The role of the IMO in the maritime governance of terrorism

Lucio Javier Salonio
THE ROLE OF THE IMO IN THE MARITIME GOVERNANCE OF TERRORISM

By

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(Maritime Administration)

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DECLARATION

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

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

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II
DEDICATION

My dedication goes to all those minds that in one way or another believe in the confluence of people and the role that International Organizations have in giving to each part of society, even if it be the sole individual, the chance to be included in all our affairs.

I dedicate the efforts of this work to my family and friends who encouraged me with the happiness and the smile that bring the wonderful subject of hope for our society which is making good progress even if we are distracted occasionally by violence.
ACKNOWLEDGEMENTS

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ABSTRACT

Title of Dissertation: The Role of the IMO in the Maritime Governance of Terrorism

Degree: MSc

The objective of this study is to identify the role of the IMO within the international actions against global terrorism after the attacks of September 11 2001, in the USA. The essential and relevant elements of terrorism are observed within academic definitions in order to examine how they affect policies and strategies that guide a response against it. The impacts of terrorist attacks on society are appreciated in their influence on trade and all aspects. The constituency of the response is analyzed in search for the principles that may give an approach that is not simply limited to the issuance of regulations and measures but to the integration of a maritime policy and strategy to protect shipping. Two case studies are looked into in order to identify the causes as to why shipping has not had protection in past situations of crisis. The solution to terrorism in the maritime sphere of influence is explored under the principles of reform of the United Nations, the legitimacy of the IMO as the maritime forum, the concept of Global Governance towards Maritime Governance, and the theory of complexity. The change proposed is significant; therefore, core issues of the identity of IMO and its overall role have been briefly visited in order to provide for its new approach against terrorism. The role of the IMO is then built on its previous structure and the new components of a future enriching and vigorous role for the protection of shipping. Conclusions, recommendations and a guide for further research are presented.

Keywords: IMO, Role, Maritime Governance, Terrorism, Global Governance, All Inclusiveness, Policy, Decision Making, Complexity Theory, Scenario.
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<tr>
<td>A.###</td>
<td>IMO Assembly Resolution</td>
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<td>A/RES</td>
<td>UN Assembly Resolution</td>
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<td>AG</td>
<td>Adaptive Governance</td>
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<tr>
<td>BIMCO</td>
<td>The Baltic and International Maritime Council</td>
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<td>Circ</td>
<td>Circular</td>
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<td>CMI</td>
<td>Comité Maritime International</td>
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<tr>
<td>COSI EU</td>
<td>Complexity in Social Science – European Union (project)</td>
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<tr>
<td>ECOSOC</td>
<td>United Nations Economic and Social Council</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GG</td>
<td>Global Governance</td>
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<tr>
<td>I&amp;R</td>
<td>Inclusion &amp; Representation</td>
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<tr>
<td>ICC</td>
<td>International Chamber of Commerce</td>
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<tr>
<td>ICS</td>
<td>International Chamber of Shipping</td>
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<td>IGO</td>
<td>International Governmental Organization</td>
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<td>IMB</td>
<td>International Maritime Bureau</td>
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<td>IMCO</td>
<td>Inter-governmental Maritime Consultative Organization</td>
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<td>IMO</td>
<td>International Maritime Organization</td>
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<tr>
<td>INF</td>
<td>Informative Document</td>
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<tr>
<td>INTERTANKO</td>
<td>International Association of Independent Tanker Owners</td>
</tr>
<tr>
<td>IO</td>
<td>International Organization</td>
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<tr>
<td>ISWG</td>
<td>Inter-sessional working group</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<td>--------------</td>
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<td>MG</td>
<td>Maritime Governance</td>
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<td>MGT</td>
<td>Maritime Governance of terrorism</td>
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<td>MGT</td>
<td>Maritime Governance of Terrorism</td>
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<tr>
<td>MS</td>
<td>Member State</td>
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<tr>
<td>MSC</td>
<td>Maritime Safety Committee</td>
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<tr>
<td>MSR</td>
<td>Member State Representation model</td>
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<tr>
<td>MSR</td>
<td>Member State Representation (model)</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
</tr>
<tr>
<td>PSC</td>
<td>Port State Control</td>
</tr>
<tr>
<td>S/RES</td>
<td>UN Security Council Resolution</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCGG</td>
<td>United Nations Commission on Global Governance</td>
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<tr>
<td>UNCLOS</td>
<td>United Nations Conference on the Law of the Sea</td>
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<tr>
<td>UNICPOLOS</td>
<td>UN Informal open-ended Consultative Process on Oceans and Law of the Sea</td>
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<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
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<tr>
<td>US</td>
<td>United States (of America)</td>
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<tr>
<td>USA</td>
<td>United States of America</td>
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<tr>
<td>WP</td>
<td>Working Paper</td>
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<td>WTC</td>
<td>World Trade Center</td>
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Dissertations usually do not have prefaces but some of the findings of this research have brought profound reflections. They were of a humane nature different to the purpose of this study. They have been so deep that I would like to share them with the reader through these pages.

In the process of searching for ways to implement the concept of Global Governance to eventually achieve the protection of shipping, I came across the concept of all inclusiveness, the inclusion of every institution and every individual in managing all our common affairs. It spoke about being able to participate in the decisions of ones interests, which for whatever reasons were not duly being considered by the actual representative system of governments. This seemed a mere ideal and unable to be put into practice.

Then followed many other concepts such as the reasons for terrorism and why is shipping defenseless or difficult to be protected against the violence of war and piracy attacks. How it seemed that shipping was being excluded from the right to have protection. The theory of complexity spoke about fit ecosystems that survived because the more species they included, the higher was their chance of survival. The theories of organizational structure showed how organizations needed to include diversity into their ways, ideas, and people in order to survive. Scenario principles indicated that scenarios, which excluded options, were not representative of governance systems and that by excluding interests they were closer to conflict than to the cooperation achieved by including all interests. At this point I discovered that inclusion and exclusion were key words that associated many of societies wonders and conflicts.
In this way I found that *all inclusiveness* was absolutely practicable. It called for all institutions and individuals to exercise their participation and responsibility in the decision and policy building against terrorism and to be *included* in the discussions at high levels. It called for the discussion of issues of essence to be *included* at all institutional levels and that these issues were not the *exclusivity* of one body that would decide on how to protect shipping. To have *exclusivity* was to *exclude*.

I also found out that Life is about the diversity of all people, that diversity is about *inclusion* and that terrorism is about *exclusion* – a sad and maybe avoidable *exclusion*. The less we *include* is the more we *exclude* and the system that could be our world will not be fit to survive.

Maybe the words of Olof Palme, on Common Security, speak about mutually *including* each other and of this "presumably impracticable" *all inclusiveness*, when he says, "*They* (the belligerents) *must achieve security not against the adversary but together with him. International security must rest on a commitment to joint survival rather than on a threat of mutual destruction." If one of the adversaries does not wish to survive then something is seriously wrong.

May all our minds, bear the remembrance of the seafarers that have lost their lives in conflicts because they could not be protected, while keeping the lifeblood of trade flowing for the world to continue its progress; and, very specially, in the cases where Maritime Governance, of which each individual is a part of, was not there for them.
CHAPTER I

INTRODUCTION

GLOBAL TERRORISM AND MARITIME GOVERNANCE
PREPARING FOR UNCERTAINTY WITH A NEW CONCEPT

The attacks on the World Trade Center (WTC) and the Pentagon in the United States of America (USA) on September 11, 2001, have changed many aspects of international relations. The global future of the world has been affected in ways that are difficult to predict, in political life, commercial life and even daily life. In this future, the maritime world is not exempted. How will these attacks affect the maritime world? Will there be attacks on ships or ports? How can we prepare for terrorism? These are questions that are being faced at all levels of the maritime community.

The concept of globalization has facilitated, by its nature of openness, the exports of violence from one country to another. In the same way as the world’s economies have crossed the old concept of borders, the violence of terrorism has crossed the old concept of focalized action in one geographic location. Internal local conflicts have increased remarkably in number and are now not only expanding regionally but also globally. Thus, terrorism has become one more element of globalization. The WTC incidents are the evidence.

The problem of global terrorism in the maritime world has many levels to be given attention. The levels range from the lowest prevention measures to be preformed by the watch of a ship to the concerns on how the maritime community can contribute to peace
in the world. However, terrorism, unlike other forms of maritime violence, is unique in its characteristics and in the difficulty of developing protection measures against it. In addition, globalization increases the possibilities of incidents by its openness to trade and immigration. All these aspects contribute to create a very complex situation that needs to be addressed internationally at all levels, from policies to instrumental protection measures.

The past efforts of the world maritime community to obtain protection for shipping against violence in order to continue its task of international transport have been very intense. However, the results of these efforts have not been successful. Shipping has been, and still is, hit by violence resulting in extremely serious and costly consequences. One example to illustrate this was the Tanker War during the period 1984-1988 in which the ships that were providing such a large percentage of oil to the world on the route between the Persian Gulf and the great centers of consumption were severely attacked (more than 365 hits) by both contenders. The shipping community could not find protection, as will be seen further in the study. Another more recent example is the issue of piracy that is inflicting serious losses and still today cannot be contained. In spite of agreements, conventions, intergovernmental decisions and the intense activity of the industry, no clear and significant results indicate a decreasing trend. Who should protect shipping? Why is the protection of shipping by governments difficult at times? These questions lead us to the issue of governance of maritime matters in order to search for a way to govern the situation of terrorism, its problems and difficulties.

1.1 Are shipping interests represented in International Organizations?

Who represents international shipping interests? The answer to this question may be found in the role of shipping interests in maritime governance. The issue of how
shipping is represented within national governments and Non-Governmental Organizations (NGOs) lies in the International Governmental Organizations (IGO). Entities such as transnational and multinational enterprises have fragmented representation in national governments. Their global representation is not adequate to protect their interests in situations of world violence. These entities can be small or large but they represent a sector of world society that brings benefits to the world as a whole and who cannot be represented by the national governments beyond the interests of national jurisdiction. Their interests are beyond national governments. Shipping is one of these entities that due to its globalized nature, finds difficulties in having its identity represented in full by the partial representation of national governments.

Shipping’s interests are not fully represented in one forum but are fragmented in several fora. National interests, today, represent only a portion of the world’s interests. The situations that affect many nations are dealt with in international fora such as the United Nations (UN); however, the UN is increasingly inviting the participation of civil society to deal with all issues. The world has progressed from the post second world war concepts that created the United Nations in 1945. Today, the world is organized in states that, in many cases, consolidated their individual identities through the economies of peace, but, there also exists many organizations that are independent and beyond governments since they have interests in two or more countries. Some of these organizations are represented in international fora by NGOs. The interests that exceed national interests are still not represented totally in international fora, and much less efficiently networked, but are fragmented in different places and interests. One of these entities, that does not have full representation of all its interests and much less in one forum, is shipping. The difficulty to protect international shipping against violence is evidence of the lack of representation within the international fora.
The societies of the world and the UN have successfully started to make the integration of economies, as well as the integration of peoples across national borders and across all other cultural borders, imaginable. This integration has been called globalization. The sea and shipping have always been globalized and, through the trend of globalization, are showing their relevance in an ever more important way. One of the potential capacities of globalization is the contribution to reduce conflicts among nations. The interests expressed as inter-national give an idea of *between nations*, whereas, *interests within globalization* refers to the concept of integrating everything towards *common interests* that *affect* all nations. This, in essence, not only involves nations but also all globalized entities that are not fully included within the responsibility of national governments. The sea, with its concept of common heritage in the United Nations Law of the Sea (UNCLOS), is one of the first examples of *declared world common interests that can also be seen as a common good*. Shipping inherits from the sea the characteristics of a common good and this may be seen in the essential service that maritime trade performs for society by transporting more than 90% of world trade volume.

Shipping, being historically a truly globalized activity, is immediately affected by the conflicts of nations in one part of the world producing impacts in other nations in other parts of the world. To which country can the benefits of shipping be attributed to? The identity of world shipping exceeds one single country. Does a country, which is benefiting from the oil trade or the trade to and from Asia, have the responsibility or *rights* to the common good that is world trade? If it were so it would have the right to uninterrupted trade routes, and maritime violence would hamper it. Do all societies have a right to demand protection and stability of world trade when focalized conflicts affect them? Will governments react to protect flags that are not their own? The answers to these questions may require a previous detailed analysis, however, the threat that terrorism poses on all these questions is very real and simple to perceive. In the light of
globalization, the threat of terrorism to shipping is a risk to the prosperity of all societies, national and international.

A practical insight into the problem of the protection of shipping from terrorism may be found in how governments and the international civil society govern the response to terrorist incidents affecting the maritime community. If we interpret governance as the managing of common affairs by all actors, the idea of governance of maritime security against terrorism would include not only governments but the whole of the world's civil society. This would imply responsibilities to governments and different responsibilities to the civil society that need to be networked towards the end goal that is the protection of the maritime community. In order to deal with the effects produced by terrorist incidents inflicted on the maritime community, a way must be found to include the unique international identity of shipping that is beyond governments, into a mechanism of Governance that will provide protection to shipping. The International Maritime Organization (IMO) should play an important role in the networking of these responsibilities and in representing the international identity of shipping.

1.2 The UN vision of the 21st Century through Global Governance and a new approach for the International Maritime Organization against Terrorism

The UN has entered the 21st century with extensive plans for reforms (reforms at the UN, 2002) that include its main bodies and also reach far into all its agencies. The Millennium Assembly of the UN, 55th session on 5 September 2000 (the General Debate) and the Millennium Summit for world leaders (Millennium Summit), dealt also with these reform matters. The concerns for governance of world affairs and governance of the UN have had a central role in the millennium meetings. Of all the documents concerning UN reform and world governance (Millennium documents and others), the
UN Commission of Global Governance (UNCGG) has a central role in the vision of the UN 21st Century reform of the governance of world issues and UN participation. Two core documents state this direction of change: “Our Global Neighborhood”, (1995), and “The Millennium Year and the Reform Process - a contribution from the Commission on Global Governance to the Millennium Summit”, (1999). These initiatives show how the UN sees governance within the process of globalization.

Globalization poses many challenges to world communities and to the functioning of governments as true representatives of these global interests. As globalization changes, shipping changes and becomes even more inter-national than it has ever been before. One example is the extensive use of international registries. All these challenges of change in structures are at the same time “challenged” by terrorism with the element of uncertainty and the threat to hinder future development. The concept of Global Governance (GG) developed by the United Nation’s Commission on Global Governance gives an answer to the problem.

It is important to make a distinction between the concepts of Government and Global Governance. Government, in this study, refers to the structure of people, activities, methods and principles in which administrative and political units manage the interests of countries. Global Governance is referred to as it is conceived by the UNCGG (1995), by “The sum of the many ways individuals and institutions, public and private, manage their common affairs”. GG is a concept that approaches the idea of governance in a more comprehensive way by including all the actors and interests in an all-inclusive way. This characteristic of all inclusiveness is the key ingredient that provides the means for all the component parts of society to take part in the governance of their common affairs. The openness of the concept goes beyond the traditional concept of political government by recognizing the participation of other institutions and individuals that have their role in managing matters that are relevant to society. In a time when governments are
downsizing, other organizations are performing functions that before were governmental. Moreover, new functions or needs are coming into play as society develops. The influence of technology is an example of the fast needs for adapting new concepts of governance to the activities of individuals and institutions. To develop the recent concepts of GG is a challenge that is new to all fields.

Maritime matters, from ocean governance to minor regulations, are a field of exceptional global characteristics for the furtherance of the mentioned reforms underway within the UN bodies and its agencies. In particular, the special international nature of globalized shipping makes Maritime Governance (MG) a favourable environment to test GG. The actual globalized problem of terrorism that is of high priority is a good objective for MG since terrorism requires the cooperation of all sectors of society. To apply the concept of GG in an initiative to govern the situation of terrorism is a new approach towards maritime security and the role of the IMO.

1.3 The focus of this study

This study focuses on the role of the IMO in the joint action of national governments and civil society worldwide against global terrorism. The role is aimed at Maritime Governance developing the appropriate structure and functions of governance for the protection of maritime trade. In this defense, national governments play a highly significant role that cannot be delegated, inasmuch as NGOs are increasingly playing a role in maritime affairs and that is now challenged with a new role in terrorism. Furthermore, the uniqueness and unprecedented experience of a situation of world terrorism may bring into play actors with very diverse interests that the actual governance systems do not account for. In this governance scenario, the IMO has initially concentrated, as if by gravity, the greater number of interests of the maritime
world in its forum, thus becoming the representative arena in maritime matters. This is a further challenge for the IMO involving the responsibility towards the maritime community composed by the states, the NGOs and the future actors that a versatile modern organization will consider. What is the role of the IMO in matters of governance of maritime affairs with respect to the issue of terrorism? This question is the core issue, which this study will explore.

1.4 The methodology

The approach to the role of the IMO in the situation of terrorism has been from the point of view of governance. The guiding line of thought needed to be expressed on a working hypothesis so as to have it defined for referencing and contrasting the arguments. Its detail is as follows:

**Working Hypothesis:** The constitution of the decision process of the IMO lies with the member states but has additional contributions from other sectors of the global society. The member states' main concern is national government issues and this is confronted with the need to protect shipping without the distinction of flags. The previous situations that have demanded protection of shipping have been unsuccessful. The analysis of the reasons leads to a lack of representativeness within the UN to provide protection and a lack of governing capacity of the maritime sector to achieve this protection. Given that the issue of governance of world maritime affairs extends beyond the government perspective, the concept of Global Governance is the instrument used to explore the solutions to the problem of terrorism within Maritime Governance. The IMO emerges as the natural forum. The role of the IMO in the Maritime Governance of Terrorism is explored here within this context.
The characteristics of this research is that the subject of terrorism in the dimension of the WTC attacks is very recent and without a developed interpretation as to the consequences. Moreover, the focus on governance does not have many previous applied cases since Global Governance itself emanated from the recent UNCGG 1995 report. However significant the challenge to research may be in this matter, it is appealing and necessary to approach the problem from its very essence, which is governance within the 21st century. The methodological approach that has been followed has needed to build on the new concept of Maritime Governance by importing conclusions from other examples of violence into the working hypothesis, since terrorism has no precedents.

First the overall situation has been investigated and researched, dividing it into analysis elements and then grouping them into better instrumental research units. The analysis elements have been brainstormed within the groups and an overall development of ideas and their relationship has been developed. The lack of information and previous studies on the issues of maritime global terrorism and global governance has presented the need to use alternative methods of proof of concepts by parallelism with other issues of violence that are not terrorism. Another alternative method has been to define a certain condition and extrapolate in the desired direction with conclusions and examples of other types of violence and similar types of governance systems.

Two logic criteria have been used: a) means towards purpose (teleological criteria), b) cause and effect (causal criteria). The cause and effect criteria did not prove clarifying or logical in some situations as, for example, when objectives and role elements were concerned. It was necessary to have the whole picture before developing the concepts and searching and verifying them with examples (for example: the assumption that shipping is difficult to protect due to its identity that is beyond national interests). The "big picture" was then brought from its state of merely linked concepts into a flowing logic with the effort and objective of the maximum tightness possible in order to arrive
at concrete conclusions and recommendations from an initial picture of uncertainty and lack of precedents.

Consequently, the brainstorm and theoretical groups were researched a second time and brought into chapters, for more empirical support of the logical line of thought, and developed, tentatively, in a practical way to provide a connection between theory and practice. The benefits of a tangible image of what is the abstract concept of Maritime Governance were also desired; therefore, elements that were theoretical and did not have a direct effect on practice were minimized or not included. The contrast with real life helped to test the partial conclusions.

1.5 The contents

The contents analyze global terrorism and its implications on the maritime community to identify the need for governance. The precedents of maritime violence are seen with the participation of the IMO and the role governance played. Subsequently, the considerations of governance for building decision making mechanisms and governing the maritime response to terrorism are developed. The role of the IMO in the light of maritime governance is visited and finally conclusions and recommendations for the role of the IMO are presented.

The contents of the core of the work start in chapter II: “Global terrorism and the implications to maritime trade.” In this chapter the unique concept of global terrorism is explored with the intent to view it in international maritime terms. The threats of terrorism on the maritime sector and the general effects on shipping and ports are shown. A brief description of the economic consequences is presented. Finally, the chapter sketches the call for governance in the response against terrorism in maritime matters.
Chapter III: “Precedents of Maritime Security, IMO participation and Structure of Governance” reaches out to the scarce precedents of maritime violence in order to extrapolate in the direction of global terrorism. Piracy is considered in order to draw lessons learned that will be applied further to terrorism. The precedents of International Law, conventions and UN participation through the IMO are seen from the basis of governance. Finally, the consideration of the transition from administration to governance for the IMO is looked into in order to view a functional basis for response building.

Chapter IV: “The response to future terrorism from the perspective of maritime governance”, uses the transition from administration to governance (previous chapter) to develop an integral paradigm shift where the administration of maritime terrorism prevention is integrated into the larger concept of the maritime governance of terrorism. Scenario methodology is tested, selected and developed sufficiently in order to bring reality into the difficulty of understanding the abstraction of governance with the practical objective to find a way to govern the response against terrorism, not only with measures but also fundamentally with policy making. The scenario is then interpreted and objectives for maritime governance are identified in the light of what is going to bring success to maritime governance through the IMO. Finally, the objectives of maritime governance are channeled and the role of IMO in maritime governance is found as a core element of success.

Chapter V: “The Role of the IMO in Maritime Governance” analyzes under the perspectives of purpose, position (relative to other institutions), functions and the environment as maritime and non-maritime related sectors. A practical approach to the role is viewed analyzing uncertainty in the policy level and in the instrumental level. The use of the theory of complexity is superficially applied to test the all inclusiveness against diversity. The role of IMO is viewed in the role of its parts where the traditional
structure is complemented with new elements that are incorporated from previous conclusions.

Chapter VI: “Conclusions and Recommendations” summarizes the development and implementation of the role of the IMO in the Maritime Governance of Terrorism. Recommendations are given and subjects for further studies and research are referenced in appendix III.

The application of the new concepts of Global Governance to Maritime Governance is wide and exceeds the applications of governance methodologies to terrorism and can be used in all fields of maritime affairs. The particular nature of shipping and its difficulties to obtain protection in areas of conflict and violence speaks of the low priority that shipping has within national governments. However, the importance of trade is paramount for all sectors of society. The concept of including all sectors possible will tend towards a richer identity of shipping and maritime trade. Constant changes in shipping are taking place at the same time as changes in the UN and changes in the forms of violence. The opportunity of IMO to take one step forward towards a more versatile and representative system of maritime interests is presented as a paradox with terrorism. The protection against terrorism needs to include the largest number of participants for ideas, new solutions and ways; and subsequently take on a challenge that has great costs at stake. Shipping is ideally international and therefore, by nature, it suits the concept of Global Governance. The opportunity to change with the UN as we enter the 21st Century is a dynamic way to approach the solutions to the problem of terrorism and will undoubtedly influence all other parts of maritime affairs contributing to general progress in the sector.
The events of September 11, at the WTC, have changed the characteristics of maritime terrorism not only in its manifestations but also in its consequences. Terrorism has become widely globalized geographically, diverse in its ways and unforeseeable in the effects. This has made prevision and preparedness tasks difficult to dimension and proactive-ness unclear due to the uncertainty. An analysis of terrorism will be developed in this chapter with a focus on the actions of prevention and reaction needed to face it.

This chapter explores the concept of governance as a strategy against maritime terrorism. Terrorism is defined in an academic sense in order to identify the main elements that will affect maritime trade and the decision-making processes. The threat of terrorism on the maritime sector is analyzed stressing the importance of the threat on the decision-making element. The effects that terrorism produces on ships and ports give a real life image that makes evident the high risks of flaws in the decision making process. The economic consequences give a view of the connection with extra maritime sectors that will be affected. Then, considerations for strategy building against terrorism are looked into. The characteristics of terrorism, the threats on the maritime sector, the maritime and non-maritime consequences and the strategy building considerations lead to governance as the primary need in a strategy against terrorism.
2.1 Terrorism: exploring the concept and its uniqueness

Terrorism, in all its forms, has been condemned during the second half of the 20th century where it has presented itself in various forms. To define terrorism has constantly been difficult as seen in Schelling (1981), Britten (1987) and the aging project of a comprehensive unified international convention on terrorism, UN Resolutions A/54/110, A/55/158. The effects however, give us a clear image of what is interpreted as terrorism in the form of acts of violence performed to induce fear. A definition of terrorism will give elements in the search for the difficulties and the sources of the problems to be addressed in a situation of terrorism in the maritime sector.

In an effort to reach an academic consensus, Schmid (1988) condensed a definition from a survey of 100 scholars resulting in the following statement:

Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby - in contrast to assassination - the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat-and-violence-based communication processes between terrorist (organization), (imperiled) victims, and main targets are used to manipulate the main target (audience(s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought.

From this definition, there are four significant characteristics that represent the situation of active terrorism and that are useful for orientating the response. Each characteristic is expanded below in order to see the consequences of each term.
1. "Anxiety-inspiring method of repeated violent action": Both anxiety and the repetition of violence produce tension and difficulty in the process of decision making. They inspire political precipitation and rushed decisions and responses. The repetition of violence will naturally produce increasing degrees of response. This is an escalation of the level of conflict in all aspects.

2. "(Semi-) clandestine individual, group or state actors": This implies two levels of action: a) activities of individual actors, b) activities under organized support. Individual actors will be involved in a local and focal conflict. When a state participates in supporting or producing terrorism it raises the conflict upto the international level. This can be enduring and resemble a situation of war.

3. "immediate human victims of violence are generally chosen randomly ... or selectively": There is no defined pattern; therefore, the defense against terrorism should consider all possibilities. This adds significantly to the complexity of building a response.

4. "manipulate the main target (audience(s))": Through the target audiences all outcomes involve the public and the private civil society. Through the effects of the media audiences, violence will be transmitted. Then violence will not be able to be confined into war zones as it has been traditionally. The whole of society will be exposed to fear as in the WTC case. Since audiences are, in another concept, also the final destination for the "media", the relationship between media and terrorism is high, thus contributing more to anxiety and to producing information confusion. An example is the denial of Reuters (2001 Sep, 2002 April) and other agencies to use the term "terrorist" relating to the aphorism "One mans terrorist is another's freedom fighter." Thomas and Standly (1988) discuss the issue expressed by the aphorism and the operational difficulties it presents and Tullock (2001) addresses the moral issue of the media's use of the expression terrorist, where the impartiality and objectiveness of avoiding the
use of the word terrorist may be questioned as diminishing the seriousness of its meaning.

In relation to these four characteristics and their implications, we can see that an international situation of terrorism and the response to it, will bring a state of anxiety, repeated violence, difficulty in making political decisions, complexity, pattern-less attacks, intense media participation, and confusion. The impact of this situation is highly relevant to globalization and any social activity that is essentially international, as is maritime transport. It is seen in the first characteristic that the social impact picture of terrorist incidents is not complete without the consequences of the response. Whatever the response to terrorism (however defined), it will impose preventive and defensive measures when not more violence in the form of the response. Thus, the complete picture of a situation of active terrorism is that of terrorist incidents with violence on one side and restrictions, controls and even retaliation on the other.

The response of the USA to the attack on the WTC (2001) has been the internationalization of the conflict on all fronts, military, economic, financial and social. The USA has been supported in the response by other nations because the attack on the WTC has been interpreted as a threat of global characteristics. The interpretation of state supported terrorism as mentioned before by Schmid is now a reality that motivated the coalition military actions in Afghanistan. The actions are against the state support that the government of this country provided to the terrorists involved in the WTC incident. This situation enlarges the risk of extending the conflict to other nations.

The crucial degree of importance of this situation for the maritime sector cannot be sufficiently stressed or insisted upon. As a previous example, the violence of the Tanker War, 1984-88, had severe economic consequences and maritime implications (Lloyd's
Shipping economist study, 1988) and is a sample of how situations of violence affect trade and maritime transport.

The characteristics mentioned show that a situation of terrorism includes the consequences of both opposing sides to the problem, not just the attacks. A need to define the threats is highly relevant. Theses two aspects: a) attack and response b) definition of the threat to the decision making process, are important factors for the development of the response of the maritime sector.

The consequences of terrorist incidents can be dealt with only from the response side leaving the uncertainty of the terrorist initiative as a factor that for the response is in principle out of reach. However, the governing of the response, its management and decision-making mechanism among states and other participants is fully within our domain. Any threat to this governance is very serious and with unforeseeable consequences.

2.2 The threats of terrorism on the Maritime Sector

It is beyond doubt that the threat of suicidal terrorist attacks on shipping and ports, as the core of the maritime sector, is open to numerous possibilities of uncertainty and difficult prevision. The analysis of these threats at a physical protection level is a technical matter as dealt with by many of the proposals submitted by the IMO member states at the meeting of the Maritime Security Working Group in February 2002. However, the threats of terrorism to the international maritime sector need to be set also in the policy perspective, or, simply said, in how to deal with it. The situation requires the treatment of terrorism on a multinational level and in close consensus with the other sectors of the global society. These conditions are of special relevance due to the international nature
of maritime transport. The response will involve many tasks such as: deciding on a strategy, agreeing among nations, identifying what responses are needed and harmonizing them and avoiding excessive trade security barriers. These are all policy and decision making issues. In this way the maritime sector governs the response. This governing of the response involves issues of the governance of the maritime sector within international governance regimes. Governance is crucial in the situation of terrorism and is the starting point of physical protection measures; therefore, a threat to governance seems to rank highest in risk and priority.

The question that arises is: Who governs the maritime sector? Maritime governance lies in the scope of the meeting of all the sectors of global society that are involved in maritime affairs or affected by it. Very appropriate to this maritime issue is the concept of *Global Governance* (GG) expressed by the UNCGG, report 1995, as, “the sum of the many ways individuals and institutions, public and private, manage their common affairs”.

At this level, the threats that we may consider are the threats to governance, meaning that a threat to governance itself is a threat to the mechanism that produces the response. To illustrate this, some examples of failures at the governance and management levels will reveal the problems in responding to terrorism:

- Not being able to respond in time or adequately to the needs of the situation
- Piecemeal solutions to incidents without an overall perspective of the socio-economic factors involved in the consequences
- Legitimate isolated or local efforts that do not conform to a global policy of nations and may be conflictive between themselves
- An overkill response with negative effects on economic and social development
The above threats and the concept of governance describe a situation where a lack of a harmonized, in time and adequate exercise of governance on a global scale produces unwanted management problems. The examples of the risk of unilateral, and possibly conflicting actions, are legitimate, however, to preserve the integrity of the maritime sector and, eventually, Society Itself consensus and harmonization of policies is the prime objective. Thus, it can be expressed that the principal threat of terrorism to the governance of the maritime sector is precisely ineffective management and governance expressed as: *The threat of not being able to deal with the problem.* The situation of terrorism and ill-governance will produce numerous effects that help us grasp the dimension of the consequences on shipping and ports.

2.3 The effects of terrorism on Shipping and Ports

The threats that terrorism presents to the maritime sector are materialized in the risks in targeting ships and ports. Furthermore, the whole economic logistic supply chain is affected and involved since containerized cargo is consolidated at origin and distributed at the final destination, demanding far greater measures of control than those that are strictly maritime (Coulter, 1998). According to the Organization for Economic Cooperation and Development (OECD), the two extremes of the chain (production and consumption) are also exposed to terrorist acts from threats consolidated within the cargo (OECD Outlook 2002). The risk of all the parts involved in sea transport shows the nature of the problem of threats including all the movement of cargo and persons.

The different degrees of intensity of terrorism will produce different degrees of constraints and reactive measures from the maritime sector and the governments. Some of these variable defensive measures and consequences are described below considering
that their intensity of reaction will be according to the risk of events and possibility of future attacks. The references are from IMO working documents and various authors:

- Increased security for ships and ports (MSC 75/17/1 i.5, 2002)
- Increase of insurance – “War” and “Malicious acts insurance” clauses
- Increase of liability – liability of the shipowner for deficient security prevention measures resulting in a terrorist attack that could have been avoided
- Increased control of ownership of vessels (MSC 75/17/1 appendix. 4, 2002)
- Increase general costs – training, equipment, operational requirements (MSC 75/17/1, 2002)
- Increase of regulations, international and national (MSC 75/17/1, 2002)
- Vulnerability of trade routes (Brooks, 1998) and increased costs by routing affecting business opportunities (Noer & Gregory, 1998)
- Increased government intervention on the logistic chain (Coulter, 1998) and in the traditionally free international maritime trade inter alia
  - Shipping operator activities
  - Routing
  - Personnel screening
  - Financing
  - Chartering practice
  - Ownership of ships and cargo
  - Documentation in general, ship, personnel and cargo
- Blacklisting: Blacklisting is a reactive resource that is in use in several port state control agreements for targeting sub standard vessels. Applied to anti-terrorist measures, it has a negative impact on trade as a whole.
The concept of blacklisting might be used by different actors that do not have the capacity to respond to international anti-terrorist measures.

- Flag States
- Ship operators, port operators
- Port States or Ports themselves
- Multimodal chains
- Identified commercial companies

The impacts on shipping and ports can be very diverse according to the increasing threats due to new attacks or to the lack of preparedness and prevention. The failure to address the problem and develop the necessary awareness and preparedness may result in last minute impulsive overreactions that will impact severely on the industry and consequently on trade and economies.

It has become a common conclusion, over the years, of symposiums, workshops and seminars on maritime terrorism that the security costs fall on the industry. In different periods that were affected by violence at sea the conclusions are similar: expressions relating to the tanker war "the industry should be liable for failures to take reasonable security measures, open to substantial awards for damages to third parties, ... moral obligations to give adequate protection to passengers and crew", (Parrit, and workshop decisions, 1986). In the same sense the impressions of the effects of the WTC attacks according Hiebert & Saywell (2002, Aug) express similar views: "Most analysts and shippers assume that participating ports [in container security controls] will be expected to purchase their own [security] equipment, and they will pass on the costs as surcharges. It is, also assumed that container [security] sensors will be paid for by shipping companies and charged to customers." This consensus is clearly preparing the way for
higher costs for the maritime sector that may be even higher, as seen earlier, in a scenario of inefficient governance.

2.4 The maritime economic consequences of terrorism

The general overall consequences of the terrorist attack on the WTC have been severe. The attacks on the WTC have had short-term impacts that were rapidly controlled through crisis management decisions and mechanisms; however, the overall losses were estimated at 5% of the GDP of the USA. The reaction was quickly approved by the US Congress on September 14 in a $40 billion emergency package and soon after by $5 billion in direct grants and $10 billion in federal loans to US airlines (OECD Outlook 2002). The effort to counteract the results of the attacks has been extremely significant. Would similar measures be enacted for shipping? From which government would the support come from: the coastal state or the flag state? Would the ships registered in international registries be supported financially for the losses? Can international registries aide their ships in terrorist incidents?

The impact on the insurance market has posed the question of the need for government action where private insurance will not provide cover. Just like other periods of violence at sea the initiative on behalf of the private sector has been to transfer responsibility to the governments for coverage that is not held. However, there is no clear view that governments will move towards this position in relevant amounts. The OECD Outlook 2002 compares different government support initiatives as follows. In France, the “Caisse Centrale de Reassurance” has moved up from covering catastrophes to cover terrorist consequences for a sum of €1.5 billion. In Canada there is no clear definition. In the UK a government-backed mutually owned company “Pool re,” initiated in 1993 after the Irish Republican Army bombings, is set for terrorist compensation where the first £100,000 lies with the primary company. In Spain, the “Consortio de Compensación de
Seguros” deals with terrorist compensation mainly to solve incidents concerning the ETA Basque separatist movement. Overall it can be seen that these examples from different countries are clearly for a smaller dimension of liabilities and for incidents that are more local in nature with smaller consequences. These systems are clearly not prepared currently for an incident of the consequences of the WTC attacks. In maritime insurance the available systems will cover war risks but on specified terms therefore the characteristics of the situation will influence premiums, coverage and eventually the responses of governments will also be calculated, (Rooth, 2001). In maritime matters, will governments support the insurance policies of ships outside their own flag?

According to the OECD Outlook 2002, international trade will be affected by security measures in possible amounts between 1 and 3 per cent ad valorem. Considering that elasticity trade flows ad valorem range between -2 and -3 % this would mean that a 1% increment in trade cost would have the effect of a decrease of 2-3% in trade flow. Maritime shipping costs increased 5-10% in the two weeks after the attack but returned to normal values afterwards. Beyond this period, shipping costs were not affected by the incidents and were stable during the six months after the attack. What would be the effect of repeated violence on the very elastic trade flows translated to shipping?

The extended federal loans that have covered the losses to promote reactivation, the increased costs of insurance and the impact of higher costs on international trade, all contribute to the recessive business cycles. The maritime sector has not reacted with increments of costs in the short term after the attack, possibly due to the competitiveness of the freights. However, it is possible, as seen above, that the effects of security measures will be reflected on the costs. This is a clear example where the response through regulations is increasing the costs that the attack did not affect directly. It is also clear that preventive measures must be taken in order to minimize the possibilities of further incidents.
2.5 Considerations in developing the approach or strategy against maritime terrorism

Due to the nature of terrorism and the consequences expressed above, the approach to the problem must necessarily be of wide scope, integral, and multidisciplinary (Carberry, 1999). The focus must be on building capacities on the national, regional and international levels that will perform accordingly to the needs of possible incidents. The effort should not be exclusively put on measures, restrictions or controls but on developing the means and policies to develop them, tailored to the specific needs. The generalization of measures to all possible incidents is a simplistic solution that has high costs for trade, businesses and the end consumers.

Two issues must always share the governance of the problem: the socio-economic and the security constraints. This duality should always be maintained in good health, so that the opposing interests are balanced. Failure to do so will produce unnecessary vulnerabilities or excessive militarization for protection. The understanding between the different international and national organizations should be put into action in a multidisciplinary approach and not in a compartmentalized manner. No one entity possesses the ability to produce such integration successfully.

Terrorism has evidenced itself as versatile and changing; therefore, the answer must be just as versatile and adaptive to that change as necessary (note the use of necessary and not the word possible, since possible is just not sufficient). The answer can lie in a regime for the interaction of Nations, International Organizations (IO), between themselves and with NGOs to deliver responses that will not affect the free international nature of shipping. In this the United Nations plays a crucial role since it is through its
bodies that response is naturally being conducted in a unified international way. Examples of this are the preventive measures proposed at the IMO by different member states in the MSC 75/ISWG intersessional working group documents. The proposed measures deal with the instrumental aspects of the response.

If the actions are channeled through the UN, the specialized agencies will need to develop policies and act in the light of the UN Charter. This implies that the maritime sector requires representation at the UN. The international and liberal nature of shipping has been globalized in character long before the word globalization started being used as it is used today. Shipping provides an excellent example of the true essence of globalization. All other transportation or trade activities have not experienced such a high degree of internationalization. It is in this way that the maritime sector has much to contribute in its response against terrorism and its risks to globalized trade, not only with the instrumental measures to protect trade but with its views, opinions, policies and strategies in the *Global Governance* of the terrorist situation dealt within the UN.

The IMO is the only agency that *uses* the sea operationally and in a sense as a vital component for trade. The severe effect of terrorism on world trade, and consequently on the development of nations, has already been mentioned (OECD Outlook 2002). The IMO is in a unique position to voice policies and strategies at a higher level than measures and participate in the intensive conceptual decision making of the global response to terrorism at the UN. The impact on the airline industry after the WTC attack required substantial extra funding. A similar impact on the shipping and port industries will have impacts that are unpredictable for the sector as well as for the whole of the world economy. An example could be an incident that might close the port of Los Angeles, concentrator of the main trade flows from Hong Kong, Shanghai and Singapore, and consequently producing a repercussion on international trade (Hiebert & Saywell, 2002).

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The common good of peaceful trade that globalized economies are achieving is helping in the prevention of war and violence. The disruption of peace impacts negatively with recession and hinders progress, as has been the experience during two World Wars. This common good is becoming a common asset that belongs to humanity rather than to individual nations. The UN system has strived for this common good since its creation. In globalized economies, international trade is an important engine that promotes the coming together of nations. The key element of the system of international trade is maritime transport that cannot be considered in any other way than through the international dimension.

Thus, it is important that such a key element as maritime transport participates in the decision-making processes of a response to terrorism at the UN or through the UN specialized agency for this matter, i.e. the IMO. It would not be wise to repeat the experience of the minor role played by the shipping industry in the discussions of the UN Convention for the Law of the Sea (UNCLOS) as expressed by Gold (1989) and the consequences of not addressing the relevant shipping issues as pointed out by Huebert (1998).

The conceptual approach expressed above can be based on the following considerations and that will contribute in administrating the degrees of implementation of measures that should be proportional to the threats:

- Assure the inclusiveness of the maritime sector with all participants needed as expressed in the concept of GG by UNCGG.
- Elaborate a proactive facilitator regime for timely terrorism response development and implementation.
• Work towards a unified international response (Carberry, 1999) within the UN Charter
• Integral awareness in all the logistic supply chain (Coulter, 1998)
• Scenario vision for research, (Menefee, 1993)
• Regionalization – Its purpose is: the containment by geographic sectors, tailored solutions in the specific places needed, avoidance of overkill measures, overspill avoidance so that one conflict does not affect or involve parties that are not concerned, to avoid generalizing a local situation and to provide protection and continuance of trade in focal areas to minimize socio-economic impact. (Sea Power Conference 1998)
• The use of technology will facilitate and enhance knowledge and prevention. (US Congress, Office of Technology Assessment, 1992)

2.6 Governance: a new maritime strategy or can it build on pre-existing structures

The approach and strategy towards the problem of maritime terrorism is an issue of governance where the capital aspect is the all inclusiveness of related sectors based on the concept that trade is a common globalized good. The effects of terrorism to trade are severe but so are, with differences, the restrictions imposed by the response. The threat of not being able to respond to the demands of governance in a situation of terrorism is the greatest threat. An objective of great importance is to maintain economic growth and development in spite of the situation of terrorism. The main objective should be the elimination of terrorism that can be pursued through the objectives of the UN Charter. The principle of all inclusiveness obliges the consideration of and the striving for these objectives at all levels of decisions and policies, with contributions and participation to higher levels of decision making at the UN. Failure to do so will dilute the strength of

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governance of security against terrorism and end up with the simple implementation of instrumental measures that only address the aspects of control but not the aspects of governance.

The maritime consequences of terrorism are significant to the shipping sector being that the rise of costs will affect the already depressed profits. In addition, international trade and the globalization process that has brought countries closer in their economies and culture will be endangered with terrorism itself and possibly also with the restrictive measures used to control it.

A unified international approach is essential as it is important to avoid unilateralism in the way of allowing no need for its use by providing an adequate multilateral response. For this, a timely response-building mechanism must be available and the necessary International Organization or forum must have the decision-making capacity and procedures in place with pre-established policies to avoid internal conflicts of governance. This can be initiated by think-tank procedures where the use of previous experience and the existing structures are a starting point of the analysis.
The precedents of maritime security lie in the instrumental measures and legislations that have been put forward on each occasion when violence at sea has erupted. However, in the past, the incidents of violence have been focalized in areas and have not had international interconnection as with WTC, 2001, incidents which were linked to the Middle East. This internationalization has found a natural forum in the discussion at the United Nations. The question of governance of the terrorism is merely underlying in the preventive measures against terrorist issues and not yet developed in full to express international policies and strategies to deal with the problem. Governance is slowly starting to be structured through the activation of conventions that are finally being ratified and are entering into force, amendments to conventions and legislation, the meeting of intergovernmental and non-governmental organizations and the confluence of these actions in UN agencies like the IMO that provide the meeting point of the interested parts, in a formal and direct way and in an informal and subjacent way. The international structure available and in use is the basis for the needed all inclusiveness. This structure has already encountered violence with the WTC attacks.

3.1 Terrorism and Piracy: differences and the common sharing of violence

In the maritime field, terrorism has been present in two relevant cases: the Santa Maria, 1961 and the Achilles Lauro, 1985. Both had political motives and both were
passenger ships which were hijacked. The more recent cases of the *Tenyu*, 1998, *Alondra Rainbow*, 1999, and *Global Mars*, 2000, had their cargoes as objectives, no political motives and the characteristics of maritime armed robbery or its near figure, piracy. According to previous experiences the acts of terrorism in the maritime field have not been significant and much less had a pattern, therefore it can be said that the experience of such incidents is scarce.

The maritime sector, however, does have extended experience in piracy as a form of violence at sea with the rising number of incidents and of greater degree of violence. Statistics from the International Maritime Bureau (IMB) report 2001, indicate a continuous rise of up to 469 incidents (2000) with the exception of a decline to 335 incidents (2001). The trend in increase is still present, in spite of the decrease in the year 2001, and with the relevant difference that incidents have become notably more violent.

Reporting centers for statistics and warnings to mariners have been set up and the subject of piracy has been discussed in many fora. The information on piracy has become extensive and its characteristics well known, but the similarity with terrorism is scarce and lies only in that both share the common ingredient of violence at sea. The motives, risks at stake, commitments, means and final goals are different. Piracy pursues private interests and is generally not associated with destruction but with violence, detention or depredation committed for private interests (UNCLOS 1982, art 101).

This common ingredient of violence presents a signal of caution to the maritime community in the question as to whether the response to piracy has been effective and if the ships have been protected, and as a consequence, if the lessons learned are useful for the issue of terrorism. The results of the IMB and the IMO reporting systems clearly state the continuance of the issue of piracy. The Singapore II - 2001 Conference of the Comité Maritime International (CMI) on “Model National Law on Acts of Piracy and
other Maritime Violence”, addresses one of the most important obstacles to the contention and eradication of piracy being the lack of national legislation in areas affected and their harmonization (this would be either a regional or even an international issue). This is a lesson learned which is applicable to terrorism: national legislation is a high priority and harmonization with all affected and non-affected countries is indispensable.

Regionalization of actions against piracy has not been sufficiently effective and the statistics have shown that success has not been reached. One & Two track Diplomacies (formal & informal) have been extensively used in producing numerous meetings of interested parts at all levels. The official initiatives have come in the form of conferences such as: March 2000 International Conference of All Maritime Related Concerns, both government and private, on combating Piracy and Armed Robbery against Ships; October 2000: Mumbai ARF Intersessional maritime meeting with the focus on piracy; and, the 2001 Tokyo conference by the Nippon Foundation. Informal initiatives have also been held and have helped the coming together of different components of different countries, but the results on the incidents have not been significantly positive.

The UN, through the meeting of UNICPOLOS (UN Informal Open-ended Consultative Process on Oceans and Law of the Sea), New York 2001, as an informal open-ended forum concentrated on two main concerns: 1) whether there was adequate action at regional level to ensure co-ordination and co-operation among relevant authorities and law enforcement agencies; 2, how the United Nations could assist States in enacting the necessary legislation so that offenders are punished; and in the establishment of law enforcement capabilities (UNICPOL 2001).

In the report of the May 2001, the UNICPOLOS commission clearly stated “the lack of communication and cooperation among the various national agencies involved” (item
Furthermore the initiative of the IMO 1998 anti-piracy project concerning reporting, information and cooperation "had not coincided with any significant improvement of the situation; on the contrary, the situation had worsened", (UNICPOLOS, 2001, item 249). It is appreciated that the efforts of coordination and cooperation have not been fully integrated in all aspects and that the addressed elements of the problem has been mainly on instrumental measures; however, one important aspect reflected in UNICPOLOS 2001 is that the concept of *all inclusiveness* is clearly present as an essential element, even though it is not expressly mentioned but dispersed in all its extent. The document shows by its exposition that a variety of organizations have been concentrated and brought to the scene on the issue of piracy with a variety of initiatives, and that the future is also in that direction.

A significant mention is registered at the UNICPOLOS meeting of 2001 (item 298) concerning the development of a regime,

...after encouraging cooperation between States and relevant international bodies, several delegations pointed to the need for a *global management regime*, as well as to the need to ensure that measures taken by individual States were consistently enforced within the framework of international law. World Bank, together with regional bodies and States, should support those measures, it was suggested.

The mention of a management regime is precisely oriented towards a concept of governance and it is noticeable that this concept of governance is being applied to the issue of piracy and violence at sea. This use of governance is rather innovative since governance is most commonly used for governing concerted interests in the utilization of resources, such as the cases of ocean governance (Valencia, 2001) and not to face violence. In the document, management is not referred to as a control regime, surveillance regime, contention regime, counter-piracy regime, or any other denomination of numerous types of regimes. The report states the concerns of the
delegations as encompassing all the actions imaginable and necessary to deal with the issue of violence in piracy by using the expression of "global management regime" for managing the problem. Management is a term for business or organizational science. This concept applied to world politics and security is referred to as governance.

It stands that piracy, in the form of an encounter of the maritime community with violence, has been a precedent to the issue of globalized terrorism in maritime matters. The applicable international experience that has come out of it and its conclusions are a contribution as the following lessons learned with the issue of piracy that should be considered in the light of terrorism:

I. *National and International legislation* is a high priority and the harmonization with all affected and non-affected countries is indispensable

II. *All Inclusiveness* is a key ingredient

III. *One & Two Track Diplomacies* (formal and informal diplomacies) are useful in reaching the broader scope of all inclusiveness

IV. There is a need and a demand for a *Global Governance Regime*

3.2 Terrorism, International Law and the United Nations

International Law has had an atomized approach towards terrorism. Different countries have varying legislations that present differences in the response. International conventions on terrorism are specific instruments that address point form issues lacking the necessary comprehensiveness of the integral issue that is terrorism. For this matter the UN Assembly Resolution A/RES/55/158, 2001, gives specific instructions for the Ad Hoc Committee on International Terrorism to develop a comprehensive convention addressing terrorism. This initiative is also based on the concern that among these
conventions there is a lack of harmonization and existing differences in their approaches towards enforcement (Carberry, 1999). Most of these conventions have been developed under the auspices of the UN and other international organizations. India has presented to the UN a working draft of a comprehensive convention on international terrorism that is still being considered by the Committee and other member states.

Cousineau (1999), of the Canadian delegation, expressed very clearly the essence of the issue of terrorism at the 54 UN Assembly and his views on the issue of the Indian proposed draft:

The proposal for a comprehensive convention on terrorism presents challenges and risks for the international community. We appreciate the efforts of the delegation of India to present a draft global convention which appears to avoid the sensitive question of the definition of terrorism and other politicized matters,... However, we should ensure that the consideration of the proposal for a global convention remains focused in its scope and avoids broad definitional questions.

One of the core issues is the difficulty of an approach to acts supported by or committed on behalf of governments. These concepts are clearly difficulties for the intent of internationally legislating terrorism. With this conditioning political factor in mind the international community, not only the UN, has set out to approach terrorism in a compartmentalized way. The international community is a much larger and wholesome concept than the UN alone since it carries the all inclusiveness of the individuals of society that through different ways want to prevent terrorism and confine it to criminalization without the prejudice of discrimination in the judgment of the motives. “Focused in its scope” would mean that the centre of action would be on the effects of terrorism. The understatement is that the conjunction of efforts on these effects will build a framework that will ultimately address, through the consequences, the issue of terrorism.

1 For further detail see appendix I
terrorism. The procedures must be detoured around the definition, which implies the origins of motives, in order to avoid a political stalemate filled with the conflict of values that at this moment cannot be handled.

The legal address towards terrorism in maritime related incidents is mainly contained in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation – (SUA), (Rome 1988 – IMO depository) through the identification of the offences typical to acts of violence of which terrorism is one of its sources. The definition of terrorism is absent and the motives for the offences are minimized in the methodology. This convention is of particular interest due to its maritime characteristics derived from the Achilles Lauro terrorist incident in October 1985 and its process of development. As mentioned by Treves (1990) the remarkably short period between the preparation of the first draft and the opening for signature was approximately one year. This was possible due to the visible interests of nations, and in another sense, the particular consensus procedures of the IMO. This timeframe can be considered as short legal timing; however, it may not be sufficiently short to deal with real time measures that repeated incidents demand. This would call for a framework that would pre-agree measures before they were put into force.

For the IMO, the prestige of technical expertise, and the continuously proven methodology of unanimous decision making, are invaluable elements to deploy the concept of all inclusiveness. With these qualities, IMO is the most relevant forum to build the mosaic of measures for maritime terrorism that will become the regime towards governance in avoidance of unmanageable politicized elements. For this the legislation needs to be preventive by generating the governance mechanisms. How can legislation be preventive or proactive? It must exist before the birth of the event that is
its object. How can it then be pre-existent? That is a key question to be answered through the IMO’s networking capacities.

3.3 Preventive action and the International Maritime Organization

The IMO, as mentioned earlier, has been the focal point where the preventive maritime response to the WTC attacks, that had no incident of maritime violence, was concentrated. This has been due to the recognition of the Organization’s representative capacity of 162 member states, including the great majority of the nations of the world and the international shipping nations. Moreover, it is the principal intergovernmental body for maritime issues and where the majority of the maritime conventions are dealt with. Today, it is beyond doubt that it is at the IMO where the governance of maritime matters has its meeting point.

In addition to the structure of the SUA convention, numerous member states presented proposals (MSC 75/ISWG/INF) for the “Prevention and Suppression of Acts of Terrorism against Shipping” in February 2002, and which are to be approved in December 2002. These measures mainly address the identification and control of ships, cargo and people through different equipment and information systems and the development of a security awareness culture. The measures finally drafted for the diplomatic conference that will adopt them as an amendment to previous conventions, mainly originate in the proposals presented by the USA, which is a considerable expansion and updating of a previous IMO document (MSC/Circ. 443, 1986).

Here a word of caution is to be given in the light of the preventive response that has mainly one source in the USA. The USA is a legitimate source, more than justifiable to

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For further details see Appendix II
be so, since it is the physical victim of the terrorist attacks that are signaling the beginning of a new international way of life. All states have interpreted this signal as a change in which they all are involved; however, the surprise of the events has left no time for research into the matter for the multilateral development of a strategy. The response cannot be considered unilateral due to its wide acceptance. This is evidenced in the converging opinions and efforts of the *travaux préparatoires* (MSC/ISWG/J/1) of the Maritime Safety Committee Inter-sessional working Group (MSC ISWG) that drafted the initial security measures proposal to the future December 2002 Diplomatic Conference. This work is the answer to the IMO Assembly Resolution A.924(22) (2001) that requests a revision on the maritime security of acts of terrorism, in order to follow the originator, UN Security Council Resolution S/RES/1373 (2001).

The response proposed is predominantly instrumental, in the legal sense, mainly with the revision of the SUA Convention and it is instrumental in the technical sense with technological and procedural measures. This response still has much to do in order to develop the change in culture that has been signaled, however, the awareness development is the starting point without which the instrumental measures will have difficulty in being successful. This task is, by nature, an attribute of the IMO and justly confided to the IMO by all member states (MS) that have voiced proposals or opinions on proposals. This networking of MSs is the true preventive task. Inasmuch as prevention accounts for routine measures that stop terrorism from occurring, the concept of pre-emption implies preparatory positive action towards the materialization of terrorism that is to be performed. Thus pre-emption leads to strategy and planning. In this way and even though both concepts of prevention and pre-emption are related, the concept of scenario-based decision making is best related to pre-emption or active strategic planning than to generalized preventive measures. In the initiative put forward by the MSC ISWG, the preventive view is extensively developed in routine security and information procedures while the preemptive policy and strategy is left to be developed.
by the IMO as stated in MSC 75/WP.18 APPENDIX 5 pg.4 “Further work of the IMO pertaining to the enhancement of maritime security,” which carries the spirit of the implied commitment stated in the US proposal MSC 75/ISWG/5/7 art. 25, where maritime security is to be discussed as a high-priority long-term goal for the IMO.

3.4 From a “Concept of Administration” towards a “Concept of Governance”

In the dimension of an international organization such as the IMO, the administration of the interests of the member states with regard to shipping would lead to the regulatory development that has characterized most of its activity. In accordance with this concept the organization was born as the Inter-governmental Maritime Consultative Organization (IMCO). The Part II of the original convention stated: “The functions of the Organization shall be consultative and advisory.” IMCO had also other functions to consider such as unfair practices in shipping as stated in art.1b of Part I. The considerations that in 1948 would have been conflictive since IMCO was an inter-public-institution (inter-governmental) organization that might influence private matters today have become common practice, as is the example of the eradication of substandard vessels.

IMO has evolved very much from this consultative function and the art. 1b Part I of the original convention mainly because shipping has evolved becoming more international and maintained its commercially free nature. Moreover, the simultaneous downsizing of governments and growth of multinational corporations that are beyond the frontiers of the sovereignty of states has also contributed in changing the IMO. The complexity of the characteristics of the mixed nature, private-public, of IMO extends its reach to a field that has always, since its creation, had these characteristics. This is even more so today with the flourishing of international registries as an example of this mixed nature and
that are represented in its forum. The IMO has grown in the number of consultative members and also expanded in the ways it welcomes their participation. An example of this is the Classification Societies that today keep in their knowledge the authority of the technical developments which the member states, due to downsizing, have left to their trust. These issues present a question as to whether shipping today is an entity in itself, with interests in itself and independent of national governments. If the representation of member states at the IMO is a representation of member state shipping, where and how is shipping itself represented? Is this representation of shipping, such a traditionally free “adventure” - as referred to by past centuries jurists – a fair representation of the ways individuals and institutions, public and private, manage their common affairs? These are questions that are understandable but when inserted to the concept of the interaction of political states in the world, it may seem without solution and not worth attending. However, we may think that the lack of representation of shipping is without a solution, but this problem has had consequences as is the example of the process of the UN Convention on the Law of the Sea III (UNCLOS) on which shipping expert Prof. Edgar Gold (1989) comments,

> During UNCLOS III shipping played a minor role, basically that of a polluting industry fighting defensively for an outdated status quo. Even the major maritime interests placed their fading shipping industries below resource and strategic interests.

During the 12 years that the deliberative process of the convention lasted, shipping was not sufficiently represented, and played a minor role. Nevertheless, shipping was one of the most heavily affected activities regulated by the convention. Shipping at UNCLOS was passively elusive by not participating intensely. Another situation in which shipping did not want to be represented was at the International Maritime Conference at Washington, USA, in 1889 where it was announced that “for the present the

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3 Applied Global Governance definition UNCGG
establishment of a permanent International Maritime Commission is not considered expedient.” At the Washington Conference shipping was actively elusive by negatively influencing the decision for the creation of an International Maritime Commission that might regulate it, as were the regulatory examples of the International Telegraphic Union and Postal Union that were created a few years earlier. This was the first precedent and also the first jeopardized intent to create the forerunner of the IMO, and that was influenced by the suspicion of attempting to control and restrict the freedom of shipping, (Focus on IMO, Sep. 1998). The need for agreements and regulation on certain issues concerning shipping abruptly became an urgent demand after the sinking of the Titanic in 1912, which triggered the Safety of Life at Sea Convention (SOLAS) of 1914. The elusive nature of international shipping, once again, continued to postpone the creation of any organization that might restrict or regulate shipping until 1948 when the IMCO Convention was signed. Furthermore, the convention was not enthusiastically ratified until 1958, being delayed for ten years for numerous reasons. The past elusive conduct of international shipping to avoid regulation, has contributed in the shifting of its identity from national to international. This transition of identity has producing a lack of representation within the international fora system of member states. This lack of representation will have serious consequences in conflict situations, as will be seen further in this study.

The question raised of who represents the international identity of shipping is also related to the desire of shipping to perform its activity with the least possible restrictions from governments and the greatest freedom of navigation obtainable. In this process the identity of shipping has progressively become diffused, of which clear examples are the multiple nationalities involved in today’s international registries and the complexities of identification of ownership of vessels. The commercial benefits of shipping obtained with a diffused national identity and an clear global identity are evident. However, in the presence of violence where the protection of shipping is required, the diffused national
identity of shipping due to commercial practices has its drawbacks since nations are reluctant to defend an activity or interests that are not entirely under its jurisdiction.

The issue of the protection of shipping may be focused on how to introduce the concept of *all inclusiveness*, which will give shipping a representative stance into all maritime society's interests groups. *All inclusiveness*, in this regard, is tied to the importance of trade to the development of nations and regions. Trade is a common affair of all states and by bringing its relevance towards the international identity of shipping, the need for the protection of shipping will become an interest to be defended by all nations. How is the representation of international sea trade brought to real terms when the interests are not nationalized in order to be represented in their true dimension by member states? These aspects may not have a precise answer today, but the direction towards governance obliges the *all inclusiveness* to be also all-participative. This concerns the idea of governance that the UNCGG brings forth as an element of future development in issues to be considered by member states and especially by other UN agencies. The protection of shipping is one of these issues.

The issue of security, of which terrorism is a part, draws closer the need for governance. Pugh (1994), in his concepts of “towards a maritime regime [in Maritime Security and Peacekeeping]”, states that “the IMO might be summed into a UN Maritime Agency which would have a range of security functions”, apart from its traditional functions. This is naturally an option to which the reasoning of the alternatives demands first an analysis of what needs to be done before deciding who is to do it. Thus it is necessary to view first, the development of a response to future maritime terrorism and afterwards who and how it will be governed.
Global Governance as it has been drawn from the analysis of terrorism itself and the lessons of the precedents of maritime security, is the foundation for the successful response to future maritime terrorism. The analysis of the response from the governance point of view is centered on the process of policy development and conduct of maritime affairs as expressed by the definition of the UN Commission on Global Governance, (UNCGG), report 1995, as, "The sum of the many ways individuals and institutions, public and private, manage their common affairs". This analysis focuses on the process of governing the response and not on the assessment of the measures themselves. A two step analysis looks into the following sequence of logic in order to develop what will be called Maritime Governance (MG): first the situation is overviewed through a selection of scenarios for global terrorism, a selection of response scenario elements for maritime terrorism. This will give an image of reality to global maritime governance of terrorism in order to avoid an excessive abstraction of concepts and to bring the real problem into play. Then a specific scenario will be interpreted. Second, a concept of success for governance will be approached with respect to the objectives of MG that will be established.
4.1 Introductory concepts for governance within a scenario analysis approach and conflict description

A few introductory concepts will be presented regarding the importance of a maritime governance attitude instead of the governance of maritime issues. The compartmentalized differences of maritime safety and their usefulness for work at different levels are stated. Finally, the description of terrorism from a conflict perspective gives a more tangible view of conflict issues.

It may be noticed that from this point of the study onwards, the concept of governance of maritime terrorism, expressed before, will be changed to maritime governance of terrorism. The reason for this is to expose the reality of the indivisible nature of terrorism in MG, or any other specific governance, as will be clearly seen in the scenarios. In addition, it is desirable to permanently visualize the natural insertion of the idea of MG into the world governance of terrorism in the ways of an integral world governing response. Seamlessness, an absolutely necessary quality for governing the issue of terrorism, is imbedded in Global Governance since it can only be obtained with the participation of lower levels of governance in the processes of the higher levels. The cost of minimizing it will be compartmentalization and the fallback into a routine of administration.

This difference may lead us to a question that may be clarifying: What are the benefits of viewing security also as an indivisible entity and not as maritime security? The attitude towards security is an incentive to pursue security beyond simply the ship, even the port and into the logistic supply chain as seen in chapter II. Maritime security, conceptually, is confined in some cases to the ship and in some cases to the port, and

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4 By the use of scenarios and exposing real incidents the indivisibility of terrorism is seen in a simple way and supports the conceptual approach to terrorism of chapter II
therefore, it is jurisdictionally tight in its own maritime discipline attributing success to its scope of action in its areas. Seamlessness with other securities is another matter to be achieved. For maritime institutions to pursue security as a integrated concept introduces the mandatory seamless connection with all the multidisciplinary fields. Seamlessness is imbedded in security itself; thus, the measure of success naturally implies an interdisciplinary effort. This detail of semantics may be irrelevant at first sight if the vision of terrorism or security is of instrumental measures because the scope of application is evident. The use of the term maritime security is clarifyingly convenient when it is referred to specific convention drafting and instrumental measures like SOLAS. However, when the vision is of governance, then policies, jurisdictions and legal concepts make a serious difference between the two terms. Thus, the preferred use of the terminology maritime governance of terrorism, involves policies of security and eventually of Peace as the ulterior objective of the UN Charter. At the level of governance it is the clearest and best way to visualize the scope of policies and decision making since maritime governance will automatically bring into play all aspects of governance that is not in terrorism itself but that does have a part in the integral response.

Before going into the scenario development process, the operational characteristics of the conflict that terrorism creates need to be addressed. In 1992, Schmid suggested to the UN Crime Branch a short definition of terrorism, complementary to his comprehensive academic definition, as: “Act of Terrorism is the Peacetime Equivalent of a War Crime”. The question that now arises is whether terrorism can be the manifestation of war in times of peace? War crimes imply a state of war, or in the undeclared case of terrorism, it would imply consequences that would resemble the manifestation of acts of war. As far a criminalization of the acts for legal purposes is concerned, it is clearly seen that the UN makes special efforts to include in the criminalization process all aspects that are related to terrorism as expressed in the Security Council resolution S/RES/1373 (2001) art. 1b. To have war crimes committed may seem to imply a general state or
manifestation of war to a certain degree, at least in the form of consequences of violence. This would be the general scenario or “big picture”. The scenario approach will give an insight into the different degrees of this “big picture”. It is useful at this moment to recall the process that took place at the IMO during the year 2002 in order to respond to the WTC attacks of September 11, 2001 as was described previously in chapter III. Bearing in mind the time it took to elaborate the measures and the time it will take to accept them (time frames and measures detailed in appendix II, still not concluded at the time of this study), it can be appreciated how serious, if not paralyzing, the difficulties of governance can be for the IMO if the attacks are repeated acts of violence as Schmid (1983) defines terrorism or if a possible situation of war is considered (Schmid, 1992). These are the images that the scenario approach will describe in the light of terrorism as a conflict.

4.2 The scenarios of global terrorism: considerations for maritime governance

In the elaboration of scenarios, four approaches will be considered: the traditional High-Medium-Low level tension scenario approach, the Threat-Target or Hypothesis approach, the Consequence approach and the Subjective approach. The exploration of each scenario helps to imagine the possible situations that MG would face in different circumstances. The different approaches may be used separately or together, sequentially or in parallel, at will and as needed in order to represent the possible situations of terrorism, and also as required in the different levels of governance, operational or instrumental measures development. At all times, it must be remembered that a scenario approach is a tool that intends to represent reality thus helping to see the picture of the current and future situation of affairs. A reasonable quota of skepticism is a healthy ingredient that can prove very convenient since a representation is not reality. Returning in time to the days before the WTC attacks, and considering normal channels
of information, few persons would have even considered the attacks even as a low possibility of occurrence of attacks on US soil, and much less if they considered the high degree of violence that was produced.

4.2.1. The High-Medium-Low level tension scenario approach

The High-Medium-Low level tension scenario approach is a traditional military approach towards conflict. An example of this approach is applied by Prins (2000) to the concept of naval power within the UN. In this approach three situation scenarios are established corresponding to the three levels of tension that should be defined. Each scenario would specify certain characteristics applied to the situation that should not be only military but also concern impacts on ships, ports and trade. This approach applied to the maritime governance of terrorism would be:

<table>
<thead>
<tr>
<th>SITUATION / TENSION</th>
<th>Military Participation</th>
<th>Command and Control</th>
<th>Military Action*</th>
<th>MG ISSUES *</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOW</td>
<td>Presence</td>
<td>National / Alliance</td>
<td>Possible boardings, port and ship controls</td>
<td>Harmonization, raising awareness</td>
</tr>
<tr>
<td>MEDIUM</td>
<td>Vigilance</td>
<td>UN procedures</td>
<td>Strict blockade, regional confinement of the conflict. Possible to regulate attacks.</td>
<td>Regionalization, harmonization</td>
</tr>
<tr>
<td>HIGH</td>
<td>Military action</td>
<td>UN Command</td>
<td>Strict blockade, boardings, control, escorts of ships at sea, main sea routes attacked, interrupted or not in use</td>
<td>Interrupted areas of sea transport, difference in measures between areas</td>
</tr>
</tbody>
</table>

High-Medium-Low level tension scenario approach. The definition of tension can be subjective or done in real time according to the need. The columns with * have been added by the author to the original study by Prins (2000) with examples of military action and applied effects on Maritime Governance.
This approach is a good example of the incidence of hard protective measures as militarization in order to enhance protection and prevention.

4.2.2. The Threat-Target or Hypothesis approach

The threat-target or hypothesis approach was used by Menefee (1993) in detailing possible incidents that could be inflicted on ports. This approach needs to be initiated sooner or later to have an idea of the acts that terrorism could perform. The incidents are described in time and place and type of attack in order to implement preventive measures. The ten scenarios presented by Menefee are an example of this approach:

1. All out global conflict
2. Regional conflicts
3. Civil war or separatist conflicts
4. Reprisal or other limited state actions
5. Transnational terrorism
6. National or sub-national terrorism
7. Isolated acts of terrorism
8. Group criminal acts
9. Isolated criminal acts
10. “non comos mentis” acts, (motiveless acts)

The WTC attacks most probably would not have been in the list before they were performed.
This is a very useful analysis since it shows the possible raw situations of the problem. The analysis from this point can further evolve in more encompassing pictures of situations, or interests-actors scenarios, and a process to center them on realities has started and continues. It is important to keep the scenarios in the broad scope not only to group the events but also to bring in the realities such as the consequences.

4.2.3. The Consequence approach

In the consequence approach, each scenario is expressed as an impact assessment. The focus of attention is the effects or consequences irrespective of the cause or incident that produced it. This type of approach is frequently found in environmental scenario prevention or planning. The following is an example applied to the situation of terrorism:

- Paralysis of major hub ports such as Los Angeles, Singapore, Kobe, Hong Kong
- Reduction of international registries due to lack of protection by the Flag States.
- Incremental unilateral action due to lack of strategy of shipping as an international entity.
- Multilateral deliberation processes with the creation of block parties of opposing positions and views on decisions.
- International groups that do not find a way to express their concerns within the global structure of parliamentary debate.

4.2.4. The Subjective approach

The subjective approach exercises an outlook towards the situation in the perspective that is relevant or useful to the organization or originator. It can use the information of all the previous approaches partially, totally, selectively, or none at all and develop an
atypical focus on the matter. This gives high flexibility to the process of creating the scenario and remarkable convenience in tailoring it to the specific needs of the situation, contingencies and desired objectives. It also has the advantage of a freeform format that makes it versatile to the change or adjustment of the agreed rules of scenario building, allowing for quick and easy, time and space modifications and with a greater independence of structure restrictions. Schwartz (1996) has expressed these concepts by projecting them towards experimented models with useful images.

The scenario process provides a context for thinking clearly about impossibly complex arrays of factors that affect any decision. It gives managers common languages for talking about these factors, starting with a series of “what-if” stories, each with a different name. Then it encourages participants to think about each of them as if it had already come to pass. “What if our worst nightmare took place, and our primary business [Maritime Governance] became obsolete?” Or, “What if our most desired future [Safer seas and cleaner oceans] came to pass? What unexpected challenges would it present us?” Or, “What if a completely unexpected series of events changed the structure of our industry [Maritime Governance & Shipping]? Would we be overwhelmed, or would we see opportunities?

This paragraph of Schwartz’s is a notable illustration of the situation of Maritime Governance of Terrorism; naturally the additions in square brackets orientate explicitly the original quote towards the current day issues in the matter. This scenario approach helps to see and focus on the difficult shape of Maritime Governance that otherwise and for all practical purposes, would remain in the clouds of theories. The importance of theorizing is alive throughout the study and its objective is the transition towards the practicality and reality that Maritime Governance needs.
4.3 Scenario interpretation

The scenario approaches of Maritime Governance have given a networking activation towards solving governance issues. However, these issues need to be brought towards the center of attention. The approaches have given some approximation to the problem of conflict and violence, even if on reading the militarization example (High-medium-low scenario) the natural tendency, or first impression, is to consider it far from reality or a remote option. Experience has shown that everything is to be included in the scenario building process. The WTC attacks in 2001 speak for themselves.

A most relevant speech addressed by the chairman of the International Association of Independent Tanker Owners (INTERTANKO), Mr. Papachristidis, gives a view of situations that are usually not considered but that have precedents in the past. A working luncheon in New York in 1988 for the Permanent Representatives of the UN Security Council was hosted by INTERTANKO, the International Chamber of Shipping (ICS) and The Baltic and International Maritime Council (BIMCO) with regard to the “Tanker War” in which the continuing consequences on shipping had no visible end after four years of intense attacks on merchant shipping. This speech was an interpretation of the many driving forces that were at play in the situation, not only concerning violence itself but how it impacts on the maritime sector that was affected by it and the actions or the absence of them from the international organizations that represent the interests of this part of society. The speech, quoted in extracts of its most relevant parts, is an excellent example that helps understand in a better way the spirit of that moment lived by merchant shipping.

5 The war really started in 1981 with shipping incidents, however the main attacks to ships were from 1984 onwards. (Lloyds Shipping Economist Study- Conflict in the Gulf, 1988)
Our intention, as you will no doubt have gathered, is to discuss with you the very grave continuing consequences of the Iran-Iraq conflict on merchant shipping. That you have taken time from your busy schedules to be here demonstrates that importance which responsible nations such as yours attach to this issue.

Needless to say, this problem is of the very highest priority to my colleagues at INTERTANKO, as it is to the members of BIMCO and the ICS. As organizations, we maintain a position of neutrality in the matter of the Iran-Iraq War. We come from many different countries with the world shipping community. But we are united by our maritime tradition, by our respect for peace, and by our fierce devotion to the ideal of freedom of the seas – an ideal fundamental to the international institutions, which you safeguard. We are also united in our deep concern over attacks on merchant vessels in the Persian Gulf and over the injury and loss of life of innocent seamen.

Since 1984, 365 vessels flying the flags of many different countries have been attacked. Their carrying capacity is 65 million tons. The material loss has been serious. However, it pales into insignificance before the human tragedy. Close to 250 innocent seafarers from around the world have been killed and many more have been injured.

More importantly, shipping people believe that an interruption of waterborne trade out of the Gulf – for whatever reason and even for short a period of time- would have dramatic consequences on the price of oil through the generation of expectations, if not the direct impact on supply. We are confident you all share this view.

In the absence of multilateral initiative, certain countries have taken independent measures to protect their national fleets in the Gulf. However, as you know, the vast majority of shipping in the Gulf does not fly the flag of those countries that have a naval presence there. This is why the international shipping community is thankful for the recent declaration by the American Government of its preparedness to extend protection to neutral ships under attack in the Persian Gulf – if such protection is requested and if it can be given. However, the initiative if individual nations to protect merchant shipping does not in our view absolve the United Nations of its responsibility to defend the principles at stake - if not the ships themselves.
And at the end of the day, to whom can we turn if not to the United Nations when it comes
to ensuring that peace and international justice are respected. We count on your support in
this vitally important mission.

The speech holds a large number of issues to be considered and that are best described
by the original words. The following salient points are relevant to our study:

- A Clear description of the nature of international shipping referred to as “the
  world shipping community” since the qualification of inter-nation is not
descriptive of the problem. There is no means for a “world community” to be
represented; the world’s governance mechanisms have no previsions for it.
Shipping is presenting its uniquely defenseless identity.
- The degree of unprotected vulnerability of world shipping is extremely high
- If the world community of shipping continues on the trade routes in these
  conditions it indicates that a withdrawal from the trade may be at least as
  inconvenient (in all meanings) as maintaining the routes. This exposes the no­
  choice option situation for the carriers.
- The dangers to the stability of the world economy induced by oil price volatility.
- The absence of multilateral protection initiatives.
- No protection for ships whose flags have no fleets in the Gulf.
- No response from the UN after repeated requests of protection.
- US Naval forces were in the Gulf prior to 1988. The attack on the warship USS
  Stark, in mid 1987, by one of the belligerents precipitated the US support of
  world shipping. This event surely influenced the decision for protection
  expressed in the speech.
• This informal diplomacy of remarkably high level leaves no evidence of a formal institutional support.

• The continuous impression of lack of response is presented throughout the speech.

It may be of interest that the date of this speech, in which more protection for shipping was requested, was May 1988 and that the majority of literature related to the Tanker War is dated 1984-1988. A study of Lloyds Shipping Economist (April, 1988) has a clarifying comment.

In 1988, the ninth year of the [Gulf]® war, the conflict between Iran and Iraq was no closer to resolution than it had been at the start in 1980 – or in 1984, prior to the outbreak of the first tanker war. For all, but the maritime community®7, the situation was, if not exactly quiet, at least back to “normal.” But such an analysis is both deceptive and deadly, for the Gulf has moved further away from peace and, with the intervention of outside powers, the situation has become immeasurably more complex.

Thus, as expressed by Lloyd’s Shipping Economist, the general reports and even history books en the war in 1988, but the maritime community continued in its search for protection after the 1988 end of hostilities. Such is the place of merchant shipping in the world’s knowledge, worries or priorities; it as much as a common expression within the sector:” the world takes for granted the fact that shipping will do its task.” A question to be further explored is, how can the reality, complexity and importance of shipping reach the higher levels of decision making in world affairs?

In this situation the maritime community is trying to search for a body of governance that will represent its international nature that is evidently not represented by the

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6 Square brackets added for clarity.
7 Italics inserted for clarity, not in the original.
individual governments. This is a clear example of the lack of representation that is solved by an *all-inclusive* Maritime Governance. In this situation, who represents the shipping community? The IMO is the only organization where maritime matters are dealt with in full. Is there a role for IMO in this context? Is the way that INTERTANKO, ICS, and BIMCO pursued protection and peace a reasonable way, or does it show a gap or flaw in the international system? These questions and many more are key questions that shipping needs to have answered in a terrorism crisis.

Without scenarios there is no vision of the possible future, and sometimes even of the present. The *cadre de situation* shown in the speech exposes very clearly the identity of international shipping, unique and essential to world economy, seeking ways for representativeness and the appeal for a possible forum within the UN to discuss the main issue. It must be noted at this point, that the idea or thought of the private shipping industry centered exclusively on economic profit interests is easily left with no argument with the clear thoughts and facts expressed by Papachristidis and the vital and dangerous roles played by merchant shipping during, not only the Tanker War, but previous wars and conflicts.

To give substance to the scenarios, an identification and analysis of objectives of Maritime Governance is needed.

### 4.4 Governance, its objectives and the interpretation of success

The clear reality of the scenarios shows that responses can be designed in many ways, but the *success* of governance of a unique situation of global terrorism must first be interpreted in the light of its objectives. These objectives must be agreed upon since they will clarify the working grounds of the global governance of the response. Success has two factors that influence it: the conceptual or theoretical and the executive or practical.
The authority and mentor of governance is the authority that emerges from the all inclusiveness of global governance. Therefore, the process of global governance assures success in the conceptual sense by the absurd, since the all-inclusive process does not leave out interests and thus avoids conflict that may arise by exclusion. In the process of transformation from concept into executive action, the degree in which global governance performs its objectives is the remaining factor of influence in measuring success.

4.5 Objectives of Global Maritime Governance

The objectives of global governance in maritime terrorism to be considered fall into two paths: first, the general governance objectives that are in the UNCGG definition of global governance itself applied to terrorism; and, second, the particular objectives for the governance of maritime terrorism originated in the previous analysis of the threat of maritime terrorism, the considerations to the approach to terrorism and lessons learned from piracy. In addition to this, considerations of scholars will be included. Comparatively the Global Governance (GG) model is more comprehensive than the member state representation (MSR) model. GG incorporates a far larger spectrum of interests, groups and ways of balancing the interests; therefore the outcome is more representative of society. White (1991) expresses clearly the difference between global models and international models,

The distinction is significant. Internationalism assumes a cluster of nation-states, each with its own interests, and examines how they relate to each other. A global perspective begins with the globe as a socio-technological system. It focuses on the

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8 Previous analysis results in chapter II
9 Previous analysis results in chapter II
10 Previous analysis results in chapter III
variety of linkages throughout the system, many of them policy issues that spill across national boundaries.

White further argues that the global concept looks into “how these linkages create problems for the global system and explores what mechanisms can be created to deal more adequately with the problems, and what further linkages can be crafted”. In this light, the objectives of the linkages that create the problems are likely to be different to the ones that deal with the problems. It could also be argued that the inclusion of many groups and interests is impossible to manage through an MSR system. Moreover, that it is through the national governments that all interests are represented and that, this is the reason why most inter-governmental organizations IGOs are MSR based. However, it has been exposed in this study that the rapidly increasing number of NGOs and their participation in the MSR systems, is the result of them being needed (for the reasons mentioned earlier) and because they represent sectors that are not representable by member states. Thus, a question is evident: does the MSR system truly represent the maritime world? This question is addressed in chapter V, in view of the relevant and valuable role of MSR as an essential element in obtaining the balance and all inclusiveness of Maritime Governance. A look into a group of proposed objectives for Maritime Governance will bring a more tangible image of the concept. Analyzing the objectives together with the interpretation of success, or how they functionally develop towards success, provides a practical view of GG.

The General objectives for the Maritime Governance of terrorism and their interpretation of success derive from the UNCGG definition of Global Governance:

"The sum of the many ways individuals and institutions, public and private, manage their common affairs"
Success is interpreted by the degree in which the objectives are achieved and, applying White’s (1991) concepts, by how they are interlinked further:

4.5.1 Inclusion and representation (I&R) of all the interests to the maritime affairs of terrorism.

Inclusion is the core of GG. So much so, that it states specifically “public and private”. This instance has already begun and it can be seen, for example, through the numerous consultative members of the IMO. In regional maritime organizations there are also NGOs of private origin, Further still, in some maritime administrations there are services and consultant support that is also private. Their representation is more than consultative as is an example of the papers that have been presented at MSC 75 by these members. Their formal representation is not fully clear since their informal participation is much more intense. The mention of “individuals and institutions” in the UNCGG definition is a concept that is not fully exploited. Institutions are in full in the I&R concept, however, individuals have no presence but through their national government or some private institution to which they can associate themselves to. This concept has much more potential than is apparent. The word “interests,” that is not in the original, is a convenient redundancy. It is clearly implied in the expression “common affairs”. Its inclusion would present the idea of interests in an explicit way. This objective allows for a greater admission of ideas and possible solutions that are not within the structure that is dealing with a problem. In the case of the Maritime Governance of Terrorism (MGT) the options needed are as many as possible due to the unpredictable nature of the incidents.

4.5.2 To put to work all the diversified interests, in formal, informal and new ways through appropriate mechanisms of interaction of actors to develop the policies and the conduct of affairs.
This objective is the engine that impulses I&R. The evidence of diversification of interests is recognizing the difficulty of the issue and putting it in the vanguard of problems. “The sum of the many ways” describes the formal and informal ways, acknowledged by Bailey & Daws, 1995 as the usual way IGOs work. In addition, the new ways to network I&R are the challenge of this objective. Applying this objective to terrorism may give an inter-linkage that is convenient.

4.5.3 To bring the interaction of 4.5.1 and 4.5.2 towards a culture of security and the establishment and implementation of instrumental measures.

According to the February 2002 proposals received at the ISWG of MSC at the IMO, there is a remarkable similarity in the essence of the proposals and informative papers presented by the member states. It has been common ground that the culture of security is a foundation and the instrumental measures are the elements of prevention. These two aspects are the final product of IGOs and the implementation will even extend outside their reach. This objective is the link between terrorism and the response. The achievement of the previous two objectives needs to be performed jointly with the culture of security.

The following Particular Objectives of the Maritime Governance of terrorism emerge from previous stages of the study that have been brought together.

4.5.4 Avoiding the principal threat to the Maritime Governance of Terrorism: “Not being able to deal with it.”

As has been expressed in the scenarios, the degrees and types of violence are most varied and pattern less. Moreover, the fact that there is no experience in such a widely expanded conflict of these characteristics, and the uncertainty that it carries with it, poses a challenge of unprecedented proportions to the IGOs and the governments.
themselves. The timeline of the maritime measures to the WTC attacks described in appendix II has been a fast track for conventions. However, fifteen months can be considered excessive to deal with an intensive scenario. The mechanisms of change in the process of objectives 1, 2 and 3 lead towards an adaptive governance (AG) according to the needs of the situation. How would IMO and the maritime community deal with an intensive scenario? The difficulty in answering this question might suggest that it is a rhetoric question, but its evident reality is, today, far beyond doubt. The concepts of White expressed earlier may be the lead to an answer.

4.5.5 The Considerations to the approach to Terrorism

A unified international response as an umbrella regime and specific regional sub-regimes with timely response to avoid the need for unilateralism.

The development of regimes that satisfy the global needs and, beneath, sub-regimes with harmonization under the global umbrella will give Global Maritime Governance the basis for approaching the diplomatic negotiations in a more consensual way. The inclusion of the largest number of possible interests will be supportive and contribute strongly to avoid the eventual need of some member for unilateral action. Global or multilateral action should always be preferred to unilateral procedures. The UN Charter (1945) directly specifies this umbrella concept in its articles.52 & 53.

4.5.6 The lessons learned from piracy

Out of the four lessons learned that emerge from piracy applicable to terrorism in Maritime Governance, two, all inclusiveness and the global governance regime, are already included in the concepts mentioned under Global Governance. The others, National and International Legislation and One & Two track Diplomacies are applied to terrorism as follows.
The importance of enactment of national legislation is of high priority in the case of piracy. It should be harmonized between nations to integrate regionalization, and further into the umbrella concept of objective 6. However, a more cautious step should be taken in the case of terrorism due to the lack of definitions on the subject and the very specific conventions that are already in force. The harmonization and assurance to be under the overall guidance of the UN is specifically mentioned by Annan (1995) in *Supplement to an Agenda for Peace*, in the following way "The primacy of the United Nations, as set out in the Charter, must be respected. In particular, regional organizations should not enter into arrangements that assume a level of United Nations support not yet submitted to or approved by its Member States. This is an area where close and early consultation is of great importance." Caution is especially convenient since the Comprehensive Convention on Terrorism is still in draft form after the resolution of the Assembly in 2000 and 2001, and the previous draft presented by India, which initiated the matter (Indirectly the Global Governance Regime lesson of UNICPOLOS, 2001, also appears.)

One & Two Track Diplomacy (formal and informal diplomacies) are capital ingredients to produce the inclusion of persons or organizations that are not able to be included by the present structure. The preparation of informal agreements, if directed under the consensus objective, fortify the development of the rules and norms that will be accepted and followed in a voluntary initiative that may or may not end in formal legislative obligation. The obligation of compliance in order to be included is the core strength of the consensus, which originates in the original will to include and be included. The effectiveness of governance is endangered by the exclusion of parts that would not make seamless any strategy towards the prevention of terrorism.

The considerations of scholars add different objectives that are useful to be considered, and which complement the previous objectives.
4.5.7 The assurance that Comprehensive Security is really comprehensive.

The development of globalization and the IGOs has led to the evolution of the concept of security; and, in aftermath of the WTC incidents, terrorism will change it even further. A very clear view of this change and the approach is given by Mann Borghese, (1993).

The basic point that has been made is that security is not what it used to be. That is, it is no longer just military, political security: "Sectoral" security; but it must be comprehensive security. This fundamental change in our concept of security has far reaching implications, from the role of navies to the very heart of the United Nations system, the Security Council.

Comprehensive Security is at the core of the interpretation of the Maritime Governance of terrorism. It incorporates not only, the environmental factor as mentioned, but also the economic factor to include the operational concept of "sustainable security".

4.5.8 The adequate moment, ways and degrees for the militarization of the conflict.

The use of military force in a conflict has many ingredients and considerations due to its complexity and lack of previous experiences of the use of sea power under UN Command. UN mandate forces are a different issue compared to the situation when the task is delegated to a national flagged force. The use of military force has varying degrees of use, as expressed in the first scenario approach. It is clear that militarization should be the last resource. However, militarization has been an element used on many occasions, eg. the Tanker War, and therefore it should be considered. The main matter of concern is the problems expressed by Papachristidis (1988, ibid): difficulties for the representation of shipping due to its multifaceted identity, the lack of response from
international organizations and the appropriateness or not of the Security Council as a forum for the matter. Thomas, 1998, comments on a possible approach:

In the event of a significant threat to maritime shipping on a large scale... Some form of international naval control of shipping would be required. The lessons of the Tanker War would apply and those states, the vital interests of which are threatened could be expected to cooperate in the protection of their maritime trade.

The example above shows the problems concerning international shipping and the diffused responsibility of the states. Some states do not have the means and the regional agreements are highly complex to coordinate, both politically and instrumentally, as has been seen with piracy in the South East Asia. Would the answer then be in the UN? Pugh (1994) comments on the UN as an answer to the problem.

The UN has considerable experience in peacekeeping, unequalled by regional organizations. However, its apparent weakness as an organization for deploying naval forces, especially in embargo and enforcement operations, may mean that it will have to delegate operational control to competent regional forces. But the UN should continue to be responsible for actions that it has authorized and contractors should be answerable to the UN.

The literature reviewed has opinions of criticism to the UN for not having a system to manage Naval Forces and the use of force by the UN. The responsibility is clearly there and supported by Annan's Agenda for Peace (1992). However, the inability to control the military situation due to the absence of a structure adds more complexity to the already complex regional solution. Ginifer & Grove (1994) support this opinion in a more direct way by addressing the "lack of consideration that has been given to the question of naval management within the UN". Furthermore, they state that "if the UN is to authorize maritime deployments more frequently it will no longer be able to ignore
the naval management issue.” This explanation can be linked to the Papachristidis (1988, ibid) request.

Security has proved to become wider in scope and means much more than just physical protection. Second generation operations, or operations other than war, are becoming front line priorities for the military since the threat of all out war is changing into a more intricate action against terrorism. To this the UN needs to conceptually resolve the management and control mechanisms of these forces that can contribute largely to maritime security in many ways other than war operations; otherwise, the interface of the military measures with economies and trade might most certainly endanger the concept of “sustainable security”.

The military also have their interests and while the contribution to security is very large the command relationship to the UN Security Council is of capital importance in order to focus on the objectives and avoid any possible shift of security, from being a mean to becoming an end in itself. Brooks (1998) has a slightly different view of this.

Why should military interests be concerned about shipping? There are two overwhelming trends: global trade liberalization (creating even more transport routing options) and general military downsizing. Is it that the military is seeking a role given its own uncertain future in the aftermath of the fall of the Berlin Wall? Or is it that trade interests must continually be protected. The means to that lie more in PSC [Port State Control] efforts. The deployment of navies to secure shipping lanes is not driven by economics so much as it is by a country’s political interests.

Be the locus of control, PSC or the routes, the contribution to peacekeeping of navies is relevant and a sure stabilizing force.
To further the interests of navies and the will to participate, Greenwood & McLean (1998) have a simplistic view of the problem that up to now, in this study, has not proved to be such.

Perhaps the answers are more clear than we think. They may be as simple as the following.
Who should protect trade? – the government. Who should protect shipping? – the owners and investors. Who should assist them? – the government, but only insofar as its involvement represents protection of national rather than private interests. When should the government assist? – when it is important to warrant the risks and costs. How should the government do this? – they have a variety of instruments, one of them is the navy.

The complexity of the issue as has been stated in the many previous terrorism issues visited and the several opinions on the difficulties of governing security expressed in this study render this opinion dangerously simplistic. The aspects of: who should do what and why, is only the very start in analyzing the problem. It needs also to address the allowance of overlapping and grey areas where interdisciplinary, multifaceted approaches and joint participation are required. An example is the division between trade and shipping that cannot be drawn as simply as shown and specially when the roles of protection of one and the other are divided so distinctly between the government and owners or investors, two protectors with extremely different protection capacities. A much more serious position is the selective protection between national and private interests when it refers to shipping. This difference and the previous ones are a destructive concept of the large efforts of internationalization of shipping and its contribution to global trade. It is surprising that this comment is made in 1998 when the private interests of trade are notoriously and directly linked to the prosperity of a nation as mentioned in many and different ways by the OECD Outlook reports (specially 2001 after the WTC incidents). In this light we may consider Greenwood & McLean (1998) comments stated above as inapplicable and disruptive to Mann Borgese’s (1993) important concept of Comprehensive Security. The division of national and private interests may lead to repeat the problems of defenseless shipping in the Tanker War and
the lack of results in the protection of ships against Piracy, as it is today a costly problem in lives and financially. The real solution for the 21st century is far beyond the simple division of tasks and an inconvenient selection of shipping to protect.

4.6 Maritime Governance and the implementation of the response

The need for implementing the response to terrorism in circles of maritime interest has been expressed above as best achieved through Maritime Governance. The characteristic of the problem of terrorism is an opportunity to work towards the implementation of Maritime Governance.

The role of the IMO is an essential element in Maritime Governance since the IMO has, in some way been a meeting point of the diverse interests of the maritime community. An implementation of GG is an objective of the UN. The global characteristics of shipping and the demand that terrorism places on the decision bodies of IGOs and national governments themselves, presents a rich context in which to explore the implementation process. The initial point of implementation is the IMO as the generator of the maritime regime in formation. The role of the IMO in Maritime Governance will give a firm ground for the development of the full governance structure.
CHAPTER V

THE ROLE OF THE IMO IN
THE MARITIME GOVERNANCE OF TERRORISM

Within the Maritime Governance of Terrorism (MGT), the role of the forum that is the IMO is not synonymous to Maritime Governance (MG). The IMO is only a part of MG that requires the inclusion of other individuals and institutions to reach the activity of governance as has been appreciated in the preceding chapters. Thus, the IMO is a part of the Maritime Governance of Terrorism (MGT), and it is this role that is the focus of this chapter. Collateral issues to the Maritime Governance of terrorism are included when required for clarification of understanding. The Role of the IMO is expressed through the process of synthesis that is started in this chapter by integrating the identified parts of the previous chapters with existing elements of the IMO as it is today. This process of synthesis, of this study, ends with the summary, conclusions & recommendations in chapter VI. It is important to bear in mind that all references to “the Role of IMO”, represent the role that comes from the process of analysis and that tries in its utmost to be freed from the influence of the present existing role of the IMO, in order to obtain fresh and new perspectives. Even though initial impressions of the role may seem distant from the traditional present role, all aspects emerge from the supported analysis methodology, which also tries to bring the role close to the changes and reforms that the UN is implementing in the governance of its own affairs of interest.
The concept of role, with reference to the IMO, will be viewed as "The purpose, position and functions within an environment". Thus, the purpose, position and functions of the IMO within the Maritime Governance of terrorism will be built with new concepts of previous chapters, with concepts from today's IMO structure itself, and with additional concepts that arise from the integration process of the new and actual concepts. With respect to the environment, considerations for maritime affairs proper are given. However, also non-maritime considerations are brought up, in the light of shipping as such a relevant activity for world trade that all sectors international and national are directly or indirectly affected. The structure of the IMO as it is at present is blended with new concepts to arrive towards a role of the IMO Maritime Governance as needed. The comparison of this role of the IMO and the traditional role at present of the Organization is not approached in full in this study, but it is used tangently only in details that will bring clarity to the Role itself. The implementations of the aspects of the role that are new require further research to develop an implementation plan which is also not discussed in this study, in spite of having included some implementation measures that arise *prima facie* and that are important contributions to governance.

The Role of IMO is approached first by looking at its conceptual component parts, second, a scenario analysis for the role of IMO in MGT will be performed in order to bring the developed role into reality, and third, the derived new roles of IMO's structural components will provide a practical view of the organizational approach to MGT.

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11 The concept of role has been integrated from two linguistic perspectives: First, the semantics (meanings of words) of the word "role" (The Collins Cobuild Learner's Dictionary and the Concise Oxford Dictionary), Second, the pragmatics (meanings and effects of words that come from the use of language in particular situations), as is the example of including the concept of environment that in the IMO interpretation of "role" is underlying in all the meanings and implications of the word. This concept of role also has the advantage of having an open end for further development.
5.1 The **Purpose component** of the role of the IMO in the MGT

Six synthesized purposes integrate all the concepts from the previous analysis into the role of the IMO.

a) Inclusion and representation (I&R) of all the interests of the maritime affairs of terrorism to assure that Comprehensive Security is really comprehensive.

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b) To put to work all the diversified interests, in formal, informal and new ways through appropriate mechanisms of interaction of actors to develop the policies and the conduct of affairs: One & Two track Diplomacies.

c) To bring this interaction of the previous two purposes (a&b) towards a culture of security and the establishment and implementation of instrumental measures.

d) A unified international response as an umbrella policy regime and specific regional sub-regimes with timely response to avoid the need for unilateralism National & International Legislation

e) The adequate moment, ways and degrees for the Militarization of the conflict

f) To avoid the principal threat to Maritime Governance of terrorism: "Not being able to deal with it."

The IMO Convention (original IMCO) presents in its art.1 the purposes of the organization that are incorporated into the purpose element as follows:
g) To provide machinery for cooperation of governments in international trade technical shipping matters.

h) To encourage removal of discriminatory action and unnecessary restrictions by Governments affecting shipping. To assure that encouragement and assistance to national flag shipping for purposes of security does not in itself constitute discrimination or restricts freedom of shipping of all flags. [Both aspects regard shipping in international trade and security can be interpreted as protection]

i) To consider unfair restrictive practices of shipping

j) To consider effects of shipping matters on the environment

k) To provide for information exchange between governments

These articulated purposes were developed in a post-war era where security was conceived under the bipolar cold war concept and the threats to security were interpreted as conflicts among nations. The role of security was assumed and overtaken by the UN Security Council (UNSC) under the UN Charter that was an outcome of World War II. Security in this sense fell predominantly on the military. The specialized agencies of the UN committed to their specialization and thus the roles were spontaneously assumed and the security role was left to the UNSC. In this sense security was not comprehensive nor did it include other types than security forces.

Today the concept of security has changed and some specialized agencies of the UN include the ulterior objective of peace and security in their basic Constitution, such as, the United Nations Educational, Scientific and Cultural Organization (UNESCO). Being that IMO has highly specific objectives that are oriented towards the technical area, extended objectives are needed for the development of not only instrumental measures but also policies. These furthered objectives would lie in accordance with the agreement IMO-UN where provisions are made for closer understanding with the Security Council.
5.2 The Position component of the role of the IMO in the MGT

The position component addresses the nature of the relationships between the IMO and other organizations. It focuses on the dependent or independent hierarchical position of the IMO with respect to the other institutions.

The IMO Convention issues in art. 10 a concept of exclusion from the Organization to a member to whom a UN General Assembly Resolution is contrary to. This hierarchical conceptual relationship carries the concept of the blending of mutual objectives of both organizations as expressed in the agreement UN-IMO, 1948. This implies the committed concern of support and cooperation of IMO towards the objectives of the UN Charter and specifically the objectives of peace. However, the agreement UN-IMO in art.VI comes much closer to explicitness by giving IMO a clear mandate in “rendering assistance to the Security Council as the Council may request, including assistance in the carrying out decisions of the Security Council for the maintenance or restoration of international peace and security.” Three significant concepts that emerge from this article of the agreement expose positions of due obligation between the organizations,

- The position towards civil society and shipping: The position of support to the UNSC is explicitly presented and with a hierarchy of dependency by the expression “as the Council may request”. This relationship is logically related to establish the clear overriding mandate of the UNSC, however, the contributions of specialized agencies to peace, as an ulterior objective is stated in art. 55 of the UN Charter “the creation of the conditions of stability and well being are necessary for peace.” The reference and relationship to the UN applies twofold to IMO since it is the only agency related to the stability and well being provided
by shipping to international maritime trade and also the stability for trading demanded by shipping in the form of protection.

- The position towards the UNSC: The assistance to be rendered to the UNSC is wide in its expression, however it is specified in one particular aspect: decision making at UNSC level. This coincides absolutely with the independent analysis in chapter 4 indicating the importance of preparing for scenario decision making. In addition, art. IV.3 of the UN-IMO agreement, 1948, indicates that the IMO "affirms its intention in whatever further measure may be necessary to make coordination of the policy and activities of specialized agencies and those of the United Nations fully effective." Decision making in art. VI and policy making in art. IV of UNSC and UN level is a clear concept that states that IMO has a position in the development of decisions and policies at that level. Thus furthering the reasoning, terrorism within the maritime sphere requires, policy contribution and decision contribution to the UNSC perspective. This requires a development of principles, priorities and actions of governance that come from a maritime level and lead to the higher UN level. This position of IMO within the world decision-making system is far beyond instrumental measures and requires policy building, governance problems solving and future decision-making principles.

- The position towards Regional Regimes and National Governments: The mandate towards peace and security of the IMO has an explicit position and is not inferred. The IMO contributes to the higher instance that is the UN in relating directly to the regional and multilateral agreements. Once again articles IV & VI of the UN-IMO agreement, 1948, come into the UN umbrella in policies and decisions that may need pre-emptive stoppage as requested by the pre-emptive legislative nature of art.53 of the UN Charter. This concept is updated by Annan (1995) by extending the limiting nature of the enemy described as the enemy of the UN members to the amorphous threat of terrorism. This is a clear example of
how the interpretation of the UN structure requires to be adaptive and updated to the situations of the 21 century.

The analysis of the position of IMO can also be viewed with respect to its own individual member states. Such is the case of the position of IMO with respect to the USA, in the subject of terrorism and in particular after the incidents of September 11, 2001. The proposal measures of the USA in the IMO document MSC 75/ISWG/5/7 are the instrumental outcome of the national study of a national maritime response (art 2). These instrumental measures surely respond to a level of policy and strategy for decision making that, as an outcome, produced these measures. The national study indicates to have considered “the elements of awareness, prevention, response and consequence management” within the USA and, thus, giving evidence of a higher level of planning. The networking of the forum that is the IMO on this issue, evidenced in the nature of the measures debated, has been instrumental and mainly supportive of the USA proposal with only one mention of an incipient policy in the reference to the need of long term goals. The USA national submission, nevertheless, states very clearly that this is not the end but the beginning of the response, in direct reference to the work expected of the IMO. This is an explicit call to policy development and governance aspects. Surely, an interaction at a policy level is of great importance in the light of the above UN-IMO 1948 agreement articles IV & VI and also in the light of the responsibility to shipping with respect to elaborating and implementing policies and decision making mechanisms. These mechanisms would be convenient for the position of the IMO with respect to member states, such as the USA, in order to interface at a policy & decision making mechanisms level in order to fast track initiatives in a harmonized way.

The policy level position and relationship of the IMO with respect to the UNSC, to the MGT and to member states highly involved in terrorism, as the USA, is not supported by the technical orientation of safety to ships and pollution prevention traditional to the
IMO. The networking of policies, strategies and decision-making mechanisms needs to be approached. The traditional technical position of IMO within the maritime community served a regulatory purpose at a time when shipping required regulation. Today, in the aftermath of September 11 and with a future trend of global terrorism, shipping requires protection. It is to be noticed that the measures developed by the working group for MSC/75 on security measures against terrorism are still of a regulatory nature, whereas there are none of direct protective nature. The measures of direct protective nature require a different debate and approach. With this change of the demand for IMO’s role by the maritime community and even by international trade, a new way to approach the problem as proposed is necessary. An important starting point to this new way is initially described in the first six purpose elements of the role of IMO developed for MG above.

5.3 The Functions component of the role of the IMO in the MGT

The functions indicated in art. 2 of the IMO Convention (1948) are as follows:

a) To consider and recommend upon matters in art1 a,b,c (also mentioned in purpose elements) derived from various sources among which are the NGOs that are not in the original convention but have been incorporated due to reasons mentioned before.

b) To provide drafting capacity

c) To provide machinery for consultation among members and the exchange of information among Governments.

d) To perform functions connecting above paragraphs a,b,c, in particular those assigned by conventions.

e) To facilitate technical cooperation
These functions, with the exception of the first a), are administrative functions delegated to the Secretariat that do not relate to the Organization as the sum of member states functions. Function a) is an overall function, which is so general that it is left to interpretation. With regards to its application in situations of terrorism nothing is clarified by it.

A different perspective can be seen in the new functions of a networker, regime and policy builder, culture developer and facilitator. These functions when applied to MGT are very useful. These functions within the organization rest on the concept that “the whole is more than the sum of its parts” in the sense that the whole will promote these new functions that logically will not be promoted by the parts or the sum of them. This is due to the concept of the whole being a seamless unity where the sum of the parts still shows the fragmentation of a mosaic. The whole would have a perspective of identity that would assure comprehensive coherence that again cannot be provided by the individual member states or their sum. It seems that there is a limit to what the sum of the parts can do. This aspect will be further discussed in the light of the complexity theory. This concept is useful to see the work of the IMO within MGT.

The networker function addresses the purpose component 2, specially in the case of MGT where new ways to produce ideas and perspectives will help policy development considerably. The networking assures the purposes of IMO and through the all inclusiveness concept and it incorporates participants from the environment that are not the usual or traditional actors. The UN Millennium declaration (2000) stating the driving concepts into the next century, states the objective of, “To ensure greater policy coherence and better cooperation between the United Nations, its agencies..., as well as other multilateral bodies, with a view to achieving a fully coordinated approach to the problems of peace and development.” The central issue of reform of the UN has been
trusted to the Commission of Global Governance, who in preparation for the Millennium Assembly central topic: "The United Nations of the 21st Century", which included a leaders Millennium Summit, issued its report “The Millennium Year and the Reform Process”, (1999). It states that “Governments, the UN Secretariat and NGOs should assign a high priority to developing a closer and more sustainable working relationship between the United Nations and civil society.” The coherence of the argument of all inclusiveness is firmly present at all levels of planning where the UN, in a demonstration of its will to take this concept towards implementation and in spite of the greater difficulties at higher levels, implemented the initiative of a Millennium Forum of NGOs. A large number of NGOs (1000 NGOs) met in parallel to the Millennium Assembly with the objective of making relations between civil society and the United Nations its first order of interest. Furthermore, the UNCGG report (1999) recommends

- Non-governmental fora sponsored by the UN should welcome participation by civil society groups representing a variety of viewpoints, including those critical of the world body and its policies.
- The General Assembly should act quickly to extend the rules and arrangements for NGO participation established in the UN Economic and Social Council (ECOSOC) resolution 1996/31 to itself and its main committees and working groups.
- All other UN bodies should review their arrangements for NGO participation and, where these fall short of the ECOSOC provisions, bring them into conformity as fully as possible.

This abundance of recommendations focalizes on the networking function of the UN and in a parallel way reaches out to reform and change towards the concept of Global Governance that the UN requires. The need for IMO to blend into the policies of the UN and to enrich them imposes a duty that can only be performed by networking in a similar
way. When the issues of terrorism are present, there is an urgent call for new ways and for the richness of multidisciplinary approaches.

It is a notable feature that the UNCGG report assigns the networking task to the Governments, the Secretariat and the NGOs in a way of networking outwards towards the civil society. In this way, the presence of the Secretariat is vital in order to elaborate concepts of networking that require the idea of wholeness to be submitted then to the member states and the NGOs. Thus, the Secretariat, with its added value, is part of the identity of the Whole that is greater than the sum of the parts.

5.4 The Environment component of the role of the IMO in the MGT

The environment of the role of the IMO is referred to as all the interests of individuals and institutions related to MG. The MGT is nourished also from the concept of the inclusion of the civil society by networking with the Organization; however, it can and may need to be extended to other non-maritime sectors. This allows for the new consideration of the influence of shipping (through trade) on non-maritime sectors and the possibilities of these non-maritime sectors to collaborate with an enrichment of ideas and different ways. An important example is the networking with other transport sectors to provide a seamless security chain for the logistic supply chain. Coulter, (1998), already stated, before the UNCGG reports and the WTC incidents, the importance of considering the logistic supply chain in security policies for the maritime sector. Evidently there is consensus among several sectors to agree on approaching the problem with a wide and inclusive perspective.

The consideration of the environment is an important issue within the functions of IMO because it helps all the other functions to broaden the scope and consider a far larger
range of possibilities and in so doing it drifts away from static previous structures that gravitate with a centrifugal force in stopping change.

5.5 A practical approach to the governance of uncertainty in the Role of the IMO within the MGT

The characteristic of the MGT is that it has the element of uncertainty present at all levels as seen in chapter 2. However, the governance approach to the problem can be applied in the light of the purpose components 1 and 2 of the role as expressed before, more specifically to the distinction between policy level and instrumental level actions.

Uncertainty is in all levels of decision, policy and instrumental. In the level of instrumental measures, uncertainty is addressed with the establishment of the procedures for maritime security on ships and ports. Uncertainty will never be eliminated due to the fact that until the incident is performed, the effectiveness of the measures will not be known, and when the incident happens, uncertainty is no longer an issue. Therefore, uncertainty, in instrumental measures, is an element that cannot be measured nor can it be eliminated. In the instrumental level, uncertainty can be interpreted as an exogenous process where the triggering incident and the activity is external to the IMO.

In the policy level, uncertainty can be minimized by the networking and extensive inclusion of different actors in order to develop a mechanism that considers all the interests minimizing the uncertainty of those who are the required participants. The development of policies will guide the measures of protection of shipping that are required. Policy networking develops a system that harmonizes objectives and ways to reach them. This system is similar to the system that will be needed to deal with further issues during the incidents that were not considered. Policy issues require time to
develop since the mechanism needs to be running to produce the meeting of the minds, whereas the instrumental measures are more straight-forward since protection measures are directed to actions and facts. If there is any difficulty of agreement in instrumental measures it will be due to differences in policies among member states. In this, NGOs can help considerable to moderate positions with their technical knowledge and the perspective of the overall impact on trade. An example of the needs for policies, is the ambiguity in the interpretation of levels of security to be assigned to ships and ports by each national administration stated in MSC 75/17. A policy on security levels would avoid discrepancies that create considerable anxiety, objective pursued by terrorism according to Schmid’s definition, (1983). At a policy level, uncertainty can be considered and endogenous process, where the activity is internal to the IMO and the triggering incidents are the principles are the duty of governance.

On a much higher level for IMO is the request of “policy making in IMO – setting the Organizations policies and objectives” annex 6 to Assembly Resolution A.909 (22) (2000) a furtherance to A.900 (21) (1999) “Objective of the Organization in the 2000s.” It is crucial to revise this task under the role components expressed above. In the light of uncertainty the lack of definition of these policies and objectives is an uncertainty generator, which in times of crisis hampers the Governance of any issue. Since the main threat of terrorism to governance is of not being able to deal with the problem, the lack of policy making would contribute to increase the probability of success of terrorism even before an incident appears.

In summary, the management of uncertainty may be divided in two areas, the policy issues and the instrumental measures. The uncertainty in the policy area should be minimized as far as possible because this uncertainty is, to great extent, dependent on the IMO itself. The uncertainty of instrumental measures is unavoidable since it depends on the performing incident that carries in itself such a high degree of uncertainty by
nature that it is impossible for the organization or national administrations to diminish it further than by the implementation of measures.

A word can be said about the mechanism that has initiated the request for policy building through these UN Assembly resolutions (A.900 & A.909) and others previous to these. The concept of the identity of the “whole greater than the sum of the parts” can be used again in this case. In all cases the initiatives have come from some member state or the proposal of the Council. There is an element of change in the organizations as seen in the Millennium UNCGG report that is the Secretariat. The Secretariat has a wide overall view of problems that could be very useful to promote suggestions on policy issues since it concentrates all of IMO affairs. The added value of the Secretariat is a valuable opportunity for the Council to have a relatively objective view and opinion without the influence or interests that by their nature lie within the national governments. The research and development of integrated proposals that the Secretariat may have the ability to develop as a contribution of unique added value cannot be brought to consideration without a creative IMO Secretariat. Likewise, it would be of invaluable importance to put the challenge to the NGOs where a different point of view may arise and it would be complying with the spirit of change suggested and already underway by the UN Secretary-General.

5.6  A theoretical approach to the role of IMO in the MGT

The role of IMO may be considered in the light of some simple concepts of the Theory of Complexity. This Theory is relatively new and has an interesting approach towards organizations and their potential. The theory has a mathematical basis for proof and can be interpreted in its principles. The usefulness to assimilate it to the role of IMO is that under this theory organizations are seen as complex systems. The views on their
properties give very interesting insights on how the capacities are inhibited or facilitated according to the different characteristics of the organizations.

To introduce the subject, a simple definition of a complex system by Waldrop (1993) is, "in the sense that a great many independent agents are interacting with each other in a great many ways." If we compare it with the definition of Global Governance UNCGG report (1995) "The sum of the many ways individuals and institutions, public and private, manage their common affairs", we can see a large similarity between both. Thus, we could say that Global Governance, and extensively MGT, may fall into the concept of a complex system.

The theory of emergent properties states that in complex systems, properties emerge and that they can not be reduced to the set of elements that when summed make up the system. In other words: the whole is greater than the sum of its parts. When a system reaches a certain threshold of complexity these properties bring forth a new identity that cannot be reduced to the sum of its parts. This new identity is an added value to the organization and is seen in the distinctive patterns of behaviours that arise, for example within the General Assembly of the IMO and all of the UN bodies and specialized agencies. These patterns of behaviour are not present outside the assembly or meeting. This concerns also the process of crisis management that will have to be undertaken in a situation of repeated incidents as seen in the scenario approach. If the meeting has added pressure, as was the situation of the Erika case deliberations for the accelerated phasing out of the single hull tankers, a more intense index of emerging patterns arise, adding to the difficulties to resolve and decide.

Another useful concept is Diversity, which is explained as the variety of the components of the complex systems. According to Axelrod & Cohen, (1995), the greater the variety within the components of a complex system the more fit it is. Within IMO, the variety of
the Organization is given by the different type of members that are included in the sum of the parts. Diversity was the concept used to bring together the Millennium Forum 2000 by the Secretary General of the UN. Our first thoughts would induce us to think that the larger the diversity the more difficult to manage, however, the contrary is proven that the larger the diversity is, the fitter the system is for survival and more qualified to adapt to change. The apparent difficulties that come to mind are administrative or instrumental and not for example policy-building difficulties since the need for flexibility is taken care by the large number of different points of view. Hence, the participation of the member-states, the civil society, NGOs, the Secretariat as an individual entity and individuals will notably enrich the capacity to resolve the threat of not being able to deal with the problem of terrorism. In this manner, complexity and the concept of all inclusiveness go together and allow for the uncertainty to be reduced with innovation as is seen in the application of the theory to the outcome of bringing the largest diversity of components into MGT. An interesting parallelism can be drawn. The richness of the Assembly provided by the large diversity of cultures within it is at the same time a null diversified environment in the sense that all the members are only governments, that is, all alike. However, the participation of organizations of the character of NGOs brings diversity to the exclusiveness of the member state representative system.

5.6 The Role of the IMO and the role of its parts

The Role of the IMO\textsuperscript{12} as has been built in the analysis of its four components and policy orientation and it is expanded in parallel to the UN reform and beyond the IMO’s

\textsuperscript{12} This discussion involves and concentrates many elements that have been developed previously. The elements of diversity, variety, emerging identities, complexity threshold belong to the complexity theory. The complexity theory is applied to the role component parts identified above in order to express a new composition of interests in MGT. The application has not been exhaustive and more is to be done.
strictly technical objectives. The implementation of the role within the structure of the IMO is not the purpose of this study; however, a view into the derived roles of the component parts of the IMO may clarify the role of the Organization. The parts of the IMO to be considered will be the traditional structure and some additional components that may bring the concept of all inclusiveness into the Organization. Here we need to bring together various concepts developed previously: representativeness, purpose, function, position, environment, diversity and complexity, identity of the whole and fitness of Governance to survive. The essence of integrating a diverse range of participants into MGT is directed towards maximizing diversity and implementing the idea of an organization fit for survival under the complexity theory, but above all it is directed towards representativeness. Governance, in essence, is about successfully representing the interests of all parts involved in common affairs. If the representation of interests is successful in the sense of its fidelity to real life then the system of Governance is naturally self-balancing and self moderating, leading to the self-reduction of the risks of sectorism. If representativeness is not successful then the exclusion of interests is produced. This exclusion should not necessarily be viewed as intentional, but as a deficiency of the representative principles that rule the system. Here, the principles of Constitutional Law, that are jurisdictionally national in scope, when applied to International Organizations provide a fruitful and valuable tool. A traditional example of applied principles of Constitutional Law to International Organizations, which

Complexity is not a synonym of difficulty and they should not be associated since self regulation is one of the emerging identities found within complex systems and that brings solutions that normative regulations cannot provide within regulatory systems. On the contrary, it should be considered whether highly normative regulatory approaches are not more "difficult" to implement in real life than "fit systems." As an example, IMO's extensive regulatory framework can be cited, where the burden to those who must put the effort and energy to "make the system work" may be the core difficulty of the system.

13 In ecosystems diversity is a main component of fitness.

14 Survival is adapting to change and the new challenges that sometimes are threats. Systems either grow or die, in perceivable or unperceivable speeds. Systems are not static in their form or their life.

15 The threshold of complexity where new identities (of the whole or out of networking) emerge is the line that is drawn between the growth and the extinction of a system. Diversity is the measure of fitness because diversity is the characteristic that raises the threshold to reach the point of the emergence of these new identities.
incidentally and at present is under critics and reform, is the UN system with its Constitutional Charter.

The principles of Constitutional Law applied with the complexity theory are the tools to expand the environment and bring diversity into play and make the system of governance fit for challenge. However, Constitutional Law, which is the tool, which we view as essential in a new approach towards the representation of interests in MG, is also under critics and change. It is a fact that all mentioned theories are at the same time questioned and questioning. The canons of Constitutional Law are being revised, the UN is under reform, the complexity theory presents a new view to organizational functioning and the MGT challenges the regulatory principles of governance to change towards a different model. All these changes and challenges are taking place simultaneously and are an indication that the system and model of representativeness is evolving. This invites us to interpret that it could be possible that the models, which institutions of today are using, might be obsolete to represent the actual real interests involved. If this were the case then obsolescence is already within the constitutional framework and the constitutional system is not providing the results that society needs. This is the measure of change that indicates that the need for change in IMO comes mainly from the MG environment component of its role acting as the incentive to all the other components.

Balkin et al (1998) are of the opinion that Constitutional Law requires the inclusion of views other than judicial or legal to enrich the interpretation of Constitutions.

The narrowness of current canonical materials has had unfortunate effects for constitutional theory and legal education, encouraging too much specialization and focusing attention away from basic questions about the justice of the legal system. A revitalized constitutional canon should pay attention to structural questions that do not often come before courts, and it should include non-judicial interpreters of the Constitution, particularly representatives of
political and social movements whose interpretations often shape and influence the direction of constitutional interpretation.

This expression concerning public national law when exported into international law will have a different expression of justice in the constitutional agreements of a governance system such as Maritime Governance. In the context of GG, the exported concept of justice as stated by Balkin et al. (1998) is directed towards the just representation of all interests by incorporating other views into canonical sources. The nature of International Law, as soft law, views justice in the action of compliance with agreements and the concept of a court is exercised through the rule of consensus. Justice as the defense of the rights of fair participation and representation is not demanded or questioned by the interests that are not officially represented in the IMO. This is due to the fact that the reigning culture of representation excludes parts that are not national governments; however, there is an ample consideration of all non-member-state voiced opinions and the moderation of the consensus mechanism helps to reach a fair and balanced inclusion of interests that are present. This is progressing with time and the inclusion of NGOs is now widely accepted and encouraged. These valuable constitutional assets are the foundations to be developed further into a more modern representative system.

IMO has a formal Constitution in its own convention and indirectly in the UN Charter; and it also has an informal tacit constitution that underlies in the IMO culture and the rules of conduct that have developed during the years. This tacit constitution has strengthened the invaluable practice of unanimous consensus and through informal channels managed to include additional participants. This tacit constitution convenes also roles and codes of relationships of all other interests that are not within the traditional components of IMO; one of these other interests is the defenseless
international identity of shipping as demonstrated during the Tanker War. How to achieve a fair and just representation of all the maritime interests is the challenge of IMO under a view of a new Constitutional Law approach that is needed to be applied to Maritime Governance.

The traditional structural parts of IMO are the Member States (MS), the NGOs and the Secretariat. The role of the member states is of paramount importance since it represents the political division of countries through the governmental mechanisms of organization that all nations have. Its value as a representative element of the world’s society is real and effective especially in regulatory issues. The role of NGOs has been described throughout this study in its value to support with knowledge and expertise the roles of downsizing national governments. The role of NGOs is growing under the UN reforms. Finally, the role of the Secretariat is a valuable asset that can promote and stimulate development in aspects that the previous two components cannot.

The Secretariat and its two roles lie in what Dag Hammarskjöld as UN Secretary General clearly exposed in his valedictory speech on Staff Day 8 September 1961.

What is at stake is a basic question of principle: Is the Secretariat to develop as an international secretariat, with the full independence contemplated in Article 100 of the Charter, or is it to be looked upon as an intergovernmental - not international - secretariat providing merely the necessary administrative services for a conference machinery? This is a basic question and the answer to it affects not only the working of the Secretariat but the whole of the future of international relations.

16 The considerations of the Mannet report (2001) are oriented towards organizational efficiency and effectiveness of the functioning of the Secretariat. It is not related to the maritime governance roles of IMO as approached in this chapter.
Dag Hammarskjöld’s question was, and still is today, a matter of principle where the active and positive participation of the Secretary General can be a catalyst of improvement and the vivid example of the networking that is needed, and which no other component of MG can perform. The unique added value that the Secretariat can provide to the Role of IMO is of such importance in capacity building and confidence building that it cannot be dismissed to a “mere administrative service” as Hammarskjöld expressed it. It could be argued that the Secretariat of IMO is not comparable to the UN Secretariat. However, it should be observed that art.51 (Secretariat functions) of the IMO Convention (1948) reads as an exact copy of art.100 (Secretariat functions) of the UN Charter. It would be reasonable to all arguments to profit from the roles and qualities that might be assimilated from the UN model to an IMO model, bearing in mind the close relationship between both organizations and the respective jurisdictional differences. In the nature of maritime affairs and in regard to the international essence of shipping which excels far beyond that of many other institutions, it would be highly convenient to consider Dag Hammarskjöld’s vision of the Secretariat for IMO’s model. In Mango’s view (1988) “the executive heads of specialized agencies have continued to take initiative within their field of competence” in relating to the essence of Hammarskjöld’s concept projected towards the specialized agencies. Today’s IMO is in need for versatility and innovation, to network the changing needs of the maritime interests and specially to develop a MGT. The fields of competence of the Secretariat as mentioned are in the sense of innovation and progress and can hardly be thought of, in this context, as the basic administrative activities of the daily routine. This calls for the IMO to seriously and explicitly go beyond the basic description of a Secretariat expressed by art.47 to 50 of the IMO Convention (1948) and that resemble an administrative service.

17 The theory of fitness within complexity needs to receive incentives and this concept of Secretariat could be a way.
Confidence building between all the parts of the IMO is essential, specially within GG and within any project for the enhancement of activities. Mango (1988) expressed his views on the Secretariat's role with respect of opinion. He commented that the valuable participation of the knowledge and experience within the secretariat of the IMO has a way to be incorporated to the consideration of the member states, and that this participation could be largely strengthened.

The new roles for components of the IMO tend towards the participation of all interests that possibly need to be included in MG. These roles that are not traditional are expanding the environment component of the role of the IMO and allowing for diversity and eventually concerning the fitness of IMO and MG. This expansion can have many forms, some of which are the following:

- **International NGOs not included**: There are a large number of NGOs that are not included in the IMO but that are a part of MG due to their maritime nature. These range from commercial to technical institutions. Their lack of affiliation to the consultative members of the IMO prevents them from accessing to a participating action.

- **Local NGOs**: There are numerous local NGOs that have difficulties to reach their ways to participate in the IMO due to the lack of access to their national member-state representation. The MSR in the national representations is not prepared to include local NGOs in a normative or even practical way.

- **Non-maritime participants**: The importance of shipping to world international trade is highly significant as has been mentioned several times in previous subjects of this study. This means that shipping affects also non-maritime interests. Non-maritime participants in MG can help to incorporate the international identity of shipping that is diffused at the time of needing international protection. Instrumentally, non-maritime participants will enrich the
options towards the response in the security chain parallel to the supply logistic chain.

- **Individual persons**: The concept of GG includes as participants not only institutions but also individuals. In this sense the inclusion of individuals can bring expertise, experience and unbiased opinion into the exercise of MG. An example is the notable experience and expertise of member state representatives that upon ending their terms in office or in their positions are separated from the IMO and also from MG. To include individual persons within an IGO is a challenge that will only provide benefits especially in the areas of knowledge, experience and research that the IMO is so needed of.

Within the present structure of the IMO there exist positive elements and favourable conditions to provide change towards a vigorous institution that will be at the center of the intense networking that international shipping requires in the concept of Maritime Governance. The complexity theory has been brought in to the forefront in several instances of reasoning and is once more an interesting recommendation for the concept of change within organizations in the words of Pavard & Dugdale stated on the permanent website of the COSI EU project 2000-2003,

Classical approaches to understanding organisations tend to view the organisation as existing in one state or another and that a 'shake-up' is required to move the organisation out of its current state. A complexity theory approach would view an organisation's culture as constantly changing which raises the question of cultural stability. Rather than 'planning change' the focus should change to 'facilitating emergence'. One approach that has been recently tried is to increase the 'connectivity' of the agents in an organisation by removing interactional barriers and opening interactional channels to bring the system closer to a point where change and self-organisation becomes possible.
These new concepts of the complexity theory fit the essence of Global Governance in the line of the thoughts of the UN Secretary General Kofi Annan for the Millennium Assembly, Summit and Forum and provide an important motivation for an organization like IMO to move towards a strategy on Maritime Governance with an all inclusiveness principle. To reach out to consultancy is beneficial in the aspects that can exempt the organization to look upon itself, however, the uniqueness of the organization's styles, ways, patterns and complexity prove an immeasurable task for an outsider and to which the answers seem to lie within.

In order to produce the necessary change for the new role of the IMO developed in this chapter, new elements have been incorporated in to MGT, guided under the new approach of the UN Commission on Global Governance, using a new tool that is the theory of complexity, and all together in the light of an old Hammarskjöld concept of networking of international organizations. This process necessarily progresses in these steps to develop the strategy and policy structure that the Maritime Governance of Terrorism needs for the Role of the IMO in pursuance of the final objective, that is: The Protection of Shipping.
CHAPTER VI

CONCLUSION

To conclude the outlook on the Role of the IMO in the Maritime Governance of Terrorism in one chapter and in this one study is by itself inconclusive, as appendix III indicates with the progressive emergence of questions for further research corresponding to each chapter. Therefore the objective of this chapter aspires to bring the abstraction of the concept of Global Governance into a more tangible concept of Maritime Governance through the Role of the IMO in the MG of Terrorism. It also has the objective to be open to further development.

The chapter presents an integrated summary of the role of the IMO within MGT and that develops the implications of terrorism within Maritime Governance. It states the difficulties of the protection of shipping and ways to approach success through the UN and its vision towards the 21st Century. The Role of the IMO is the central focus of the strategy and the needs for a new direction are stated. A set of conclusions is presented in point form to serve as a basis for the recommendations that follow.

6.1 The role of the IMO in the Maritime Governance of terrorism

The characteristics of global terrorism show a different type of violence than the previous experiences of piracy and the Tanker War of 1984-1988. Terrorism as experienced in the WTC attacks cannot be confined to a local or even regional
phenomenon. The vulnerability of the region is directly proportional to the intensity of the trade routes. The significance of the targets is also related to the effects that the incident will have on trade and development, such as the WTC attack that affected directly the New York Stock Exchange. Thus, trade is an indirect victim that will affect the economies of countries according to their participation in it.

The protection against terrorism requires policies and instrumental measures. Policies are required in order to develop a plan to make decisions and guide actions towards objectives in a multilateral action of all states to protect their interests. Instrumental measures are the final outcome of a process of policies that need to be implemented in a harmonized way. However, terrorism creates situations with pressure on decision making mechanisms and uncertainty is the common factor at all levels. Uncertainty at a policy level is avoidable or can be minimized by previous policy & strategy making through objectives. Uncertainty is also the most dangerous threat at this level if there are no policies or strategies to lead to quick understanding and the protection of shipping without overreacting. Uncertainty at the instrumental level is unavoidable until the incident is performed. Thus, the key to success lies in policy & strategy making as an approach that can minimize uncertainty.

Shipping has had an independent nature from governments in the past that has given it freedom of navigation and its international characteristics. However, its international nature has become much more so with the use of international registries and multiple owners. This has given shipping an identity that is beyond the interests of national governments at the time of providing protection against violence. Piracy, which is still at large today with increasing statistic trends of incidents and violence, has not been controlled and the ships are without defense. During the Tanker War ships did not receive protection from third countries due to their avoidance of commitment. Thus, the ships traded without protection. Protection is not only physical but also financial since it
is seen from experience that the consequences of terrorist incidents require also financial support from governments in situations of catastrophic characteristics. These are the basic requirements that the maritime community needs to address since the national governments for a variety of reasons systematically postpone shipping in their list of priorities. International registries will receive the worst impact in terrorist situations since, in general, they are not capable of providing physical or financial protection to their ships in a repeated situation of terrorist violence. All sources of analysis trace the possible solutions to the UN Security Council.

A new strategy is needed since the previous experiences do not give any indication that ships will enjoy protection in future similar situations. Being the UN, the body that is closest to the global identity of shipping and considering its 21st Century plans for reforms, a strategy for the protection of shipping networked within these UN reforms is a new approach with new opportunities. The concept of Global Governance of including the participation of civil society provides new ideas and ways to manage the common affairs. It provides an opportunity for a more substantive representation of the international identity of shipping rather than the diffused identity that shipping had during the Tanker War or that shipping has now in the events of piracy, both of which have not manage to obtain protection. The call for a governance regime for the protection of ships against piracy by national representatives at UNICPOLOS implies, according to regime theory, rules and a decision-making mechanism. Once again, policy building is the essential cornerstone of the strategy for the protection of shipping.

The measures for the protection of shipping after the WTC attacks were unanimously concentrated in the IMO evidencing its representativeness in matters for maritime security. However, the urgent requirement for policy building is outside the customary practices of the IMO that circumscribes itself to technical matters that regulate shipping. Maritime Governance, the application of GG to maritime interests, is the concept that
will provide the networking and the guiding principles to policy building and, at the same time, maintain the distinctive responsibilities of Governments and the NGOs. The objective of obtaining a protection regime for shipping through a more representative international identity in the UN system is of the interests of both national governments and NGOs and will eventually contribute to protect the benefits of the trade of all nations. The IMO’s responsibility requires to be taken extensively in order to approach subjects of higher policy level in the networking of the NGOs, all in the search for the protection of shipping that governments have difficulties in providing. NGOs do not have another forum to discuss these matters and the protection of shipping is within the IMO’s jurisdiction. A way must be found to include these priorities within the IMO so that the protection of shipping is not left to lobbying, as was the unsuccessful case of the Tanker War described in chapter IV.

The development of scenarios according to the degrees of terrorism will give the basis for further policy building. The objectives identified for the specific case of Maritime Governance of terrorism are guides towards measuring the efficiency of the inclusion of all the relevant interests of shipping. *All inclusiveness* is a key element of GG and MG. Therefore; it is *all inclusiveness* acting as the main pillar that will enable interests that are not represented by national governments to be considered regardless of the difficulties in finding a way to represent them within the forum that is the IMO. The difficulties of including all interests will require new solutions, much in a similar concept to the reforms of the UN main bodies, which are already under way, in the same direction, and with a far greater dimension of difficulties. The comprehensiveness of the method is a versatile and flexible response to the changing needs of the uncertainty of a terrorist scenario.

The Role of the IMO in the Maritime Governance of terrorism needs to be seen in the light of its purposes, position, functions and the environment that is the maritime and
non-maritime related sectors of governments and civil society. The objectives of the IMO require a direct policy concern with matters related to the relationship with the UNSC as mentioned in art. VI of the UN-IMO agreement. This requires the development of new ways to represent the extra-national identity of shipping as could be through NGO meetings as suggested in the millennium reforms presented by the UN Secretary General. This approach has theoretical support with the complexity theory stating that organizations are fitter when their diversity is greater. This diversity requires networking and this is a fundamental role of the IMO to enhance the richness of options in all aspects in favour and service of the protection of International Shipping.

6.2 Conclusions

The following conclusions are synthetically presented:

C 01 Shipping has not had protection in previous situations of violence and there are no mechanisms in force that will assure its protection in similar or different terrorist circumstances in the future.

C 02 The IMO is the legitimate international organization to represent the interests of international shipping, however, the IMO has no experience in obtaining results in the protection of shipping.

C 03 Member states, represented at the IMO, do not have the capacity to fully represent the international interests of shipping. In the past, other national interests have involuntarily sided the member state participation in the protection of shipping in demand of other needed course of action
C 04 The issue of representativeness of NGOs by and within the IMO is an issue that falls, in principle, within the jurisdiction of concepts of constitutional law applied to international organization. The new concepts require new solutions in the principles of representativeness of all the interests.

C 05 Member states at the IMO need to network more with NGOs at the national level in order to bring in the national NGO perspectives.

C 06 The IMO is reactive partly due to the absence of policy building mechanisms originated in its technical nature.

C 07 The IMO Secretariat needs to function more as a networker within the policy building of diverse participants of maritime and non-maritime sectors towards a concept of maritime governance.

C 08 The effects and implications of Maritime Governance have a much broader spectrum than shipping regulations extending the reach towards ports but also towards non-maritime affairs.

C 09 The networking with NGOs at all levels is essential to build up a security chain that runs parallel to the logistic supply chain. Capacity building and confidence building are networking elements that in a diverse and rich environment of MGT solutions will arise naturally. The Secretariat has an important role in this networking.

C 10 A timely and successful response to terrorism can only be obtained by incorporating all the participants involved in securing the maritime interests.
C 11 Policies in national and regional levels for the MGT require insertion in an overall international umbrella policy that will ensure harmonization and seamlessness of strategies and instrumental measures.

C 12 A situation of repeated incidents of terrorist violence on shipping will demand protection for shipping as a physical protection of ships and financial government support under similar principles of the aide to natural catastrophes.

C 13 Flag States of international or open registries will receive the strongest impact in a situation of repeated violence since they will not be able to provide protection to the ships under their flag. The protection should be viewed in both physical and financial terms.

C 14 The role of the Secretariat in all international organizations is viewed from two perspectives: a) the catalytic engine that aides member state representatives to network between themselves and with other institutions and adds a value that no other component of the organization can provide, and b) an administrative role that provides the convention making machinery.

C 15 The IMO requires a research capacity to develop knowledge that is within its role and sphere of competence. No other organization can have the perspective that the IMO has with the inclusion of the secretariat. The secretariat needs the capacity to expand the knowledge and insight for the needs of its bodies and member states. This capacity will be the basis for the policy building that the Organization needs and that the member states need.

C 16 The ship and port interface require greater interaction between the parts with more representation of ports within the IMO member states and bodies. The
security chain needs to have a single source of regulations and in parallel to the logistic chain.

6.3 Recommendations

The following recommendations are intended to be a basis for the role of the IMO in the MGT. The recommendations are not extensive since they are to be interpreted within the context of this study and not individually or separately.

R 01 The IMO has a part to play in the world’s decision-making process of terrorism as a whole. As an institution it should participate and contribute to this process within a higher-level action among the bodies of the UN in order to then bring down the policies to the maritime communities and the MGT. The Secretary General has an important role to play as a representative of the decisions of the Assembly and the Council of the IMO within the networking of UN bodies.

R 02 The IMO needs to approach policy building within its main bodies.

R 03 The IMO needs to establish decision-making mechanisms in order to configure its conventions within a maritime regime. The decision-making mechanisms are not dispute settlement procedures that are already existent. They are strategy mechanisms.

R 04 The IMO needs to have a new approach to the issue of how to protect shipping of third flags within conflicts or terrorist situations similar to the actual situation of lack of protection in piracy attacks. The approach needs to be trough NGO
representation within the concept of GG in compatibility with government participation. The issue needs to consider constitutional law procedures.

R 05 The IMO requires an umbrella policy for the Maritime Governance of terrorism networked with all other conventions on terrorism and upwards with the UNSC policies so that national governments can insert their national policies in a harmonized way.

R 06 Policy building in Maritime Governance workshops should be performed for member states with 4 objectives: to aide them in developing their own policies, to integrate them to the IMO's umbrella policy for terrorism, to aide them in networking with NGOs at the national level and to aide them in building the security chain.

R 07 The roles of the individual parts of the IMO, member states, NGOs and the Secretariat can be incremented with non-traditional components such as International NGOs not included, local NGOs, non-maritime participants and individual persons.

R 08 The role of the Secretariat of the IMO should be oriented towards the perspective a) of Conclusion 14 being a networker of the MGT. The perspective b) is the responsibility of the administrative systems of the Secretariat.

R 09 A way must be found for the inclusion of individual persons to participate within the IMO in the concept of GG, in order to avoid losing expertise and experience of delegates of member states and other sources that are separated from the Organization for whatever reason it may be.
The guide for further research in appendix III is also a starting point for measures in developing diversity within the system of the IMO. In this research new ways will emerge for networking and developing policies for the protection of shipping.

The Conclusions and recommendations to the role of the IMO in the Maritime Governance of Terrorism mentioned above are the initial steps to the intense brainstorming that is needed for policy building. The set of new tools that have been exposed can provide the Organization with a fresh and vigorous way to approach the complexities of terrorism. The insight to the prevention of acts of violence has many sides that need to be integrated and harmonized within the maritime and non-maritime community. Trade and progress must continue their development in spite of the drawbacks of violence and the difficulties of economies. Whichever the approach towards the response against terrorism in Maritime Governance the measures that are merely instrumental should not oversee the policies and the policy building processes should prevail. The presence of policies and strategies will orient the efforts towards the final objective that should be present at all levels, from the UN to the minor institutions and individuals that are networking. The final objective cannot be the measures to enhance security for then we would be accepting to live in a world of permanent violent confrontation. The permanent objective should be for each institution and each individual to contribute, at their level and to higher levels, to the principle of eliminating terrorism and the use of violence. No one institution or individual may in their conscience delegate this principle to other bodies or persons under the allegation that it is not within their jurisdiction. The concept of all inclusiveness brings the jurisdiction of the duty to participate to the conscience of individuals and institutions in the understanding that this is what human nature is in essence.
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APPENDIX I

CONVENTIONS ON TERRORISM


Summaries of the multilateral treaties deposited with the United Nations Secretary-General

The Convention applies to the crimes of direct involvement or complicity in the murder, kidnapping, or attack, whether actual, attempted or threatened, on the person, official premises, private accommodation or means of transport of diplomatic agents and other "internationally protected persons". Internationally protected persons are defined as Heads of State or Government, Ministers for Foreign Affairs, State officials and representatives of international organizations entitled to special protection in a foreign State, and their families.

States Parties have obligations to establish their jurisdiction over the offences described, make the offences punishable by appropriate penalties, take alleged offenders into custody, prosecute or extradite alleged offenders, cooperate in preventive measures, and exchange information and evidence needed in related criminal proceedings. The offences referred to in the Convention are deemed to be extraditable offences between States Parties under existing extradition treaties, and under the Convention itself.

2. International Convention against the Taking of Hostages, New York, 17 December 1979

The Convention applies to the offence of direct involvement or complicity in the seizure or detention of, and threat to kill, injure or continue to detain a hostage, whether actual or attempted, in order to compel a State, an international intergovernmental organization, a person or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage.

Each State Party is required to make this offence punishable by appropriate penalties. Where hostages are held in the territory of a State Party, the State Party is obligated to take all measures it considers appropriate to ease the situation of the hostages and secure their release. After the release of the hostages, States Parties are obligated to facilitate the departure of the hostages. Each State Party is obligated to take such actions as may be necessary to establish jurisdiction over the offence of taking of hostages.

States Parties have obligations to establish their jurisdiction over the offences described, make the offences punishable by appropriate penalties, take alleged offenders into custody, prosecute or extradite alleged offenders, cooperate in preventive measures, and exchange information and evidence needed in related criminal proceedings. The offences referred to in the Convention are deemed to be extraditable offences between States Parties under existing extradition treaties, and under the Convention itself.

The Convention applies to the offence of the intentional and unlawful delivery, placement, discharge or detonation of an explosive or other lethal device, whether attempted or actual, in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility, with the intent to cause death or serious bodily injury, or extensive destruction likely to or actually resulting in major economic loss. Any person also commits an offence if that person participates as an accomplice in any of these acts, organizes others to commit them or in any other way contributes to their commission. The Convention does not apply where an act of this nature does not involve any international elements as defined by the Convention.

States Parties are required to establish jurisdiction over and make punishable, under their domestic laws, the offences described, to extradite or submit for prosecution persons accused of committing or aiding in the commission of the offences, and to assist each other in connection with criminal proceedings under the Convention. The offences referred to in the Convention are deemed to be extraditable offences between States Parties under existing extradition treaties, and under the Convention itself.


The Convention applies to the offence of direct involvement or complicity in the intentional and unlawful provision or collection of funds, whether attempted or actual, with the intention or knowledge that any part of the funds may be used to carry out any of the offences described in the Conventions listed in the Annex, or an act intended to cause death or serious bodily injury to any person not actively involved in armed conflict in order to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act. The provision or collection of funds in this manner is an offence whether or not the funds are actually used to carry out the proscribed acts. The Convention does not apply where an act of this nature does not involve any international elements as defined by the Convention.

The Convention requires each State Party to take appropriate measures, in accordance with its domestic legal principles, for the detection and freezing, seizure or forfeiture of
any funds used or allocated for the purposes of committing the offences described. The
goals referred to in the Convention are deemed to be extraditable offences and States
Parties have obligations to establish their jurisdiction over the offences described, make
the offences punishable by appropriate penalties, take alleged offenders into custody,
prosecute or extradite alleged offenders, cooperate in preventive measures and
countermeasures, and exchange information and evidence needed in related criminal
proceedings. The offences referred to in the Convention are deemed to be extraditable
offences between States Parties under existing extradition treaties, and under the
Convention itself.

Summaries of the multilateral treaties deposited
with other depositaries

5. Convention on Offences and Certain Other Acts Committed on Board Aircraft,
Tokyo, 14 September 1963 (*)

The Convention applies to offences and other acts prejudicial to good order and
discipline on board an aircraft, committed while the aircraft is in flight or on the surface
of the high seas or of any other area outside the territory of any State. It does not apply
to State aircraft, for example, aircraft used in military, customs and police services.

The purpose of the Tokyo Convention is to protect the safety of the aircraft and of the
persons or property thereon and to maintain good order and discipline on board. The
aircraft commander, members of the crew and, in specific circumstances, even
passengers on board, is empowered to prevent the commission of such acts and to
disembark the person concerned. The aircraft commander may also disembark the
offender or, if the offence is serious, deliver him to the competent authorities of a
Contracting State when the aircraft lands. The Convention protects the aircraft
commander and any crew member or passenger assisting him in imposing the measures
he finds necessary from any proceedings in respect of actions taken by them.

The State of registration of the aircraft is competent to exercise jurisdiction over
offences and acts committed on board. Each Contracting State is obliged to take the
necessary measures to establish its jurisdiction as the State of registration. The Convention does not eliminate existing or future jurisdiction in States other than the State of registration. A Contracting State which is not the State of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in certain cases, for instance, the offence has been effected in the territory of the State overflown, the offence has been committed by or against a national or permanent resident of that State, and the offence is against the security of that State.


The Convention defines the act of unlawful seizure of aircraft, and the Contracting States have undertaken to make such an offence punishable by severe penalties. Under the provisions of The Hague Convention a State is obliged, whether or not it is the State of registration, to take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him. If there is no extradition treaty between the States concerned and the offender is in the territory of a Contracting State and that State refuses to extradite the offender, then it must submit the case to its competent authorities for the purpose of prosecution under its criminal law.

The Convention requires any Contracting State in which the aircraft or its passengers or crew are present to facilitate the continuation of the journey of the passengers and crew as soon as possible and to return the aircraft and its cargo to the persons lawfully entitled to possession without delay.


The Convention deals with acts other than those covered by the Tokyo and The Hague Conventions. The Montreal Convention defines a wide spectrum of unlawful acts against the safety of civil aviation and the Contracting States have undertaken to make these offences punishable by severe penalties. The Convention contains detailed provisions on jurisdiction, custody, prosecution and extradition of the alleged offender
similar to those of The Hague Convention. Like the Tokyo and The Hague Conventions, the Montreal Convention does not apply to aircraft used in military, customs or police services. This Convention attempts to establish a form of universal jurisdiction over the offender, as provided in Article 5(1) of the Convention. The scope of the Convention is primarily determined in terms of the "international element" provided in Article 1, subparagraphs 1(a), (b), (c), (d) and (e). The Convention applies, irrespective of whether the aircraft is engaged in international or domestic flight, only as provided in Article 4(2) of the Convention, namely, if:

the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registration of the aircraft; or
the offence is committed in the territory of a State other than the State of registration of the aircraft.

In the case of air navigation facilities mentioned in Article 1, sub-paragraph 1(d), the Convention applies only if the facilities destroyed, damaged, or interfered with are used in international air navigation.


The Physical Protection Convention has a twofold objective:
it establishes levels of physical protection required to be applied to nuclear material used for peaceful purposes while in international nuclear transport and it also provides for measures against unlawful acts with respect to such material while in international nuclear transport as well as in domestic use, storage and transport.

Although the levels or physical protection prescribed in the Convention are required to be applied only to nuclear material used for peaceful purposes while international nuclear transport, other provisions of the Convention (e.g., the requirements that relate to making specified acts punishable offences under national law, to establishing jurisdiction over those offences and to prosecuting or extraditing alleged offenders) apply also to nuclear material used for peaceful purposes while in domestic use, storage and transport. Accordingly, States Parties to the Convention are obliged to make punishable under their national law the intentional commission of offences with respect to nuclear material as listed in its Article 7, in particular, intentional commission of: acts without lawful authority dealing with nuclear material causing or likely to cause death or serious injury or damage to any person or property; theft or robbery of nuclear material;
embezzlement or fraudulent obtaining of nuclear material; demands for nuclear material by any form of intimidation; threats to use nuclear material to cause death or serious injury or damage to any person or property; or threats to steal nuclear material to compel a person, international organization or State to do or refrain from doing any act. The Convention also contains specific rules on jurisdiction and extradition.


The Protocol adds to the definition of "offence" given in the Montreal Convention of 1971 unlawful and intentional acts of violence against persons at an airport serving international civil aviation which cause or are likely to cause serious injury or death and such acts which destroy or seriously damage the facilities of such an airport or aircraft not in service located thereon or disrupt the services of the airport; the qualifying element of these offences is the fact that such an act endangers or is likely to endanger safety at that airport. These offences are punishable by severe penalties, and Contracting States are obliged to establish jurisdiction over the offences not only in the case where the offence was committed in their territory but also in the case where the alleged offender is present in their territory and they do not extradite him to the State where the offence took place.


The Convention applies to the offences of direct involvement or complicity in the intentional and unlawful threatened, attempted or actual endangerment of the safe navigation of a ship by the commission of any of the following acts: seizure of or exercise of control over a ship by any form of intimidation; violence against a person on board a ship; destruction of a ship or the causing of damage to a ship or to its cargo; placement on a ship of a device or substance which is likely to destroy or cause damage to that ship or its cargo; destruction of, serious damaging of, or interference with maritime navigational facilities; knowing communication of false information; injury to or murder of any person in connection with any of the preceding acts. The Convention applies to ships navigating or scheduled to navigate into, through or from waters beyond
the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States, or when the alleged offender is found in the territory of a State Party.

The Convention does not apply to warships, ships owned or operated by a State when being used as a naval auxiliary or for customs or police purposes or ships that have been withdrawn from navigation or laid up.

The offences referred to in the Convention are deemed to be extraditable offences and States-parties have obligations to establish their jurisdiction over the offences described, make the offences punishable by appropriate penalties, take alleged offenders into custody, prosecute or extradite alleged offenders, cooperate in preventative measures, and exchange information and evidence needed in related criminal proceedings.


The Protocol applies to the offences described in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation when committed in relation to a "fixed platform", defined as an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

States-parties have obligations in relation to establishing their jurisdiction over the offences described, making the offences punishable by appropriate penalties, taking alleged offenders into custody and prosecuting or extraditing them.


The Convention requires each State Party to prohibit and prevent the manufacture in its territory of unmarked plastic explosives. Plastic explosives will be marked by introducing during the manufacturing process any one of the detection agents defined in the Technical Annex to the Convention. The Convention also requires each State Party to prohibit and prevent the movement into or out of its territory of unmarked explosives.
and to exercise strict and effective control over the possession of any existing stocks of unmarked explosives. Stocks of plastic explosives not held by authorities performing military and police functions are to be destroyed or consumed for purposes not inconsistent with the objectives of the Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of the Convention in respect of the State concerned.

The Convention also establishes an International Explosives Technical Commission, experts in the field of manufacture or detection of, or research in, explosives. The Commission will evaluate technical developments relating to the manufacture, marking and detection of explosives, report its findings, through the Council of ICAO, to all States Parties and international organizations concerned, and propose amendments to the Technical Annex to the Convention, as required.

(*) Summary courtesy of ICAO

(**) Summary courtesy of IAEA

Source: http://untreaty.un.org/English/tersumen.htm#1
APPENDIX II

SECURITY MEASURES PROPOSED BY THE INTERSESSIONAL WORKING GROUP ON THE "PREVENTION AND SUPPRESSION OF ACTS OF TERRORISM AGAINST SHIPPING"

These measures were proposed by the Maritime Safety Committee’s Intersessional Working Group on Maritime Security in the report document MSC 75/WP.18 in May 2002 to be accepted in Diplomatic Conference in December 2002.

Chronology of the responsive measures

2001 September 11 Attacks on WTC and Pentagon
2001 November 29 IMO Assembly Resolution A.924 (22) Review of measures and procedures to prevent acts of terrorism which threaten the security of passengers and crews and the safety of ships.
2001 December 3 IMO call for the intersessional working group (ISWG) on maritime security for February 11-15 2002 with proposals and information on security issues. IMO Circular letter No. 2351 Ref. T2/2.02
2002 February 11 Meeting of the ISWG. Analysis of 12 proposals and 8 information papers and elaboration of recommendations. MSC Provisional list of Documents for ISWG meeting (including agenda) document MSC 75/ISWG/J/1.
2002 May 22 Meeting of the working group on Maritime Security (MSWG). (54 member states, 3 UN and special agencies, 3 inter-governmental (IGO) organizations, 24 NGOs in consultative status). Report to MSC. MSC 75/WP.18
2002 May 22 Meeting of the Maritime Safety Committee accepting the proposed recommendations and with further proposal to the Diplomatic Conference in December 2002
2002 December Scheduled meeting in Diplomatic Conference of member states and expected acceptance of measures.

Note: It is understood that the member states at IMO can adopt these measures in their own state as national regulatory measures if the situation urges, however, it is desirable to avoid unilateralism in the light of multilateral consensus and the important need of harmonization.
Automatic Identification Systems

The ISWG agreed in principle to accelerate the implementation schedule for the mandatory fitting of Automatic Identification Systems for all ships of 500 gross tonnage and above, on international voyages. The final implementation date would be decided by the Diplomatic Conference on maritime security.

The requirement for ships to carry AIS was adopted in December 2000 as part of a new chapter V on Safety of Navigation in the International Convention for the Safety of Life at Sea (SOLAS).

The requirement, entering into force on 1 July 2002, applies to all ships constructed after 1 July 2002, and to other ships on a phase-in schedule up to 1 July 2008. The requirement applies to all ships of 300 gross tonnage and upwards engaged on international voyages and cargo ships of 500 gross tonnage and upwards not engaged on international voyages and passenger ships irrespective of size. AIS were developed to deliver digital information conveying a vessel's position, identity and other related information automatically from ship to ship and from ship to shore.

The systems allow ships and coastal authorities to "see" the position of other ships, even in situations where physical obstructions would prevent radar detection. AIS also enable ships to identify other ships.

Amendments to SOLAS chapter XI

The ISWG agreed in principle to amend SOLAS chapter XI to include special measures for maritime security and to amend the title accordingly. The general idea for consideration by MSC 75 is to incorporate new regulations XI/5 to 7 containing definitions, requirements for ships and requirements for port facilities respectively, supported by a draft International Code for the Security of Ships and Port Facilities, which should have a mandatory section.

The date for entry into force of the new regulations and the mandatory part of the proposed international security Code would be decided by the Diplomatic Conference on Maritime Security.

SOLAS Chapter XI on Special Measures to Enhance Maritime Safety was adopted in 1994 and entered into force on 1 January 1996. Its current four regulations cover
Authorization of recognized organizations, enhanced surveys, ship identification number and port State control on operational requirements.

**Proposed new requirements for ship security plans, Ship Security Officer and Company Security Officer**

The ISWG agreed in principle that the proposed international security Code would require all ships of 500 gross tonnage and above engaged in international voyages to carry ship security plans (SSPs). The need for such plans to be ultimately incorporated in the International Safety Management (ISM) Code was also acknowledged. It was considered essential that the mandatory requirements relating to such plans should be developed prior to the Diplomatic Conference on maritime security.

The Code would also include a requirement for a Ship Security Officer (SSO) and a Company Security Officer (CSO). The training needs of the SSO would need to be developed in the context of the STCW Convention and initially his/her responsibilities should include any necessary instruction to the crew of the ship. Training requirements for the SSO would need to be developed as a matter of urgency. In the case of the CSO, responsibilities and training requirements would be included in the Code.

**Proposed new requirements for port security officer, port facility security plans and port vulnerability assessment**

The ISWG agreed to recommend to MSC 75 to incorporate a requirement for a Port Security Officer (PSO) and port facility security plans (PFSP). The PFSP would address only the threat for the ship from ashore, the Ship Port Interface - which needed further identification and definition. The requirement would also need to stipulate which ports it would apply to. MSC will be invited to authorize more detailed work to be undertaken in close co-operation with ILO on comprehensive PFSP requirements.

There was concern that it may not be appropriate to require such plans for small ports. Port Vulnerability Assessment (PVA) was considered an essential part of the port facility security process and it was agreed that a new requirement for PVA would be incorporated in the proposed international security Code. There would also be a need to develop guidance/criteria for PVA based on the existing level of threat.

**Urgent action on revised seafarer identification document**

The ISWG agreed on the need for urgent action on a revised seafarer identification document.
The Secretary-General of IMO has written to the Director-General of the International Labour Organization (ILO), emphasizing the importance the Member States of IMO give to revising the ILO seafarer identification document as a significant contribution to enhanced maritime security and requesting early action on this matter, offering the assistance of IMO in this process.

It was hoped that the ILO Director-General would bring this matter to the attention of his governing body in March 2002, proposing that a new protocol to amend the ILO Seafarers' Identity Documents Convention of 1958 (No. 108) be developed for adoption by the ILO General Conference in June 2003.

The desirability of transparency of ownership and control of the ship

The ISWG discussed the issue of provision of information on the ship, its cargo and people and agreed that transparency of ownership and control of the ship was desirable. However, this could be difficult to achieve. Nevertheless the owner of a ship needed to be defined in future, bearing in mind that many IMO instruments place responsibilities on the shipowner, who may, however, not be easy to identify.

The Legal Committee has been invited to comment on the ownership and control of the ship at its next session in April (LEG 84) and the issue should be further considered at MSC 75, based on the comments from LEG 84 and substantive proposals submitted.

Providing a capability for seafarers to activate an alarm in the case of a terrorist hijacking

The ISWG agreed that the Sub-Committees on Radiocommunications and Search and Rescue (COMSAR), Ship Design and Equipment (DE) and Safety of Navigation (NAV) should be requested to consider means for providing a capability for seafarers to activate an alarm to notify authorities and other ships of a terrorist hijacking. The Sub-Committees will consider whether such an alarm should be surreptitious.

Inspection of containers and other cargo transport units

The ISWG recommended the formalization of co-operation with the World Customs Organization (WCO) on the question of cargo/container inspection. The ISWG noted the need to ensure that the effective and efficient flow of multi-modal cargo is maintained, in spite of the need for cargo security. IMO should work together with WCO through an appropriate mechanism with the aim of establishing international measures that would enhance the integrity of all cargo.
In view of the annual volumes of containers being moved globally (about 150 million full and 40 million empty container movements in 2001), the ISWG considered this issue to be a particularly complex and difficult one to solve in the short term. Facilitation of maritime traffic needed to be balanced against the desire for maritime security.

**Maritime security equipment to prevent unauthorized boarding in ports and at sea**

DE 49 (meeting in March) is set to consider the issue of maritime security equipment to prevent unauthorized boarding in ports and at sea and report to MSC 75. The ISWG recognized that the kind of equipment to be used on board would largely depend again on risk assessment (e.g. ship types, trading areas, etc.) and that this impacted on the Ship Security Plan. If appropriate, a new regulation may be incorporated in the international security Code to require ship security equipment.

**Technical Co-operation - Capacity building for maritime security**

The ISWG noted need for technical co-operation in combating threats to maritime security in terms of technology, expertise and hardware to cope with the challenges, should the threat become real. The assistance programme would focus on such matters as international or regional co-operation in form of information exchange, pooling of equipment and training of enforcement personnel, seafarers and port personnel.

IMO's technical co-operation programme on maritime security, "Capacity building for maritime security", has already been instigated by the Organization's Technical Co-operation Division, in response to Assembly resolution A.924(22).

The resolution requests the Secretary-General to take appropriate measures, within the Integrated Technical Co-operation Programme, to assist Governments to assess, put in place or enhance, as the case may be, appropriate infrastructure and measures to strengthen port safety and security to prevent and suppress terrorist acts directed against ports and port personnel as well as ships in port areas, passengers and crews.

The programme Capacity building for maritime security is benefiting from £1.5 million from the TC Fund, although the ISWG recognized that donations in cash and kind would be welcomed for the programme to succeed.

The programme includes the following planned activities:

Activity
1
Expert advice to the Secretariat on security issues and preparation of an outline programme for subsequent training workshops

Activity 2
Development of detailed lesson plans/ manuals based on the agreed outline programme

Activity 3
Translation of all materials into French and Spanish

Activity 4
Delivery of sub-regional workshops throughout the world

Activity 5
Delivery of advisory missions/national workshops

Activity 6
Fellowships and on-the-job training attachments

It is anticipated that, as the programme develops, it will take into account the output of the ISWG, MSC and other bodies and, indeed, the needs of the users of the programme. In the beginning, one important focus will be on “maritime domain awareness building”. Co-operation and support will be sought from Member States, UN and intergovernmental organizations both international and regional and NGO’s in consultative status with IMO.

In gaining experience in the implementation of the programme and from evaluating the uptake of advisory services and workshops, a long term TC programme and the funding requirement could be developed, since maritime security would continue to remain a significant component of IMO’s technical co-operation strategy and the programme.

The initial contributions from the TC Fund might be viewed as seed money, which should attract counterpart funding from bilateral and multilateral sources. Contributions in kind would also be sought, for example, expertise, host facilities, fellowships and on the job training.

Companies and individuals with the relevant maritime security experience have already offered their expertise to the Organization, though further help from IMO Member States and organizations is being sought in identifying such experts.

Following the adoption by the Conference and entry into force of any maritime security measures in 2004, further technical co-operation will be needed to help developing
countries to implement these new provisions and donors will be needed for such activities in due course.

**Long-term goals**

The ISWG agreed that, as usual, the IMO Assembly and Council would be ultimately responsible for setting the long-term agenda for IMO on issues relating to maritime security. The MSC, MEPC, Technical Co-operation, Facilitation and Legal Committees would all have roles to play, as identified in Assembly resolution A.924(22).

Amongst the medium to long term goals identified by the ISWG for further work (other than those mentioned above) were the following:

Review of MSC/Circ.443, issued in 1986, which includes Measures to prevent unlawful acts against passengers and crew on board ships, intended for application to passenger ships engaged on international voyages of 24 hours or more and the port facilities which service them. The measures should be expanded to cover all ship types.


Review of Port Recommendations – taking into account maritime security measures.

Review of the IMO/ILO/UN ECE Guidelines for Packing of Cargo Transport Units (CTUs). The 1997 guidelines (which replaced the IMO/ILO Guidelines for Packing Cargo in Freight Containers or Vehicles) apply to transport by all surface and water modes and the whole intermodal transport chain. The guidelines are endorsed by IMO and ILO and by the United Nations Economic Commission for Europe (UN ECE).

Review of IMO’s guidance to governments and guidance shipowners, ship operators and crew on preventing and suppressing acts of piracy and armed robbery - the latest guidance was issued in 1999 as Revised MSC/Circ.622 Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships and Revised MSC/ Circ.623 Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships.

Review of resolution A.872(20) on Guidelines for the prevention and suppression of the smuggling of drugs, psychotropic substances and precursor chemicals on ships engaged in international maritime traffic (adopted in 1997).
Outline of a port security instrument – the ISWG agreed to invite MSC 75 to consider the need for the development of the outline of a port security instrument in co-operation with ILO.

APPENDIX III

GUIDE - SUMMARY FOR FURTHER RESEARCH ON MARITIME GOVERNANCE

In the different chapters there are questions, concepts, conflictive or differing opinions and operational aspects that need further study in order to reach a clearer view of maritime governance in a practical and implemental way. This list is simply a summary and an expansion in some cases to assist as an aide to further research or as a checklist when exploring the subject of maritime governance. By no means is it exhaustive; it is only an approximation with the hope that it will be a useful instrument and aide memoire.

CHAPTER II

- Would governments provide similar measures of financial aide to shipping, as were the measures that were provided after the WTC attacks to US airlines?
- From which government would the ships registered in international registries be supported financially with the losses of terrorist attacks?
- Can international registries aide the ships of their flag in terrorist incidents? If not what mechanisms must be put in place?
- In matters maritime, will governments support insurance policies of ships other than their own flag?
- What would be the effect translated to shipping of repeated violence on the very elastic trade flows?

CHAPTER III

- To develop a regime towards governance legislation needs to be preventive in generating the governance mechanisms. The development of preventive or even pre-emptive legislation has to be interfaced with policy building in a plan for regime building.
- National and International legislation is a high priority and the harmonization with an overall umbrella legislation that needs to be substantive and procedural needs to include all affected and non-affected countries is indispensable.
- How to implement One & Two Track Diplomacies (formal and informal diplomacies) for reaching the broader scope of all inclusiveness.
• By bringing its relevance towards the international identity of shipping, the need for the protection of maritime trade will become an interest to be defended by all nations. Further development is needed in how to perform this connection.

CHAPTER IV

• General Scenario research
• Seamlessness is a highly desirable quality in Global Governance that can only be obtained with the participation of lower levels of governance in the processes of higher levels. The cost of minimizing it will be compartmentalization and the fallback into a routine of administration. How this is performed is a necessary concept of success in governance implementation that requires special study.
• "Maritime governance of terrorism, ... of security ...and even of peace as the ulterior objective of the UN Charter." The ulterior objectives of maritime governance need more detailed specification with regards to the contributions to the UN Charter, specially the objective of Peace.
• Does the MSR system truly represent the maritime world?
• The representation of NGOs is more than consultative in many cases as is it is an example of the papers that have been presented at MSC 75 by these members. Their representation is not fully clear formally since their informal participation is much more intense.
• Institutions are in full in the I&R concept, however, individuals have no presence but through their national government or some private institution to which they can associate themselves to. This concept has much more potential to than is apparent.
• The new ways to network I&R is the challenge of objective 2.
• How would IMO and the maritime community deal with an intensive scenario?
• How can the reality, complexity and importance of shipping reach the higher levels of decision of world affairs in order to provide protection and even development within a situation of terrorism?
• In the Tanker War the search for the protection of shipping was pursued by track two diplomacy: What are the difficulties for representation of shipping due to its multifaceted identity, the lack of response from international organizations and the appropriateness of the Security Council as a forum for the matter.
CHAPTER V

- The application of principles of Constitutional Law to the representativeness of all the interests of Maritime Governance of Terrorism with the goal of an image with the fidelity of real life.
- All the components need a operationalization to make them implementable and to deliver low level actions and measures.
- The purpose of militarization requires expansion with the connection to the military structure already in place.
- The IMO convention needs further expansion of its purposes and functions.
- Protection measures need to be developed as physical protection and as financial protection.
- Regional policy building approaches need to be searched for.
- Greater research in the Role of the Secretary General needs to be done, specially with respect to the networking function within Maritime Governance and outside towards the UN bodies and the civil society.
- Further research needs to be done on the perspective of self-development of the institution under the complexity theory in parallel to the standard structure-change approach.