Coast Guard missions.²⁵ But the US Coast Guard needs to establish more than 300 towers along the nation's coasts, whilst there has also been a need to restructure the Coast Guard's field units through the greater recognition of the relationship between resources and command authority and may thus be challenging to implement.²⁶ Finally, efforts have been made to enhance the US Coast Guard's station readiness for search and rescue and other missions - although the Coast Guard's contracting approach carries a number of inherent risks that may lead to spiraling costs and slipped schedules.²⁷

The US Coast Guard is still meant to define long-term activity levels for homeland security and has yet to convert the mission into specific station readiness - although the impact of these new duties cannot be determined.²⁸ However, many coast guard stations have found themselves unable to meet current US Coast Guard standards because the US Coast Guard's strategic plan has not been updated to reflect increased security responsibilities and the agency lacks specific planned actions.²⁹ For example, a November 2004 DHS Inspector General report found the US Coast Guard has been faced with significant barriers for improving and sustaining its readiness. For one thing there has been a significant lack of comprehensive and fully defined performance management systems to allow the Coast Guard to not only gauge its performance, but also allocate resources and target areas for improved performance.³⁰ Moreover, the workload also places significant demands upon

²² *Ibid.*

²³ Government Accountability Office (GAO) 'COAST GUARD[:] Observations on Agency Priorities in Fiscal Year 2006 Budget Request' GAO-05-364T (17th March 2005).

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Department of Homeland Security, Office of Inspector General 'Major Management Challenges Facing The Department Of Homeland Security' Department of Homeland Security, (November 2004) at p.17.

the US Coast Guard to implement the MTSA 2002 through experienced and trained personnel. The DHS report also found the US Coast Guard has been faced with challenges to the MTSA 2002's implementation and enforcing the required vessel, facility, and area security plans in concert with the national security and homeland defence strategies and plans.³¹

A June 2004 General Accounting Office report found both owners and operators have made progress in developing security plans.³² The US Coast Guard then looked to enhance the process by permitting both facilities and vessels to continue operating with less than full plan approval as long as the Coast Guard was satisfied with their progress. The Coast Guard's strategy for overseeing security plan implementation will then be faced with numerous challenges.³³ In addition, the Coast Guard & Maritime Transportation Act 2006 provided section 102 authorising an active-duty end strength of 45,500 for the US Coast Guard, whilst section 201 has also provided for the extension of the Coast Guard's vessel and anchorage movement authority to territorial waters up to 12 nautical miles from shore. In addition, section 202 permits the US Coast Guard to provide technical assistance to foreign navies, coast guards, and other authorities, whilst section 404 directed the Coast Guard to undertake a three-year pilot program for a long-range vessel tracking system.

2.3 Enforcement Role of Navy - 'Hot Pursuit'

When considering navies enforcement role 'Hot Pursuit' has been founded upon "*the legitimate chase of a foreign vessel on the high seas following a violation of the law of the pursuing state committed . . . within the pursuing state's jurisdiction*" so long as "*the chase commences immediately and the vessel evades visit and search within the jurisdiction, and . . . is carried on without interruption on to the high seas*".³⁴ The rationale is based upon the idea "*when a vessel or someone on board . . . , while within foreign territory commits an infraction of its laws she may be pursued into the open seas, and there arrested*".³⁵ The reasoning is "*that pursuit . . . is considered to be a continuation of an act of jurisdiction which has been begun, or which but for the accident of immediate escape would have been begun, within the territory itself, and that it is necessary to permit it . . . to enable the territorial jurisdiction to be efficiently exercised*".³⁶ But 'hot pursuit' is related to the high seas freedom of navigation because it constitutes limitations on such freedom as

³¹ *Ibid* at p.17.

³² US General Accounting Office 'Maritime Security: Substantial Work Remains to Translate New Planning Requirements into Effective Port Security' GAO-04-838 (June 2004).

³³ *Ibid*.

³⁴ O'Connell. D. P 'The international law of the sea 1984' Volume 2, Clarendon Press (1984), at pp.1075-1076.

³⁵ Brownlie. I 'Principles of Public International Law' 5th Edition, New York :Oxford University Press (1999), at p.309.

³⁶ *Ibid* at p.309.

a clear exception to 'exclusive flag state jurisdiction' when all conditions have been satisfied.³⁷

State practice shows 'hot pursuit' has been accepted under customary law because the right of 'hot pursuit' is clearly stated in Article 23 of the Law of the Sea 1958 along with Article 111 in UNCLOS 1982.³⁸ Article 111 states “*The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the law . . . of that State*”. In addition, “*Such pursuit must be commenced when the foreign ship or one of its boats is within the international waters, the archipelagic waters, the territorial sea, or the contiguous zone if the pursuit has not been interrupted . . . The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State*”. But there are also qualifications found in these Articles rather than relying on individual state practice.³⁹ Firstly, competent authorities of a given coastal State have good reason to believe a given ship has violated both national laws and regulations. Second, the ship in pursuit is convinced the other ship they are pursuing is in the territorial sea or the contiguous zone.⁴⁰ Third, it is not necessary for the order to stop a particular pursued ship to be given by a ship in the same sea zone – although the pursuit undertaken can only be commenced after a clear visual or auditory signal to stop has been given.⁴¹

Additionally, 'hot pursuit' can only be exercised in reality by warships and/or military aircraft along with other ships or aircraft recognized as being on government service authorized for 'hot pursuit'.⁴² But the right of 'hot pursuit' stops as long as the ship pursued enters the territorial sea of their homeland or of a third State.⁴³ Therefore, although there are countries who object to 'hot pursuit' in their EEZs like Brazil because, regarding the UN Convention Against Illicit Traffic in Narcotic Drugs 1988, the government understands a ship's arrest within an EEZ needs the coastal state's consent.⁴⁴ As a result, academics have commented on such a state of affairs by finding there is no reason why 'hot pursuit' should be brought to an end when the ship being pursued enters its own EEZ or a third state.⁴⁵ On this basis, the case of the *T'm Alone* is interesting to consider since it explains there is a need for a strong sense of adherence to the qualifications needed for 'hot pursuit'.

37 Maritime Affairs *'The Regime of Boarding Ships in International Maritime Law'* Maritime Affairs (2006), at pp.14-16.

38 Churchill. R. R & Lowe. A. V *'The law of the sea'* 3rd Edition, Juris publishing, Manchester University Press (1999), at p.206.

39 Keyuan. Z *'Seeking Effectiveness for the Crackdown of Piracy at Sea'* (2005) 59(1) Journal of International Affairs 117.

40 Maritime Affairs *'The Regime of Boarding Ships in International Maritime Law'* Maritime Affairs (2006), at pp.14-16.

41 Keyuan. Z *'Seeking Effectiveness for the Crackdown of Piracy at Sea'* (2005) 59(1) Journal of International Affairs 117.

42 Maritime Affairs *'The Regime of Boarding Ships in International Maritime Law'* Maritime Affairs (2006), at p.15.

43 Keyuan. Z *'Seeking Effectiveness for the Crackdown of Piracy at Sea'* (2005) 59(1) Journal of International Affairs 117.

44 Maritime Affairs *'The Regime of Boarding Ships in International Maritime Law'* Maritime Affairs (2006), at p.15.

45 Churchill. R. R & Lowe. A. V *'The law of the sea'* 3rd Edition, Juris publishing, Manchester University Press (1999), at p.215.

The *'T'm Alone'* had been registered in Canada and was intercepted off the Louisiana coast but, upon being signaled to stop, refused. The commander of the intercepting vessel was eventually allowed to board the *'T'm Alone'*, but not to analyze the ship's papers or search it.⁴⁶ Therefore, the intercepting vessel pursued the *'T'm Alone'* and, on the morning of the third day, was joined by a further vessel that eventually sank the vessel.⁴⁷ The US authorities looked to justify the arrest on the basis of the Anglo-American Liquor Treaty 1924, but Canada disputed the arrest because the pursuit needed to have been commenced in the territorial sea and were ultimately awarded compensation.⁴⁸ On this basis, cases of interference with foreign ships through arrest and seizure are justifiably considered a serious matter by placing the risk of action upon the interfering vessel that appears relatively commensurate with the situation.⁴⁹ It is then arguably more desirable to require payment of compensation for any harm caused through the pursuit of a vessel on inadequate grounds.⁵⁰

2.4 Convoy Protection

When one considers convoy protection, since the eighteenth century it has been British policy to maintain at least a one-power standard of naval strength in the Mediterranean due to its importance to trade.⁵¹ Therefore, during World War II British naval planners were faced not only with determining what sort of fleet they needed but also how to balance commitments and resources at a time of greater uncertainty⁵² to move against the Germans or against the Japanese during World War II whilst patrolling the Mediterranean.⁵³ This is because Britain needed to reequip its army and supply the populace with agricultural produce from across the Atlantic.⁵⁴ But, although it was undeniable these vessels needed protection, the Royal Navy did not have the resources to meet the demands of the war and guard transatlantic convoys from attacks from Germany.⁵⁵ On this basis, one is left to ponder whether the actions of the Germans during World War II were justified in law when one considers the vessels involved in a convoy were usually unarmed and often unprotected for large proportions of their journey.

46 Maritime Affairs *'The Regime of Boarding Ships in International Maritime Law'* Maritime Affairs (2006), at pp.15-16.

47 McDougal, M. S & Burke, W *'The public order of the Oceans, a contemporary international law of the sea'* New Haven Press (1987), at p.900.

48 O'Connell, D. P *'The international law of the sea 1984'* Volume 2, Clarendon Press (1984), at 1064.

49 McDougal, M. S & Burke, W *'The public order of the Oceans, a contemporary international law of the sea'* New Haven Press (1987), at p.898.

50 *Ibid* at p.898.

51 Caravaggio, A. N *'The Attack at Taranto'* (2006) 59(3) Naval War College Review 103, at paragraph 3.

52 *Ibid*.

53 *Ibid*.

54 Robb-Webb, J *'Convoy'*, in R. Holmes *'The Oxford Companion to Military History'* Oxford Reference Online, Oxford University Press (2001).

55 *Ibid*.

Therefore, there is a need to evaluate the law's development because, for example, 'enemy navigation' refers to all of the ships flying the flag of a nation in a given international conflict.⁵⁶ The problem is, although both war and auxiliary ships may be legitimate military objectives, merchant ships cannot usually be attacked unless they serve a military function.⁵⁷ But merchant ships may still be subject to visit, search, diversion and capture⁵⁸ unless they are in neutral waters⁵⁹ and, where they actively resist an order or travel with enemy warships, they may be subject to armed force and 'prize measures'.⁶⁰ Of course a given flag state can protect its merchant ships but it has been historically shown this will lead to a conflict being exacerbated.⁶¹ Therefore, it is best for such parties to keep their vessels as far away as possible from hostilities and rely on neutral navigation⁶² - although special protection may be provided for certain classes of enemy vessels presumed to serve innocent purposes.⁶³ Such legal protection was first agreed upon under the 1907 Hague Convention XI⁶⁴ and later updated by state practice⁶⁵ - merchant ships are exempt from attack and/or capture only if they - (a) are innocently employed; (b) submit to identification and inspection; and (c) do not intentionally hamper combatants movement⁶⁶. However parties in conflict may claim a broad spectrum of measures affect neutral shipping.⁶⁷

For example, whilst a merchant vessel flying an enemy state flag is usually considered evidence of its enemy character, there is no similar rule for determining neutrality.⁶⁸ Instead, the fact that a merchant ship is flying the flag of a neutral state is merely *prima facie* evidence⁶⁹ because they may still be the enemy⁷⁰ and be diverted or captured to check the status.⁷¹ Furthermore, problems may arise in view of the conditions of a modern battlefield because there will often not be any visual contact between the parties and so the only data available will often be on a computer.⁷² But parties

56 von Heinegg, H. W 'The Protection of Navigation in Case of Armed Conflict' (2003) 18 The International Journal of Marine & Coastal Law 401-422, at p.407.

57 von Heinegg, H. W 'Seekriegsrecht und Neutralität im Seekrieg' Duncker und Humblot (English Translation) (1996), at pp. 369 et seq.

58 International Institute of International Humanitarian Law 'San Remo Manual on International Law Applicable to Armed Conflicts at Sea' International Institute of International Humanitarian Law (1994), at paragraphs 118 et seq.

59 *Ibid* at paragraphs 135.

60 *Ibid* at paragraph 60.

61 Borchard, E. M 'Armed Merchantmen' (1940) 34 American Journal of International Law 107.

62 von Heinegg, H. W 'The Protection of Navigation in Case of Armed Conflict' (2003) 18 The International Journal of Marine & Coastal Law 401-422, at p.408.

63 *Ibid* at p.408.

64 Borchard, E. M 'Armed Merchantmen' (1940) 34 American Journal of International Law 107..

65 International Institute of International Humanitarian Law 'San Remo Manual on International Law Applicable to Armed Conflicts at Sea' International Institute of International Humanitarian Law (1994) at paragraphs 47.

66 *Ibid* at paragraph 48.

67 von Heinegg, H. W 'The Protection of Navigation in Case of Armed Conflict' (2003) 18 The International Journal of Marine & Coastal Law 401-422, at p.409.

68 *Ibid* at p.409.

69 International Institute of International Humanitarian Law 'San Remo Manual on International Law Applicable to Armed Conflicts at Sea' International Institute of International Humanitarian Law (1994), at paragraph 113.

70 *Ibid* at paragraph 117.

71 *Ibid* at paragraphs 114 & 116.

72 In 1983 the World Administrative Radio Conference for the Mobile Services adopted Resolution No. 18 on 'The Identification of Vessels and Aircraft of States Not Parties to an

to armed conflicts at sea must still appreciate the sea's legitimate uses by neutral states and their navigation.⁷³

By way of illustration, those involved with Gulf War I attacked neutral tankers because they contributed to the war-sustaining effort through oil's export⁷⁴ - although the US must no longer expressly characterise neutral merchant vessels as legitimate military objectives simply because they are included in the enemy's war-sustaining effort.⁷⁵ During Gulf War I the US and Kuwait came to believe the re-flagging of Kuwait tankers was necessary for the US to protect the tankers against (illegal) attacks by belligerents.⁷⁶ However, the reality is the US and Kuwait could have implemented a bilateral agreement through which the US could escort Kuwaiti tankers through the Arabian Gulf thus protecting them from Iraq and Iran amongst other and legal belligerent measures of control including visit and search under Article 61 of the 1909 London Declaration.⁷⁷

Therefore, states in conflict cannot interfere with neutral shipping without justifying their measures since this will commonly lead to compensatory claims.⁷⁸ As for the law of naval warfare and maritime neutrality, warships may not only harm the enemy but also verify third states shipping is not involved in activities contributing to the enemy's efforts.⁷⁹ But neutral merchant ships are subject to visit and search by conflicting parties everywhere beyond neutral waters if there are reasonable grounds for suspecting they may be captured because of - (i) carrying contraband; (ii) carrying individual enemy passengers; (iii) operating directly under enemy control; (iv) using fraudulent documents or lacking those necessary; (v) violating of regulations established by a conflicting state in naval operations immediate area; or (vi) breaching or attempting to breach a blockade.⁸⁰ However, it is still to be appreciated that it is not always necessary to visit and search a merchant ship if it is diverted from its declared destination.⁸¹

Such an alternative to visit and search has to be distinguished from diversion ordered for visit and

International Armed Conflict' (1984) 66 *International Review of the Red Cross* 58, at pp.58 et seq.

⁷³ von Heinegg, H. W 'The Protection of Navigation in Case of Armed Conflict' (2003) 18 *The International Journal of Marine & Coastal Law* 401-422, at p.411.

⁷⁴ Council on Ocean Law/Law of the Sea Institute 'The Persian/Arabian Gulf Tanker War: International Law or International Chaos' Washington, DC (1988) 19 *Ocean Development & International Law* 299.

⁷⁵ von Heinegg, H. W 'The Protection of Navigation in Case of Armed Conflict' (2003) 18 *The International Journal of Marine & Coastal Law* 401-422, at p.418.

⁷⁶ *Ibid* at p.419.

⁷⁷ *Ibid* at p.419.

⁷⁸ *Ibid* at p.411.

⁷⁹ *Ibid* at p.411.

⁸⁰ International Institute of International Humanitarian Law 'San Remo Manual on International Law Applicable to Armed Conflicts at Sea' International Institute of International Humanitarian Law (1994), at paragraph 146.

⁸¹ *Ibid* at paragraph 119.

search that does not need consent⁸² if it is impossible or unsafe.⁸³ Maritime neutrality thus accepts neutral merchant ships could be faced with considerable losses because their voyage is delayed by regulation.⁸⁴ But 'capture's' legality has to be established by a competent 'prize court' that can be problematic if it is justified because of contraband especially if the conflict lasts for a prolonged period⁸⁵ - although a conflicting state needs to publish a contraband list.⁸⁶ This is because all other goods are free goods meaning their carriage does not justify capture⁸⁷ and even goods with a neutral destination from a conflicting state are not contraband.⁸⁸ Nevertheless, even a neutral ship's destruction can be legal so long as - (a) the safety of those on board is preserved; (b) documents and papers relating to the prize are safeguarded; and (c) personal effects of the passengers and crew could be saved.⁸⁹ Moreover, *“Every effort should be made to avoid destruction of a captured neutral vessel . . . unless the contraband, . . . , forms more than half the cargo”*.⁹⁰ Finally, a merchant ship's master along with a particular neutral flag state are obliged to be tolerant of the exercise of 'prize measures' regarding the spoils of war.⁹¹

The establishment of 'exclusion' or 'operational' zones have nearly nothing in common with World Wars I and II different zones along with those of Gulf War I⁹² as an exceptional measure only where the following requirements are fulfilled - (a) the same law applies regardless of whether you are in or out of the zone; (b) the extent, location and duration of the zone; (c) the measures that are implemented will not exceed what is a military necessity and proportionality; (d) due regard needs to be given to neutral states rights to the seas legitimate uses; (e) necessary safe passage through the zone for neutral vessels and aircraft shall be provided where the geographical extent of the zone significantly impedes free and safe access to the ports and coasts of a neutral state.⁹³ Therefore, modern exclusion or operational zones can be utilized for facilitating identification in an area not simply dependent upon military exigencies but also proportionality as a necessary 'evil' to be

82 *Ibid* at paragraph 119.

83 *Ibid* at paragraph 121

84 von Heinegg, H. W 'The Protection of Navigation in Case of Armed Conflict' (2003) 18 The International Journal of Marine & Coastal Law 401-422, at p.412.

85 von Heinegg, H. W 'Seekriegsrecht und Neutralität im Seekrieg' Duncker und Humblot (English Translation) (1996), at pp. 369 et seq.

86 International Institute of International Humanitarian Law 'San Remo Manual on International Law Applicable to Armed Conflicts at Sea' International Institute of International Humanitarian Law (1994), at paragraph 149.

87 *Ibid* at paragraph 150.

88 'Helsinki Principles on the Law of Maritime Neutrality' Final Report of the Committee on Maritime Neutrality, International Law Association, Report of the 68th Conference, Taipei (1998), at pp.496 et seq.

89 International Institute of International Humanitarian Law 'San Remo Manual on International Law Applicable to Armed Conflicts at Sea' International Institute of International Humanitarian Law (1994), at paragraph 151.

90 *Ibid* at paragraph 151.

91 von Heinegg, H. W 'The Protection of Navigation in Case of Armed Conflict' (2003) 18 The International Journal of Marine & Coastal Law 401-422, at p.414.

92 Robertson, H. B, Jr (Editor) 'The Law of Naval Operations' 64 International Law Studies, Newport, US Naval War College Press (1991), at p.156.

93 von Heinegg, H. W 'The Protection of Navigation in Case of Armed Conflict' (2003) 18 The International Journal of Marine & Coastal Law 401-422, at p.416.

preferred over the use of indiscriminate attacks.⁹⁴

With this in mind, it is also interesting to consider the Gulf of Aden which is an area of water particularly renowned for piracy and needed greater regulation. The main reason for this has been put down to a lack of an effective Somalian government with the International Maritime Bureau reporting over twenty actual and attempted attacks in 2007 off the coast. Further instances also arose in 2008. By way of example, on 4th April 2008 pirates commandeered a French luxury yacht in the Gulf of Aden,⁹⁵ then on 21st August 2008 a dry cargo ship going from China to the Netherlands with 40,000 tons of iron ore was hijacked in the gulf, whilst on 15th September 2008 the Japanese chemical tanker *Stolt Valor* was seized by pirates in the gulf and was only later released on 16th November 2008 allegedly after a ransom of \$2.5 Million was paid.⁹⁶ Therefore, to improve the situation as an example of the establishment of a 'safe zone of transit' the Maritime Security Patrol Area (MSPA) was designated as a specified patrol zone within the Gulf of Aden.⁹⁷

Although the MSPA's borders are unmarked, it is a narrow, rectangular corridor between Somalia and Yemen within the Gulf of Aden's northern sector which was established in August 2008 by the Combined Task Force 150 (CTF-150).⁹⁸ The CTF-150 has been recognised as a multinational, coalition naval task force to deter the destabilising activities already including piracy directed by the Commander of the US Naval Central Command.⁹⁹ As a result, some substantial efforts were undertaken by the CTF-150 to combat instances of piracy all too frequently arising in the region. For example, on 11th November 2008, the Indian bulk-carrier *Jag Arnav* a 38,265-tonne bulk carrier was attacked by pirates and so the ship sent out an SOS call picked up by an Indian Navy Warship (*INS Tabar*) patrolling the region. In response the warship launched an armed helicopter with marine commandos to prevent the pirates from hijacking the vessel.¹⁰⁰

94 *Ibid* at p.416.

95 Reuters '*Pirates storm French Yacht off Somalia*' Reuters (4th April 2008).

96 NDTV.Com '*Two-month ordeal was nightmare: Stolt Valor Captain*' NDTV.Com (18th November 2008).

97 MarEx Newsletter '*Maritime Security Patrol Area (MSPA) in the Gulf of Aden Established*' MarEx (2008).

98 ICC Commercial Crime Services '*Coalition warships set up Maritime Security Patrol area in the Gulf of Aden*' International Institute of International Humanitarian Law (26th August 2008).

99 U.S. Naval Forces Central Command/Commander, U.S. 5th Fleet Public Affairs Office '*Press Release - Combined Task Force 150 thwarts criminal activities*' U.S. Naval Forces Central Command/Commander, U.S. 5th Fleet Public Affairs Office (22nd September 2008).

100 The Hindu '*Pirates attack Indian ship, Navy intervenes*' The Hindu (11th November 2008).

2.5 Humanitarian Role

When considering the navy's humanitarian role it is interesting to consider the position of the US Navy in relation to assisting those living in foreign countries in the event of there being a humanitarian disaster largely because, in view of the country's position within the world as one of the biggest and most powerful, the US is commonly instrumental in relief efforts the world over.¹⁰¹ By way of example, on the 26th December 2004 the earthquake that struck off the northwest coast of Sumatra led to a tsunami that wreaked havoc around the Indian Ocean in countries including India, Indonesia, and Thailand killing around 230,000 people, injuring tens of thousands more, and making 10 million others homeless and displaced.¹⁰² As a result, this led to a significant humanitarian response ostensibly led by the US Navy (although supported by numerous other countries) that dispatched P-3C Orion patrol aircraft and an aircraft carrier to assist with relief operations and conducting survey operations (including search-and-rescue efforts), whilst cargo planes shuttled supplies to shelter the living and dry ice to preserve the dead.¹⁰³ Moreover, the *USS Abraham Lincoln* undertook the 'aircraft carrier battle group' that was dispatched from port in Hong Kong to Sumatra to provide support to the Indonesian province of Aceh. Additionally, an 'expeditionary strike group' led by *USS Bonhomme Richard* was scheduled for a port call in Guam to provide further help. Furthermore, around fifty Navy and Marine Corps helicopters were involved, whilst each ship could produce around 90,000 US gallons of fresh water per day and the US Navy also deployed the *USNS Mercy*, a 1,000-bed hospital ship.¹⁰⁴

It is also interesting to note if one considers Hurricane Katrina in the US in 2005, the response was to include federal government agencies including the Federal Emergency Management Agency (FEMA), state and local-level agencies, federal and National Guard soldiers, non-governmental organisations, charities, and private individuals. Moreover, many thousands of volunteers and troops responded or were deployed to redress the problems that arose from the disaster both in the affected area of New Orleans and Louisiana but also throughout the US at shelters established in at least 19 states. Therefore, the US Navy dispatched several ships to help the relief efforts carrying CH-53 Sea Stallion and SH-60 Sea Hawk helicopters already being utilised for search and rescue and the US Navy also arranged to send eight civilian 14-person 'Swift Boat' rescue teams to the

101 Hilpold. P 'Humanitarian Intervention: Is there a Need for a Legal Reappraisal?' (2002) 12 European Journal of International Law 437, at pp.437-467.

102 BBC News 'Giant wave damages S. Asia Economy' BBC News (28th December 2004).

103 Margesson. R 'Indian Ocean Earthquake & Tsunami: Humanitarian Assistance & Relief Operations' Congressional Research Service (CRS) Report for Congress, Order Code RL32715 (10th February 2005).

104 3rd Fleet Public Affairs 'Hospital Ship Mercy Sails for Indian Ocean' Navy.Mil (6th January 2005).

disaster zone using C-5 Galaxy cargo planes.¹⁰⁵ Furthermore, one Lt General Russel L. Honore of the army was also appointed to run a temporary special command through Joint Task Force (JTF) Katrina to coordinate all military responses to the effort based at Camp Shelby in Mississippi, whilst FEMA asked the Pentagon to have the US Northern Command ready to help.¹⁰⁶

More recently regarding the Haitian earthquake of 12th January 2010 the rescue efforts again involved parties from different states sending aid to assist the Haitian people. But the navy (in particular the US Navy) arguably played one of the most significant roles in helping to assist in the wake of the earthquake. For example, the 'Supercarrier' *USS Carl Vinson* arrived with tonnes of emergency food rations and thousands of gallons of drinking water.¹⁰⁷ Additionally, the helicopter carrier *USS Bataan* sailed with three large dock landing ships and two survey/salvage vessels to establish a 'sea base' for the rescue¹⁰⁸ along with medical support.¹⁰⁹ Moreover, to further the relief effort the buoy tender *USCG Oak* and *USNS Grasp (T-ARS-51)* were utilised to assess the damage done to the port and work to reopen it so at least one pier at the Port-au-Prince seaport was functional to offload humanitarian aid.¹¹⁰ Therefore, as a mark of the navy's importance in partaking in the resolution of humanitarian disasters, the US Navy listed its resources as including “17 ships, 48 helicopters and 12 fixed-wing aircraft” along with at least 10,000 sailors and Marines who delivered thousands of gallons of water and tonnes of food and medical supplies.¹¹¹

Of course there have been many instances where the US Navy (as well as those based in other countries) has looked to assist in humanitarian relief efforts, but this is merely reflective of the fact that humanitarian intervention may be gaining significant international recognition despite its opposition to the widely-accepted *status quo* of non-intervention in relation to State sovereignty. This is largely because some notable problems have materialised from out of the strict adherence to international legal norms that have developed. The reason for this is the United Nations (UN) General Assembly Declaration of Principles of International Law Concerning Friendly Relations & Cooperation Among States in Accordance with the UN Charter 1945 proclaims there is a “*duty not to intervene in matters within the domestic jurisdiction of any state*”.¹¹² This view is then only

105 Warships International Fleet Review 'Web Special – Hurricane Katrina' Warships International Fleet Review (6th September 2005).

106 Jackson Free Press 'Transcript: New Orleans' Mayor C. Ray Nagin's Interview' Jackson Free Press (2nd September 2005).

107 Dreazen. Y 'US Carrier Carl Vinson joins relief efforts' The Wall Street Journal (15th January 2010).

108 Farlan. M. M 'Bataan heads for Haiti' Navy Times (16th January 2010).

109 Fuentes. G 'Bunker Hill en route to help Haiti Mission' Navy Times (18th January 2010).

110 Schept. S 'CG continues evacuations, clear port' Navy Times (19th January 2010).

111 US Fleet Forces Public Affairs 'US Fleet Forces Commander Provides Update on Navy Contributions to Haiti Relief Efforts' United States Navy (12th January 2010).

112 UN General Assembly Declaration of Principles of International Law Concerning Friendly Relations & Cooperation Among States in Accordance with the Charter of the United Nations U.N. GAOR, 25th Sess., Supp. No. 18, U.N. Doc. A/8082 (24th October 1970), at p.338.

further supported by the UN declaring “*The sovereignty, territorial integrity and national unity of States must be fully respected . . . [and] . . . humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country*”.¹¹³

As a result, whenever natural disasters have arisen in the past some significant problems have developed with the provision of humanitarian assistance in practice. By way of illustration, when Cyclone Nargis struck the southern rice-growing region of Myanmar with devastating force in early May 2008.¹¹⁴ Nearly 140,000 people were killed or categorized as missing¹¹⁵ and so the international community quickly mobilised itself with millions of dollars worth of aid arriving within days.¹¹⁶ The problem was that this aid remained largely unused because the ruling military *junta* regime refused to let foreign aid in¹¹⁷ and instead impounded it¹¹⁸ whilst US Navy ships languished off the coast with fresh water, supplies, and expertise that was continuously rebuffed.¹¹⁹ Eventually the failure to accept foreign aid became so extreme French Foreign Minister Bernard Kouchner and a number of US lawmakers appealed to their governments for forced intervention.¹²⁰ This is largely because until aid was eventually accepted, the choices had seemed somewhat limited as a reflection of the dilemma between humanitarian intervention (i.e. what is done) and the theory of responsibility to protect (i.e. why it is done).¹²¹

Therefore, as with other bodies, the navy's humanitarian role can be somewhat limited unless diplomatic intervention works in the sense that negotiations, sanctions and embargoes work – or better yet a request for aid is made by the country affected – otherwise the options are limited and a resort to the use of force to allow for bodies like the navy to exercise their humanitarian role will be controversial.¹²² This is because states usually do not interfere with the internal workings of other sovereign states because they are empowered in international law to exercise exclusive and total jurisdiction over matters within their territorial borders and, if states do intervene, the offended state

113 UN General Assembly Resolution 46/182, U.N. Doc. A/Res 46/182 (19th December 1991), at Annex 3.

114 Office for the Coordination of Humanitarian Affairs (OCHA) Situation Report No. 46, United Nations, OCHA, Myanmar Cyclone Nargis (21st August 2008).

115 *Ibid.*

116 Jackson, T. R, Lt Cmdr 'Bullets for Beans: Humanitarian Intervention & the Responsibility to Protect in Natural Disasters' (2010) 59 Naval Law Review 1, at p.1.

117 Saputra, A & Mount, M 'U.S. Marines: Aid Begins to Trickle into Myanmar' CNN.Com (15th May 2008).

118 Brown, A, Jenkins, G & Chamberlain, G 'Burma Generals Hijack Cyclone Relief Efforts' Telegraph.co.uk (10th May 2008).

119 Associated Press 'US Admiral: Myanmar Junta Unconcerned By Cyclone' CNN.Com (15th May 2008).

120 See World Federalist Movement Institute for Global Policy 'The Responsibility to Protect & its Application to the Situation in Burma' World Federalist Movement Institute for Global Policy (9th May 2008) & Australia Network News 'US Congressmen Call for Humanitarian Intervention in Burma' Australia Network News (17th May 2008).

121 Jackson, T. R, Lt Cmdr 'Bullets for Beans: Humanitarian Intervention & the Responsibility to Protect in Natural Disasters' (2010) 59 Naval Law Review 1, at p.2.

122 *Ibid* at p.2.

has the right to defend itself from outside aggressors under Article 2 of the UN Charter 1945.¹²³ However, Cyclone Nargis prompted a request to use the responsibility to protect doctrine as a justification to force a nation to receive humanitarian aid.¹²⁴ Whilst the request was not acted upon in this instance, there is a willingness to consider individual human rights as superior to a State's right to sovereignty where there is a significant violation of individuals' human rights with bodies like the navy then being mobilized to supply humanitarian aid.¹²⁵ But any humanitarian interventions undertaken without the approval of the UN Security Council are still considered by most international legal scholars to be illegal even where they are morally justified to provide for greater humanitarian relief under Article 27 of the UN Charter 1945.¹²⁶

2.6 Hydrography

The navy will also look to play a significant scientific role because, in any given nation state, a hydrography office has been recognized as a usually national organization that focused upon acquiring and publishing information in this field. Traditionally, hydrographic offices have sought to undertake surveys along with the production of nautical charts, whilst many countries also include numerous services related to navigation that are now a significant focal point for large governmental organisations in terms of 'maritime administration' - although the International Hydrographic Organization (IHO) refers to them as 'hydrographic offices' and they are regulated via the Convention on the International Hydrographic Organization 1970 (as amended). But, along with nautical charts, a significant number of hydrographic offices seek to publish books and periodicals referred to as nautical publications principally including – (a) sailing directions; (b) lists of lights (i.e. lighthouses and light buoys); (c) tides; (d) Ephemerides and Nautical Almanacs for celestial navigation; and (e) Notice to Mariners.¹²⁷ Moreover, hydrographic organisations will also often involve themselves in services including - (i) pilotage; (ii) search and rescue; (iii) maintenance of navigation aids; (iv) weather observation; (v) sea traffic information and surveillance; (vi) maritime research; and (vii) regulatory affairs relating to general ship safety.¹²⁸

123 *Ibid* at p.4.

124 World Federalist Movement Institute for Global Policy 'The Responsibility to Protect & its Application to the Situation in Burma' World Federalist Movement Institute for Global Policy (9th May 2008).

125 Report of the International Commission on Intervention & State Sovereignty (ICISS) 'The Responsibility to Protect Report' ICISS (December 2001) at p.12.

126 Jackson, T. R, Lt Cmdr 'Bullets for Beans: Humanitarian Intervention & the Responsibility to Protect in Natural Disasters' (2010) 59 Naval Law Review 1, at p.6.

127 Dawson, L. S 'Memoirs of Hydrography: Including Brief Biographies of the Principal Officers who Have Served in H.M. Naval Surveying Service Between the Years 1750 & 1885: Part I: 1750-1830' H.W. Keay (1830), at pp.94-5.

128 *Ibid* at pp.94-95.

Hydrographic organizations may also involve themselves in hydrogeology regarding the discharges of rivers over a period of time shown in data form on a hydrograph, which can also show the volume of water that reaches a particular outfall or location in a sewerage network – i.e. the design of surface water sewerage and combined systems.¹²⁹ The discharge is measured at a certain point in a river and is typically time variant with types of hydrograph including storms, floods, annual hydrographs, direct run-off hydrography and effective run-off hydrograph. Therefore, through the navy's activities a broad variety of factors affecting a given example of a hydrograph are identified and published: (a) watershed; (b) the area of a basin receiving rainfall, (c) land-use; (d) drainage density; (e) duration of rainfall and precipitation intensity and type; (f) evapotranspiration rates; (g) river geometrics; (h) the season; (i) previous weather; (j) vegetation type and cover; (k) River conditions; (l) initial conditions; and (m) soil permeability and thickness.¹³⁰

In 1795 the UK Hydrographer office was established whilst the Royal Navy began to collate both charts and related surveys officially, reputedly after Admiral Sir Cloudesley Shovell was lost near the Scilly Isles on an uncharted reef in October 1707.¹³¹ Originally hydrographic data was mainly collected through the utilisation of ordinary Royal Navy ships. But, by the middle of the twentieth century, a purpose-built survey vessel was launched via the *HMS Vidal* and the current ships now form the 'Hydrographic Squadron', whilst the use of echo sounder and electronic equipment saw a big increase in the quantity and quality of the collection of data.¹³² Now, however, the United Kingdom Hydrographic Office (UKHO) is an integral part of the Ministry Of Defence (MOD) as opposed to a naval department in Taunton, Somerset and is widely lauded for its ability to produce the Admiralty chart series, which details virtually every stretch of water that can be navigated on Earth. Interestingly, however, despite its links to a public body the government in the UK needs agencies including the UKHO to be self-funding in maintaining and developing its archive under the Public Records Act 1958 by selling the information they can produce commercially.¹³³

More recently, however, in July 2002 changes to Chapter V of SOLAS 1974 came into force making two key points of fundamental significance to hydrographers of contracting governments. By way of illustration, Regulation 9 of SOLAS 1974 (as amended) needs its contracting governments “*to arrange for the collection and compilation of hydrographic data and the*

129 Porges. R. E & Hammer. M. J 'The Compendium of Hydrogeology' National Ground Water Association (2001), at Introduction – see also Chapter 1.

130 *Ibid* at Chapter 1.

131 Nicholls. M 'Norfolk Maritime Heroes & Legends' Poppyland Publishing (2008), at pp.25-30.

132 Colledge. J. J & Warlow. B 'Ships of the Royal Navy: The complete record of all fighting ships of the Royal Navy' Chatham (2006), at p.374.

133 *Ibid* at p.374.

publication, dissemination and keeping up to date of all nautical information . . . for safe navigation". In addition, contracting states must "Take into account, whenever possible, relevant international resolutions and recommendations" adopted by the IHO to achieve uniformity in collection techniques, data management and product display and "coordinate their activities to the greatest degree . . . to ensure that hydrographic and nautical information is made available on a worldwide scale as timely, reliably and unambiguously as possible". The sheer weight of such an obligation upon a contracting state to the provisions of the SOLAS 1974 (as amended) just cannot be understated. This is because although even those contracting states with well-developed and resourced Hydrographic Services may be somewhat burdened as they seek to meet this requirement, those countries with either no effective services in place or even just rudimentary hydrographic capabilities face a severe challenge in looking to satisfy their obligations. But Regulation 19 of SOLAS 1974 (as amended) permits the use of an Electronic Chart Display & Information System (ECDIS) (with suitable back up) to meet the chart carriage requirements under SOLAS 1974 by offering an exceptional opportunity to improve navigations safety and maritime operations efficiency through ECDIS' use for voyage planning, execution and recording.

2.7 Salvage

Marine salvage is concerned with the rescue of a particular ship itself, its cargo, or other property from danger including rescue towing, refloating or patching or repairing a ship - although the environment's protection from oil or other contaminants is commonly essential.¹³⁴ Generally, 'salvors' are usually seamen and engineers who carry out salvage of vessels they do not own or have any other interest in by using cranes, floating dry docks and divers to then lift and repair the ships concerned for short journeys to safety assisted by a tugboat.¹³⁵ 'Salvage' involves repairing the given ship at either a harbour, dry dock or to clear a channel for the purpose of navigation along while preventing pollution or damage to the marine environment and potentially recovering the vessel or valuable parts therein. But at the same time an act of salvage needs – (a) a serious peril from which the vessel or property could not have been rescued without the salvor's assistance; (b) the salvor's act to be voluntary (no legal or official duty to render assistance); and (c) the act must be successful in saving all or part of the property at risk under the International Convention on Salvage 1989.¹³⁶

134 Brice, G 'Maritime Law of Salvage' 4th Edition, Sweet & Maxwell (2003) at Chapter 1.

135 *Ibid* at Chapter 1.

136 *Ibid* at Chapter 1.

Generally, salvage law provides a salvor should be rewarded for risking both their life and property with a view to 'rescuing' another individual or group's property – although certain maritime rescue organisations including the RNLI have insisted their lifeboat crews renounce their right to claim salvage compensation. The law is provided under the Brussels Convention for the Unification of Certain Rules with Respect to Assistance & Salvage at Sea 1910 to reflect marine salvage's traditional legal principles which the International Convention of Salvage 1989 looked to not only incorporate but also add provisions to. Therefore, the law regarding ships salvage is somewhat similar to the wartime law of 'prize' in relation to the capture, condemnation and sale of a vessel along with its cargo in what is commonly referred to as a 'spoils of war'.¹³⁷ In fact it is arguable laws could 'dovetail'. This is because, for example, a ship taken as a 'prize' then recaptured on its way to the prize adjudication is not labelled as a rescuer's prize since title simply returns to the original owner, whilst under salvage law the ship involved with doing the rescuing may claim for that salvage.¹³⁸ Similarly, where a ship is found to be badly damaged and abandoned after enemy fire disabled it under the laws of war, it is not a prize of a rescuing friendly vessel – although the rescuers can claim for salvage.¹³⁹

More generally, a ship needs help if it is in danger or placed in a situation that could become dangerous including when a ship runs aground or runs the risk of running aground.¹⁴⁰ Usually before an attempt at salvage is made the salvor will get permission from either the given ship's owner or master – although if the particular ship has already been abandoned there is no need for permission to be obtained. As for the salvor's reward for the salvage they have undertaken there is a need to consider the ship's value, the level of risk involved and the ship's activities¹⁴¹. Moreover, disputes in law regarding the salvage of a given ship do not arise from out of claiming rights. However, to reduce a potential claim in the event of an accident, the owner or the master of a vessel will commonly remain onboard their ship to retain command as they try to minimise further loss through reducing risk.¹⁴² For example, if another vessel provides a stricken ship with a tow and the master or owner then negotiates an hourly rate prior to acceptance this would mean the laws of salvage would not apply. This is because an act of salvage needs – (a) a serious peril from which the vessel or property requiring assistance; (b) the salvor's act to be voluntary (no legal or official duty to render assistance); and (c) the act must be successful in saving all or part of the property under

137 Grotius. H '*De Iure Praedae Commentarius*' ('On the Law of Prize and Booty') Oxford University Press (1950), at p.164.

138 Upton. F '*Maritime Warfare & Prize*' John Voorhies Law Bookseller & Publisher (1863), at pp.234-35.

139 Scott Brown. J (Editor) '*Prize Cases Decided in the United States Supreme Court*' Clarendon Press (1923), at p.130.

140 Mandaraka-Sheppard. A '*Modern Maritime Law & Risk Management*' 2nd Edition, Taylor & Francis Group (2007) at Chapters 1 & 2.

141 *Ibid* at Chapter 1 & 2.

142 *Ibid* at Chapters 1 & 2.

the International Convention on Salvage 1989.

Instead in English law, by way of example, it was recognised in *Clan Steam Trawling Co Ltd v. Aberdeen Steam Trawling & Fishing Co Ltd*¹⁴³ there is a contractual duty for the salvor. Additionally, Lord Wright found in *The Beaverford v. The Kafiristan*¹⁴⁴ in relation to contractual agreements for salvage “its validity is not and could not be contested. It specifically provides for remuneration as salvors in the event of success”¹⁴⁵ and the salvor was duty bound to exercise the best endeavours to complete the salvage¹⁴⁶ until the salvaged vessel was towed somewhere where permanent repairs could be affected.¹⁴⁷ Moreover, in the UK under the Merchant Shipping Act 1995 jetsam, flotsam, lagan and all other cargo and wreckage are to remain their original owner’s property so anyone – even recreational divers and beachcombers - who removes such goods needs to tell the Receiver of the Wreck to avoid being accused of theft. Since wreck diving is a common leisure activity there are laws to protect wreckages of historic importance, for example, the Protection of Military Remains Act 1986 safeguards the last resting places of members of the armed forces remains.

2.8 Search and Rescue (SAR)

Search and rescue (SAR) ostensibly involves the search for and provision of aid to people found to be in significant distress or imminent danger. However, there are several distinct interpretations of SAR dependent upon the involvement of the agency in question. For example, whilst the US Coast Guard defines SAR as being “*The use of available resources to assist persons or property in potential or actual distress*”,¹⁴⁸ the US Defence Department looks upon SAR processes being “*normally coordinated by a Rescue Coordination Center (RCC) or rescue sub-center, using available personnel and facilities to locate persons in distress*” and the rescue itself is “*An operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety*”.¹⁴⁹ Therefore, one of the world's earliest documented SAR efforts arose as far back as 1656 after the Dutch merchant ship *Vergulde Draeck* ran aground just off of the Australian coastline leading to three separate SAR missions being conducted without any real

143 *Clan Steam Trawling Co Ltd v. Aberdeen Steam Trawling & Fishing Co Ltd* [1908] SC 651 – see also *The Sava Star* [1995] 2 Lloyd’s Rep 134.

144 *The Beaverford v. The Kafiristan* [1938] AC 136.

145 *Ibid* at pp.153-154.

146 *The Unique Mariner (No 2)* [1979] 1 Lloyd’s Rep 37.

147 *The Troilus* [1951] AC 820.

148 Model Maritime Service Code (1995) at Chapter 9.

149 US Coast Guard Office of Search & Rescue (CG-534) ‘*The SAR Mission*’ (2009).

success.¹⁵⁰

More recently, however, by way of example, the Egyptian passenger ferry MS al-Salam Boccaccio 98 sank on 3rd February 2006 in the Red Sea on a voyage from Saudi Arabia to Egypt.¹⁵¹ Its last known position was 100 km (62 miles) from Dubai when it lost contact with the shore with no SOS heard from the ship and poor weather conditions hampering the search rescue operation so that of well over 1,000 passengers and crew only 388 people could be rescued.¹⁵² This is despite the fact that, as of two minutes to midnight on 2nd February 2006, the air-sea rescue control room at RAF Kinloss in Scotland detected an automatic distress signal relayed by satellite from the ship's position, which was passed on via France to the Egyptian authorities.¹⁵³ Unfortunately, whilst at least 314 survivors and around 185 dead bodies were recovered, Reuters reported 'dozens' of bodies floating in the water as rescue boats and helicopters searched the area, including four Egyptian frigates.¹⁵⁴ But interestingly, politics may have caused unnecessary problems in this area dating back to the beginning of the Arab-Israeli conflict since Israeli sources reported that an offer of search and rescue assistance from their national navy had been declined by the Egyptian authorities – although they did accept a US offer of a P-3 Orion maritime naval patrol aircraft after having said the help was not needed.¹⁵⁵

Efforts have since been coordinated to improve maritime search and rescue operations such as in the UK by Her Majesty's Coastguard whilst land-based operations are coordinated by the local police. Generally, operations are carried out using aircraft that are supplied by the Royal Navy, the Royal Air Force (RAF), the Coastguard, the Royal National Lifeboat Institution (RNLI) lifeboats and police, military or volunteer mountain rescue or a combination thereof whereby coordination is provided by the UK Aeronautical Rescue Coordination Centre based at RAF Kinloss.¹⁵⁶ Potential problems may, however, arise in the not too distant future. This is because since 2006 the government has controversially proposed privatisation of the provision of search and rescue helicopters to replace the Sea Kings - although crews could still include at least some military.¹⁵⁷ Ideas were then firmed up in February 2010 when Soteria Search & Rescue was officially

150 See Major. R. H (Editor) 'Early Voyages to Terra Australis, Now Called Australia' The Hakluyt Society (1859) (2001 facsimile edition on Google Books) & Henderson. J. A 'Marooned: The Wreck of the Vergulde Draeck & the Abandonment & Escape from the Southland of Abraham Leeman in 1658' St. George Books (1982).

151 BBC News 'Egyptian ferry sinks in Red Sea' (3rd February 2006).

152 Saleh. H 'Egypt ferry probe raps officials' BBC News (19th April 2006).

153 Sky News 'Passenger ferry sinks in Red Sea' (3rd February 2005).

154 Saleh. H 'Egypt ferry probe raps officials' BBC News (19th April 2006).

155 Nasr. O 'Grief & Outrage in Egypt' CNN.com (31st July 2008).

156 Royal National Lifeboat Institution (2010).

157 BBC News 'Private bids plan for air rescue' BBC News (9th May 2006).

recognised as being the 'preferred bidder' for the domestic SAR programme for the contract to run all civilian search and rescue missions as of 2012 in the UK.¹⁵⁸

Nevertheless, despite the role the navy plays in SAR, all commanders of ships are obliged to help those in danger of becoming lost at sea. To this effect, ships (and aircraft) may enter the territorial seas of another nation without being permitted to involve themselves in what are recognized as *bona fide* attempts to help others in danger at sea.¹⁵⁹ Such a right has been developed independently of the rights of innocent transit and archipelagic sea lanes passage under Article 18(2) of the UNCLOS 1982 and needs to be undertaken in good faith when the problem is reasonably well known. However, the right of entry for supplying assistance is not considered dependent upon either seeking or receiving the coastal state's permission, for example, the US must provide notice to a given coastal state before entering its territorial sea to help those in danger for international comity and for the purpose of alerting further rescue forces.¹⁶⁰

Several international conventions have been put into place to address matters of SAR along with both a state's and master of a given vessel's obligations. For example, the States party to the International Convention for the Safety of Life at Sea (SOLAS) 1974, the UNCLOS 1982, or the Geneva Convention on the High Seas 1958 must establish SAR organisations to provide for the enforcement of rescue efforts.¹⁶¹ For example, SOLAS 1974 provides at Regulation 15, Chapter V it is for each contracting state to guarantee “*any necessary arrangements are made for coast watching and for the rescue of persons in distress . . . round its coasts*” including “*the establishment, operation, and maintenance of such maritime safety facilities as are deemed practicable and necessary having regard to the density of the seagoing traffic and the navigational dangers and should, . . . , afford adequate means of locating and rescuing such persons*”.

The Geneva Convention on the High Seas 1958 then also similarly provides at Article 12(2) it is for all coastal nations to provide “*the establishment and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and - . . . - by way of mutual regional arrangements cooperate with neighbouring states*”. Ostensibly, the Geneva Convention on the High Seas 1958 and the UNCLOS 1982 provides every state needs the master of a ship bearing its flag (whether naval or otherwise) without seriously endangering the ship, crew, or passengers, to

158 Soteria Search & Rescue 'MOD & MCA/DfT selects Soteria for SAR-H Programme' Soteria Search & Rescue (9th February 2010).

159 Model Maritime Service Code (1995).

160 *Ibid.*

161 *Ibid.*

help anyone found at sea who may run the risk of being lost. These vessels must proceed with all possible speed to their rescue where they are made aware of their need for help to the extent it is reasonably expected.¹⁶² Additionally SOLAS 1974 needs the master of every merchant and private ship to help those in distress and broadcast warnings regarding either dangerous conditions or hazards they come across at sea, whilst further provisions include the International Convention on Maritime Search & Rescue 1979, Convention for the Unification of Certain Rules of Law regarding Assistance & Salvage at Sea 1910 and the International Convention on Salvage 1989.¹⁶³

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

Chapter 3 ROLE OF NAVY IN MARITIME SECURITY

3.1 Defining maritime violence and maritime security

The definition of Maritime violence formulated by the Joint International Working Group on Uniformity of Law Concerning Acts of Piracy and Maritime Violence ends disagreements and long debates to whether a certain crime at sea was an act of piracy, armed robbery, sabotage, or terrorism where, under “Maritime Violence” all of the above listed crimes share violence as a common denominator, regardless of the motives for or locations of the crimes.¹⁶⁴

With regard to the Singapore's Model National Law on Acts of Piracy & Maritime Violence 2001, as a result of deliberation by the Joint International Working Group on Uniformity of Law Concerning Acts of Piracy & Maritime Violence. On this basis, under Section I(3) of Singapore's Model National Law on Acts of Piracy & Maritime Violence 2001 the crime of 'maritime violence' is committed when, for any unlawful purpose, someone intentionally or recklessly - (a) injures or kills someone in connection with the commission or the attempted commission of any of the offences at sub-Sections I(3)(b)-(h); or (b) performs an act of violence against someone on board a ship; or (c) seizes or exercises control over a ship or anyone on board by force or any other form of intimidation; or (d) destroys or causes damage to a ship or ship's cargo, an offshore installation, or an aid to navigation; or (e) employs any device or substance likely to destroy or cause damage to a ship, its equipment or cargo, or an aid to navigation; or (f) destroys or causes damage to maritime navigational facilities, or interferes with their operation, if that act would endanger the safe navigation of a ship or ships; or (g) engages in an act involving interference with navigational, life support, emergency response or other safety equipment, if that act could endanger the safe operation or navigation of a ship or ships or someone on board a ship; or (h) communicates false information, endangering or being likely to endanger the safe operation or navigation of a ship or ships; or (i) engages in an act constituting an offence under Article 3 of the SUA 1988 (as amended); or (j) engages in an act constituting an offence under Article 2 of the SUA 1988 (as amended); or (k) engages in any of the acts described in sub-Sections II(3)(a) – (i), to the extent applicable, where such acts involve or affects someone on an offshore installation.

164 Maximo Q. Mejia Jr., “Defining Maritime Violence and Maritime Security”, in Proshanto K. Mukherjee, Maximo Q. Mejia Jr. and Gotthard M. Gauci (ed.), *Maritime Violence and Other Security Issues at Sea: Proceedings of the International Symposium Held at the World Maritime University, Malmö, Sweden, 26-30 August 2002*, Malmö: WMU Publications, 2002 at p. 34.

In addition, it was also recognized under Section I(3) of Singapore's Model National Law on Acts of Piracy & Maritime Violence that instances of maritime violence are also committed when anyone, for any unlawful purpose, intentionally or recklessly endangers or damages the marine environment, or the coastline, maritime installations or facilities, or related interests. To deal with instances of maritime violence, maritime security is focussed upon preventing intentional damage through sabotage, subversion, or terrorism. As has already been recognized, maritime security is considered to be one of the three most basic roles of the US Coast Guard that has gradually developed with a view to responding to a series of catastrophic events that started in 1917 with the implementation of the Espionage Act 1917. There are now three main maritime security activities that are undertaken by the US Coast Guard involving – (i) Port Security (i.e. to reduce the risks and mitigate the results of an act threatening personnel, facilities, vessels, and public security); (ii) Vessel Security (i.e. owners or operators of vessels must designate security officers, develop security plans based on security assessments, implement security measures specific to the vessel's operation); and (c) Facility Security (i.e. the security of any facility located in, on, under, or adjacent to any waters subject to the US' jurisdiction and used, operated, or maintained by a public or private entity).¹⁶⁵

The Espionage Act 1917 contains provisions for the Coast Guard to make regulations to prevent damage to harbours and vessels during national security emergencies in the US. The Magnuson Act 1950 subsequently provides for implementing permanent port security regulations and broad powers to search vessels found in US waters and also control foreign vessels' movements.¹⁶⁶ The Ports & Waterways Safety Act 1972 followed as a result of a number of major groundings and oil spills and provides for port safety authority beyond the Magnuson Act 1950 to safeguard the use of port transportation facilities and enhance efforts undertaken against the marine environment's degradation.¹⁶⁷ More recently the Maritime Transportation Security Act (MTSA) 2002 was implemented as a result of the 9/11 terrorist attacks against the US to provide for the application of sweeping new authority to prevent acts of terrorism in the maritime domain.¹⁶⁸ Finally, the International Ship & Port Facility Security Code (ISPS) of 2002 has been adopted by the IMO as part of a system of new provisions as part of the International Convention for SOLAS with a view to then better enhancing the ongoing development of policies of maritime security.¹⁶⁹

¹⁶⁵ United Nations Convention on the Law of the Sea 1982 at Part VII: High Seas, Article 101..

¹⁶⁶ Hoge, J, Jr & Rose, G 'How Did This Happen?' Public Affairs (2001), at p.186.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

When US Navy merchant vessels are in dangerous waters, security detachments are posted on the vessel. Security forces have helped deter piracy as well as terrorist attacks, such as the *Maersk Alabama*.¹⁷⁰ US Navy merchant vessels normally train the deck department in firearms, but the added Navy security detail provides for extra protection, whilst Navy escorts might sometimes accompany the vessels on their voyage. Similarly, in order to better combat instances of piracy, international ships are now commonly equipped with helicopters to patrol the waters where piracy has arisen – although these kinds of patrols have proved to be largely ineffective since the seas and oceans are so large.¹⁷¹ Therefore, ships are now being increasingly equipped with anti-piracy weaponry including sonic devices that can be used against directed targets creating a sound so powerful it causes pirates to become disoriented as the vessel being pursued increases speed and takes evasive manoeuvres.¹⁷²

3.2 Combating Piracy

To combat maritime piracy through the development of a Naval Anti-Piracy Programme, piracy is defined under the UNCLOS 1982, to include any criminal acts of violence, detention, rape, or depredation committed privately by the crew or the passengers of a private ship or aircraft directed against another ship, aircraft, or persons or property therein.¹⁷³ In addition, acts of piracy may also be committed against a ship, aircraft, persons, or property in a place beyond a state's jurisdiction in keeping with idea of 'universal jurisdiction' although the international community is now facing considerable problems achieving justice.¹⁷⁴ This is emblematic of the fact that seaborne piracy is still a significant issue represented by estimated global losses of US\$13 to \$16 billion annually and is particularly prevalent between the Red Sea and the Indian Ocean off of the coast of Somalia along with the Strait of Malacca and Singapore utilised by over 50,000 commercial ships annually.¹⁷⁵ With this in mind, a recent surge in piracy off of the Somalian coast brought about a significant international effort led by the US to patrol the area near the 'Horn of Africa'.¹⁷⁶

Problems have been exacerbated by the fact that while pirates in contemporary times favour the use of small boats to take advantage of the limited crews on most cargo vessels, they also use large

170 See Roberts. R 'Mariner details life aboard a lifeboat' NPR (11th April 2009) & BBC News 'US captain rescued from pirates' BBC News (13th April 2009).

171 Cruise Critic.Co.UK 'Pirates attack cruise ship, effort fails' Cruise Critic.Co.UK (30th November 2008).

172 *Ibid.*

173 Chiarugi. M & Archibugi. D 'Piracy Challenges Global Governance' Open Democracy (9th April 2009).

174 *Ibid.*

175 See Luft. G & Korin. A 'Terrorism goes to sea' Foreign Affairs (November/December 2004) & Dillon. D 'Piracy in Asia: A growing barrier to Maritime Trade' The Heritage Foundation (22nd June 2000).

176 Krane. J 'US Navy warships exchange gunfire with suspected pirates off Somali coast' The Seattle Times (19th March 2006).

vessels to supply their attacks where a large amount of international commerce occurs.¹⁷⁷ There is a need to appreciate that the majority of major routes for shipping involve going through narrow bodies of water including the Gulf of Aden (which has already been discussed in an earlier part of this dissertation)¹⁷⁸ making them vulnerable to attack due to having to travel at lower speeds.¹⁷⁹ Combating the problems in this area are then made all the more difficult by the fact pirates often operate around developing or struggling countries with smaller navies and significant trade routes and commonly evade capture by sailing into waters controlled by their pursuer's enemies.¹⁸⁰ The anti-piracy programmes that nations have looked to put into place have also proved limited because, what with the Cold War's end, navies have decreased both their size and the extent of their patrols whilst trade has increased to make organized piracy and that carried out by individual groups even easier.¹⁸¹

With a view to ascertaining some idea of the problem, the International Maritime Bureau seeks to maintain statistics in relation to pirate attacks from 1995 onwards. These records show that most crimes emanating from acts of piracy are associated with hostage-taking. By way of illustration, in 2006, there were 239 attacks, 77 crew were kidnapped and 188 taken hostage but only 15 attacks resulted in murder.¹⁸² Then, in 2007, the number of attacks rose by 10% to 263 attacks with a 35% increase in reported attacks involving guns and the total number of crew members injured was 64 when compared to just 17 in 2006 and this does not include hostage taking/kidnapping, where no one was injured.¹⁸³ Moreover, the number of attacks in 2009 saw a significant increase in just the first three-quarters of the year due to growing unrest in the Gulf of Aden. In particular, between January and September alone of 2009 the number of attacks rose from 293 to 306 in 2008.¹⁸⁴ Occasionally, however, modern pirates are more interested in taking the personal belongings of the crew and the ship's safe as opposed to the cargo or even hijacking the vessel itself and sailing it to a port to be repainted and given a new identity.¹⁸⁵ Moreover, piracy has also been a particular problem in the event there is a significant amount of political unrest because, for example, following the US withdrawal from Vietnam, Thai piracy was aimed at the many Vietnamese looking

177 Gauci. G. M 'Piracy – Legal & Theoretical Problems', in 'Maritime Violence & Other Security Issues at Sea' The proceedings of the Symposium on Maritime Violence & other Security Issues at Sea, World Maritime University, Malmö, Sweden (26th–30th August 2002), at p.40.

178 ICC Commercial Crime Services 'Coalition warships set up Maritime Security Patrol area in the Gulf of Aden' ICC Commercial Crime Services (26th August 2008).

179 Coffen-Smout. S 'Pirates, Warlords & Rogue Fishing Vessels in Somalia's Unruly Seas' (2000).

180 Gauci. G. M 'Piracy – Legal & Theoretical Problems', in 'Maritime Violence & Other Security Issues at Sea' The proceedings of the Symposium on Maritime Violence & other Security Issues at Sea, World Maritime University, Malmö, Sweden (26th–30th August 2002), at p.40.

181 Ibid at p.40.

182 Elliot. R 'Eastern Inscrutability: Piracy on the High Seas' Security Management (June 2007).

183 International Criminal Court (ICC) Commercial Crime Services: IBM Piracy Report 2007.

184 International Criminal Court (ICC) Commercial Crime Services: IBM Piracy Report 2009.

185 Langeswiesche. W 'Anarchy at Sea' Atlantic Monthly (September 2003).

to escape via the sea, whilst warlords have also looked to attack ships delivering UN food aid in the Somalian region since the government's collapse.¹⁸⁶

Interestingly, environmental action groups including '*Sea Shepherd*' have been accused of being involved in acts of piracy and terrorism when they ram and then throw butyric acid onto the decks of ships involved with commercial fishing, shark poaching and fining, seal hunting, and whaling despite the fact that non-lethal weapons are used by the '*Sea Shepherd*' ships.¹⁸⁷ However, the attack against the US cruise ship the '*Seabourn Spirit*' off of Somalia in November 2005 serves as an excellent example of the sophisticated pirates that mariners have to deal with in contemporary times.¹⁸⁸ The pirates made their attack more than 100 miles offshore with speedboats out of a larger mother ship armed with automatic firearms and rocket-propelled grenades.¹⁸⁹ To improve the anti-piracy mechanisms that have been put into place, many countries now look to prevent ships from either entering their territorial waters or ports if crews are armed to hopefully restrict possible instances of piracy, whilst shipping companies often look to take further precautions by hiring armed security guards.¹⁹⁰

Ships are, however, also customarily hijacked for political reasons by those that could be described as pirates. An example arose with the hijacking of the Italian civilian passenger ship '*Achille Lauro*' that is generally regarded as an act of piracy and will be considered in greater detail further on in this chapter.¹⁹¹ Another example occurred during the troubles in Northern Ireland with two coaster ships that were hijacked and sunk by the Irish Republican Army (IRA) between February 1981 and 1982.¹⁹² Another example arose when a collision between the container ship '*Ocean Blessing*' and the hijacked tanker '*Nagasaki Spirit*' occurred in the Malacca Straits at about 23:20 on 19th September 1992 after pirates had boarded the '*Nagasaki Spirit*', removed the captain, set the ship on autopilot and left with the ship's master.¹⁹³ With no one at the wheel, the ship was left going at full speed and the collision and resulting fire took the lives of '*Ocean Blessing's*' sailors, whilst there were only two survivors from the '*Nagasaki Spirit*'.¹⁹⁴ Moreover, the cargo ship '*Chang Song*' was boarded and taken over by pirates posing as customs officials in the South China Sea in 1998 and the entire crew was killed leading to a crackdown by the Chinese government resulting in the arrest

186 Reuters '*Pirates open fire on cruise ship off of Somalia*' The Washington Post (5th November 2005).

187 The Sydney Morning Herald '*Whaling acid attack terrorist attack: Japan*' The Sydney Morning Herald (9th February 2007).

188 '*Piracy is still troubling the shipping industry: report; Industry fears revival of attacks though current situation has improved*' The Business Times Singapore (14th August 2006).

189 *Ibid.*

190 MaritimeSecurity.com '*Guns on Board – A 'real world' look at the issue of carrying firearms on your vessel*' MaritimeSecurity.com (2009).

191 F-14 Tomcat in Combat '*The 1985 Achille Lauro Affair*' F-14 Tomcat in Combat (2010).

192 Ardoyne Commemoration Project '*Ardoyne: The untold truth - Beyond the Pale*' (2002), at p.104.

193 *Semco Salvage & Marine Pte. Ltd v. Lancer Navigation* [1997] UKHL 2, at p.2.

194 *Ibid.*

of 50 pirates.¹⁹⁵ A further example arose when pirates boarded the Danish bulk carrier *'Danica White'* in June 2007 near the coast of Somalia. Although the *USS Carter Hall* tried to rescue the crew by firing several warning shots, it was unable to follow them on into Somali waters.¹⁹⁶

More recently, in April 2008 pirates seized control of the French luxury yacht *'Le Ponant'* carrying 30 crew members off the coast of Somalia that were only released after a ransom was paid.¹⁹⁷ The French military later captured some of the pirates, with the support of the provisional Somali government.¹⁹⁸ As a result of this and other incidents, on 2nd June 2008 the United Nations Security Council (UNSC) passed a resolution that served to permit the patrolling of Somali territorial waters for six months by states cooperating with Somalia's Transitional Federal Government (TFG) to stop *"piracy and armed robbery at sea, in a manner consistent with international law"*.¹⁹⁹ But despite such efforts, on 8th April 2009, Somali pirates briefly captured the *'MV Maersk Alabama'*, a cargo ship containing emergency relief supplies destined for Kenya in what was the latest in a week-long series of attacks along the Somali coastline.²⁰⁰ The crew then eventually took back control of the ship and although the Captain was taken by the escaping pirates to a lifeboat he was rescued on 12th April 2009 from his pirate captors who were shot and killed by US Navy Seals.²⁰¹ But it is not only in the Somali region where piracy has continued to be particularly prevalent. For example, in July 2009 the Finnish ship *'MV Arctic Sea'* sailing under the Maltese national flag was allegedly hijacked in Sweden's territorial waters by a group of pirates disguised as policemen who went through the cargo and later released the ship and the crew.²⁰² Finally, in April of this year pirates mistakenly attacked the United States Ship (USS) *'Nicholas'* (an Oliver Hazard Perry-Class missile frigate) in international waters just west off of the Seychelles believing it to be a merchant vessel in the dark leading to the eventual detention of the pirates involved.²⁰³

To combat instances of piracy international ships are now commonly equipped with helicopters with a view to patrolling the waters where piracy has arisen – although these kinds of patrols have proved to be largely ineffective since the seas and oceans are so large.²⁰⁴ As a result, ships are now

195 BBC News *'China executes pirates'* BBC News (28th January 2000).

196 USA Today *'Navy: US ship fired at pirates off Somalia'* USA Today (6th June 2007).

197 BBC News *'France raid ship after crew freed'* BBC News (12th April 2008).

198 *Ibid.*

199 United Nations News Agency *'UN Maritime Agency welcomes Security Council action on Somalia Piracy'* United Nations (5th June 2008).

200 Roberts. R *'Mariner details life aboard a lifeboat'* NPR (11th April 2009).

201 BBC News *'US captain rescued from pirates'* BBC News (13th April 2009).

202 The Local *'Finnish ship hijacked in Swedish waters'* The local (30th July 2009).

203 Lewis. M *'USS Nicholas Captures Suspected Pirates'* United States Department of Defense (1st April 2010).

204 Cruise Critic.Co.UK *'Pirates attack cruise ship, effort fails'* Cruise Critic.Co.UK (30th November 2008).

being increasingly equipped with anti-piracy weaponry including sonic devices that can be used against directed targets creating a sound so powerful it causes pirates to become disoriented as the vessel being pursued increases speed and takes evasive manoeuvres.²⁰⁵ But the best protection against piracy is simply to avoid encountering pirates and this can be achieved by using regular radar and more advanced forms.²⁰⁶ In addition, although it has been a non-wartime twentieth century tradition for merchant vessels to be unarmed, the US government for one has recently changed the rules so it is now 'best practice' for particularly large and significant vessels to travel with their own teams of armed private security guards.²⁰⁷ Ship crews can also be given weapons training,²⁰⁸ whilst remote weapon systems can also be implemented to a vessel²⁰⁹ along with a high firewall²¹⁰ and vessel boarding protection systems.²¹¹ But, as has already been alluded to, in some areas including near Somalia (as was discussed in the preceding chapter) naval vessels from different nations patrol to intercept those that would attack merchant vessels, whilst robotic or remote-controlled Unmanned Surface Vehicles (USVs) are also sometimes used²¹² and Unmanned Aerial Vehicles (UAVs) are also used by the army.²¹³

Nevertheless, despite the best efforts made at achieving the prevention of piracy internationally, there are legal barriers to effectively prosecute those captured in international waters. Countries the world over have been struggling to apply existing maritime and international laws along with those of their own systems, which then limits them to having jurisdiction over their own people. According to piracy experts, there is a need to both 'deter and disrupt' acts of piracy so pirates are then often detained, interrogated, disarmed, and released. But, since millions of dollars are at stake, there is little incentive for pirates to stop their activities, whilst prosecutions have proved to be all too rare for several reasons. For one thing, the laws to prevent piracy are almost non-existent in modern times. To this effect the Dutch are still looking to utilize a seventeenth century law against 'sea robbery' to achieve prosecutions. More generally warships that capture pirates do not have the jurisdiction to try them, whilst the North Atlantic Treaty Organization (NATO) also has not got a detention policy. In practice prosecutors have found it difficult to assemble witnesses and find translators, whilst many countries are reluctant to imprison pirates because they would then have to

205 *Ibid.*

206 MarineBuzz.Com 'BAE systems reveal anti-sea piracy systems' MarineBuzz.Com (2010).

207 Miller. J. W 'Loaded: Freighters ready to shoot across pirate bow' The Wall Street Journal (6th January 2010).

208 YouTube 'Company provides anti-piracy training for security forces' AP Television (18th June 2009).

209 Bellamy. L 'What can be done to counter Somali piracy?' Research Institute for European & American Studies (RIEAS), Research Paper No.129 (March 2009).

210 CNN Politics.com 'Shipping company head wants to arm vessels against pirates' CNN Politics.Com (5th May 2009).

211 Secure-Waters 'The Patent Pending Ship Protection System Protects Ships Against Intruders' Secure-Waters (2009).

212 Sofge. E 'Robot boats hunt high-tech pirates on the high speed seas' Popular Mechanics (1st October 2010).

213 *Ibid.*

deal with them when they are released²¹⁴ - although the US has a statute that serves to impose a sentence of life imprisonment for piracy in keeping with “*the law of nations*” regardless of the pirate or victims nationality.²¹⁵ It is interesting to note that academics including George Mason University professor Peter Leeson have suggested there is a need for the international community to appropriate Somalian territorial waters and sell them, together with the international portion of the Gulf of Aden, to a private company to provide security from piracy in exchange for tolls to world shipping.²¹⁶

Piracy is a significant issue in international law because it is commonly held to be representative of the earliest invocation of the idea of 'universal jurisdiction'.²¹⁷ The crime is looked upon as being a breach of *jus cogens* that is a conventional peremptory norm that nation states are to uphold in international law.²¹⁸ Ostensibly it has come to be understood that those that are committing thefts on the high seas, inhibiting trade either nationally or internationally, and endangering maritime communication are considered *hostis humani generis* ('enemies of humanity').²¹⁹ More specifically, in the US the criminal prosecution of piracy is authorised under Article 1, section 8, clause 10 of the US Constitution 1787 that states “*Congress shall have Power ... To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations*”. But, since piracy often takes place beyond a nation state's territorial waters, the prosecution of pirates by sovereign states represents a complex legal situation because pirates' prosecution on the high seas contravenes conventional freedom.

Nevertheless, in view of the recognition of the value of the principle of 'universal jurisdiction', it is possible for action to be taken against pirates without national objection from the pirate vessel's flag state.²²⁰ As a result, this is considered to be representative of what is recognised as being an exception to the principle of *extra territorium jus dicenti impune non paritur*, which translates to meaning that the “*judgment of one who is exceeding his territorial jurisdiction may be disobeyed with impunity*”.²²¹ But interestingly problems may have been exacerbated by the fact in the UK in 2008, the British Foreign Office advised the Royal Navy not to detain pirates of certain nationalities

214 Pitman, T & Houeeld, K 'NATO frees 20 hostages; pirates seize Belgian ship' The Huffington Post (18th April 2009).

215 Piracy under Law of Nations 18 USC 1651.

216 Leeson, P 'Want to prevent piracy? Privatize the Ocean' National Review Online (13th April 2009).

217 Caninas, O. P 'Modern Maritime Piracy: History, Present Situation & Challenges to International Law' Paper presented at the annual meeting of the ISA-ABRI Joint International Meeting, Pontifical Catholic University, Rio de Janeiro Campus (PUC-Rio), Rio de Janeiro, Brazil (22nd July 2009).

218 *Ibid.*

219 Kissinger, H 'The Pitfalls of Universal Jurisdiction' Foreign Affairs (July/August 2001).

220 *Ibid.*

221 *Ibid.*

because they could claim asylum under the Human Rights Act 1998 if their national laws included execution, or mutilation as a judicial punishment for their piracy.²²² More generally, however, under the UNCLOS 1982 the practice of 'maritime piracy' includes “(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)”.²²³

3.3 Combating Armed Robbery

With a view to understanding how armed robbery is dealt with in the context of maritime law, the IMO has looked to define the idea of 'armed robbery against ships' as meaning any unlawful act of violence, detention, act of depredation, or threat thereof, aside from an act of 'piracy', directed against either a ship, persons or property on board such a ship in a given State's jurisdiction.²²⁴ The IMO then goes on to state the offence of 'piracy' relates to any “*unlawful acts as defined in Article 101 of the 1982 United Nations Convention on the Law of the Sea*”.²²⁵ On this basis, the distinction that has been made by the IMO has proved to be very useful because under international law piracy has been recognized as applying solely to acts committed on the high seas or an EEZ.²²⁶ Therefore, the IMB's utilization of 'piracy' to define virtually any attack or robbery on a ship has served to create some considerable confusion amongst both lawyers and national governments despite the fact it has been recognized.²²⁷ This is because the IMB has looked to define 'piracy' as being “*an act of boarding any vessel with a view to committing theft or any other crime with the intent or capability to use force in the furtherance thereof*”.²²⁸ With this in mind, the IMB definition effectively includes, within the understanding of the practice of 'piracy', attacks perpetrated against ships in the territorial sea or archipelagic waters of a particular nation state and also includes crimes of stealth

222 Woolf. M 'Pirates can claim UK asylum' The Sunday Times (13th April 2008).

223 United Nations Convention on the Law of the Sea 1982 at Part VII: High Seas, Article 101.

224 International Maritime Organization (IMO) 'Draft Code of Practice for the Investigation of the Crimes of Piracy & Armed Robbery Against Ships' MSC/Circ.984 (20th December 2000), at p.1.

225 *Ibid* at p.1.

226 Beckman. R. C 'Combating Piracy & Armed Robbery Against Ships in Southeast Asia: The Way Forward' (2002) 33 Ocean Development & International Law 317-341, at p.319.

227 *Ibid* at p.319.

228 International Chamber of Commerce/International Maritime Bureau (ICC/IMB) 'Piracy & Armed Robbery Against Ships - Annual Report 1st January-31st December 2000' International Chamber of Commerce/International Maritime Bureau (ICC/IMB) (January 2001).

and attacks from shore when a given vessel is either anchored or berthed in a particular port.²²⁹

Nevertheless, understanding 'armed robbery against ships' is not without its ambiguity since it includes offences undertaken without weapons, whilst the idea of being “*within a state’s jurisdiction over such offences*” is not completely clear. This could be confined to ocean areas within a given state’s jurisdiction including ports, territorial seas, and archipelagic waters, but could also include within its remit attacks on ships in internal waters like lakes or rivers along with attacks on ships on the high seas not within piracy's narrow definition - although it does not include acts of robbery aboard ships without an act of violence or detention.²³⁰ On this basis, it is arguable that a considerable amount of confusion would ultimately be avoided if state governments and all concerned organizations used the same definitions. The IMB report of June 2001 seems to be a significant step forward in this direction as it defines 'Piracy' and 'Armed Robbery against Ships' in keeping with the IMO Draft Code of Practice.²³¹ As a result, the Report concludes the IMO definitions now cover actual or attempted attacks whether the ship is berthed, at anchor, or at sea in keeping with the position of the IMB. But, although the reality is that the matter is actually slightly more complicated than this, this is a clear indication that the two organizations have looked to positively resolve their differences.²³² Therefore, the concept of 'piracy' needs to only be utilized to describe incidents within the remit of Article 101 of the UNCLOS Convention 1982 in maritime zones beyond the territorial sovereignty of the coastal state on either the high seas or an EEZ, whilst 'armed robbery against ships' needs to be used to describe incidents in maritime zones within the sovereignty of the coastal state. Most incidents in the straits that are utilized for international navigation would be described as armed robbery against ships because they are usually within the territorial sea of a coastal state.²³³

In its 2001 Resolution on Oceans and Law of the Sea, the UN General Assembly urged states to become parties to the SUA Convention 1988 (as amended) and ensure its effective implementation.²³⁴ Therefore, there is a need to provide an overview of the SUA Convention 1988 (as amended) since – (a) State parties agree to cooperate to ensure those who commit certain specific offences that endanger international maritime navigation's safety will be arrested and

229 Beckman. R. C '*Combating Piracy & Armed Robbery Against Ships in Southeast Asia: The Way Forward*' (2002) 33 *Ocean Development & International Law* 317-341, at p.319.
230 *Ibid* at p.319.

231 International Chamber of Commerce/International Maritime Bureau (ICC/IMB) '*Piracy & Armed Robbery Against Ships, Report for the Period 1st January–30th June 2001*' International Chamber of Commerce/International Maritime Bureau (ICC/IMB) (July 2001).

232 Beckman. R. C '*Combating Piracy & Armed Robbery Against Ships in Southeast Asia: The Way Forward*' (2002) 33 *Ocean Development & International Law* 317-341, at p.320.
233 *Ibid* at p.320.

234 Resolution 55/7 Oceans & the Law of the Sea, 55th Session, UNGA, 30th October 2000, (UN Doc. No. A/RES/55/7), at paragraphs 33–35.

prosecuted if they enter the territory of any country that is party to the Convention; (b) the list of offences includes someone who unlawfully and intentionally seizes or exercises control over a ship by force, threat thereof, any other form of intimidation, or performs an act of violence against someone on board a ship if that act is will endanger its safe navigation;²³⁵ (c) someone also commits an offence if they attempt to commit the offences already identified;²³⁶ (d) the Convention applies wherever the matters are committed and also applies if the ship is scheduled to engage in international maritime navigation and in relation to offences committed on ships in port or internal waters; (e) States parties to the convention must establish jurisdiction over the offence if it was committed against or on board a ship flying its flag in its territory or territorial sea by someone who is its national and is present in its territory;²³⁷ (f) if the alleged offenders are present in its territory, a state party to the Convention needs to take them into custody and either extradite them or prosecute them nationally;²³⁸ (g) the Convention has provisions that make it much easier to extradite someone who has committed an offence under the Convention from one state party to another even where there is no bilateral extradition treaty;²³⁹ (h) States party to the Convention must afford one another the greatest measure of cooperation regarding criminal proceedings;²⁴⁰ and (i) States party to the Convention must also cooperate to prevent offences under the Convention.²⁴¹

On this basis, it seems arguable the SUA Convention 1988 (as amended) could be looked upon as a significant tool with a view to combating major criminal hijacks that are widely looked upon as the most serious forms of attack against ships whether they were committed in port, in the territorial sea, or in maritime zones beyond a coastal state's jurisdiction.²⁴² In addition, it has also been recognized under the terms of the SUA Convention 1988 (as amended) that someone also commits a criminal offence in this context if they aid in the commission of any of the offences or are otherwise an accomplice to someone who commits such an offence.²⁴³ This would make it much easier to arrest and prosecute those that are accomplices to the offence but who do not participate in an attack themselves. However, there remains a significant level of confusion regarding the nature and scope of the SUA Convention 1988 (as amended) because there are some working in the field who believe it is a piece of international legislation that is only applicable to those acts that are

235 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) 1988 (as amended) at Article 3.

236 *Ibid* at Article 3(2).

237 *Ibid* at Article 6.

238 *Ibid* at Articles 7 & 10.

239 *Ibid* at Article 11.

240 *Ibid* at Article 12.

241 *Ibid* at Article 13.

242 Beckman, R. C 'Combating Piracy & Armed Robbery Against Ships in Southeast Asia: The Way Forward' (2002) 33 Ocean Development & International Law 317-341, at p.330.

243 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) 1988 (as amended) at Article 3.

committed by terrorists even though there is no mention of the word 'terrorism' or any derivative thereof in the Convention.²⁴⁴ Nevertheless, the SUA Convention 1988 (as amended) can be looked upon as being an important tool for combating major criminal hijacks and, if the hijackers entered the territory of any state party to the Convention, that state would be under a legal obligation to take them into custody and either prosecute them themselves or extradite them to another state for the purpose of prosecution. Therefore, the process of making individual offenders 'international criminals' amongst states parties to the SUA Convention 1988 (as amended) would help to ensure that offenders could not hide.²⁴⁵

With a view to combating instances of armed robbery and related offences at sea, it is recommended that the existing bilateral agreements on coordinated patrols be reviewed with a view to determining whether further bilateral cooperation is required so as to prevent attacks on ships in important straits. When reviewing the bilateral agreements, the coastal states need to consider the merits of including provisions in international legislation in this regard to deal with numerous matters of concern.²⁴⁶ For one thing it is arguable there is a need for coastal states to look to agree to pass their own national legislation making any attacks against ships exercising rights of passage in a given strait a criminal offence that is punishable by severe penalties no matter where it was committed. Therefore, there is a need for universal understandings to develop at both the minimum and maximum levels where weapons were used, crew members injured, or crew members taken hostage.²⁴⁷ Coastal states should agree that either state has the right to arrest any ship in the traffic separation scheme or its buffer zone if a particular ship has attacked a vessel navigating a strait. In addition, it is for coastal states to agree to arrest any alleged offenders coming into their territory or territorial sea and agree that an arresting state has an obligation to either prosecute the alleged offenders or extradite them. Coastal states could also look to include a legislative provision regarding the extradition of offenders suspected of having committed offences and should agree to specific measures to ensure the greatest measure of cooperation in connection with the investigation of attacks on ships in the strait. Finally, the existing coordinated patrol arrangement should continue and be reviewed to determine whether adjustments are necessary.²⁴⁸

244 Beckman. R. C '*Combating Piracy & Armed Robbery Against Ships in Southeast Asia: The Way Forward*' (2002) 33 *Ocean Development & International Law* 317-341, at p.330.

245 *Ibid* at p.330

246 *Ibid* at p.330.

247 *Ibid* at p.330.

248 *Ibid* at p.330.

3.4 Combating Terrorism

In looking to combat terrorism, terrorism is viewed as distinct from piracy in that whilst piracy is a crime motivated by greed based on immediate financial gain, terrorism is motivated by political goals beyond attacking or hijacking a maritime target that is considered to be more immediate. But there is some overlap between acts of piracy and terrorism in the maritime arena such as has arisen with the ransom kidnappings by members of Abu Sayyaf in the Southern Philippines and the Free Aceh Movement.²⁴⁹ The level of concern regarding maritime terror has heightened since the events of 9/11 in the US due to the widely disseminated, and largely accepted fact that al-Qaeda possesses at least 15 cargo vessels.²⁵⁰ But, internationally, the attack upon the *'Achille Lauro'* is considered particularly significant for making maritime terrorism a key concern on the political map to be dealt with internationally.²⁵¹

The attack in this case arose on 7th October 1985 when four men serving to represent the Palestine Liberation Front (PLF) took control of the *'Achille Lauro'* liner off of the coast of Egypt when it was on a voyage from Port Alexandria to Port Said.²⁵² The PLF hijackers had been surprised by the crew and acted prematurely so as to hold the passengers and crew hostage and then redirect the vessel to Tartus, Syria whilst also demanding the release of some 50 Palestinians imprisoned in Israel.²⁵³ Problems were then only further exacerbated when the hijackers killed a disabled Jewish-American passenger and threw the body overboard.²⁵⁴ The ship headed back towards Port Said, and after two days of negotiations, the hijackers agreed to abandon the liner in exchange for safe conduct and were flown towards Tunisia.²⁵⁵ As a result the then US President Ronald Reagan ordered the plane that the hijackers were on to be intercepted in the air from off the aircraft carrier *USS Saratoga*. They were then directed to land at Naval Air Station Sigonella where the hijackers were arrested by the Italians after a disagreement with the American authorities.²⁵⁶ Matters came into contention because some of the hijackers were permitted to continue to their destination despite

249 See, for example, 'Piracy Watchdog Points Finger at Aceh Separatists' Straits Times Interactive News (4th February 2002) & 'China Gives 'Guarded' Response to Indian Warships in Malacca Strait' BBC Monitoring International Reports (18th July 2002).

250 Roach, J. A 'United States Initiatives to Enhance Maritime Security at Sea' Paper presented to the International Conference on the Regime of the Exclusive Economic Zone: Issues & Responses, Ship & Ocean Foundation & East-West Center (February 2003), at p.3.

251 Jacobsson, M 'Terrorism at Sea' Ministry of Foreign Affairs, Sweden, Transcript of Oral Presentation, in 'Maritime Violence & Other Security Issues at Sea' The proceedings of the Symposium on Maritime Violence & other Security Issues at Sea, World Maritime University, Malmö, Sweden (26th–30th August 2002), at pp.157-159.

252 Berman, D 'Klinghoffer daughters recall personal tragedy at commemoration of terror victims outside Israel' Haaretz.com (5th September 2008).

253 F-14 Tomcat in Combat *The 1985 Achille Lauro Affair* F-14 Tomcat in Combat (2010).

254 Jacobsson, M 'Terrorism at Sea' Ministry of Foreign Affairs, Sweden, Transcript of Oral Presentation, in 'Maritime Violence & Other Security Issues at Sea' The proceedings of the Symposium on Maritime Violence & other Security Issues at Sea, World Maritime University, Malmö, Sweden (26th–30th August 2002), at pp.158-159.

255 Heymann, P. B 'Terrorism & America: A Commonsense Strategy for a Democratic Society' The MIT Press (2001).

256 Bosiljevac, T. L 'SEALS: UDT/SEAL Operations in Vietnam' Ballantine Books (1990), at p.200.

the US' protests whilst the Egyptian authorities demanded an apology from the US.²⁵⁷

The '*Achille Lauro*' was by no means the first maritime terrorist incident, but it received international publicity, particularly since an American citizen was killed during the attack and raised several important issues including the almost complete lack of security and preventative measures which made it all too easy for a handful of Palestinian Liberation Organization (PLO) operatives to hijack and seize control of the vessel.²⁵⁸ As was recognised earlier in this section of the discussion, apparently the PLO operatives had planned to carry out an attack on the Israeli port of Ashdod but a waiter found them cleaning their weapons so the hijackers plan had to be varied.²⁵⁹ Therefore, the PLO operatives seized control of the '*Achille Lauro*' and 'toured' the eastern Mediterranean before the Egyptian authorities eventually negotiated the release of the vessel in exchange for returning the PLO operatives to Palestine.²⁶⁰ However, because an American had been killed during this ordeal, the then US President Ronald Reagan ordered two F-14 Tomcats to overtake the Egyptian plane returning the PLO operatives to Sicily where the Palestinians were arrested by Italian security.²⁶¹ But in the immediate aftermath problems arose from a lack of security, whilst the ease with which the cruise ship and its passengers were seized shocked the US government and raised significant concerns in relation to other potentially 'soft targets'.²⁶²

This incident then indirectly led to the establishment of the IMO's sponsorship of the 1988 Rome conference from which support for the SUA Convention 1988 (as amended) emerged in the circumstances.²⁶³ Therefore, the SUA Convention 1988 (as amended) was meant to "*fill many of the jurisdictional gaps highlighted when the acts endanger the safety of international navigation and occur on board national or foreign flag ships while underway in the territorial sea, international straits or international waters*".²⁶⁴ This is because "*The Convention requires States Parties to criminalize such acts under national law and to cooperate in the investigation and*

257 Jacobsson. M '*Terrorism at Sea*' Ministry of Foreign Affairs, Sweden, Transcript of Oral Presentation, in 'Maritime Violence & Other Security Issues at Sea' The proceedings of the Symposium on Maritime Violence & other Security Issues at Sea, World Maritime University, Malmö, Sweden (26th–30th August 2002), at pp.157-159.

258 Young. A. J & Valencia. M. J '*Congflation of Piracy & Terrorism in Southeast Asia: Rectitude & Utility*' (2003) 25(2) Journal Title: Contemporary Southeast Asia 269.

259 Jacobsson. M '*Terrorism at Sea*' Ministry of Foreign Affairs, Sweden, Transcript of Oral Presentation, in 'Maritime Violence & Other Security Issues at Sea' The proceedings of the Symposium on Maritime Violence & other Security Issues at Sea, World Maritime University, Malmö, Sweden (26th–30th August 2002), at pp.157-159.

260 *Ibid.*

261 Parritt. B. A. H '*Violence at Sea: A Review of Terrorism, Acts of War & Piracy & Countermeasures to Prevent Terrorism*' ICC Publishing SA (1986), at pp.18-19.

262 *Ibid* at p.19.

263 Jacobsson. M '*Terrorism at Sea*' Ministry of Foreign Affairs, Sweden, Transcript of Oral Presentation, in 'Maritime Violence & Other Security Issues at Sea' The proceedings of the Symposium on Maritime Violence & other Security Issues at Sea, World Maritime University, Malmö, Sweden (26th–30th August 2002), at p.159.

264 Roach. J. A '*United States Initiatives to Enhance Maritime Security at Sea*' Paper presented to the International Conference on the Regime of the Exclusive Economic Zone: Issues & Responses, Ship & Ocean Foundation & East-West Center (February 2003), at p.26.

prosecution of their perpetrators".²⁶⁵ But whilst the SUA Convention 1988 (as amended) was developed largely in response to the 1985 *Achille Lauro* incident with a view to combating terrorism²⁶⁶, it is also now being promoted as an anti-piracy measure.²⁶⁷ Moreover, since the terrorist attacks of 9/11, countries including the US look upon extremists in Indonesia, Malaysia, the Philippines and Thailand as potential threats to international commerce in Southeast Asia.²⁶⁸

American authorities have been particularly concerned with the fact that a super tanker may be hijacked and driven into Singapore or sunk in the Malacca Strait to seriously disrupt or detour the flow of oil to East Asia and potentially block US naval mobility and flexibility. Issues are not helped by the fact the US and other industrialised nations lack confidence in the capacity and will of Southeast Asian countries to prevent such a disaster.²⁶⁹ Therefore, the more Westernised states have pressed other countries in the developing world – like parts of Asia – to look to ratify the SUA Convention 1988 (as amended). The problem is that some Southeast Asian countries fear their potential obligations under the SUA Convention 1988 (as amended) could serve to compromise the recognition of their national sovereignty.²⁷⁰ As a result the remit of the SUA Convention 1988 (as amended) could be expanded to permit maritime forces of other nations to pursue terrorists, pirates, and maritime criminals into their waters.²⁷¹ Indeed some Southeast Asian states feel that the Rome Convention 1988 only makes sense for those countries with maritime dominance or unchallenged maritime boundaries in the circumstances. For countries with a recent colonial history and relatively newly won independence, as well as disputed or porous maritime boundaries, the Rome Convention 1988 could be a serious compromise to both their national pride and domestic support for their national governments.²⁷²

Nevertheless, in view of the understanding that 'piracy' and 'terrorism' could be fused into a general threat to maritime security, developing countries could find outside 'help' easier to accept and 'sell' their domestic policy. As a result, it may be in the US' interests to conflate matters of 'piracy' and 'terrorism' to look to persuade reluctant developing countries to assist maritime powers with the

²⁶⁵ *Ibid* at p.26.

²⁶⁶ Batongbacal. J. L. 'Trends in Anti-Piracy Cooperation in the ASEAN Region', in Ahmad. H & Ogawa. A (Editors) 'Combating Piracy & Ship Robbery' Okazaki Institute (2001), at p.125.

²⁶⁷ Roach. J. A. 'United States Initiatives to Enhance Maritime Security at Sea' Paper presented to the International Conference on the Regime of the Exclusive Economic Zone: Issues & Responses, Ship & Ocean Foundation & East-West Center (February 2003), at p.3.

²⁶⁸ Young. A. J & Valencia. M. J 'Conflation of Piracy & Terrorism in Southeast Asia: Rectitude & Utility' (2003) 25(2) Journal Title: Contemporary Southeast Asia 269.

²⁶⁹ *Ibid*.

²⁷⁰ Jacobsson. M 'Terrorism at Sea' Ministry of Foreign Affairs, Sweden, Transcript of Oral Presentation, in 'Maritime Violence & Other Security Issues at Sea' The proceedings of the Symposium on Maritime Violence & other Security Issues at Sea, World Maritime University, Malmö, Sweden (26th–30th August 2002), at pp.159-160.

²⁷¹ Young. A. J & Valencia. M. J 'Conflation of Piracy & Terrorism in Southeast Asia: Rectitude & Utility' (2003) 25(2) Journal Title: Contemporary Southeast Asia 269.

²⁷² *Ibid*.

pursuit of pirates and terrorists in their territorial waters. For practical reasons, however, the SUA Convention 1988 (as amended) may not be the appropriate instrument to combat piracy.²⁷³

Under Article 3 of the Convention it has been recognised the enumeration of offences, even if interpreted broadly, will clearly cover only the serious but admittedly less common incidents of vessel hijackings and not the most common forms of piracy and armed robbery at sea.²⁷⁴ On this basis, over 95% of the piracy and sea robbery incidents reported would not actually be covered by the terms of the SUA Convention 1988 (as amended).²⁷⁵

This effectively means that there is a need for standardised international law to facilitate the prevention and prosecution of piracy - although the Rome Convention 1988 may not be it.²⁷⁶ By way of illustration, in co-operation with India, the US has undertaken a proactive attempt to control both piracy and terrorism in the Strait of Malacca using U.S. and Indian warships to escort commercial vessels of 'high value'.

The problem is that the reality is that naval patrols by major powers may not be the most effective or politically acceptable means for combating either piracy or terrorism.

There are a number of reasons for this. First, such patrols have served to bring about a significant amount of suspicion in Southeast Asia in relation to the real goals of both the Indian and US' naval presence in the Strait of Malacca.²⁷⁷ In the immediate aftermath of events including the Cold War and the terrorist attacks of 9/11, the governments of the US and India have developed what may be best described as something of a new political and military relationship. It would seem that the Bush administration needed a full-fledged alliance to make India the US' most important ally in Asia as India agreed to the joint patrols in return for the resumption of arms sales to India.²⁷⁸ Therefore, the Indian and American naval presence in the Malacca Strait was not meant to only combat piracy and terrorism, but is also a significant aspect of a much broader attempt to implement an American-friendly Indian naval presence since joint patrolling is the beginning of a larger military engagement.²⁷⁹

With this in mind, although the development of joint policies such as this between India and the US could be looked upon by some as a reasonable attempt to be able to establish a security order in the

²⁷³ *Ibid.*

²⁷⁴ Roach, J. A 'United States Initiatives to Enhance Maritime Security at Sea' Paper presented to the International Conference on the Regime of the Exclusive Economic Zone: Issues & Responses, Ship & Ocean Foundation & East-West Center (February 2003), at p.126.

²⁷⁵ Jacobsson, M 'Terrorism at Sea' Ministry of Foreign Affairs, Sweden, Transcript of Oral Presentation, in 'Maritime Violence & Other Security Issues at Sea' The proceedings of the Symposium on Maritime Violence & other Security Issues at Sea, World Maritime University, Malmö, Sweden (26th-30th August 2002), at pp.160-162.

²⁷⁶ Young, A. J & Valencia, M. J 'Conflation of Piracy & Terrorism in Southeast Asia: Rectitude & Utility' (2003) 25(2) *Journal Title: Contemporary Southeast Asia* 269.

²⁷⁷ *Ibid.*

²⁷⁸ Dragonette, C 'Worldwide Threat to Shipping Mariner Warning Information' Office of Naval Intelligence Analysis Department (3rd March 2003).

²⁷⁹ Ramachandran, S 'India Signs on as Southeast Asia Watchdog' *Asia Times* (5th April 2002).

region, Indonesia and China could see this development as a threat to their authority and influence.²⁸⁰ In addition, it is also to be appreciated that when the 1988 Rome Convention is considered in this context it may be looked upon as a device that permits the dominant naval powers to undermine regional powers. When one looks upon the current American military and political actions in the Muslim world in particular, such actions may not be universally viewed as positive or constructive. Indeed, the potential ability of these patrols to curb piracy and terrorism may not balance their potential to undermine security relations.²⁸¹

A significant concern is the arrest authority of foreign naval vessels in another country's jurisdiction; whilst commercial ships may look to exercise their rights to transit through international straits so naval vessels may escort those ships under this regime. However, their authority is generally limited to their own flag vessels because "*Enforcement is largely left to the navy, which possesses the hardware of enforcement but lacks the power of arrest. This role is also at odds with international practice in which navies typically operate on the high seas leaving patrolling of territorial waters to coast guard-type bodies*".²⁸²

There is also something of a question mark in relation to the appropriate size of the pursuit craft used in the circumstances of a given case. By way of illustration, in the shallow waters where most pirates operate, high-speed patrol craft are invaluable.²⁸³ In addition, the indigenous Southeast Asian enforcement capacity is generally insufficient. Air surveillance and pursuit would be an important adjunct, but most Southeast Asian nations, and particularly Indonesia, cannot afford the number of aircraft necessary to adequately patrol. International assistance in developing the indigenous patrol capacity of Southeast Asian maritime nations is a long-term solution to promoting regional security and would minimise the sensitive presence of foreign naval vessels.²⁸⁴ For example, agreements that were made in 1992 between Indonesia, Malaysia and Singapore served to provide for joint anti-piracy patrols and information sharing. On this basis, a Maritime Operation Planning Team was established with a view to carrying out joint anti-piracy patrols of the Malacca Strait, whilst a 1994 memorandum of understanding between Malaysia and the Philippines sought to coordinate anti-piracy patrols and share intelligence gained as a result.²⁸⁵ However, such agreements were found to be insufficient because they stopped short of actually permitting 'hot pursuit' of pirates into a neighbour's territorial waters (see the preceding chapter for a discussion of

280 Young, A. J & Valencia, M. J 'Conflation of Piracy & Terrorism in Southeast Asia: Rectitude & Utility' (2003) 25(2) Journal Title: Contemporary Southeast Asia 269.

281 *Ibid.*

282 Urquhart, D 'Japan Helping Indonesia Set Up Coast Guard' Business Times (25th March 2003).

283 Chalk, P 'Contemporary Maritime Piracy in Southeast Asia' Studies in Conflict & Terrorism (16th March 1997), at p.96.

284 Young, A. J & Valencia, M. J 'Conflation of Piracy & Terrorism in Southeast Asia: Rectitude & Utility' (2003) 25(2) Journal Title: Contemporary Southeast Asia 269.

285 Chalk, P 'Contemporary Maritime Piracy in Southeast Asia' Studies in Conflict & Terrorism (16th March 1997), at p.99.

'Hot Pursuit').

By way of illustration, the Malaysian Maritime Enforcement Coordination Centre recognized that “*Under no circumstances would we intrude into each other's territory. If we chase a ship and it runs into the other side, we let the authorities there handle it*”.²⁸⁶ Interestingly, currently it needs to be understood that there is only really a 'hands off' protocol in relation to those situations of 'hot pursuit' that may arise between Indonesia and Malaysia by way of example. This effectively means that, although these co-operative efforts are considered commendable with a view to limiting piracy's growth during the 1990s, they also serve to highlight the ongoing difficulties that are involved with pursuing criminals over international maritime borders.²⁸⁷ The problem is multilateral initiatives to address these issues have either proved to be somewhat lacking or, as with the SUA Convention 1988 (as amended), raised considerably more concerns than they addressed. However, commercial vessels can look to protect themselves by employing Ship Loc locational devices, electric fences, high pressure hoses, security lights, and pirate watches - although of course the purchase and use of these devices may be too expensive for small coastal trading vessels.²⁸⁸

3.5 Ship Boarding under the SUA Convention and Interdiction at Sea

Former American President George W. Bush unveiled the Proliferation Security Initiative (PSI) in Poland at the end of May 2003.²⁸⁹ Deemed “*foremost among President Bush's efforts to stop WMD proliferation,*” PSI was looked upon as a new channel for interdiction cooperation beyond treaties and regimes of multilateral export control²⁹⁰ and informally expanded the number of cooperating countries without expanding membership in export control groups.²⁹¹ Earlier, in December 2002 National Strategy to Combat Weapons of Mass Destruction (WMD) Proliferation, the Bush Administration looked to recognize the importance of countering proliferation and managing WMD consequences so that the interdiction of related goods gained greater prominence.²⁹² On this basis, US policy looked to bring about the enhancement of “*the capabilities of our military, intelligence, technical, and law enforcement communities to prevent the movement of WMD materials,*

²⁸⁶ *Ibid* at p.100.

²⁸⁷ *Ibid* at p.99.

²⁸⁸ Hadfield. P 'Repel Boarders' New Scientist (12th August 2000), at p.14.

²⁸⁹ Remarks by the President to the People of Poland (31st May 2003).

²⁹⁰ Bolton. J. R (former Under Secretary for Arms Control & International Security) 'Testimony Before the House International Relations Committee - The Bush Administration's Non-Proliferation Policy: Successes & Future Challenges' (30th March 2004).

²⁹¹ CRS Report RL31559 'Proliferation Control Regimes: Background & Status' coordinated by Mary Beth Nikitin.

²⁹² Nikitin. M. B 'Proliferation Security Initiative (PSI)' Congressional Research Service Report for Congress (8th January 2010), at p.1.

technology, and expertise to hostile states and terrorist organizations”.²⁹³

PSI was started, at least initially, partially in response to legal gaps that were revealed in an incomplete interdiction of the '*So-San*' (a North Korean-flagged ship) that was carrying Scud missile parts to Yemen in December 2002.²⁹⁴ This is because US intelligence had collected evidence of money transfers from Yemen to North Korea and Scud fuel oxidizer being loaded into shipping containers as analysts narrowed identification of the merchant vessel carrying the Scuds themselves to one of 'three likely ships' including the North Korean-flagged '*So-San*'. As a result, the '*So-San*' was interdicted on the high seas by a Spanish warship after a tip from American intelligence and the boarding was legal because there was no ship under that name in the North Korean registry. Inspectors found 15 complete Scud-like missiles, 15 warheads, and a missile fuel oxidizer hidden away on board the '*So-San*'.²⁹⁵ But then the US and Spanish authorities had no legal basis to seize the cargo and so the ship was then released. This is because Yemen looked to claim ownership of the Scud-like missiles and reportedly promised the US it would not retransfer the items or purchase additional missiles from North Korea.

Generally, UNCLOS gives a right to board ships as described by article 110 in a number of cases including the suppression of the slave trade, piracy, unauthorized broadcasting and ships without flags. There are other provisions which allow hot pursuit whenever ships violate the law of a state, this gives the right to chase ships and board them, these cases do not require requests for authorization since they are stated in UNCLOS.

Boarding suspected ships under the 1988 Drug Convention to search for illicit drugs requires a request for authorization and the express consent of the requested state. Prohibition of proliferation of WMD and their transfer present a legal gap in the international law where all the conventions invoked with respect to WMD are limited to states party to them. The new legal frame work of the SUA convention 2005 fills the gaps in the legal system of the previous treaties, where article 8 makes it possible to board ships and search for WMD- related materials, subject to certain conditions as stipulated in article 8.

Article 8b of the SUA Convention elaborates the regime concerning third party boarding of vessels

²⁹³ White House '*National Strategy to Combat Weapons of Mass Destruction (WMD)*' White House (December 2002), at p.2.

²⁹⁴ Nikitin. M. B '*Proliferation Security Initiative (PSI)*' Congressional Research Service Report for Congress (8th January 2010), at p.1.

²⁹⁵ *Ibid* at p.1.

for the purpose of preventing and suppressing unlawful acts. Article 8 addresses inter alia, requests for assistance, boarding of a vessel by non-flag state authorities, the rights of flag states in boarding ships, safeguards to be observed by a boarding state, and potential liability of a boarding state. Sub-paragraphs 10 a (ii) and (iii) of article 8b provide for fair treatment of persons in compliance with international law related to fair treatment and human rights. Paragraph 5 of article 8b defines four elements for boarding of a suspect ship by a third party. First, authorized officials of the requesting state must have encountered a suspect ship flagged with a state party. Secondly, the location of the suspect ship must be outside any territorial sea, either in high seas or in the EEZ of a coastal state. Thirdly, there must be reasonable grounds to suspect that the ship in question is or is about to be involved in committing an offence, but not necessarily against a ship of the requesting state. Fourthly, the most important element is that the requesting party wishes to board the suspect ship. There are five sub-paragraphs under paragraph 5 setting out procedures for request. Sub-paragraph 5(a) states that the requesting state must request the flag state of the suspect ship to confirm the ship's nationality. Sub-paragraph 5(b) states that after confirming the nationality of the suspect ship, the requesting state shall request authorization to board and take appropriate measures as set out in Sub-paragraph 5(b). According to sub-paragraph 5(c), The flag state may grant the request subject to conditions it may stipulate, or decide to board the ship itself, or together with the requesting state. If the flag state does not expressly grant the request, the requesting state must not board the suspect ship.²⁹⁶

Article 110 of UNCLOS 1982 serves to justify the boarding of a foreign ship on the high seas to verify a given ship's right to fly its particular national flag if there is reasonable ground for suspecting the ship is engaged in piracy.²⁹⁷ The courts of the state that undertook the seizure may decide upon the penalties to be imposed and the actions to be taken regarding the ship subject to the rights of third parties in good faith - although the arrest and prosecution of pirates fall within the precinct of a state's national law.²⁹⁸ On this basis, successful prosecution is dependent on whether the corresponding national legal standard exists and the degree the enforcing state has adopted the 'universal jurisdiction' over piracy as an international crime subject to arrest and prosecution anywhere in the world.²⁹⁹ Conversely, under Article 8 of the SUA Convention 1988 (as amended), some experts expected that concern over proliferation would lead a large number of states to ratify

296 Mejia M. & Mukherjee P. K. (2006) *The SUA Convention 2005: a critical evaluation of its effectiveness in suppressing maritime criminal acts* Journal of International Maritime Law, 12(3) 170-191.

297 Fouché, H. 'Somali Pirates Take to the High Seas: Expediency or Long-Term Pirate Strategy?' (2009).

298 Guyo, M. 'Taking the Somali pirates to court' ISS Today (15th April 2009).

299 Fouché, H. 'Somali Pirates Take to the High Seas: Expediency or Long-Term Pirate Strategy?' (2009).

the 2005 Protocol to the SUA Convention 1988.³⁰⁰ This is because it has been recognised that the Protocol's amendments to Article 3 will extend the prohibitions on the transfer or transport of WMD, whilst amendments to Article 8 will then provide new authority for boarding by states other than flag states.³⁰¹ However, whilst demand for interdiction operations may rise appreciably, it is doubtful the US Navy or Marine Corps will have authority under American domestic law to take enforcement action under it so any maritime enforcement would be carried out by the US Coast Guard.³⁰²

The '*So-San*' became the focus of attention as a result of two actions that could be considered to be innocuous alone but were suspicious when taken together. First the '*So-San*' zigzagged on its course whereas merchant vessels usually follow a steady course on the shortest track between two points, then the '*So-San*'s' crew lowered and raised the vessel's flag which is somewhat unusual in view of the fact that the national ensign should be displayed continuously throughout their time under way.³⁰³ Surveillance of the '*So-San*' off of the Indian Ocean produced a legal basis for boarding because the vessel was freshly painted on the stern (the customary location for a ship's name) when no such vessel was actually registered under the North Korean flag. As a result, the '*So-San*' was 'stateless' under international law to allow US warships to invoke a peacetime right to approach and visit.³⁰⁴ However, the master of the '*So-San*' failed to give consent for boarding, ignored warning shots and claimed the ship's cargo consisted of cement before the boarding team discovered the missiles and related equipment.³⁰⁵

On this basis, dialogue between the US and Yemen followed leading to some significant speculation that political considerations would reverse the interdiction. The reason for this is that Yemen was recognized as being a prospective partner in the war on terror, whilst the escalation of significant tension with a nuclear-capable North Korea needed to be avoided wherever possible.³⁰⁶ Therefore, despite what was found on board the vessel, the '*So-San*' was then allowed to continue on its voyage. The problem was that this situation was somewhat frustrating in operational terms because of the fact that the US-led maritime-interdiction coalition had mastered time, space, and force since the effectiveness of the intelligence processes used served to correctly identify a Scud carrier and

300 Allen. C. H '*Moderator's Report: Legal Experts' Workshop on the Future Global Legal Order*' (2007) 60(4) Naval War College Review 73.

301 Mbiah. K '*The revision of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, & its Protocol of 1988 Relating to Fixed Platform Located on the Continental Shelf (SUA Convention & Protocol)*', Ghana Shippers Council, in '*Maritime Violence & Other Security Issues at Sea*' The proceedings of the Symposium on Maritime Violence & other Security Issues at Sea, World Maritime University, Malmö, Sweden (26th–30th August 2002), at pp.198-199.

302 Allen. C. H '*Moderator's Report: Legal Experts' Workshop on the Future Global Legal Order*' (2007) 60(4) Naval War College Review 73.

303 United Nations Convention on the Law of the Sea 1982 at Article 92.

304 United Nations Convention on the Law of the Sea 1982 at Article 110.

305 Robbins. C. A '*Why U.S. Gave UN No Role in Plan to Halt Arms Ships*' Wall Street Journal (21st October 2003), at p.1.

306 Doolin. J. A '*The Proliferation Security Initiative: Cornerstone of a New International Norm*' (2006) 59(2) Naval War College Review 29.

had apprehended it with sufficient force.³⁰⁷ But there was no gain regarding the operation undertaken because the Scuds were still permitted to arrive at their destination since international law and politics could not be synchronised, so interdiction failed.

Legal debate relating to the interdiction began with the premise that proper authority in two respects needs to be present for maritime interdiction to be much more effective. First, there is a need for sufficient authority to visit and search a particular vessel like the '*So-San*'.³⁰⁸ This condition appears to have been satisfied in the case of the '*So-San*' because, as has already been stated, it was 'stateless'. However, there was also a need for there to be the authority to seize, detain, or divert cargo found aboard and this was not in existence here because conventional missiles are not contraband subject to seizure.³⁰⁹ In addition, no UN resolution serves to impose a weapons embargo against Yemen, whilst neither North Korea nor Yemen is signatory to the Missile Technology Control Regime that may have otherwise served to authorise seizure.³¹⁰

Therefore, the '*So-San*' case is considered to be illustrative of the close intertwining of politics and international law in this area. This understanding is reflected by the fact that less than a month before, the UN Security Council had passed Resolution 1441 that served to provide Iraq with a "*final opportunity to comply with its disarmament obligations*".³¹¹ However, the decade-old embargo that was put in place against Iraq was not used as authority with a view to legally boarding the '*So San*' because its destination was so clearly Yemen. In addition, although the 'USS Cole' had been in Aden, Yemen, when it was attacked two years earlier, the US did not now make a self-defence claim.³¹² Moreover, the arguments for seizing Yemeni ballistic missiles would have divided international political opinion on WMDs precisely when solidarity was desired for a future UN Security Council Resolution serving to permit 'all necessary measures' to dismantle Iraqi programs. As a result, the price of solidarity involved serving to permit Yemen to be able to keep the Scuds and avoid the opportunity to use this case as a precedent for interdiction of WMD in this context.³¹³ On this basis, although it is unclear whether if this incident had occurred after PSI was formed the outcome would have been different, it was clearly necessary to quickly bring about a multilateral

307 *Ibid.*

308 *Ibid.*

309 Wedgewood, R 'A Pirate Is a Pirate' Wall Street Journal (16th December 2003).

310 US State Department 'Fact Sheet on Missile Technology Control Regime Washington DC, Bureau of Non-Proliferation' (9th October 2001).

311 United Nations Security Council Resolution 1441 (8th November 2002).

312 Doolin, J. A 'The Proliferation Security Initiative: Cornerstone of a New International Norm' (2006) 59(2) Naval War College Review 29.

313 *Ibid.*

interdiction coordination mechanism as soon as possible.³¹⁴ Since its inception, there has been little publicly available information by which to measure the PSI's success. One measurement might be the number of interdictions successfully carried out as a result of PSI countries cooperating. Little public information is available, however. Secretary of State Rice, on the second anniversary of PSI, announced that PSI was responsible for 11 interdictions in the previous nine months.³¹⁵ On June 23, 2006, Under Secretary for Arms Control and International Security, Robert Joseph, reported that between April 2005 and April 2006, PSI partners worked together "*on roughly two dozen separate occasions to prevent transfers of equipment and materials to WMD and missile programs in countries of concern*".³¹⁶ In July 2006, Under Secretary Joseph recognized PSI had "*played a key role in helping to interdict more than 30 shipments*"³¹⁷ since PSI cooperation stopped exports to Iran's missile program and the export of heavy water-related equipment to its nuclear program.³¹⁸ However, to consider whether and to what extent PSI has contributed to the increased number of interdictions is unclear. This is because it is arguable that the same number of interdictions may have happened even without the implementation of the PSI since prior to this announcement the US was already co-operating with other countries to interdict WMD shipments.³¹⁹ In addition, even if the PSI could be said to have resulted in many more interdictions, this increase could be put down to an upsurge in proliferation activity or improved intelligence.

Nevertheless, when looking to assess the success of the PSI this may also be gauged by the level of completeness of PSI membership - particularly those countries with what may be considered the highest proliferation of transshipment concerns. By way of illustration, it is of substantial concern to many including the US that countries such as China, Malaysia, and Pakistan are not members of the PSI.³²⁰ It should be noted, however, that some countries that are not ready to sign up as full participants do attend PSI exercises as observers.³²¹ Other countries may participate indirectly in interdictions or information exchange related to WMD proliferation without becoming full participants in PSI and the US is seeking to encourage India to join PSI with little success.³²² An

314 See Joseph, J 'The Proliferation Security Initiative: Can Interdiction Stop Proliferation?' Arms Control Today (June 2004) & Winner, A. C 'The Proliferation Security Initiative: The New Face of Interdiction' The Washington Quarterly (Spring 2005).

315 Arms Control Association 'The Proliferation Security Initiative (PSI) At a Glance' (2010).

316 Under Secretary for Arms Control & International Security Robert Joseph, Warsaw, Poland (23rd June 2006).

317 Under Secretary for Arms Control & International Security Robert Joseph, Remarks to the Capitol Hill Club (18th July 2006).

318 Nikitin, M. B 'Proliferation Security Initiative (PSI)' Congressional Research Service Report for Congress (8th January 2010), at p.3.

319 *Ibid.*

320 US General Accounting Office 'U.S. Efforts to Combat Nuclear Networks Need Better Data on Proliferation Risks & Program Results' GAO-08-21 (October 2007) (<http://www.gao.gov/new.items/d0821.pdf>).

321 Lieggi, S 'Proliferation Security Initiative Exercise Hosted by Japan Shows Growing Interest in Asia But No Sea Change in Key Outsider States' WMD Insights (December 2007-January 2008).

322 Valencia, M. J 'The Proliferation Security Initiative: Making Waves in Asia' The International Institute for Security Studies (October 2005), at p.66.

additional issue affecting successful implementation of the PSI is the conclusion of ship-boarding agreements particularly in relation to those countries that rely upon 'Flags Of Convenience' (FOC).³²³ When a merchant ship registers under a foreign flag to avoid taxes, save on wages or avoid government restrictions it is known as an FOC. FOC are of particular concern for proliferation reasons because of looser government regulations over their shipments and the ease with which ships can switch from one registry to another with Panama and Liberia said to have the highest volume of FOC global trade.³²⁴ Nevertheless, to date, the US has signed nine ship-boarding agreements - in 2004 the US established agreements with Panama, the Marshall Islands, and Liberia; in 2005 with Croatia, Cyprus, and Belize; in 2007 with Malta and Mongolia; and in 2008 with the Bahamas. Ostensibly these kinds of arrangements share in the fact that they commonly permit two hours to deny US personnel the right to board a ship.

3.6 Freedom of Movement

In view of the discussion in the preceding subsection of this chapter there are concerns that the PSI. WMD interdiction activities could serve to endanger international commerce and give unwarranted powers to the US Navy to act as a global police force.³²⁵ But ship boarding agreements serve as significant illustrations of non-proliferation cooperation to then offer authority on what is a bilateral basis to board ships suspected of illicitly carrying WMD or related materials.³²⁶ On this basis, these kinds of agreements commonly serve to provide for bilateral cooperation so as to prevent these kinds of shipments through the development of processes to board and search ships when they are in international waters. Therefore, if a ship that is registered in the US (or the partner country) is suspected of carrying proliferation-related cargo, either one of the parties can request the other to confirm a particular ship's nationality to permit the ship's boarding and possible detention and its cargo's search.³²⁷ These agreements are important for furthering the PSI and enhancing the mechanisms to interdict suspected cargoes of WMD modelled after similar arrangements in the counter-narcotics arena.

As was discussed in the preceding section, the PSI is a multilateral initiative that is meant to prevent

323 Nikitin. M. B 'Proliferation Security Initiative (PSI)' Congressional Research Service Report for Congress (8th January 2010), at p.3.

324 *Ibid* at pp.3-4.

325 'Russia joins WMD alliance' Taipei Times (2nd June 2004), at p.6.

326 US Department of State 'Ship Boarding Agreements' US Department of State (2010).

327 *Ibid*.

the proliferation of WMD and the materials that are utilised to construct them.³²⁸ This is because “*The goal of the PSI is to create a more dynamic, creative, and proactive approach to preventing proliferation transfers to or from nation states and non-state actors of proliferation concern*” by establishing links to allow information sharing between countries.³²⁹ The PSI organises multinational exercises to train for the interdiction of these weapons on the high seas and to allow its supporters to identify cross-border trafficking in WMD and to halt that through restrictions on the freedom of movement of vessels. The PSI explicitly contemplates boarding ships and using armed forces to seize weapons and the equipment to make them³³⁰ through undertakings by its participants to board and search vessels reasonably suspected of transporting WMD and to not transport them themselves,³³¹ whilst consenting to boarding and search of vessels carrying their flags so as to further restrict the freedom of movement of vessels.³³²

With this in mind, subsequent bilateral agreements have been signed so as to permit the US to board ships bearing FOC in some cases.³³³ This is because many merchant ships nowadays fly FOC to avoid taxes, laws regulating work conditions, and/or environmental regulations. Some small states register these ships for small sums adding up to a significant revenue stream even though they were selected based on the implied promise that they would not inconvenience owners so these states retain the legal authority to board those ships with their flags.³³⁴ Five leading flag states have signed boarding agreements including Liberia³³⁵ and Panama³³⁶ so a large portion of the global merchant fleet is flagged by states either supporting the PSI or having signed boarding agreements. Therefore, over half the world's shipping fleet is liable to be boarded with minimum obstacles contrary to the recognition of the principle of free movement.³³⁷

More specifically regarding the Proliferation Security Initiative Ship Boarding Agreement with Panama in 2004, in view of the Arrangement between the Government of the United States of

328 US Department of State ‘*International Information Programs - The Proliferation Security Initiative*’ US Department of State (June 2004).

329 *Ibid.*

330 *Ibid.*

331 US Department of State ‘*The Proliferation Security Initiative - Statement of Interdiction Principles*’ US Department of State (4th September 2003).

332 *Ibid.*

333 Bolton, J. R (Under Secretary for Arms Control & International Security) ‘*Remarks with H.E. Arnulfo Escalona, Minister of Government & Justice of Panama: Signing of the US-Panama Ship Boarding Agreement to Support the Proliferation Security Initiative (PSI)*’ (12th May 2004).

334 United Nations Convention on the Law of the Sea (UNCLOS) 1982 at Articles 93 & 217.

335 Agreement Between the Government of the United States of America & the Government of the Republic of Liberia Concerning Cooperation To Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, & Related Materials by Sea, US-Liberia (11th February 2004) (<http://www.state.gov/t/isn/trty/32403.htm>).

336 Amendment to the Supplementary Arrangement Between the Government of the United States of America & the Government of the Republic of Panama to the Arrangement Between the Government of the United States of America & the Government of Panama for Support & Assistance from the United States Coast Guard for the National Maritime Service of the Ministry of Government & Justice, US-Panama (12th May 2004).

337 Becker, M. A ‘*The Shifting Public Order of the Oceans: Freedom of Navigation & the Interdiction of Ships at Sea*’ (2005) 46 Harv. Int'l L.J. 131, at p.182.

America and the Government of Panama for Support And Assistance from the United States Coast Guard for the National Maritime Service of the Ministry of Government And Justice and the Supplementary Arrangement between the Government of the United States of America And the Government of the Republic of Panama to the Arrangement between the Government of the United States of America And the Government of Panama for Support And Assistance from the United States Coast Guard for the National Maritime Service of the Ministry of Government And Justice a program was established for conducting bilateral maritime law enforcement operations to stop illegal activities between the US and Panama. The implementation of the Proliferation Security Initiative Ship Boarding Agreement with Panama in 2004 effectively involved looking to prevent the international trafficking of drugs, illegal fishing and the transportation of contraband.

The Proliferation Security Initiative Ship Boarding Agreement with Panama in 2004 was implemented because the parties were deeply concerned regarding WMD proliferation, their delivery systems, and related materials, particularly by sea, as well as the risk these could be taken by terrorists. UN Security Council Resolution 1373 of 28th September 2001 recognised the unfortunately close connection between acts of international terrorism along with the illegal movement of nuclear, chemical, biological and other potentially deadly materials to emphasise the need to enhance coordination of efforts nationally, sub-regionally, regionally and internationally to strengthen a global response. The UN Security Council Resolution 1373 called upon States to find ways of intensifying and accelerating the exchange of operational information, especially regarding the threat posed by the possession of weapons of mass destruction by terrorist groups. Furthermore, Proliferation Security Initiative Ship Boarding Agreement with Panama in 2004 acts according to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction 1993, the Treaty on Non-Proliferation of Nuclear Weapons 1968, and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction 1972.

Chapter 4 - CASE STUDY - THE ROLE OF THE SAUDI ARABIAN NAVY

4.1 The role of the Saudi navy in maintaining sovereignty and security of Saudi Arabia

The geographic location of the Kingdom of Saudi Arabia, where it is surrounded by the Red sea from the west, Arabian Gulf from the east and Indian Ocean from the south, along with its considerable natural resources and leading role and responsibility toward the Islamic and Arabic world in the protection of holy places, highlights the need for naval protection. The Saudi government thus established, beginning in 1960, an efficient advanced naval force capable of protecting its interests including, state, religious and economic elements as well as contributing to the service of humanitarian aims.

The importance of the Kingdom as an oil producing country and main source of power using the sea as its chief means to load its exports, underlies the necessity of a strong naval force. Saudi Arabia is the world's largest producer and exporter of total petroleum liquids, and the world's second largest crude oil producer behind Russia. Saudi Arabia's economy remains heavily dependent on oil and petroleum-related industries, including petrochemicals and petroleum refining. Oil export revenues have accounted for around 90 percent of total Saudi export earnings and state revenues and more than 40 percent of the country's Gross Domestic Product (GDP). With the passage of more than 15 million barrels of oil through the Strait of Hormuz every day, the need for attention to maritime security has become urgent.

The Royal Saudi Navy was founded in 1960 and began a significant expansion with US assistance in 1972. By way of illustration, the Saudi Arabian government received its first naval vessel, named '*Al-Riyadh*' from the US. It was a patrol boat which played a large role in training many officers and sailors at that time.³³⁸ A further expansion programme was then undertaken with the assistance of the French government as part of the '*Sawari*' Programme'.³³⁹ More vessels for the purpose of strengthening the Royal Saudi Naval forces (RSNF) were purchased from France and the UK during the 1980s and 1990s. In addition, in 1980 the US defence contractor Science Applications International Corporation commenced its work with the Royal Saudi Naval Forces with a view to both designing and integrating the country's '*Command, Control, and Communications*' (C3)

³³⁸ Cordesman, A. H '*Saudi National Security & the Saudi-US Strategic Partnership: Part One: The Civil & Economic Aspects of Security*' CSIS (29 April 2010).

³³⁹ See, for example, the work of Kurzman, C '*The Unthinkable Revolution in Iran*' Harvard University Press (2004).

centres.³⁴⁰ As a result of the assistance it has received from other countries to date, the Royal Saudi Naval Forces currently has about 15,000 officers and men, including 3000 Marines looking to safeguard its interests in its territorial waters.³⁴¹

The Royal Saudi Naval Forces ostensibly seeks to protect Saudi Arabia's interests within its territorial waters and is principally focussed on ensuring the free flow of oil to global markets and impeding the traffickers' activities. In addition, the Royal Saudi Naval Forces looks to help with the achievement of international security and counter terrorism efforts.³⁴² But it is also to be appreciated that serious safety concerns have arisen as a result of the ever increasing shipping traffic in the region with the risk of collisions and groundings increasing dramatically. Clearly it is possible for such risks to be mitigated through thorough management of shipping activity within Saudi Arabia's territorial waters - although such concerns must be carefully addressed in any maritime policy plans.³⁴³ This is because it has been recognized that the impacts would be less critical to the future of Saudi Arabia than terrorist attacks since incidents such as these are often much more likely to occur. With this in mind, Saudi Arabia has an array of response plans for different types of incidents. By way of illustration, the Ministry of Petroleum and Mineral Resources will look to oversee the response to incidents resulting in oil and chemical pollution to Saudi Arabian waters and the Coast Guard – along with the Navy - will respond to humanitarian incidents such as the coordinated international search and rescue operation following the sinking of the Egyptian ferry 'Al-Salam 98' in 2006 during its journey from [Duba, Saudi Arabia](#), to [Safaga](#) in southern Egypt.³⁴⁴

Work to be undertaken is, however, somewhat complex in view of the sheer scale of what is to be done. This is because Saudi Arabia has two coastlines (totalling 1,840 km) of which 700km borders the Arabian Gulf, whilst between the Red Sea and the Arabian Gulf, Saudi Arabia's territorial waters cover 29,000km².³⁴⁵ The Arabian Gulf has an area of approximately 240,000 km² and is very shallow with only one opening – the Strait of Hormuz - linking the Arabian Gulf with the Gulf of Oman and the Arabian Sea.³⁴⁶ Beneath the Arabian Gulf lie gas and oil deposits and, where maritime borders are not clearly demarcated, these deposits are vulnerable to exploitation from

340 Beyster, J. R, Dr & Economy. P 'The SAIC Solution: How We Built an \$8 Billion Employee-Owned Technology Company' John Wiley & Sons (2007), at p.49.

341 Cordesman, A. H 'Saudi National Security & the Saudi-US Strategic Partnership: Part One: The Civil & Economic Aspects of Security' CSIS (29 April 2010).

342 *Ibid.*

343 *Ibid.*

344 BBC News 'Egyptian ferry sinks in Red Sea' BBC News (3rd February 2006).

345 Earth Trends 'Coastal & Marine Ecosystems – Saudi Arabia' Earth Trends (2003).

346 Isenberg, D 'A game of chicken in the Persian Gulf' Asia Times Online (10th January 2008).

states other than those with rights to them.³⁴⁷

Maritime border disputes prevailing between Saudi Arabia and its Gulf neighbours have been largely resolved; Saudi Arabia and Bahrain agreed on a series of mid-points between coastal areas in 1958 and designated an area north of Bahrain as being under the jurisdiction of Saudi Arabia - although revenues gained from hydrocarbon exploitation are to be split between the two states.³⁴⁸ In addition, the 138.7 nautical mile long Saudi Arabia/Iran maritime boundary was agreed in 1969, whilst a neutral zone was designated with Kuwait in 1965 - although the countries did not agree demarcated boundaries until July 2000.³⁴⁹ However, in 2000 Iran drilled for gas in an area disputed by Saudi Arabia, Kuwait and Iran, prompting protests by both Kuwait and Saudi Arabia with discussions on this border continuing even today, whilst in March 2001 a final resolution was settled between Saudi Arabia and Qatar; although still outstanding is recognition of the official demarcation of the boundary with the UAE to reflect a 1974 agreement.³⁵⁰

Saudi Arabia officially recognized the scale of its territorial waters on 28th May 1949 and Royal Decrees No.33 and No.M-27 of 1968 both set out to officially proclaim the Saudi Arabian boundaries in this regard. However, there have been long running disputes with neighbouring countries ever since as to which areas actually fall under the jurisdiction of Saudi Arabia because the submarine environment of both the Arabian Gulf and the Red Sea contains very valuable resources such as oil.³⁵¹ The problem is that matters are only exacerbated by the fact that the Red Sea is bordered by nine Arabic and African countries with Saudi Arabia, Yemen, Sudan, Ethiopia and Egypt being the most important regional players and contain an abundance of significant mineral deposits. Therefore, this only serves to place greater importance upon proper border demarcation. By way of illustration, in 1974 Saudi Arabia and Sudan formed the Sudan – Saudi Arabia Red Sea Commission (SSRSC) to look to investigate and develop the submarine deposits in the common zone until an appropriate delineation of the continental shelf could be agreed upon.³⁵² In addition, Saudi Arabia and Yemen also agreed upon the Treaty of Jeddah of 2000 that declares the two states' respective boundary rights with a view to resolving Saudi Arabian claims dating back from 1934 – although the final demarcation has been deferred pending considerations of a

347 Fox News.Com 'US Navy Commander Warns Iran: Don't Try Closing Gulf Oil Passageway' Fox News.Com (2nd July 2008).

348 Cordesman. A. H 'Saudi National Security & the Saudi-US Strategic Partnership: Part One: The Civil & Economic Aspects of Security' CSIS (29 April 2010).

349 *Ibid.*

350 *Ibid.*

351 Isenberg. D 'A game of chicken in the Persian Gulf' Asia Times Online (10th January 2008).

352 *Ibid.*

tribal nature.³⁵³ Moreover, the division of the Red Sea between Saudi Arabia and Egypt was performed using median points in 1951 and in 1965 Saudi Arabia and Jordan performed a land swap whereby Jordan exchanged a large area of desert for a short area of Red Sea coast near Aqaba.³⁵⁴

Ports in Saudi Arabia are also divided into categories, including the commercial ports of King Abdul Aziz, port Dammam, Jeddah Islamic port and King Fahd port in Jubail, as well as industrial ports of King Fahd industrial port in Jubail and King Fahd industrial port in Yanbu along with the petroleum ports of Ras Tanura port, Ju'aymah Ras Al Khafji port and the port of Rabigh so there are a number of vital positions to be safeguarded in the country's economic interests.³⁵⁵ For example, Saudi Arabia looks to export a majority of its oil by tanker. Tankers that are loaded daily have a full capacity of some 14 million barrels a day on the Arabian Gulf.³⁵⁶ Oil is also primarily distributed through the 1,200 kilometer Trans-Arabian pipeline linking the Abqaiq oil field near Riyadh with Yanbu on the Red Sea. The majority of the oil that arrives in Yanbu is then loaded on to tankers for transport out of the Red Sea whilst the remainder continues on through the Sumed pipeline to Sidi Krier on Egypt's Mediterranean coast.³⁵⁷ However, as has already been recognized, most of Saudi Arabia's oil is exported by tanker through the Arabian Gulf terminals at Ras Tanura and Ju'aymah ports. On this basis, the Royal Saudi Naval Forces are important because, generally, when a country plans to build naval forces many factors should be considered with direct influence on type and size of those forces including – (a) geographical location; (b) nature, climate and environmental features; (c) country area; and (d) population.³⁵⁸

Aside from its vast natural resources, Saudi Arabia has a leading role and responsibility to both the Islamic and Arabic worlds with a view to protecting places of religious importance from attacks emanating from the seas surrounding the Saudi Arabian state through the establishment of an efficient naval force. With this in mind, the Saudi Naval Expansion Program (SNEP) was initiated with the assistance of the United States. Previously, the navy had only a few obsolete patrol boats, landing craft, and utility boats. As of 1992, the main combat vessels were four guided-missile frigates and four corvettes, nine missile-armed fast attack craft, and four minesweepers.³⁵⁹

353 Al-Enazy. A. H 'The Long Road from Taif to Jeddah: Resolution of a Saudi-Yemen Boundary Dispute' ECSSR (2006).

354 Cordesman. A. H 'Saudi National Security & the Saudi-US Strategic Partnership: Part One: The Civil & Economic Aspects of Security' CSIS (29 April 2010).

355 *Ibid.*

356 Al-Rodhan. K. R 'The Impact of the Abqaiq Attack on Saudi Energy Security' CSIS (27th February 2006).

357 *Ibid.*

358 Cordesman. A. H 'Saudi National Security & the Saudi-US Strategic Partnership: Part One: The Civil & Economic Aspects of Security' CSIS (29 April 2010).

359 Wolf. J 'US arms sales seen booming in 2009' Reuters (15th December 2008).

4.2 Anti-smuggling and Piracy

The strategic location of the Kingdom of Saudi Arabia, with proximity to international shipping routes and drug producing countries, makes it a potentially appealing staging post for the trafficking of illicit substances. In addition it is to be appreciated that many people, particularly in developing nations, believe the strong Saudi Arabian economy can offer them a better life. As a result, these people are often tempted to enter the country illegally with a view to seeking employment. This means that trafficking (or smuggling), whether of people or illicit substances, is damaging to the Saudi Arabian nation so that all efforts must then be made to ensure that it does not occur in the future.³⁶⁰ But, as is discussed in greater detail in section 4.5, problems can arise with the issue of smuggling outside of the country. Moreover, it is necessary to watch over all merchandise and other ships which come into Saudi Arabian waters and guard them from any attack or piracy since the Royal Saudi Naval Forces currently patrol the Gulf of Aden to counter piracy.³⁶¹ As a result, RSNF has already helped to ensure the protection of many national commercial vessels along with the merchant ships of other countries in the process of addressing the phenomenon of piracy.

Piracy is one of the most significant forms of maritime crime to hit the world economy and has also proved particularly detrimental in the region of Saudi Arabia.³⁶² By way of illustration, as has previously been alluded a crisis of piracy has emerged off of the Somalian coast in particular. For example, on 4th April 2008 pirates commandeered a French luxury yacht in the Gulf of Aden,³⁶³ then on 21st August 2008 a dry cargo ship going from China to the Netherlands with 40,000 tons of iron ore was hijacked in the gulf, whilst on 15th September 2008 the Japanese chemical tanker *Stolt Valor* was seized by pirates in the gulf and was only later released on 16th November 2008 allegedly after a ransom of \$2.5 Million was paid.³⁶⁴ More specifically, in the case of Saudi Arabian problems experienced in this area, it is interesting to consider the fact that the Royal Saudi Naval Forces participate in most efforts undertaken with a view to preventing acts of piracy being perpetrated. For example, in the case of the Saudi Arabian oil tanker '*Sirius Star*', the ship received substantial international attention when Somalian pirates hijacked it on 15th November 2008 since it was the biggest ship ever to be captured by pirates.³⁶⁵

360 Tvedt. O '*Drug Trafficking, Refugees & Illegal Immigrants*', in '*Maritime Violence & Other Security Issues at Sea*' The proceedings of the Symposium on Maritime Violence & other Security Issues at Sea, World Maritime University, Malmö, Sweden (26th–30th August 2002), at pp.165-182.

361 MarEx Newsletter '*Maritime Security Patrol Area (MSPA) in the Gulf of Aden Established*' MarEx (2008).

362 Chiarugi. M & Archibugi. D '*Piracy Challenges Global Governance*' Open Democracy (9th April 2009).

363 Reuters '*Pirates storm French Yacht off Somalia*' Reuters (4th April 2008).

364 NDTV.Com '*Two-month ordeal was nightmare: Stolt Valor Captain*' NDTV.Com (18th November 2008).

365 Walker. R '*Pirates pass open water test*' BBC News (18th November 2008).

The ship was en route from Saudi Arabia to the US by way of the Cape of Good Hope and, when it was attacked, it was about 450 nautical miles southeast of the Kenyan coast, carrying 25 crewmen and its tanks fully loaded with oil.³⁶⁶ On 20th November the pirates in question demanded a US\$25 million ransom with a 10-day deadline before reducing their ransom demand to US\$15 million on 24th November. The ship was finally released on 9th January 2009 after the payment of a \$3 million ransom from the '*Sirius Star's*' owners Vela International Marin.³⁶⁷ In another case, a Saudi Arabian navy frigate helped thwart an attempt by pirates to hijack a Turkish cargo ship near the Gulf of Aden. The frigate known as '*Al-Riyadh*' responded to calls for help from the merchant ship '*Yasa Seyhan*' which came under attack by three small boats in international waters near the Gulf of Aden.³⁶⁸ As a result, the pirates fled after the arrival of the frigate which is part of an international fleet fighting piracy in the area. In looking to then comment upon the nature of the operation, Turkish Ambassador Naci Koru recognized that "*Such a rescue mission on the part of the Royal Saudi Navy deserves all appreciation*" as a symbol of the strong cooperation between Saudi Arabia and Turkey on the one hand and amongst nations of the world on the other.³⁶⁹

4.3 Combined Task Force and Convoy Protection

As has already been recognized in the first subsection to this chapter, with a view to enhancing maritime security in the region it is necessary to provide for patrols in Saudi Arabia's regional and economical waters. In view of the fact that more than 15 million barrels of oil make passage through the Strait of Hormuz each and every day of the year there has proved to be an urgent need for attention to maritime security and the provision of convoy protection.³⁷⁰ This is because as well as needing to protect the ports there is a need to provide for the safeguarding of the important naval transportation passages with greater international protection because the major state powers that border these waterways failed in securing the movement of trade to protect the security of their shipments³⁷¹. By way of illustration, as has previously been recognized in section 2.4, the Gulf of Aden has been widely recognized as an area of water particularly renowned for piracy that needed greater regulation due to the lack of an effective Somalian government.

Therefore, to improve the situation the Maritime Security Patrol Area (MSPA) was designated as a

366 Google News '*Saudi super-tanker taken to Somali pirate lair*' Google News (18th November 2008).

367 BBC News '*Pirate 'washes ashore with cash*' BBC News (12th January 2009).

368 Ghazanfar Ali Khan. M '*Saudi frigate thwarts pirate attack on ship*' Arab News (17th February 2009).

369 *Ibid.*

370 Isenberg. D '*A game of chicken in the Persian Gulf*' Asia Times Online (10th January 2008).

371 Cordesman. A. H '*Saudi National Security & the Saudi-US Strategic Partnership: Part One: The Civil & Economic Aspects of Security*' CSIS (29 April 2010).

specified patrol zone within the Gulf of Aden³⁷² established in August 2008 by the CTF-151³⁷³ to deter the destabilising activities already being undertaken in the region including piracy.³⁷⁴ For example, on 11th November 2008, the Indian bulk-carrier *Jag Arnav* was attacked by pirates and so the ship sent out an SOS call picked up by an Indian Navy Warship (*INS Tabar*), which launched an armed helicopter with marine commandos to prevent the pirates from hijacking the vessel.³⁷⁵ With a view to furthering developments in this regard the CTF-151 was a furthering of the remit of the international naval task force to respond to attacks of piracy in shipping lanes off the Somalian coasts, such as those already alluded to, covering approximately 1.1 million square miles. The CTF-151 was established in January 2009 to conduct operations with a view to preventing instances of piracy under a mission-based mandate throughout the Combined Maritime Forces (CMF) area of responsibility to deter, disrupt and suppress piracy to protect global maritime security for all nations' benefit. The command staff of the CTF-151 consists of personnel from a number of coalition countries and manages daily operations from onboard the 'ROKS Kang Gamchan' a Chungmugong Yi Sun-sin class destroyer from the South Korean Navy. In addition, CTF-152 provides for multinational co-operation with a view to patrolling the Arabian Gulf from the northern end where the area of responsibility of CTF-158 ends (i.e. in the North Arabian Gulf) and down to the Strait of Hormuz between Oman and Iran where the area of responsibility for CTF-150 begins.³⁷⁶

As is reflected by the multinational efforts being undertaken in the Gulf region, it has long been recognized that the passage of an international trade convoy in the waterways of the area may serve to expose them to attacks from rogue elements like pirates.³⁷⁷ This has effectively served to mean that the majority of the corridors of international shipping are subject to the provisions of international law because it relates to the Maritime business interests of a number of countries to protect the ships in transit in the region where the development of international law and custom looks to provide for the transit of vessels from one destination to another.³⁷⁸ Such efforts can be aided through the use of protective forces, like those that have been utilised in the Gulf of Aden in the countries bordering on channels of international water, to be aimed at protecting international

372 MarEx Newsletter 'Maritime Security Patrol Area (MSPA) in the Gulf of Aden Established' MarEx (2008).

373 ICC Commercial Crime Services 'Coalition warships set up Maritime Security Patrol area in the Gulf of Aden' ICC Commercial Crime Services (26th August 2008).

374 U.S. Naval Forces Central Command/Commander, U.S. 5th Fleet Public Affairs Office 'Press Release - Combined Task Force 150 thwarts criminal activities' U.S. Naval Forces Central Command/Commander, U.S. 5th Fleet Public Affairs Office (22nd September 2008).

375 The Hindu 'Pirates attack Indian ship, Navy intervenes' The Hindu (11th November 2008).

376 Royal Navy 'Royal Navy assumes command of Combined Task Force 152' Royal Navy (25th June 2009).

377 *Ibid.*

378 Cordesman, A. H 'Saudi National Security & the Saudi-US Strategic Partnership: Part One: The Civil & Economic Aspects of Security' CSIS (29 April 2010).

waterways from attack or danger through the establishment of an MSPA.³⁷⁹ However, as has already been recognised in section 4.1, there is a need for Saudi Arabia to look to have controls of its own in the navigation channel, as it takes all security measures it deems appropriate to ensure its corridors are safe for vessels to travel through. In addition, some States like Saudi Arabia operating in the region may also look to force protection on the canal system with the imposition of legal collection to obtain half the profits of the channel's output. Saudi Arabia's role is considered to be particularly important since it looks to control most of the waterways that serve to internationally link the majority of the world while protecting the Red Sea area, which could otherwise be exploited illicitly.³⁸⁰

4.4 Combating Terrorism

Terrorism is also a significant issue for the Royal Saudi Naval Forces to deal with in view of the fact that Saudi Arabia has incredibly valuable oil reserves consisting of approximately 262 billion barrels within its territory along with its own processing facilities and a highly strategic position that sits near shipping routes of international importance.³⁸¹ With this in mind, it is clear that such factors are likely to place the country of Saudi Arabia at a significant risk from both acts of terrorism and other hostile activities perpetrated by foreign powers. As a result, since 12th May 2003, attacks in Saudi Arabia by terrorist organizations have caused numerous deaths of both nationals and foreign residents and militants.³⁸² By way of illustration, the oil processing facility at Abqaiq was the site of an attempted terrorist attack in February 2006. As a result, the Saudi Arabian authorities have looked to take significant precautions to prevent future attacks being perpetrated against the facility at Abqaiq - as well as those situated elsewhere in the country – through the securing of pipelines, oil fields, and other energy terminals.³⁸³ Surveillance from helicopters and F15 patrols operate around the clock together with heavily equipped National Guard battalions along the perimeter. Since oil fields and processing plants are large area targets with redundant facilities, overlapping patrols serve to guarantee that an attack on one area would not cause a serious disruption in the entire production system.³⁸⁴

In any given period of time there are approximately 25,000 to 30,000 troops looking to protect the

379 MarEx Newsletter 'Maritime Security Patrol Area (MSPA) in the Gulf of Aden Established' MarEx (2008).

380 Cordesman. A. H 'Saudi National Security & the Saudi-US Strategic Partnership: Part One: The Civil & Economic Aspects of Security' CSIS (29 April 2010).

381 EIA 'Saudi Arabia' Country Analysis Briefs (August 2005) .

382 Karam. S 'Al-Qaeda vows more attacks after Saudi oil raid' Reuters (25th February 2006), at pp.2-3.

383 Al-Rodhan. K. R 'The Impact of the Abqaiq Attack on Saudi Energy Security' CSIS (27th February 2006).

384 Cordesman. A. H & Obaid. N 'Saudi Petroleum Security: Challenges & Responses' CSIS (30th November 2004).

Kingdom of Saudi Arabia's infrastructure. Each of the oil terminals and platforms have their own specialized security units comprised of 5,000 Saudi Aramco security forces along with an unknown number of specialized units of the National Guard and the Ministry of Interior.³⁸⁵ In addition, both the Coast Guard along with components of the Royal Saudi Naval Forces look to protect the installations from the sea.³⁸⁶ With this in mind, the Ministry of the Interior security units guarding Saudi Arabian energy infrastructure include - (a) representatives from the Special Security Forces; (b) Special Emergency Forces; (c) General Security Service; (d) regular forces of the Public Security Administration; (e) Petroleum Installation Security Force (PISF); and (f) specialized brigades of the Saudi Arabian National Guard (SANG), Royal Saudi Navy, and the Coast Guard.³⁸⁷ That such substantial efforts need to be undertaken to safeguard the country's natural resources in particular is marked by the fact that foreign powers, whether by direct aggression or by failure to resolve territorial demarcation disputes appropriately, could lay claim to the valuable natural resources that Saudi Arabia has otherwise been blessed with.³⁸⁸

Moreover, in another case it was necessary for the Royal Saudi Naval Forces to participate in supporting the security forces in Makkah and Eastern area. The terrorists that caused problems in this area in this regard in recent years were skilled marksmen with weapons that had good range and they occupied the top levels of the Mosque's minarets.³⁸⁹ As a result, Saudi Arabian armed forces - with the assistance of the Royal Saudi Naval Forces - looked to attack the terrorists and arrest them all. The Royal Saudi Naval Forces are very active in looking to support the Interior Ministry in fighting against acts of terror that may be perpetrated against the Saudi Arabian state. By way of illustration, with a view to proving effective in its role in combating terrorist ideologies, the Ministry of the Interior, with the support of the forces of the Royal Saudi Naval Forces, announced the arrest of five individuals (two of whom were not Saudi) for disseminating terrorist propaganda on Internet websites.³⁹⁰ As a result, the five individuals in question were then charged with seeking to recruit young people to follow their terrorist ideals with a view to then mobilising them to act in either Saudi Arabia or elsewhere abroad. From a technical standpoint, the Ministry of the Interior recognized the websites in question were registered outside of the state of Saudi Arabia and that the individuals owning the websites made frequent changes to the websites in a way that made it

385 Karam. S 'Al-Qaeda vows more attacks after Saudi oil raid' Reuters (25th February 2006), at p.3.

386 Cordesman. A. H & Obaid. N 'Saudi Petroleum Security: Challenges & Responses' CSIS (30th November 2004).

387 Karam. S 'Al-Qaeda vows more attacks after Saudi oil raid' Reuters (25th February 2006), at p.3.

388 *Ibid.*

389 Vickers. S 'The Stability of Saudi Arabia in the face of Mounting Terrorist Attacks' International Risk Ltd (7th July 2004).

390 *Ibid.*

difficult for the Saudi Arabian government to shut down.³⁹¹ This is reflective of the fact that, in Saudi Arabia, all armed forces including the Royal Saudi Naval Forces stand together hand-in-hand with a view to more effectively fighting against terrorist attacks and protecting their homeland from danger and threats.³⁹²

4.5 Yemen blockade to disrupt Al-Houthi resupply

The Yemen blockade undertaken to disrupt al-Houthi's resupply arose out of the Sa'dah Insurgency that led to a Yemeni civil war. The civil war in this case started in June 2004 when the dissident cleric Hussein Badreddin al-Houthi, head of the Shi'a Zaidiyyah sect, launched an uprising against the government of Yemen that was finally resolved in February 2010 with both a ceasefire and truce.³⁹³ Most of the fighting that took place during the civil war occurred in Sa'dah Governorate in Yemen's northwest region - although some of the fighting spread to Hajjah, Amran, al-Jaw and the Saudi Arabian province of Jizan. Ostensibly, the government of Yemen alleged the Houthis were looking to overthrow it and implement the religious Shī'a law, whilst the rebels argued they were looking to defend "*their community against discrimination*" and government aggression.³⁹⁴ As a result, in August 2009 the army launched a fresh offensive against Shi'a rebels in the northern Sa'ada province leading to the displacement of hundreds of thousands of people. The conflict then proceeded to take on something of an international dimension and, as of 4th November 2009, clashes arose between the northern rebels and the security forces of Saudi Arabia along the two countries' common border as they launched an anti-Houthi offensive.³⁹⁵

As a result, Saudi Arabian forces looked to impose a naval blockade upon the Red Sea coast of northern Yemen, where regular weapon smuggling operations were taking place from the Eritrean port of Assab to the port of Midi on coasts near the province of Sa'dah, so that it can be stored there waiting to be transported by smugglers to the Houthis at the province of Sa'dah. It is believed that Iranian Navy stationed in the Red Sea and Gulf of Aden, where coordinating the process of securing the smuggling of arms and weapons from a port of Eritrea in Red Sea to the coast of Yemen for groups armed rebels on the Yemeni government in Sa'dah province on the southern border of the Kingdom of Saudi Arabia. The security cordon imposed by the Royal Saudi Naval Forces on the port, "Midi" and the shores of North Yemen has paid off when the Royal Saudi Naval Ships cut off

³⁹¹ *Ibid.*

³⁹² Karam. S 'Al-Qaeda vows more attacks after Saudi oil raid' Reuters (25th February 2006), at p.8.

³⁹³ Al-Jazeera 'Yemen rebels renew ceasefire offer' Al-Jazeera (30th January 2010).

³⁹⁴ *Ibid.*

³⁹⁵ Nasrawi. S 'Saudi Arabia enforces blockade near Yemen' The Washington Post (11th November 2009).

the supply routes of weapons to Houthis.

With a view to combating Shiite rebels along its border after an escalation of fighting in the southern Arabian Peninsula. Saudi Arabian policy makers took this step because Iran, which is the region's dominant Shiite power and had been accused by Arabs of backing the rebels, warned neighbouring countries not to interfere in Yemen's affairs.³⁹⁶ With this in mind, the steps taken by Saudi Arabian policy makers served to raise concerns regarding the possibility of a proxy war in the Middle East. The Shiite rebels in northern Yemen had been fighting the government for five years before violence escalated into Saudi Arabia. Therefore, policy makers in the country responded with several days of airstrikes against the rebels, whilst the kingdom's warships had been ordered to search any suspect ship sailing near the Yemeni coast to check for the smuggling of materials and weaponry from Iran to the rebels.³⁹⁷ Prince Khalid bin Sultan, the Saudi assistant defence minister, went on to add that it was necessary for the rebels to “*withdraw dozens of kilometres*” inside Yemen before the Saudi Arabian army would halt its assault. In response the Iranian Foreign Minister Manouchehr Mottaki said that “*The regional countries and especially the neighbouring countries -- we recommend seriously they not interfere in the internal issues of Yemen and instead try to restore stability in Yemen*”. Nevertheless, Saudi Arabian defence expert Anwar Eshki went on to add that the Saudi Arabian army has served to tighten up its control of the border area – although it has no plans to enter Yemen despite Saudi airstrikes on rebel arms positions.³⁹⁸

4.6 Natural disasters & humanitarian assistance

As for the matter of humanitarian assistance in Saudi Arabia, there is a need to consider a number of different actions in this regard perpetrated by the Royal Saudi Naval Forces. By way of illustration, in looking to deal with the problems emanating from natural disasters in the region, the Royal Saudi Naval Forces has played a particularly prominent role in acts of search and rescue. Heavy rain and flash floods in Najran, Al-Qunfudha, Al-Leeth and Jizan led to the deaths of many people, but the Royal Saudi Naval Forces were able to rescue numerous others that were trapped in valley beds after downpours had paralysed traffic throughout the region.³⁹⁹ It has also proved to be incumbent upon the RSNF to deal with medical evacuations. This is because the Royal Saudi Naval Forces has undertaken planned preparations to face emergency situations like medical evacuations during Hajj

³⁹⁶ *Ibid.*

³⁹⁷ *Ibid.*

³⁹⁸ *Ibid.*

³⁹⁹ BBC News 'Flood deaths in Saudi Arabia rise to around 100' BBC News (28 November 2009).

season and also in the wake of floods, rain and earthquakes. The Royal Saudi Naval Forces also provided some considerable help during the floods which hit the southern areas like Jizan so as to be able to evacuate many thousands of affected people.⁴⁰⁰ Therefore, the Royal Saudi Naval Forces were able to effectively participate in a disaster relief role with a view to demonstrating their value as more than a deterrent to war or transnational threats through the employment of their instruments of hard power to deliver aid to the victims of natural disasters such as the Jizan floods.

In addition, the Royal Saudi Naval Forces has played a particularly significant role in participating in other armed forces exercises with what could be considered to be both brotherly and friendly countries within the region. By way of illustration, internationally the Royal Saudi Naval Forces has served to provide a significant presence in Somalia under the flag of the UN in its involvement in '*Operation Restore Hope*'.⁴⁰¹ In so doing the Royal Saudi Naval Forces contributed to the distribution of subsidies to the affected people in Somalia leading to significant praise of the Saudi's as part of the joint forces of the UN. This is because Somalia relied on key players within the Muslim world, and Saudi Arabia in particular, for military assistance because their ideological ties with the Islamic world reinforced mutual interests shared with several Muslim states and so the Kingdom of Saudi Arabia provided the foundation for military cooperation.⁴⁰² Therefore, as has already been recognized, during the 1960s, Saudi Arabian naval forces did their best to co-operate with the UN with a view to better maintaining peace within Somalia and distributing aid to the people.

400 *Ibid.*

401 Miller, L. L. & Moskos, C. '*Humanitarians or Warriors?: Race, Gender, & Combat Status in Operation Restore Hope*' (1995) 21 *Armed Forces & Society* 615, at pp.615-637.

402 *Ibid.*

Chapter 5 - Conclusion and Recommendations

5.1 Conclusion

Having sought to consider the role of naval forces in the non-military maritime domain internationally, it is clear that the activities in which navies the world over are willing to participate in are varied since there are a number of problems and areas where it is possible for maritime assistance to be provided. This is reflected by the fact that the sea has become the main artery of international trade and hydrocarbons are the most important of all the commodities that are transported by sea today as the life-blood of modern industry and economies. Sea transport has proved to be the largest carrier of freight in recorded history since it has been recognized that transport by water is commonly cheaper than transport by air over any distance and may be utilized, with this in mind, for the purposes of commerce or recreation. Therefore, naval forces were founded in countries around the world to protect those sources of transport operations at sea with a view to then reducing the problems of maritime crime in international waters. In addition, the role of navies the world over has been extended to other areas including acts of scientific advancement and international aid such as and through the ongoing development of the field of hydrography along with the provision of humanitarian assistance.

Nevertheless, it is clear that there is still scope for improvement and greater clarification of the law as it has developed over time in this area. This is because, as has been shown with the example of the Gulf of Aden, even where an area is designated as a 'safe zone of transit' such as the Maritime Security Patrol Area (MSPA),⁴⁰³ there still exist substantial problems in this area. For example, on 4th April 2008 pirates commandeered a French luxury yacht in the Gulf of Aden,⁴⁰⁴ on 21st August 2008 a dry cargo ship going from China to the Netherlands with 40,000 tons of iron ore was hijacked in the gulf and on 15th September 2008 the Japanese chemical tanker '*Stolt Valor*' was seized by pirates in the gulf and was only later released after a ransom was paid.⁴⁰⁵ Finally, in the case of the Saudi Arabian oil tanker '*Sirius Star*', the ship received substantial international attention when Somalian pirates hijacked it on 15th November 2008 since it was the biggest ever to be captured by pirates reflecting the ongoing problems in the region despite regulatory attempts.⁴⁰⁶

403 MarEx Newsletter '*Maritime Security Patrol Area (MSPA) in the Gulf of Aden Established*' MarEx (2008).

404 Reuters '*Pirates storm French Yacht off Somalia*' Reuters (4th April 2008).

405 NDTV.Com '*Two-month ordeal was nightmare: Stolt Valor Captain*' NDTV.Com (18th November 2008).

406 Walker. R '*Pirates pass open water test*' BBC News (18th November 2008).

In addition, even where naval forces internationally have sought to assist in the event of there being humanitarian disasters, some notable problems have arisen from out of the strict adherence to international legal norms. This is because the UN General Assembly Declaration of Principles of International Law Concerning Friendly Relations & Cooperation Among States in Accordance with the UN Charter 1945 proclaims there is an effective “*duty not to intervene in matters within the domestic jurisdiction of any state*”.⁴⁰⁷ Therefore, whenever natural disasters have arisen in the past some significant problems have developed with the provision of humanitarian assistance in practice. For example, when Cyclone Nargis struck Myanmar in early May 2008⁴⁰⁸ nearly 140,000 people were killed or categorized as missing⁴⁰⁹ and so the international community quickly mobilised itself with millions of dollars worth of aid arriving within days.⁴¹⁰ The problem was the aid remained largely unused because the ruling military *junta* regime refused to let foreign aid in⁴¹¹ and instead impounded it⁴¹² whilst US Navy ships languished off the coast, continuously rebuffed.⁴¹³ Eventually the failure to accept foreign aid became so extreme French Foreign Minister Bernard Kouchner and a number of US lawmakers appealed to their governments for forced intervention⁴¹⁴ because until aid was eventually accepted the choices had seemed somewhat limited as a reflection of the dilemma between humanitarian intervention and the responsibility to protect.⁴¹⁵

Therefore, these examples of the problems experienced in this area are reflective of the difficulties that naval forces have been faced with more generally in their work to date. It has been recognised that such problems are arguably reflective of the fact there is a high degree of unavailability of coordination among the naval forces of those countries. Such a view is reflected in the preceding paragraph regarding the crisis in Myanmar⁴¹⁶ when one naval force attempts to provide humanitarian assistance away from its regional waters while hindered by obstacles when passing through a country's territorial seas or exposed to threats or attacks. By way of illustration, the interference of political powers in a navy's humanitarian activities, specifically sending medical and food supplies by ships, has seen some countries stop the transference of such aid or forbid them

407 UN General Assembly Declaration of Principles of International Law Concerning Friendly Relations & Cooperation Among States in Accordance with the Charter of the United Nations U.N. GAOR, 25th Sess., Supp. No. 18, U.N. Doc. A/8082 (24th October 1970), at p.338.

408 Office for the Coordination of Humanitarian Affairs (OCHA) Situation Report No. 46, United Nations, OCHA, Myanmar Cyclone Nargis (21st August 2008).

409 *Ibid.*

410 Jackson. T. R, Lt Cmdr 'Bullets for Beans: Humanitarian Intervention & the Responsibility to Protect in Natural Disasters' (2010) 59 Naval Law Review 1, at p.1.

411 Saputra. A & Mount. M 'U.S. Marines: Aid Begins to Trickle into Myanmar' CNN.Com (15th May 2008).

412 Brown. A, Jenkins. G & Chamberlain. G 'Burma Generals Hijack Cyclone Relief Efforts' Telegraph.co.uk (10th May 2008).

413 Associated Press 'US Admiral: Myanmar Junta Unconcerned By Cyclone' CNN.Com (15th May 2008).

414 See World Federalist Movement Institute for Global Policy 'The Responsibility to Protect & its Application to the Situation in Burma' World Federalist Movement Institute for Global Policy (9th May 2008) & Australia Network News 'US Congressmen Call for Humanitarian Intervention in Burma' Australia Network News (17th May 2008).

415 Jackson. T. R, Lt Cmdr 'Bullets for Beans: Humanitarian Intervention & the Responsibility to Protect in Natural Disasters' (2010) 59 Naval Law Review 1, at p.2.

416 Office for the Coordination of Humanitarian Affairs (OCHA) Situation Report No. 46, United Nations, OCHA, Myanmar Cyclone Nargis (21st August 2008).

from entering that needy country's waters to provide such assistance.⁴¹⁷

5.2 Recommendations

On this basis, in view of the problems that have been identified in both the summaries and the overall discussion of this dissertation borne in mind regarding those areas of law enforcement and aid that naval forces supply internationally, there is clear scope for improvement to the legal position as it stands with a view to then making the role of naval forces in these areas much more effective. Therefore, it would seem that the various challenges to the role of naval forces in the non-military maritime domain must be addressed on a multi-layered basis with a view to better maintaining maritime order as recommended in a paper prepared by Commander P. K. Ghosh of the Indian Navy for the Center for Strategic and International Studies - American-Pacific Sealanes Security Institute conference on Maritime Security in Asia.⁴¹⁸ Nevertheless, although regional cooperation between navies and coast guards internationally needs to take centre stage in the emerging order of regulation of the maritime environment, non-military maritime cooperation is equally important. With this in mind, it is incumbent upon navies internationally to look to reorient themselves from the existing mindset, with a view to then better preparing for war, to ensure peace so there is a need for greater stability to cooperate with a view to achieving greater regulation of the maritime area.

It has come to be understood that any multinational agency that has been designed to deal with the maritime challenges discussed in this dissertation regarding non-military matters will need to establish priorities which multinational security organizations will have to adapt to with respect to the pace of operations and the force to be applied to a challenge. By way of illustration, instances of maritime piracy and terrorism along with acts of humanitarian intervention would most directly and extensively involve international naval forces. Unfortunately, however, there has also been proved to be a lack of sufficiently 'channeled' efforts towards addressing non-military maritime challenges, whilst previous efforts to combat these problems have been mostly bilateral and trilateral arrangements along with a near total absence of a multilateral approach to deal with disorder in the maritime field.

417 Jackson. T. R., Lt Cmdr 'Bullets for Beans: Humanitarian Intervention & the Responsibility to Protect in Natural Disasters' (2010) 59 Naval Law Review 1, at p.1.

418 Ghosh. P. K., Cdr 'Maritime Security Challenges in South Asia & the Indian Ocean: Response Strategies' A paper prepared for the Center for Strategic & International Studies – American-Pacific Sealanes Security Institute conference on Maritime Security in Asia (18-20th January 2004).

On this basis, it is necessary to put into place Joint Maritime Centers along with Oil Spill Response Centers that are interlinked, and comprise regional navies and coast guards, at important ports to allow for rapid and coordinated responses to smuggling, piracy, humanitarian disasters, and search-and-rescue operations as crucial areas requiring cooperation. The establishment of such centers could also serve to offer a potential venue for allowing for intelligence sharing. In addition, there is a need for regional states to look to develop marine technology and a joint strategy with a view to guaranteeing the safety of both ports and harbors, whilst also looking to pursue coordinated efforts in relation to the utilization and management of marine resources. Moreover, it is also incumbent upon littoral states in the region to look to regional power centers for help with a view to then being able to better maintain maritime order and cope with natural disasters. This is because, as has been shown throughout this dissertation countries with enhanced maritime capabilities like the US, UK and Saudi Arabia can help to maintain order in the maritime sector. Such a view is based on the fact they are not only cooperating amongst themselves but also taking other littoral states on board as part of the multilateral efforts that have been undertaken towards the achievement of greater maritime order and the prevention of crime and terrorism along with greater support in humanitarian efforts that are undertaken.

From the preceding chapter it is clear that Saudi Arabia, in particular, already has an extensive regulatory framework both nationally and internationally to govern and better regulate the maritime sector. But the framework that has developed in the country to date is still significantly fragmented since numerous government ministries and other bodies in the country have been recognized as having overlapping responsibilities in relation to the nature of their activities for furthering the aims of the country. In view of the fact the Saudi Arabian maritime sector is considered to be gaining somewhat with regards to its economic importance - particularly in relation to the matters of international trade and shipping along with coastal development – there is a need to provide for greater safeguards to be implemented. As a result, there is a need to recognize that the pressure on the maritime sector is being increased in and around the Saudi Arabian territory in view of its importance to trade in the region and so it is becoming ever more important that the sector is managed and overseen in an effectively integrated and coherent manner.

Therefore, in view of the problems experienced there is a need to address the overlap of ministerial responsibilities that will lead to a lack of attention in some areas and an excess of attention in others because there is no overriding authority to appropriately delegate duties in relation to the activities of the Saudi Arabian navy. This means it is very important for the Saudi Arabian government to

look to realise the increasing role of the maritime sector in the country's future and implement such strategies with a view to optimising the sector's use, reduce conflicts of interest, and increase resource and environmental integrity. On this basis, it is likely to become necessary to develop a maritime strategy in Saudi Arabia that incorporates all aspects of the sector and allows a specified set of decision makers to more effectively coordinate activities and policies for the Saudi Arabian maritime sector's greater good. At the very least there is a need for greater co-ordination of efforts in this regard at the regional level that could be expanded out globally to limit restrictions and allow for more substantial developments in relations between nations to support one another in the prevention of crime and the provision of help in matters of humanitarian assistance.

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