



Ports in a Storm?
The Nexus Between Counterterrorism,
Counterproliferation, and Maritime Security
in Southeast Asia

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Table of Contents

<u>ACKNOWLEDGEMENTS</u>	V
<u>EXECUTIVE SUMMARY</u>	1
<u>I. INTRODUCTION</u>	2
<u>II. THE IMPORTANCE OF SOUTHEAST ASIA’S MARITIME REALM</u>	5
<u>III. MARITIME TERRORISM – HOW REAL IS THE THREAT?</u>	8
<u>MARITIME TERRORISM</u>	8
<u>REGIONAL TERRORISTS</u>	10
<u>PIRACY AND TERRORISM?</u>	12
<u>THE PROLIFERATION ANGLE</u>	14
<u>ASSESSMENT</u>	15
<u>IV. THE MARITIME SECURITY INITIATIVES</u>	15
<u>THE PROLIFERATION SECURITY INITIATIVE</u>	16
<u>THE CONTAINER SECURITY INITIATIVE</u>	17
<u>THE INTERNATIONAL SHIP AND PORT FACILITY SECURITY CODE</u>	19
<u>V. REGIONAL RESPONSE AND IMPACT</u>	20
<u>PERSPECTIVES ON THE INITIATIVES</u>	22
<u>PSI</u>	22
<u>CSI</u>	24
<u>ISPS</u>	25
<u>ASSESSMENT</u>	25
<u>VI. PROPOSALS</u>	26
<u>LIMITATIONS</u>	27
<u>RECOMMENDATIONS</u>	31
<u>OBSTACLES</u>	33
<u>VII. CONCLUSION</u>	33
<u>ABOUT THE AUTHOR</u>	35
<u>APPENDIX A</u> PSI STATEMENT OF INTERDICTION PRINCIPLES	37

<u>APPENDIX B</u> UN SECURITY COUNCIL RESOLUTION 1540.....	41
<u>APPENDIX C</u> SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION CONVENTION (SUA CONVENTION)	45
<u>APPENDIX D</u> IMO SUMMARY OF ISPS CODE AND SOLAS AMENDMENTS	55
<u>APPENDIX E</u> 2003 ARF STATEMENT ON COOPERATION AGAINST PIRACY AND OTHER THREATS TO MARITIME SECURITY	65
<u>FIGURES</u>	
TABLE 1. SOUTHEAST ASIAN NATIONS' LAND AREA, COASTLINES, AND TERRITORIAL WATERS.....	6
TABLE 2. WORLD'S TOP CONTAINER PORTS 2002.....	7
TABLE 3. ACCEPTANCE OF MARITIME SECURITY CONVENTIONS AND INITIATIVES BY ASEAN MEMBERS.....	25
CHART 1. INTERNATIONAL CONTAINER LOGISTICS CHAIN VULNERABILITY ASSESSMENT.....	28
CHART 2. WORLD FLEET BY COUNTRY OF REGISTER (MAIN FLAG) IN 2000.....	30

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Executive Summary

Since the September 11, 2001 terrorist attacks on the United States, there has been increasing attention given to the nexus between terrorism, proliferation of weapons of mass destruction (WMD), and the security of the maritime transport sector. The September 11 attacks not only exposed the loopholes in airport and airplane security, but also alerted the U.S. and the world to the gaping security vulnerabilities in other transport sectors. The very nature of international shipping has made it far more difficult to protect and thereby render it open to abuses. International maritime vessels are often owned by companies in one country, registered in another, manned by crew from several other nations, and call at ports around the world. Ships transport more than 80 percent of the world's trade by volume, from high-value goods such as oil and liquefied natural gas to everyday commodities. Most goods are transported on large cargo ships in containers; in fact more than 200 million containers are transported across the globe each year. The U.S. has more than 300 ports and receives some 6 million containers at those ports each year. However, prior to September 11, only 2 percent of those containers were physically inspected. In an age of nuclear proliferation and international terrorism, the vulnerabilities of maritime transport can no longer be tolerated.

Southeast Asia has emerged as a region of particular concern in the areas of terrorism, proliferation, and maritime security. Maritime Southeast Asia – Indonesia, Malaysia, Singapore, the Philippines, Brunei, and southern Thailand – is predominantly Islamic. There has been regional and international concern over the rise of radical and fundamental Islam. Several Islamic terrorist groups are active in the region, such as the Abu Sayyaf in the southern Philippines and Jemaah Islamiyah in Indonesia. Some of these groups are allegedly connected with al-Qaeda.

The maritime space of Southeast Asia, at the crossroads between Europe and the Middle East and East Asia and North America, is essential to international trade. More than a third of all shipping vessels, carrying 50 percent of the world's oil and 25 percent of the world's cargo, pass through Southeast Asian waters each year. The Straits of Malacca and Singapore are among the busiest in the world, with some 600 ships sailing them every day. Six of the world's top 25 ports are located in Southeast Asia, with Singapore hosting the world's busiest port.

However, maritime security in the region is inconsistent and largely ineffective. The UN Convention on the Law of the Sea greatly expanded maritime jurisdiction, and the territorial water under Southeast Asian regional control is now larger than that of the region's total landmass. Unfortunately, the extensive coastlines and territorial waters are difficult to secure. Maritime piracy attacks have steadily been on the rise since the early 90s. In 2003, 42 percent of the world's pirate attacks occurred in Southeast Asian ports and waters. The region's vulnerability to piracy exposes areas open to possible terrorist exploitation.

In response to the combined threats of terrorism on and WMD proliferation through the maritime transport system, the U.S. and the UN have developed several security initiatives. Three of the major initiatives, to be examined here, are the U.S. government's

Proliferation Security Initiative (PSI), the U.S. Customs and Border Protection Agency's Container Security Initiative (CSI), and the UN International Maritime Organization's International Shipping and Port Facility Security Code (ISPS). The focus of the PSI is the interdiction of ships at sea suspected of carrying illegal shipments of WMD or related materials. The CSI aims to securitize shipping containers bound for U.S. ports. Finally the ISPS is designed to increase and standardize security measures in ports, on ships, and with shipping companies.

Despite an increasing regional awareness of maritime security concerns and the need to coordinate counter-activities in Southeast Asia, regional support for these three initiatives has been mixed. Responses have depended on many factors, but a trend does emerge. First, countries determine their participation based on their national interests. Such factors include the relationship with the U.S., percentage of total trade with the U.S., sovereignty concerns, and economic interests. If participation in the initiative matches national interests, as in the case of Singapore, the country will sign on. If not, national or even bilateral agreements are preferred. Second, Southeast Asian nations prefer regional solutions to problems. In this way regional norms of cooperation, often called the "ASEAN-way," are upheld. Third, individual countries in the region may consider international multilateral proposals such as UN conventions. U.S.-led initiatives are generally regarded with suspicion.

Therefore the current proposals face substantial difficulties ensuring maritime security in the region. First, they are U.S.-led or U.S.-focused. Second, the emphasis on port security overlooks other elements in the production-supply chain. Third, high costs and the need for capacity building are not incorporated into the proposals. Fourth, they neglect other threats to maritime security such as seafarer certification, the Flags of Convenience (FOC) system, and other transnational crimes with maritime aspects.

This paper recommends greater regional cooperation; an increase in cost burden-sharing, technological collaboration, and capacity building; the creation of a truly regional maritime security initiative; and the adherence to and new proposals for UN maritime security conventions. There is room for improvement and obstacles still lie ahead, but Southeast Asia is making advances in safeguarding its maritime realm.

I. Introduction

In the aftermath of the September 11, 2001 terrorist attacks on the United States, concerns over terrorism, nuclear weapon proliferation, and maritime security have become increasingly intertwined. September 11 served as an unexpected and jarring wake-up call – revealing gaping vulnerabilities to terrorist attacks and tearing open the U.S.' sense of security. A single event immediately altered the world's responses to security threats.

Though there were certainly challenges to the prevailing security paradigm prior to 9/11, previous acts of terrorism were directed at domestic concerns with localized attacks resulting in a relatively small number of casualties. After September 2001, it was impossible to ignore the signs that even terrorist organizations had benefited from globalization and the relaxation of borders characteristic of the '90s – increasing their reach, recruitment, training,

and targets to an international scale. Along with the incredible planning and creativity used by terrorist organizations in attacking recent targets, the attacks also revealed transportation security to be shockingly inadequate. Governments moved quickly to increase security on land and in airports and planes but securing of ports and shipping – the backbone of global trade – has proven far more difficult.

The very nature of the international shipping trade has made it far more vulnerable to potential abuses and yet also far more difficult to protect.¹ Ships transport more than 80 percent of the world's trade by volume, from lucrative commodities such as oil, natural gas and cars to almost any other product imaginable. A large proportion of the goods transported travel in containers. In 2002, an estimated 15 million containers were in circulation worldwide with as many as 232 million containers transported each year.² Yet prior to 9/11 only 2 percent of the approximate 6 million containers unloaded in the U.S. each year were physically inspected.³ Maritime vessels are often owned by individuals or companies in country A, flagged in country B (such as by the flags-of-convenience states such as Liberia, Panama, Belize), and carry cargo from country C to country D stopping in multiple countries along the way. Ports are often poorly staffed and in many countries port officials are paid low wages, opening up the possibility for corruption. Large ships are lightly staffed and poorly protected from attacks, particularly as they slow in areas of high traffic, called “choke points” such as the Suez Canal, Panama Canal, and the Strait of Malacca. Terrorist attacks on shipping vessels have been relatively rare despite the lax security. However in an age of international terrorism and nuclear nonproliferation, such weaknesses can no longer continue to be overlooked. Maritime terrorism, like al-Qaeda, has become a key term for the security specialist.

Part of what makes maritime terrorism operations difficult to protect against is that there is no one specific way an attack could be carried out. Gunaratna and Campbell clearly categorize several possible threat scenarios as follows: 1) vessel as a means; 2) vessel as a weapon; 3) vessel as a bomb; 4) vessel as a disruption tool; and 5) vessel as a target.⁴ These methods are in no way mutually exclusive, and any number of them could be employed in concert.

In the first scenario the ship is used to smuggle goods to fund or support terrorist networks. They can also be employed to transport nuclear, chemical, biological, or conventional weapons to terrorist groups or even the terrorists themselves. The October 2001 discovery of a suspicious stowaway in a well-outfitted container is but one possible

¹ For comprehensive background to the risk factors for sea ports and maritime transport see John F. Frittelli, “Port and Maritime Security: Background and Issues for Congress,” *CRS Report for Congress*, 5 December 2003 <http://www.fas.org/sgp/crs/RL31733.pdf> [10 May 2004], and OECD Maritime Transport Committee, *Security in Maritime Transport: Risk Factors and Economic Impact*, July 2003 <http://www.oecd.org/dataoecd/19/61/18521672.pdf> [11 May 2004].

² OECD Maritime Transport Committee, *Security in Maritime Transport*, p. 7.

³ Data from OECD Maritime Transport Committee, *Security in Maritime Transport*, p. 8 and Frittelli, “Port and Maritime Security,” p.4.

⁴ Tanner Campbell and Rohan Gunaratna, “Maritime Terrorism, Piracy and Crime,” in *Terrorism in the Asia-Pacific* by Rohan Gunaratna, ed. (Singapore: Eastern Universities Press, 2003), pp. 80-83.

example.⁵ Terrorists could use a commandeered vessel to stage attacks on other ships or targets close to the water. In the second case, a shipping vessel could be employed as the weapon itself. Terrorists having hijacked or assumed control of a large ship, particularly one laden with highly explosive materials such as oil or liquefied natural gas (LNG), could then crash it into another vessel or a port. A small speedboat, such as that used in the attack on the *USS Cole*, can also inflict major damage. The idea of modifying a shipping vessel as a floating bomb is simply taking the vessel as a weapon concept a step further. Detonating a weapon of mass destruction on board a ship, especially if rammed into a crowded port facility, is perhaps the most nightmarish scenario possible. If disrupting international trade and crippling the global economy is a goal for terrorists, there are several ways a ship could be utilized. The sinking of a large vessel in a major port or in any one of several shipping chokepoints could seriously impede international trade, causing major economic losses, and significantly increasing transport and insurance costs. Were a vessel carrying oil or LNG to be used in such a scenario, or should an offshore oil facility be targeted, the global environmental and economic impact would be far greater. Finally, ships can be the targets of maritime terrorists. Attacks on ferries or cruise ships carrying hundreds of passengers are one possibility; attacks on U.S. Navy vessels, with the intent to kill U.S. military personnel and impair or destroy a U.S. military asset, are another.

The purpose of this paper is multifold. First and foremost it is to provide an overview of the perceived linkages between terrorism, the proliferation of weapons of mass destruction, and the maritime realm since September 11 and by extension the relation between counterterrorism, counterproliferation, and maritime security efforts. The second is to show the importance of Southeast Asian cooperation in regional and international efforts to counter security threats in these areas. Third, it introduces several of the recent initiatives to improve port security. Next, the paper assesses Southeast Asian efforts to increase maritime security in the region and their perspectives on these initiatives. To accomplish this, the paper is divided into several sections. First it outlines the significance of Southeast Asian waters to international trade and security. This is followed by an examination of the risk of maritime terrorism in the region, taking in turn a look at maritime terrorism in a historical perspective as well as the probability factors for maritime attacks. Risk factors also include terrorist organizations in the region, possible links between sea piracy and terrorism, and finally adding WMD proliferation to the mix. The paper then turns to three of the main port and shipping security initiatives launched since 9/11: the Proliferation Security Initiative, the Container Security Initiative, and the International Ship and Port Facility Security Code. The next section presents recent Southeast Asian measures to combat these threats and regional responses and perspectives to the security initiatives. The final section offers an examination of the current proposals' limitations, some recommendations for moving ahead, and the obstacles to doing so.

⁵ On October 18, 2001, Italian police arrested 43-year old Egyptian-born businessman Farid Rizk in the southern Italian port of Gioia Tauro. Mr. Rizk had been discovered hiding inside a Canada-bound container ship from Port Said, Egypt. Inside his container police found a bed, toilet, 2 cell phones, a satellite phone, maps, a laptop computer, Canadian passports, airline tickets, and an airline mechanic's certificate valid for New York's JFK, Newark, L.A. International and O'Hare airports. Port officials discovered the man after hearing strange noises coming from the container as he was attempting to enlarge his air holes with a drill. While released on bail, Mr. Rizk disappeared.

Though there has been a proliferation of writing on this topic recently, most focus on only one aspect of the problem or solution, perhaps only discussing the merits of the Proliferation Security Initiative or the inevitability of a maritime terrorist attack. Usually, the papers provide a U.S. or Western perspective of the problems and the initiatives. This paper by no means purports to cover all aspects of the problem, as these are complex and evolving issues, but instead intends to highlight the main points. It is hoped that this paper will link important issues, provide a comprehensive view of perspectives from Southeast Asia, and most importantly raise questions of how best to proceed to secure the seas from terrorist and WMD proliferation threats.

II. The importance of Southeast Asia's maritime realm⁶

Southeast Asia is a geographic region unlike any other in its maritime significance. The waters of Southeast Asia are rich in seafood and hydrocarbons; its seas are some of the most traversed shipping lanes in the world. Not only does the region draw much of its livelihood from the sea, but the world also relies on the resources from and safe passage of vessels through its waters.

With the exception of land-locked Laos, all the countries of the region have significant coastlines. The region is host to the South China Sea, the third largest sea in the world, which, including the Gulf of Thailand and the Gulf of Tonkin, totals 1,091,642 nautical miles of water. If one includes all the enclosed bodies of water in the Southeast Asian region then the total is more than 2.5 million nautical miles.² The 1982 UN Convention on the Law of the Sea (UNCLOS) expanded the definition of territorial waters from 3 nautical miles off the coast to 12, established the 200- nautical mile Exclusive Economic Zone (EEZ), and formulated the rule of jurisdiction over archipelagic waters. As a result of these changes, the seas under Southeast Asian control were greatly extended. Table 1 shows that the water under regional control is larger than that of the region's total landmass.

⁶ In order to simplify the regional focus of this paper, "Southeast Asia" in this context refers to the geo-political boundaries encompassing the countries of ASEAN (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam) and does not refer to countries that may have spheres of influence in the region or its waters.

Table 1. Southeast Asian Nations' Land Area, Coastlines, and Territorial Waters

	Land Area (km ²)	Coastline (km)	Coastline to Area Ratio	EEZ (km ²)	Territorial Water to Land Ratio
Brunei	5,270	185	0.0351	13,149	2.4951
Cambodia	176,520	509	0.0029	30,002	0.1700
Indonesia ^Δ	1,826,440	66,272	0.0363	2,921,160	1.5994
Laos	230,800	0	0	0	0
Malaysia	328,550	5,369	0.0163	256,872	0.7818
Myanmar	657,740	3,513	0.0053	274,096	0.4167
Philippines	298,170	25,882	0.0868	964,336	3.2342
Singapore	682	222	0.3255	185	0.2713
Thailand	511,770	3,697	0.0072	175,384	0.3427
Vietnam	325,360	5,237	0.0161	390,031	1.1988
Total	4,361,302	110,886	0.0254	5,025,215	1.1522

Sources: CIA World Factbook; Joseph R. Morgan and Mark J. Valencia, *Atlas for Marine Policy*, 1983, 4. Morgan and Valencia data converted from square nautical miles to square kilometers for comparison.

^ΔThe coastline and EEZ data are from 1983, therefore the independence of East Timor affects the totals for Indonesia, but not for Southeast Asia once East Timor joins ASEAN.

Singapore is one of the world's 20 "megaports" – those ports that together make up the largest bulk of international maritime trade (65 percent of the container trade into the United States). It ranks as the world's busiest port, the second largest container port, and the third largest in terms of percent of cargo exported to the United States. In 2003 alone, 135,386 vessels called at Singapore's port with a total cargo of more than 347 million tons and a total container throughput of 18 million TEUs.⁷ Singapore is also home to the world's third largest oil refinery industry. Some 17,000 tankers arrived in Singapore in 2003 carrying over 123 million tons of oil.

Singapore is however not the only critical port in Southeast Asia. Of the world's top 25 container ports, 15 are located in East Asia and 6 in Southeast Asia (Table 2). Thailand's Laem Chabang port is also a "megaport," ranking 20th among container ports exporting to the United States in 2002. Though only one of Indonesia's hundreds of ports, Jakarta's Tanjung Priok, ranks in the top 20 of the world's container ports, with 17,000 islands across the archipelago transporting goods to the capital and beyond, the country is important to regional maritime trade. Indonesia is also the world's leading exporter of LNG. Two-thirds of the global LNG trade passes through Southeast Asian seas.⁸

⁷ Maritime and Port Security of Singapore statistics, <http://www.mpa.gov.sg/homepage/portstats.html>. TEU stands for Twenty-foot Equivalent Units, used to express the relative number of containers based on the equivalent length of a 20-foot container.

⁸ Ji Guoxing, "SLOC Security in the Asia Pacific," *Asia-Pacific Center for Security Studies Occasional Paper*, February 2000 <http://www.apcss.org/Publications/Ocasional%20Papers/OPSloc.htm> [6 May 2004].

Table 2. World's Top 25 Container Ports 2002*

Rank	Port	Volume (in million TEUs)
1	Hong Kong	19.14
2	Singapore	16.94
3	Pusan	9.45
4	Shanghai	8.61
5	Kaohsiung (Taiwan)	8.49
6	Shenzhen (China)	7.62
7	Rotterdam	6.52
8	Los Angeles	6.11
9	Hamburg	5.37
10	Antwerp	4.78
11	Port Kelang (Malaysia)	4.53
12	Long Beach	4.53
13	Dubai	4.19
14	New York & New Jersey	3.75
15	Qingdao (China)	3.41
16	Bremen/Bremerhaven	3.03
17	Gioia Tauro	3.01
18	Felixstowe	2.80
19	Tokyo	2.78
20	Tanjung Priok (Jakarta)	2.70
21	Tanjung Pelepas (Malaysia)	2.66
22	Laem Chabang (Thailand)	2.60
23	Manila	2.46
24	Tianjin (China)	2.41
25	Yokohama	2.30

Source: http://www.oocl.com/trade_news/20030715.htm

*Ports in bold are located in Asia, those in italics are in Southeast Asia.

Due to the significance of the region's ports and its fortuitous position at the cross roads of international maritime trade, between Europe and the Middle East and East Asia and North America, the shipping lanes of Southeast Asia are very busy and often congested. The Strait of Malacca, the region's western maritime gateway between the Indian Ocean and the Pacific, is perhaps the world's busiest Strait. Despite its narrow width, more than 600 vessels navigate the Strait on a daily basis, transporting one-quarter of the world's commerce and half the world's oil. More vessels pass through the South China Sea than the Suez and Panama Canals combined. The safety of Southeast Asia's sea lines of communication (SLOC) are essential to East Asia's and indeed the world's extensive seaborne trade.

III. Maritime Terrorism – How Real is the Threat?

This section will address the history and prevalence of maritime terrorism, the existence of terrorist groups in Southeast Asia, the susceptibility of Southeast Asian ports and waters to criminal activity, and the fear of uncontrolled WMD proliferation, which together have raised security concerns over the prospect of maritime-related terrorist attacks.

Maritime Terrorism

Terrorist incidents on the high seas or against maritime interests are neither new nor a prevalent activity, yet the current political-security environment suggests such an attack is both inevitable and imminent. Though a small and consistent group of security experts and policy analysts have warned of the vulnerability of maritime targets to terrorist attacks for more than two decades, concerns over maritime security received only occasional and cursory attention until September 11, 2001.⁹ The infamous 1985 terrorist hijacking of the cruise ship *Achille Lauro* off the coast of Egypt threw a global spotlight on the very real possibility of maritime terrorism. In October of that year, four Palestinian terrorists took control of the *Achille Lauro* and ordered the ship to Syria. When Syria denied access to their port, the hijackers killed one disabled American tourist, Leon Klinghoffer, and threw his body overboard, then headed back to Egypt. The Egyptian government and the PLO then negotiated an end to the hijacking. Though the situation was resolved rather quickly, it focused global attention, at least for a time, on the loopholes in port and ship security.

Following the *Achille Lauro* incident, in November 1986 the governments of Italy, Egypt, and Austria proposed that the UN International Maritime Organization (IMO) create a document of international law regarding such incidents. In 1988 at Rome, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) was adopted. It entered into force in March of 1992, though at the time China was the only Asian nation party to it. Unfortunately, the SUA would be found inadequate in addressing terrorist attacks at sea – clearly demonstrated by Yemen’s accession to the Convention in September 2000, only to be shortly followed by suicide attacks on ships in its waters in October of 2000 and 2002. After the September 11 attacks, the IMO Committee 85th session met in October 2002 to consider expanding Article III to include additional offenses against ships including the use of a ship to transport illegal nuclear weapons or substances or which would turn a ship into a more lethal weapon of mass destruction and other means of maritime terrorism.¹⁰

Even before the *Achille Lauro* sailed into infamy, RAND published a short paper in 1983 chronicling terrorist and criminal activities aimed at maritime targets since 1960 in light

⁹ See Merle MacBain, “Will Terrorism Go to Sea?” *Sea Power* 23, 1 (January 1980), p. 15-24; Brigadier Brian A.H. Parritt, ed., *Violence at Sea: A Review of Terrorism, Acts of War and Piracy, and Countermeasures to Prevent Terrorism* (Paris: ICC Publishing S.A., 1986) and Hugh W. Stevens, “Maritime Security in the United States: Latent Threats and Latent Vulnerabilities,” *Terrorism & Political Violence* 2, 4 (1990): 554-574.

¹⁰ Center for Nonproliferation Studies, “Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation,” *Inventory of International Nonproliferation Organizations and Regimes* <http://cns.miis.edu/pubs/inven/pdfs/maritime.pdf> [30 April 2004].

of the rising number of terrorist incidents worldwide.¹¹ Most, though not all, of the 111 incidents listed in the 23-year period were terrorist in nature. Although the authors noted that 40 percent of the terrorist attacks recorded in the chronology were the work of Cuban exiles, Palestinian groups, and the IRA, they attributed this to the special maritime knowledge and financing of the groups involved. They acknowledged many terrorist groups were unlikely to operate in the maritime arena because of the higher financial costs and tactical knowledge necessary to carry out such activities. However they also recognized some regions possess maritime traditions that may abet the potential maritime terrorist – “groups most likely to operate in the maritime environment in the future will be those who possess specialized explosives and naval skills, and *have emerged from geographic regions where maritime skills are prevalent.*”¹² Nine of the recorded incidents occurred in Southeast Asia.

Nearly 20 years after the *Achille Lauro* incident, maritime terrorism has not represented a popular means of attack, but only the rare incident. Terrorists are far more likely to attack land targets for a number of reasons. First and foremost, besides the additional tactical skills, organization, and funding needed to pull off a maritime attack, there are far more attractive targets for the would-be terrorist on land than are to be found at sea or in ports. Second, the variety of targets found on land is greater – i.e., government and military installations, areas of mass congregation for civilians such as hotels, malls, restaurants, and business and economic centers, or transport and utility targets such as airports, power facilities, trains, etc. Also, the sheer numbers of possible targets on land makes it far more difficult to adequately secure them all from attack.¹³ Additionally terrorists generally seek media attention for their cause and the coverage of such attacks is greater on land.¹⁴ It is far easier and less conspicuous to drive a truck (full of explosives), enter a school, restaurant, or place of worship (carrying concealed weapons) than it is to board a ship at sea or stroll into a port or shipyard.

Still, despite the sound logic indicating that maritime terrorism is less likely than other arenas for terrorism, it cannot be discounted either. There are indications of an increase in terrorist attacks and planned attacks on maritime targets since September 11.¹⁵ Terrorist organizations may opt to chance seaborne targets for numerous reasons.¹⁶ One reason is the novelty of the attack. As few terrorists attempt marine-based attacks, a particularly spectacular strike against such a target would receive greater media attention. The unfamiliar milieu also provides terrorist organizations an opportunity to develop new methods of assault. Second, the link between maritime targets and global commerce offers an attempt to disrupt not only national economic affairs but to adversely influence international trade. Therefore such targets have the potential to affect a far wider audience. Finally given the

¹¹ Brian Michael Jenkins et al., *A Chronology of Terrorist Attacks and Other Criminal Actions Against Maritime Targets* (Santa Monica, CA: RAND Corporation, September 1983).

¹² Jenkins et al., *A Chronology of Terrorist Attacks*, p. 4. [my italics]

¹³ Jeffrey D. Simon, *The Implications of the Achille Lauro Hijacking for the Maritime Community* (Santa Monica, CA: RAND Corporation, August 1986), p. 4.

¹⁴ Paul Wilkinson, “Terrorism and the Maritime Environment,” in *Violence at Sea: A Review of Terrorism, Acts of War and Piracy, and Countermeasures to Prevent Terrorism*, ed. Brigadier Brian A.H. Parritt, p. 34.

¹⁵ Campbell and Gunaratna, “Maritime Terrorism, Piracy and Crime,” pp. 77-80.

¹⁶ Simon, *The Implications of the Achille Lauro*, p. 5-6.

potential for one strategically sunk ship to severely impede international commerce, the maritime environment may also serve as an attractive domain for very symbolic victories for terrorists.

Despite the few attacks on maritime targets thus far, since September 11 the possibility that al-Qaeda will turn to maritime terrorism has become a focus, if not a fascination, of numerous news reports and policy research.¹⁷ The organization reportedly possesses as many as 15 cargo ships that could be used to launch a maritime attack. Al-Qaeda has shown it will hit maritime targets, with the strikes against the *USS Cole* in October 2000 and the French oil tanker *Limburg* in October 2002, both off the Yemen coast, proving the point. Al-Qaeda is both a well-organized and well-financed international network. It has established a reputation for novel targets and methods in addition to well-coordinated simultaneous attacks. As demonstrated below, al-Qaeda has also developed a partnership of sorts with regional terrorist groups working in a traditionally maritime region.

Regional Terrorists

Following the September 11 attacks, the Middle East (and Afghanistan) and Southeast Asia became focal points in the U.S.-led “War on Terror.” Due to its political instability and large Muslim population, Southeast Asia came to be known as the “Second Front” in the effort to stamp out terrorism. The region’s many homegrown and active terrorist organizations, some with alleged connections to al-Qaeda, and Muslim separatist groups, became natural targets for U.S. and national counterterrorism schemes. There has been increasing regional and international concern over the rise in radical and fundamentalist Islam in maritime Southeast Asia.

Indonesia represents the greatest potential risk in the region – both the world’s largest archipelago and home to the largest Islamic population of any country. Though most of Indonesia’s Muslims are moderate, there are pockets of extremism, a growing fundamentalist movement, and several organized Islamic-based terrorist groups working in the country. The most well known of these groups are the Laskar Jihad and Jemaah Islamiyah (JI). Laskar Jihad, founded in 2000, is predominantly active in violent attacks on Christians in the northeastern islands of the Moluccas and Sulawesi. The group’s leader Jafar Umar Thalib readily admits connections to the Kumpulan Mujahidin Malaysia group, but asserts he rejected a 2001 al-Qaeda offer to join the cause.¹⁸ Despite the seemingly localized focus of Laskar Jihad, Jones et al notes that the idea of national borders is anathema to Islamic

¹⁷ Peter Grier and Faye Bowers, “How al-Qaeda Might Strike at Sea,” *Christian Science Monitor*, 15 May 2003 <http://www.csmonitor.com/2003/0515/p02s02-usgn.html> [12 May 2004]; Ben English, Ian Gallagher and Jef Sommerfield, “Al-Qaeda Targeting Ocean Liners,” *Fox News*, 30 December 2003 <http://www.foxnews.com/story/0,2933,106814,00.html> [12 May 2004]; “Experts: al-Qaeda Maritime Threat Growing,” *Reuters*, 18 February 2004; Campbell and Gunaratna, “Maritime Terrorism, Piracy and Crime,” pp. 70-88; Michael Richardson, *A Time Bomb for Global Trade: Maritime-related Terrorism in an Age of Weapons of Mass Destruction* (Singapore: Institute of Southeast Asian Studies, 2004).

¹⁸ See Reyko Huang, “In the Spotlight: Laskar Jihad,” *Center for Defense Information Terrorism Project* <http://www.cdi.org/terrorism/laskar.cfm> [12 May 2004].

teachings and the use of “jihad” indicates a collective and not geographic concept.¹⁹ Therefore Laskar Jihad remains a suspect group.

Ji however represents a far greater threat both within and outside of Indonesia because of its resourcefulness in orchestrating attacks and its regional and international terrorist connections. Ji has been linked to the 2000 Christmas Eve bombings of churches in several cities throughout the archipelago. Higher profile bombings of Western interests in Indonesia have followed including the October 2002 bombing of a Bali nightclub which killed 202, mostly Australians, a bomb explosion at the Jakarta airport in April 2003, and the August 2003 bombing outside a Marriott hotel in Jakarta that killed 12. Intelligence has uncovered numerous connections between Ji and al-Qaeda, including training, financial links, and top-level personnel connections.²⁰ There are suspected Ji cells operating throughout the region. The Philippines, Cambodia, and Thailand have arrested suspected Ji members in their countries. Ji’s maritime capability is in dispute.²¹

Finally, there is also the separatist group Gerakan Aceh Merdeka (GAM) or the Free Aceh Movement working out of the northernmost Indonesian province of Aceh. Another long-standing secessionist movement, the Acehnese have been fighting a protracted war with Indonesian security forces for decades. The province of Aceh is strategically poised at the mouth of the Strait of Malacca, and GAM operatives have been accused of hijacking and ransoming vessels and crew with the aim of funding their cause.

The Philippines is a second country of concern. For centuries there has been a Moro (Philippine word for Muslim) movement to establish an independent Islamic state on the southern island of Mindanao. The primary groups are the Moro National Liberation Front (MNLF), the Moro Islamic Liberation Front (MILF) and the Abu Sayyaf. Both the MILF and Abu Sayyaf have received training and financial support from al-Qaeda.²² The MILF was officially set up in 1984 as a splinter group of the more secular MNLF. For much of the ‘70s, ‘80s and early ‘90s the MNLF and MILF were very active in terrorist activities such as bombings and kidnappings and both organizations have been linked to several attacks on maritime vessels.²³ While the MNLF and MILF have effectively signed a peace agreement with the Philippine government, another more radical splinter group, the Abu Sayyaf, has emerged as an even greater threat in recent years. Since it’s founding in 1991, the Abu Sayyaf have embarked on a campaign of extensive terror, though activities have escalated

¹⁹ David Martin Jones et al., “Looking for the Pattern: al-Qaeda in Southeast Asia- The Genealogy of a Terror Network,” *Studies in Conflict & Terrorism* 26 (2003), p. 457, supranote 75.

²⁰ Jones et al., “Looking for the Pattern: al-Qaeda in Southeast Asia,” p. 449-450.

²¹ Although Singaporean officials allege Ji operatives were conducting surveillance of the port facilities at Changi, this does not indicate intent or capability to carry out an attack. In personal communication with a regional expert on maritime security in May of 2004, I was told Ji had no maritime capability at present.

²² Larry Niksch, “Abu Sayyaf: Target of Philippine-U.S. Anti-Terrorism Cooperation,” *CRS Report for Congress* <http://www.fas.or/irp/crs/RL31265.pdf> [10 May 2004], p. 4; Jones et al., “Looking for the Pattern: al-Qaeda in Southeast Asia,” p. 446.

²³ For instance in September 1975 30 Muslim rebels attacked the Japanese vessel *Suehiro Maru* in Zamboanga; in July 1981 the *Illana Bay I* was hijacked and the master killed; in 1982 the MNLF placed an explosive aboard the ferry *Santa Lucia* and two people were killed and fifty injured, in Jenkins et al., *A Chronology of Terrorist Attacks*. In February 2000 the MILF is alleged to have perpetrated the explosion of two passenger buses aboard a Mindanao ferry.

since 2000. In that year, the Abu Sayyaf, using speedboats, kidnapped 21 tourists from a Malaysian resort on the island of Borneo. The following year the group kidnapped 20 persons, again taken by speedboats, from a resort on the western Filipino island of Palawan. One of the hostages, an American, was later beheaded. Although in early 2002 U.S. forces joined the Armed Forces of the Philippines in an effort to eradicate the group, they continue to represent a viable threat. In February 2004, Abu Sayyaf claimed responsibility for an explosion on a passenger ferry killing 100 people. In 2004 Philippine authorities uncovered active terrorist cells of the Indonesian-based JI in the country and discovered a money trail leading to al-Qaeda.²⁴

Though Thailand is a predominantly Buddhist country, some 5 percent of the country follows Islam, with the majority of those followers residing in the five southern provinces (Yala, Pattani, Songkhla, Narathiwat, and Satun) bordering Malaysia. Like many other areas of religious minorities, the Muslims of Thailand have been waging an armed separatist struggle for many years. The principal organizations active in Southern Thailand are the PULO and the new PULO (Pattani United Liberation Organization), with the armed wing called the PULA or Pattani United Liberation Army.²⁵ The two groups integrated in 1997 under the title “Bersatu” (Solidarity). Though the decades of the ‘60s and ‘80s, the groups conducted sporadic violent activities, by the late ‘90s there was some cause for hope the situation would be resolved. However, the year 2004 has seen a major escalation in the violence in the area, resulting in more than 120 deaths by the end of April. Though militants and security forces make up most of the casualties, public threats aimed at foreigners in the area have heightened the possibility the conflict could take on greater dimensions.

Malaysia and Singapore are linked into the regional and international terrorist networks by way of several groups, most notably the Kumpulan Mujahidin Malaysia (KMM) and JI cells. Abu Bakar Bashir and Riduan bin Isomoddin, known better as Hambali, established the frontrunner to KMM in the 1980s when they were both in Malaysia.²⁶ In January 2002, both Singapore and Malaysia arrested dozens of suspected Islamic militants. In late 2002 it was uncovered that JI had conducted covert surveillance activities with the intention to launch attacks at several vital targets in Singapore, including oil refinery facilities on Jurong Island and a US vessel at the Changi Naval Base.²⁷

Piracy and Terrorism?

One statistic often used to underscore the probability of a maritime terrorist attack in Southeast Asia is the increasing prevalence and violence of piracy and armed robbery at sea in the region. In 1991 there were 107 reported pirate attacks and attempted attacks

²⁴ Richard C. Paddock, “Al Qaeda Funds Used in Philippines,” *LA Times*, 7 May 2004 http://www.latimes.com/news/printedition/asection/la-fg-terror7may07,1,912155.story?coll=la-news-a_section [10 May 2004]; ABC News Online, “Philippines Arrests Four Alleged JI Operatives,” 25 April 2004 <http://www.abc.net.au/news/newsitems/s1094503.htm> [10 May 2004].

²⁵ Peter Chalk, “Separatism and Southeast Asia: The Islamic Factor in Southern Thailand, Mindanao, and Aceh,” *Studies in Conflict & Terrorism* 24 (2001): 243-244.

²⁶ Jones et al., “Looking for the Pattern: al-Qaeda in Southeast Asia,” p. 449.

²⁷ “Singapore and Their Targets,” *Straits Times*, 19 September 2002.

worldwide, with 88 of those in Southeast Asian waters.²⁸ For the year 2003 there were a total of 445 reported attacks worldwide. Of those, 187 occurred in Southeast Asian waters, representing 42 percent of total attacks.²⁹ Since pirate attacks are notoriously underreported due to the time and money consumed by lengthy investigations, the problem of security on the seas is greater than it appears. The majority of the Southeast Asian attacks were reported in Indonesia, which saw a rising number of attacks with 103 in 2002 and 121 in 2003. If there is concern that Indonesia's terrorists might take to the seas, then this rise in attacks is a worrying statistic. Because the majority of pirate attacks occur in the region of traditional "maritime Southeast Asia" encompassing the archipelagic nations of Indonesia and the Philippines and the peninsular countries of Singapore, Malaysia, and southern Thailand, and these countries are also home to local terrorist groups of great concern (and Islamic ones at that), it is not surprising that terrorism and piracy are easily linked.

Since the September 11 attacks, media accounts portraying a close association between Southeast Asia's pirates and terrorists have increased both locally and around the world. There have even been news stories of terrorists posing as pirates and hijacking ships for the purpose of training for a maritime strike.³⁰ Despite this propensity to associate high levels of piracy with a high probability of maritime terrorism, the two phenomena are not interchangeable. Pirates and terrorists have notably different motives.³¹ In general, piracy is committed for financial gain while terrorism (maritime or otherwise) is perpetrated for political objectives. Indeed under international law the two crimes are identified and dealt with differently.³² One way around this predicament is to do what Singapore's Home Affairs Minister did and to label all pirates as terrorists.³³ Though measures to reduce sea piracy will most probably have little or no effect in discouraging terrorist strikes against maritime targets, the very existence of piracy and armed robbery at sea exposes a vulnerability that could be easily exploited by terrorists.

An interesting academic debate over what constitutes an act of piracy has been whether attacks are those which only occur on the high seas, as in the traditional definition imposed by UNCLOS (though in 2001 the IMO expanded the definition to include attacks in territorial waters), or if attacks to vessels in port are also included, as they are in the definition employed by the International Maritime Bureau. In 2002, 95 of the 123 actual reported attacks for Southeast Asia occurred in ports, representing 77 percent of attacks. In 2003, piracy in regional ports represented 50 percent of actual reported attacks. Of the 27 anchorages worldwide with three or more reported piratical incidents in 2003, 10 were in Southeast Asia - Indonesia, Vietnam and the Philippines, yet not all the same ports as the

²⁸ ICC-International Maritime Bureau, *Piracy and Armed Robbery Against Ships Annual Report 2002* (Essex: ICC-IMB, 2003), p. 5.

²⁹ ICC-International Maritime Bureau, *Piracy and Armed Robbery Against Ships Annual Report 2003* (Essex: ICC-IMB, 2004), p. 5.

³⁰ "Peril on the Sea," *Economist*, 14 October 2003, pp. 57-58; Donald Urquhart, "Rise in Crew Kidnappings May Signal Terror Training," *Business Times Singapore*, 24 March 2004.

³¹ See Adam J. Young and Mark J. Valencia, "Conflation of Piracy and Terrorism in Southeast Asia: Rectitude and Utility," *Contemporary Southeast Asia* 25, 2 (2003), pp. 269-283.

³² H.E. Jose Luis Jesus, "Protection of Foreign Ships against Piracy and Terrorism at Sea: Legal Aspects," *International Journal of Marine and Coastal Law* 18, 3 (2003), pp. 363-400.

³³ ICC-International Maritime Bureau, *Annual Report 2003*, p. 24.

year before. Many of the Southeast Asian ports with high numbers of attacks in 2002 experienced a drop in 2003, but ports with no attacks at all in 2002 experienced several attacks in 2003, such as Haiphong in Vietnam and Manila in the Philippines. These statistics show that regardless of whether one considers piracy that which occurs in any maritime realm, including harbors, or only at sea, ports in Southeast Asia are susceptible to criminal activity. The statistics also reveal an ability on the part of pirates to adapt to port security measures.

This is not the first time Southeast Asian pirates have exhibited a capability to adapt to increased security patrols in a particular area. In 1992, when ASEAN countries declared a regional strengthening of security cooperation, Singapore, Indonesia, and Malaysia agreed to coordinated patrols in the Strait of Malacca. From 1992 to 1993, piracy attacks in the national waters of Southeast Asia dropped from 63 to just 16. However in that same time period, pirate attacks *increased* in the Far East and the South China Sea from 7 to 69! The pirates had simply moved to areas of less surveillance. As cooperation waned between the littoral states, the pirates returned the following year.

The Proliferation Angle

The dual threats of terrorism and proliferation were linked in President Bush's 2002 State of the Union address when he stated the two primary objectives of the U.S. were to "first shut down terrorist camps, disrupt terrorist plans and bring terrorists to justice. And second, [to] prevent the terrorists and regimes who seek chemical, biological or nuclear weapons from threatening the United States and the world." Later that year the U.S. *National Security Strategy* reflected the same relationship between terrorism and WMD.³⁴ Bush further reiterated this connection in his landmark February 2004 speech at the National Defense University.³⁵ Therefore in addition to the threat of general terrorist acts against the maritime transport sector, there is concern that terrorists might exploit the insecurity of the shipping trade and ports to illegally acquire, transport, or detonate weapons of mass destruction (WMD) and/or related materials. The probability of a WMD terrorist attack against a maritime target, though low, would be of such devastating consequences it cannot

³⁴ See Part III entitled "Strengthen Alliances to Defeat Global Terrorism and Work to Prevent Attacks against Us and Our Friends" whereby methods with which terrorist organizations will be destroyed include "direct and continuous action using all the elements of national and international power. Our immediate focus will be those terrorist organizations of global reach and any terrorist or state sponsor of terrorism which attempts to gain or use weapons of mass destruction (WMD) or their precursors," and Part V entitled "Prevent Our Enemies from Threatening Us, Our Allies, and Our Friends with Weapons of Mass Destruction."
<http://www.whitehouse.gov/nsc/nss.html>.

³⁵ "More nations have nuclear weapons and still more have nuclear aspirations. Many have chemical and biological weapons... And a number of these countries are spreading these technologies around the world. Most troubling of all, the list of these countries includes some of the world's least-responsible states. Unlike the Cold War, today's most urgent threat stems not from thousands of ballistic missiles in the Soviet hands, but from a small number of missiles in the hands of these states, states for whom terror and blackmail are a way of life. They seek weapons of mass destruction to intimidate their neighbors, and to keep the United States and other responsible nations from helping allies and friends in strategic parts of the world."
<http://www.whitehouse.gov/news/releases/2001/05/20010501-10.html>.

be ignored.³⁶ Despite ASEAN's commitments to renounce nuclear weapons in the 1971 Zone of Peace, Freedom and Neutrality (ZOPFAN) and 1995 Southeast Asia Nuclear Free Zone (SEANWFZ), the October 2003 discovery of Malaysia's alleged connections to WMD shed additional light on the problem of and possible linkages between WMD proliferation, terrorism, and maritime security in Southeast Asia.³⁷

Assessment

The mixture of local terrorist groups, the prevalence of piracy and armed robbery in the seas and ports, and the importance of the regional maritime environment to international trade, coupled with the fear of al-Qaeda's connections makes the Southeast Asia region a great international concern. Whether the probability of a maritime terrorist attack is high or low, the United States, or any country, can ill-afford to be unprepared for a devastating marine-based attack on par with that of the World Trade Towers in New York City. There is concern that stricter security measures protecting land- and air- based facilities will compel terrorists to turn toward the more vulnerable shipping targets – more difficult to attack, yet also much more difficult to defend. Can any government in this security-charged milieu hope to politically survive if it is seen as lenient or less than committed to upgrading the protection of such a vitally important industry or of safeguarding the security of those who might be harmed in the event of an attack? The estimated economic costs of such an attack are astounding.³⁸ It is time the maritime transport sector receives the security attention it deserves, and yet there is the danger of spending too much time in one particular part of the sector - ports. As the trend in pirate attacks has shown, attacks in ports have decreased while the overall number of attacks has increased. Pirates are adapting to elevated port security measures and moving operations out to sea. Regardless of whether any connection exists between pirates and terrorists in the region, this trend reveals a vulnerability that could be exploited.

IV. The Maritime Security Initiatives

In the aftermath of the September 11 attacks, it became clear that airports, which had been the focus of increasing security measures over the years, were still extremely vulnerable to terrorists. If airports were so exposed to terrorist infiltration, then this placed the far more neglected international port and shipping system at a terrible disadvantage. As a result, the United States on its own and through the United Nations pushed for the introduction of several schemes to safeguard ports, cargo, and shipping from terrorism. Below is a summary

³⁶ Jonathan Medalia, "Terrorist Nuclear Attacks on Seaports: Threat and Response," *CRS Report for Congress* <http://www.fas.org/irp/crs/RS21293.pdf> [14 May 2004].

³⁷ Sheldon Simon, "A WMD Discovery in Malaysia and Counter-Terrorism Concerns in the Rest of Southeast Asia," *Comparative Connections* 1st Quarter 2004 http://www.csis.org/pacfor/cc/0401Qus_asean.html [6 May 2004].

³⁸ Based on projections surrounding the closure of U.S. west coast ports in October of 2002, a lower limit of potential costs to the *United States alone* in the event of a maritime terrorist attack against U.S. interests is estimated at approximately \$466.9 million for 10 days. Another study revealed an upper potential cost of \$58 billion. OECD Maritime Transport Committee, *Security in Maritime Transport*, p. 18-19.

of the three main initiatives, though there are many more.³⁹ Each is put forward by a different organization and focuses on separate aspects of shipping security, but they all aim to rapidly increase the security of the global maritime transport system against terrorist acts.

The Proliferation Security Initiative

Probably the best known and controversial of the three initiatives introduced here, the Proliferation Security Initiative (PSI) most directly ties together concerns over counterproliferation and counterterrorism. Hints at the formation of the initiative first emerged in the U.S. government's December 2002 document *National Strategy to Combat Weapons of Mass Destruction*, in which counterproliferation strategies were highlighted over those of nonproliferation.⁴⁰ This followed closely on the heels of a December 2002 incident in the Indian Ocean, in which Spanish forces acting on U.S. information stopped a North Korean ship transporting missiles and warheads to Yemen.⁴¹ The ship and cargo were released to continue to their destination according to international law. Many countries felt this a dangerous loophole in maritime law and on May 31, 2003 the United States in concert with 10 coalition partners⁴² officially launched the PSI.

The PSI is an exercise in supplementing the right to self-defense under international law; pre-empting nuclear terrorist attacks. The basis of the PSI lies in the principle of interdiction, the ability for the U.S. and other member states to stop and search ships, aircraft, and other means of transport suspected of illegally carrying or transporting WMD, delivery systems, and related technology. The U.S. has emphasized the initiative is neither an organization nor a rule of law, but an open-ended coalition of willing partners. PSI participants agree to the following abbreviated interdiction principles:⁴³

- 1) To undertake effective measures, either alone or in concert with other states, for interdicting the transfer or transport of WMD, their delivery systems, and related materials to and from states and non-state actors of proliferation concern.
- 2) To adopt streamlined procedures for rapid exchange of relevant information concerning suspected proliferation activity.
- 3) To review and work to strengthen their relevant national legal authorities where necessary to accomplish these objectives, and work to strengthen when necessary

³⁹ Some of the other measures include: The U.S. Maritime Transportation Security Act of 2002; the 96-hour Advance Notification of Arrival for ships arriving to U.S. ports; new crew seafarer visa requirements where before crews of foreign vessels visiting the United States were provided blanket visas each now has to individually apply for a U.S. visa in order to leave ships in U.S. ports; U.S. 24-hour advance manifest rule requiring submission of cargo declaration before cargo is loaded on a ship bound for the U.S.; the U.S. Customs-Trade Partnership against Terrorism (C-TPT); new provisions to the ILO Seafarer's Identity Documents Convention; additional protocols to the 1974 IMO Safety of Life at Sea (SOLAS) Convention.

⁴⁰ IISS, "The Proliferation Security Initiative: An Interdiction Strategy," *Strategic Comments* 9, 6 (2003) <http://www.iiss.org/stratcomfree.php?scID=282> [3 April 2004].

⁴¹ Benjamin Friedman, "The Proliferation Security Initiative: The Legal Challenge," *The DPRK Briefing Book* September 2003 http://www.nautilus.org/DPRKBriefingBook/terrorism/PSI_brief.html [26 March 2004].

⁴² Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, and the United Kingdom.

⁴³ *Proliferation Security Initiative: Statement of Interdiction Principles* <http://www.whitehouse.gov/news/releases/2003/09/print/20030904-11.html>.

relevant international laws and frameworks in appropriate ways to support these commitments.

- 4) To take specific actions in support of interdiction efforts such as:
 - a) Not to transport or assist in the transport of any such cargoes to or from states or non-state actors of proliferation concern.
 - b) At their own initiative, or at the request and good cause shown by another state, to take action to board and search any vessel flying their flag in their internal waters or territorial seas, or areas beyond the territorial seas of any other state, that is reasonably suspected of transporting such cargoes and to seize such cargoes.
 - c) To seriously consider providing consent under the appropriate circumstances to the boarding and searching of its own flag vessels by other states.
 - d) To take appropriate actions to stop and search in their internal waters, territorial seas, or contiguous zones and enforce conditions on vessels entering or leaving their ports, internal waters or territorial seas.
 - e) At their own initiative, or at the request and good cause shown by another state to search and seize suspected cargoes on airplanes flying through one's airspace.
 - f) If ports, airfields or facilities are used as transshipment points for shipment of such cargo, to seize such cargoes that are identified.

Additionally, member states agree to meet on a regular basis in order to facilitate cooperation and information sharing and to take part in multilateral land, air and sea interdiction training exercises.

With the addition of Canada, Singapore, Norway, Denmark, and Turkey in December 2003, the Czech Republic announcing its intention to join in April 2004, and Russia on May 31, 2004, the PSI membership currently stands at 18. Additionally some 60 other countries have agreed to cooperate with member nations in interdiction strategies. To date, the participants have held seven plenary sessions and training exercises, including 5 that were maritime based.⁴⁴ The PSI faces many challenges – not least allegations that it interferes with the principles of freedom of navigation and innocent passage codified in UNCLOS. Although PSI proponents assert the initiative is an *activity* and not an organization, some government officials, lawyers, and policy makers in both the U.S. and abroad question its legality. Even with the passing of UN Security Council Resolution 1540, which appears to sanction PSI efforts, some still fear the initiative represents merely another U.S.-led circumnavigation of international law.

The Container Security Initiative

In January 2002, the commissioner of the U.S. Customs and Border Protection (CBP) agency announced the formation of the CSI aimed at tightening the security of the hundreds

⁴⁴ The Australian-led 'Pacific Protector' was held in the Coral Sea in September 2003; the Spanish-led 'Sanso' exercise in the Mediterranean in October 2003; a French-led exercise in the Mediterranean in November 2003; 'Sea Saber' was held in the Arabian Sea in January 2004; and the Italian-led 'Clever Sentinel' occurred in April 2004.

of thousands of containers that enter U.S. ports each year. The CSI consists of four main elements:

- 1) using intelligence and automated information to identify and target containers that pose a risk for terrorism
- 2) pre-screening those containers that pose a risk at the port of departure before they arrive at U.S. ports
- 3) using detection technology to quickly pre-screen containers that pose a risk
- 4) using smarter, tamper-evident containers

The CSI works by stationing U.S. CBP officers in foreign ports to work with host nation counterparts to target and screen all containers that pose a potential threat. The stationing of U.S. officers in the member nations is actually one of the primary concerns of other countries toward the CSI. Also, in its present form, the CSI appears only unidirectional, screening only cargo intended for U.S. ports. Though under the CSI both Japan and Canada also have customs personnel stationed in the United States, when or how other CSI-participating countries will be offered this reciprocity is still under consideration.

The initiative, though voluntary, was initially aimed at the top 20 megaports shipping containers to the U.S. Following the accession of the majority of those ports to the initiative, the U.S. opened participation to any country that wished to join. There are however eligibility requirements for nations to join the CSI:⁴⁵

- 1) The Customs Administration must be able to inspect cargo originating, transiting, exiting, or being transhipped through a country
- 2) Non-intrusive inspectional (NII) equipment and radiation detection equipment must be available and utilized for conducting such inspections
- 3) The seaport must have regular, direct, and substantial container traffic to ports in the United States
- 4) Commit to establishing a risk management system to identify potentially high-risk containers, and automating that system. This system should include a mechanism for validating threat assessments and targeting decisions and identifying best practices
- 5) Commit to sharing critical data, intelligence, and risk management information with the United States Customs Service in order to do collaborative targeting, and developing an automated mechanism for these exchanges
- 6) Conduct a thorough port assessment to ascertain vulnerable links in a port's infrastructure and commit to resolving those vulnerabilities
- 7) Commit to maintaining integrity programs to prevent lapses in employee integrity and to identify and combat breaches of integrity

As of March 2004, 38 ports in 18 countries had agreed to participate in the CSI and are currently in various stages of implementation.⁴⁶

⁴⁵ Container Security Initiative Fact Sheet, March 8, 2004 <http://www.cbp.gov>.

⁴⁶ Operational ports: Halifax, Montreal, & Vancouver in Canada (03/02); Rotterdam, Netherlands (09/02/02); Le Havre, France (12/02/02); Bremerhaven, Germany (02/02/03); Hamburg, Germany (02/09/03); Antwerp,

The International Ship and Port Facility Security Code

Unlike the PSI and CSI, the ISPS is not a U.S. program, but is promoted through the UN's International Maritime Organization, though there has been considerable U.S. pressure on the IMO to implement these measures. In December 2002, after nearly a year of committee and working group meetings, the IMO convened a Diplomatic Conference to introduce its new maritime safety procedures.⁴⁷ These included several amendments to the 1974 UN Safety of Life at Sea Convention (SOLAS) and the introduction of new ISPS Code. The ISPS Code is divided into two parts, Part A, which encompasses a mandatory set of requirements and supports the new Chapter XI-2 "Special Measures to Enhance Maritime Security" of the SOLAS, and a voluntary Part B, which is a series of guidelines on how to meet the requirements. The purpose of the Code is to provide a standardized framework to assess security risks to ships and ports and to systematically reduce vulnerabilities.

The ISPS Code identifies three security levels. Security Level 1 corresponds to the normal level or the minimum appropriate protective security measures to be maintained. Security Level 2 equates to a medium degree of security risk and the corresponding security measures to be maintained. Security Level 3 indicates the highest level of concern when a security incident is probable or imminent, even if the specific target cannot be determined.⁴⁸ Contracting governments agree to set appropriate security threat levels for ships and ports, with the goal to operate at Security Level 1 at all times.

The process begins with a risk assessment exercise by contracting parties to 1) identify and evaluate important assets and infrastructures that are critical to the port facility as well as those areas or structures that, if damaged, could cause significant loss of life or damage to the port facility's economy or environment, 2) identify the threats to those critical assets and infrastructure in order to prioritize security measures, 3) address vulnerability of the port facility by identifying weaknesses in physical security, structural integrity, protection systems, procedural policies, communication systems, transportation infrastructure, utilities, and other areas that may be targeted.⁴⁹

Thereafter, contracting parties, in order to receive ISPS Code certification by the IMO must meet a number of minimum-security requirements for shipping companies, vessels, port facilities, and contracting governments. For ships the requirements include ship security plans, ship security officers, company security officers, and certain onboard equipment. Port facility requirements include port facility security plans, port facility security officers, and

Belgium (02/32/03); Singapore (03/10/03); Yokohama, Japan (03/24/03); Hong Kong (05/05/03); Gothenberg, Sweden (05/23/03); Felixstowe, United Kingdom (05/24/03); Genoa, Italy (06/16/03); LaSpezia, Italy (06/23/03); Busan, Korea (08/04/04); Durban, South Africa (02/02/03); Port Kelang, Malaysia (03/08/04).

⁴⁷ For a look at the measures adopted at the conference see: "IMO Adopts Comprehensive Maritime Security Measures," http://www.imo.org/Newsroom/mainframe.asp?topic_id=583&doc_id=2689. Additional sources for ISPS information include: Peter Heathcote, "New Measures for Maritime Security Aboard Ships and in Port Facilities," <http://www.spc.int/Maritime/documents/New%20measures%20for%20maritime%20security.pdf> [30 April 2004]; Hartmut G. Hesse, "Maritime Security in a Multilateral Context: IMO Activities to Enhance Maritime Security," *International Journal of Marine and Coastal Law* 18, no. 3 (2003), pp. 327-339.

⁴⁸ Heathcote, "New Measures for Maritime Security".

⁴⁹ "IMO Adopts Comprehensive Maritime Security Measures."

certain security equipment in place. Additionally requirements for both ships and ports include monitoring and controlling access, monitoring the activities of people and cargo, and ensuring security communications are readily available. Once certified, ships will have to carry the International Ship Security Certificate indicating their compliance with the SOLAS and ISPS mandatory measures. Contracting governments should designate a Recognized Security Organization to carry out port facility securitization.

It is important to note that the ISPS Code applies only to passenger ships and cargo ships of 500 tons or more, engaged in international voyages and the port facilities that serve such vessels, and not all sea-going vessels. Concerns over the ISPS implementation surround the necessary extensive personnel training, technology use, and inter-agency cooperation. As of early June just 18.25 percent of ships and 9.9 percent of port facilities have met the new regulations, with only Singapore and India fully compliant in their fleets and port terminals.⁵⁰ The Code went into effect July 1, 2004.

V. Regional Response and Impact

Since the September 11 attacks, Southeast Asia has actively assisted the U.S. in its war on terror. Indonesian President Megawati Sukarnoputri was the first head of state to visit the U.S. following the attacks. Philippine President Gloria Macapagal-Arroyo also quickly threw her weight behind the U.S. cause, even inviting the U.S. to provide support and training to Philippine forces fighting the Abu Sayyaf in Mindanao. Singapore, Malaysia, and Thailand have also received praise for their national measures to tackle terrorism. In July 2003, the Bush administration's proposed Southeast Asia Regional Centre for Counter-Terrorism (SEARCCT) opened in Malaysia's capital of Kuala Lumpur.

In addition to national cooperation between Southeast Asian nations and the United States on terrorism, ASEAN has also been promoting intra-regional and ASEAN-U.S. cooperation on the issue. There have been no less than 15 organization statements involving regional counterterrorism efforts since November 2001.⁵¹ These include the November 2001 ASEAN Declaration on Joint Action to Counter Terrorism, the August 2002 ASEAN-United States of America Joint Declaration for Cooperation to Combat International Terrorism, and the January 2004 Joint Communiqué of the First ASEAN Plus Three Ministerial Meeting on Transnational Crime. These involve a myriad of measures to combat terrorism in the region, from freezing terrorist assets, strengthening links between law enforcement agencies, and providing training and improving institutional capacity for authorities dealing with transnational crimes.

Maritime security considerations have also increasingly garnered ASEAN's attention. Southeast Asian think tanks helped establish the track-two Council for Security Cooperation in the Asia-Pacific (CSCAP) in 1994, and its Maritime Cooperation Working Group has been one of the most prolific and successful of the CSCAP endeavors. ASEAN's 1997 Declaration on Transnational Crime was the first organizational document to identify sea piracy as a problem for regional concern and attention. The 2002 ASEAN-China Declaration

⁵⁰ Jane Porter, "Mitropoulos Nails Nations on ISPS Code Delays," *Lloyd's List* 8 June 2004.

⁵¹ See ASEAN Secretariat website, <http://www.aseansec.org/13844.htm>.

on the Code of Conduct in the South China Sea also drew attention to solving maritime territorial disputes and possible cooperation in reducing maritime transnational crimes in the South China Sea through multilateral channels. In June 2003 the 10th ASEAN Regional Forum (ARF) meeting in Phnom Penh released a statement on Cooperation Against Piracy and Other Threats to Maritime Security.⁵² The October 2003 9th ASEAN Summit in Bali produced an unprecedented document on regional security cooperation, the ASEAN Concord II, indicating the intention of the member states to form a Security Community.⁵³ What is striking about the document is how central the maritime environment has become to thinking about regional security. The Declaration states ASEAN should “nurture common values” on issues of common concern, of which maritime security cooperation is listed as a primary one. Maritime security is further highlighted in the fifth point of the section on measures to adopt: “Maritime issues and concerns are transboundary in nature, and therefore shall be addressed regionally in holistic, integrated and comprehensive manner. Maritime cooperation between and among ASEAN member countries shall contribute to the evolution of the ASEAN Security Community.”

There have been other progressive moves in the maritime arena. In 1995 Vietnam established a Coast Guard, and in 2003 Indonesia announced a reorganization of its navy to improve efficiency. Vietnam also joined the 1988 UN Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) in late 2002, 10 years after the agreement came into force. It had seemed that other ASEAN countries were reluctant to become party to such an internationally binding agreement. However, following the 9th ASEAN Summit many seemed to undergo a change of heart, and in quick succession four additional ASEAN nations joined the SUA. This brought the total to half of ASEAN’s members: Myanmar in December 2003, Brunei in March 2004, the Philippines in April 2004 and Singapore in May 2004. A Cambodian official has indicated that after the current parliamentary turmoil in the country settles, Cambodia is likely to join the SUA next year.⁵⁴ There has also been increasing cooperation between Southeast Asian and other regional navies. The Malaysian Institute for Maritime Affairs (MIMA) and the Royal Malaysian Navy began a series of workshops on Prevention of Incidents at Sea (INCSEA) in 1997, which has come to include naval leaders from Indonesia, Thailand, Singapore, Cambodia, Brunei, Myanmar, Vietnam, India, and Pakistan.⁵⁵ One achievement from these workshops was the signing of the Malaysia-Indonesia Prevention of Incidents at Sea Agreement (MALINDO INCSEA) in January 2001. Following a bilateral meeting of Customs, Immigration, Quarantine, and Security, Indonesia and the Philippines agreed to increase port-to-port communication between their respective countries, as well as to strengthen port and maritime training, monitoring, and surveillance between their respective security agencies.⁵⁶

⁵² For the text of the Statement see http://www.dfat.gov.au/arf/statements/10_piracy.html.

⁵³ The text of the Declaration is found at <http://www.aseansec.org/15160.htm>.

⁵⁴ Author personal communication with Cambodian government official.

⁵⁵ Iskandar Sazlan Mohd Salleh and Capt. Mat Taib Yassin, “Southeast Asian Maritime CBMs: National Perspectives and Recent Developments,” paper presented at the CSCAP Maritime Cooperation Working Group Meeting, Hanoi 26-27 May 2004.

⁵⁶ “Philippines, Indonesia Cite Need to Coordinate Port Security,” *Asia Pulse* 16 January 2004.

PSI

In the case of the various initiatives, the response in Southeast Asia has been mixed - determined primarily on a nation-by-nation basis in line with the specific country's national interests. Singapore is currently the only Southeast Asian country to sign up for the PSI, and only the second nation in East Asia along with Japan. At the recent joint CSCAP Confidence and Security Building Measures (CSBM) and Maritime Cooperation working group conference in Hanoi, Vietnam, it quickly became clear there is much confusion over the interpretation of the PSI interdiction principles, as well as much concern over its legality amongst Asia-Pacific countries, particularly in Southeast Asia. This translates into great unwillingness on the part of ASEAN nations to join the PSI.

In a *Jakarta Post* editorial Hasjim Djalal, a former Indonesian ambassador and a leading authority on regional maritime affairs, indicated Indonesia would not welcome PSI participants or neighboring countries conducting interdiction strategies in its waters, including its EEZ.⁵⁷ He suggested the only way Indonesia might concede to such exercises were if they were conducted "through *regional* arrangements in which Indonesia is a participant." The article also stated most countries in East Asia were reluctant to join and especially noted "Malaysia seems not to be so enthusiastic."

The Philippines has made no official statement regarding the PSI one way or another. Part of this is due to the recent close presidential election. In the campaign and election period, any candidate identifying with a sovereignty-related issue such as the PSI would have been committing "political suicide."⁵⁸ Although the executive branch is presently undergoing a "comprehensive study of the PSI", it is unlikely the country will come out in support of the initiative in the near future, if at all. Both the Philippine Constitution and the SEANWFZ Treaty, to which the Philippines is a party, prohibit the country from developing, possessing, manufacturing, acquiring or transporting nuclear weapons or related materials. These will most likely stand as sufficient national commitment to the goals of global nonproliferation rendering the PSI politically unnecessary.

The Regional Maritime Security Initiative (RMSI)⁵⁹ proposed by the United States as an extension of the PSI, has caused much consternation in Southeast Asia. Adm. Thomas B. Fargo, Commander of the U.S. Pacific Command, first introduced the RMSI in a speech to the U.S. Congress on March 31, 2004. Soon afterward it came to light the U.S. was conducting informal talks with Singapore over the initiative, which was reported as intended to combat transnational crime in the Strait of Malacca through the use of U.S. Marines

⁵⁷ Hasjim Djalal, "WMD Initiative Could Endanger Sea Trade," *Jakarta Post* 27 February 2004.

⁵⁸ Author personal communication with Philippine government officials.

⁵⁹ For background and a somewhat detailed explanation of what the RMSI is and is not, as well as links to official speeches on the RMSI see the Pacific Command RMSI webpage <http://www.pacom.mil/rmsi/>.

special operations forces.⁶⁰ Malaysia and Indonesia vehemently rejected the idea of U.S. troops in the area, emphasizing their own capabilities in tackling the threat.⁶¹

Malaysia and Indonesia are the major littoral states bordering the Strait of Malacca; therefore the success of the PSI, RMSI, or any related initiatives requires their support and cooperation. Realizing the untenable situation, the U.S. began almost immediately to backpedal on the idea. On May 11, James Kelly, the U.S. assistant secretary of state for East Asia and Pacific Affairs, in Indonesia to attend an ARF meeting stated, “Indonesia and Malaysia are capable of safeguarding this strait” and assured the two countries the U.S. would not deploy troops to the Strait without first seeking their approval.⁶² At the ARF meeting, U.S. officials formally proposed the RMSI to the 23-member group and further defined it as an Asia-Pacific-wide cooperation strategy not focused only on the Strait; the plan received merely a positive but cautious response from ASEAN.⁶³ In Singapore for the high-level IISS Asia Security Conference (or Shangri-La Dialogue) in early June, U.S. Secretary of Defense Donald Rumsfeld and the U.S. Navy Pacific Fleet Commander Adm. Walter F. Doran further attempted to clarify the RMSI, saying Adm. Fargo’s earlier comments on the initiative had been “misreported,” the plan was still very much in its early stages, and it would focus primarily on intelligence sharing not a U.S. troop presence.⁶⁴ Following the Conference, Malaysia appeared to have warmed to the idea of greater intelligence cooperation with the U.S., and the Malaysian Defense Minister Najib Razak indicated he would meet with Adm. Fargo later in the month to discuss maritime security.⁶⁵ However the minister emphasized that the presence of foreign forces in the region or “interdiction” operations in the Strait would not be tolerated. Despite what appeared to be positive gestures toward the U.S.-led initiative, a regional alliance soon after agreed to its own maritime terrorism training exercises.⁶⁶ The Five Powers Defence Arrangement

⁶⁰ “Crack US troops may be used to flush out terrorists in key Southeast Asian waterway,” *Channel News Asia*, 5 April 2004 http://www.channelnewsasia.com/stories/afp_asiapacific/view/78644/1/.html [7 June 2004].

⁶¹ John Burton, “Countries Oppose US Offer to Patrol Malacca,” *Financial Times*, FT.com 5 April 2004; “Malaysia rejects US help to guard Malacca Straits against terrorists,” *Channel News Asia*, 4 April 2004 http://www.channelnewsasia.com/stories/afp_asiapacific/view/78601/1/.html [7 June 2004].

In Adm. Fargo’s initial testimony before the House Armed Services Committee he mentions only that “expeditionary forces [may need] to take action when the decision has been made to do so,” though what forces these are and who makes the decision to take action are not clarified. During the Q&A session however, Adm. Fargo says, “You know, we’re looking at things like high speed vessels, putting Special Operations Forces on high-speed vessels so that we can use boats that might be incorporated with these vessels to conduct effective interdiction in, once again, these sea lines of communications where terrorists are known to move about and transmit throughout the region.” Later at the Military Operations and Law Conference in Canada on May 3, Adm. Fargo attempted to clarify what the RMSI is and is not. Although he did say “the RMSI is not a challenge to sovereignty – voluntary or otherwise” and that it would not “result in a standing naval force patrolling the Pacific,” he did not rule out the use of U.S. troops on a temporary basis. Speeches and transcripts available at: <http://www.pacom.mil/rmsi/>.

⁶² Veeramalla Anjaiah, “RI, Malaysia can safeguard Malacca Strait, U.S. says,” *Jakarta Post* 11 May 2004 <http://www.pacom.mil/articles/articles2004/040510story1.shtml> [7 June 2004].

⁶³ “US Proposes Maritime Security Cooperation for Asia-Pacific,” *ABC Online* 12 May 2004 <http://www.abc.net.au/news/newsitems/s1107034.htm> [3 June 2004].

⁶⁴ John D. Banusiewicz, “Officials Clarify Maritime Initiative Amid Controversy,” *American Forces Press Service* 4 June 2004 http://www.defenselink.mil/news/Jun2004/n06042004_200606048.html [7 June 2004].

⁶⁵ “Malaysia Pledges to Wipe Out Maritime Piracy, Work with US against Terror,” *Channel News Asia* 6 June 2004 http://www.channelnewsasia.com/stories/afp_asiapacific/print/88704/1/.html [7 June 2004].

⁶⁶ John Burton, “Asian Alliance to Enhance Sealane Protection,” *Financial Times*, FT.com 7 June 2004.

(FPDA), made up of Australia, the UK, Malaysia, Singapore, and New Zealand, decided to add counter-terrorism drills to its annual joint military training exercises. It is too early to tell whether this initiative is an alternative to the U.S. one or its complement.

Concern over the possibility that U.S. troops might patrol Southeast Asia waters also prompted additional regional bilateral and multilateral initiatives, and assurances that Southeast Asian countries could step up patrols themselves. Speaking to the media on June 10 before the 37th joint exercise between Malaysian and Thai marine forces, a Malaysian naval officer indicated such exercises would be conducted with greater frequency in the future.⁶⁷ Both Malaysia and Indonesia then announced the formation of new national maritime forces to tighten security in the Strait of Malacca. On June 18, Indonesia, Malaysia, and Singapore declared the creation of a special joint task force to safeguard the Strait.

CSI

Unlike the PSI, the CSI is not entirely voluntary. If a country wants to export to the United States, then that country must sign up. Yet despite this glaring economic problem, Southeast Asian countries, with the exception of Singapore, have not been enthusiastic to sign on. Beyond concerns over the stationing of U.S. Customs officers in CSI member ports, the implementation of the Initiative has also raised concerns over the financial costs versus the security benefits and its effect on trade efficiency. Although both Malaysia and Thailand have agreed to the CSI principles,⁶⁸ there has been hesitation in doing so. Even as Thai representatives were in DC to sign the CSI Declaration, the Port Authority of Thailand questioned the practicality of additional CSI measures for Thai ports.⁶⁹ Besides raising questions over who would absorb the additional costs, a Thai official suggested the additional procedures for electronically sealing containers sent an unwelcome hint at corruption amongst Thai shippers. Although Malaysian ports and shipping companies worry about the costs of CSI implementation, because the U.S. is both a major trading partner and the largest foreign investor, there seemed little choice in the matter.⁷⁰ The promise of possible competitive benefits in exporting to the U.S., such as faster 'green lanes,' and the possible loss of lucrative U.S. trade persuaded Malaysia and Thailand to sign up. The port rivalry between Singapore and Malaysia may have also influenced Malaysia's decision to join.⁷¹ Many companies in Indonesia have also expressed concern that implementing the CSI would significantly increase costs for exporting to the U.S.⁷² For other Southeast Asian nations,

⁶⁷ "M'sia-Thai Maritime Ops Enhances Border Security," 10 June 2004

http://www.bernama.com/bernama/state_news/news.php?id=72643&cat=nt [25 June 2004].

⁶⁸ Malaysia signed the principles on January 20, 2003; Thailand signed on June 11, 2003.

⁶⁹ Srisamorn Phoosuphanusorn, "Port Authority of Thailand Calls U.S. Code on Terrorism Impractical," *Bangkok Post* 11 June 2003.

⁷⁰ Wong Hin Wei, "Economic Impacts and Implications of Trade and Maritime Security Initiatives on Malaysia," August 2003 http://www.mima.gov.my/mima/htmls/paper/pdf/whw/whw_econ-impact.pdf [12 April 2004], pp. 5-6.

⁷¹ Irvin Lim, "Not Yet All Aboard...But Already All at Sea Over Container Security Initiative," *Institute of Defence and Strategic Studies Working Paper No. 35*, October 2002 <http://www.ntu.edu.sg/idss/WorkingPapers/WP35.pdf>, p. 12.

⁷² Rendi A. Witular, "CSI Policy Not a Trade Barrier for RI Products," *Jakarta Post* 14 March 2003.

whose percentage of sea container traffic to the U.S. is low, the cost-benefit analysis of the CSI does not offer enough incentive to join.

ISPS

The ISPS Code is mandatory for all member nations. Although there are concerns over the cost of implementing the Code, particularly in the face of a looming deadline, the benefits of the ISPS are more visible. Even in bilateral discussions, Southeast Asian nations consider the ISPS Code a boon to facilitate intra-regional customs, trade, and security procedures. At present much of ASEAN trade is conducted through shipping, and as the region moves closer to streamlining its trade for the ASEAN Free Trade Area, the standardized ISPS certification will improve intra-ASEAN and extra-regional trade. Although the Code is an international initiative, it is implemented and managed locally (i.e., not by foreign personnel).

Table 3.
Acceptance of Maritime Security Conventions and Initiatives by ASEAN Members

	UNCLOS	IMO	SOLAS	SUA	PSI	CSI	ISPS
Brunei	X	X	X	X			
Cambodia		X	X				
Indonesia	X	X	X				X
Laos	X						
Malaysia	X	X	X			X	X
Myanmar	X	X	X	X			
Philippines	X	X	X	X			X
Singapore	X	X	X	X	X	X	X
Thailand		X	X			X	X
Vietnam	X	X	X	X			X

Note: As of May 2004. ISPS as of September 2003.

Sources: IMO website, Yann-huei Song, "Maritime Security and International Maritime Instruments," *Indonesian Quarterly* 31, 4 (2003), p. 480.

Assessment

In examining the perspectives of Southeast Asian countries in relation to the PSI, CSI, and ISPS, as well as other recent regional actions to improving maritime security cooperation, a trend emerges. First, countries determine their participation in maritime security initiatives based on their national interests. Such factors include the relationship with the U.S., percentage of total trade with the U.S., concerns over national sovereignty, and economic interests. Second, Southeast Asian countries prefer to pursue regional solutions to problems. In this way regional norms of cooperation, such as respect for national sovereignty and non-binding resolutions, are upheld. Finally, in signing up for international initiatives, Southeast Asian nations prefer the greater legitimacy of UN Conventions than the more legally murky U.S.-led schemes, except when national interests override those concerns.

That Singapore would sign up for the PSI and other initiatives is hardly surprising. The country's close relationship with the United States, its position as the premier entrepôt in the region, and its economy's dependence on its port make it a prime target for a maritime terrorist attack. Singapore has not hesitated to sign up for any of the maritime security initiatives, being the first in Southeast Asia to sign up for the PSI, the sixth worldwide to join the CSI, and one of the first to receive complete certification from the IMO on the ISPS Code. In fact Singapore has been beefing up its own national maritime capabilities as well as strengthening international maritime cooperation beyond the existing initiatives. Singapore opened the new Changi Naval Base in May and in June unveiled the Singapore Navy's new Barak missiles and remote-control weapons systems to combat sea piracy and other maritime threats.⁷³ The city-state also continues regular joint exercises with the U.S. navy and recently was the first country to sign up for the U.S. Coast Guard's new International Port Security Initiative aimed at sharing best practices in port security.⁷⁴ Singapore has gone above and beyond the international calls for export controls and port security. However it is essential to Singapore's national security interests to maintain close relations with the United States and in its national economic interests to safeguard its primary resource – its port.

For other Southeast Asian countries, the national interest equation works out differently in terms of the various maritime initiatives. The debate over managing the security of the Malacca Straits reveals the very different interests at work among Singapore, Malaysia, and Indonesia.⁷⁵ Singapore is a small country for which its port is a critical component of its export-oriented economy. Without the Strait of Malacca, ships would have to navigate around to the Sunda and Lombok Straits, leaving Singapore off the major maritime trade route. Singapore also has a tendency to align itself with major maritime powers such as the U.S. and Japan. Malaysia's main ports lie along its Western coast along the Strait of Malacca. Yet the country also desires to exert greater navigational control over this key waterway, which the presence of U.S. troops would surely hurt. The Strait holds less economic interest for Indonesia, as its main ports are located elsewhere in the archipelago. However, control of the Strait is considered essential to Indonesian territorial integrity.

VI. Proposals

Thus far this paper has outlined the situation of terrorism, WMD proliferation and maritime security in Southeast Asia, presented three international initiatives intended to combat those threats, and the regional impacts and perspectives on those initiatives. Examination of the initiatives' focus and the response reveal several limitations of the current proposals. This section will take a look at those limitations, propose recommendations for improving the initiatives, and the obstacles to instituting new proposals.

⁷³ David Boey, "S'pore Navy Unveils New Firepower to Fight Terror at Sea," *Straits Times Interactive* 2 June 2004.

⁷⁴ "S'pore Shares Port Security Methods with US," *Straits Times Interactive* 1 June 2004; "S'pore, US Begin Joint Naval Drill," *Straits Times Interactive* 1 June 2004.

⁷⁵ Lydia Lim, "Dire Straits?" *Straits Times*, 15 May 2004.

Limitations

The limitations of the above three proposals can be categorized into four areas: U.S.-led or U.S.-focused, emphasis on port security, high costs and low capacity, and/or they neglect other important threats to maritime security. Both the PSI and RMSI are U.S. proposals. In Southeast Asia there is still a strong tendency to protect national sovereignty above all else, and thereby a high perception of external threats, particularly from large powers like the United States. Except for countries with extremely strong ties to the United States, such as Singapore and Japan, there is a strong suspicion within Asia of U.S.-led initiatives as opposed to those that are bilateral, regional, or UN-backed. Before a June 30 ASEAN meeting in Jakarta, Indonesian President Megawati blasted the U.S. for its recent tendencies toward unilateralism and called for greater regional cooperation on security. China too has expressed dismay over the possibility of an increased U.S. troop presence in Southeast Asia. There also remains the question of the PSI's international legality. As long as these questions remain for the PSI and RMSI there will be resistance to them through much of Asia.

Even the CSI poses similar problems in that it only targets cargo headed to U.S. ports. A terrorist attack on the U.S. does not necessarily have to be on U.S. *soil* but can instead target U.S. *interests* abroad. This terrorist capability has certainly not been lost on the U.S. as seen in the embassy attacks in Tanzania and Kenya in 1998, the attack on the *USS Cole* in Yemen waters in 2000, the bombings of expatriate housing in Riyadh, Saudi Arabia in 2003, and numerous other attacks. Therefore how can a container security initiative that examines only a small number of containers heading only to U.S. ports be considered adequate? Table 2 not only emphasizes the importance of Southeast Asian ports to U.S. and global trade, but the importance of East Asian ports. Six of the world's top 25 ports are in Southeast Asia, but 15 of the top 25 and 19 of the top 30 ports are in East Asia.⁷⁶ Intra-ASEAN and intra-regional trade is on the increase, and the upcoming China-ASEAN Free Trade Agreement will only serve to further expand that trade, much of it through the maritime transport sector. A container shipped between say Hong Kong and Singapore or Pusan and Port Kelang, not subject to CSI requirements, poses an as great, if not greater, security threat to international commerce. Concerns raised over the CSI include sovereignty issues created by the presence of U.S. Customs and Border Patrol officials based in foreign ports and the international legality of U.S. preferential trade treatment given to CSI-sanctioned ports. Both limit the attractiveness of joining the initiative.

The emphasis on upgrading the security of ports neglects the fundamental fact that ports represent only one aspect of the entire production-supply chain. An OECD report on maritime transport security indicates the transportation of a shipping container usually involves around 25 different actors, generates some 30-40 documents, uses 2-3 modes of transport, and passes through some 12-15 physical locations.⁷⁷ Piracy statistics have already identified a loophole in the securitization of major seaports without similar increases in security in other areas of maritime transport. Looking back at the maritime terrorist

⁷⁶ For the World's top ports, number 26 is Algeciras Bay, number 27 is Guangzhou/Huangpu, number 28 is Kobe, number 29 is Nagoya, and number 30 is Keelung.

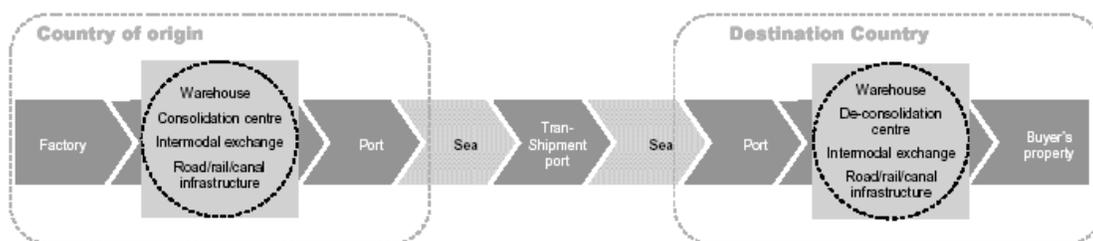
⁷⁷ OECD Maritime Transport Committee, *Security in Maritime Transport*, p. 24.

scenarios, it becomes clear terrorist attacks on the maritime transport sector do not require access to ports. Vessels can be boarded, commandeered, attacked, and outfitted with weapons in places other than port facilities.

In addition to the above limitations, there are those which come from the financial cost involved in purchasing the technological equipment and training the staff necessary to comply with the regulations. The OECD estimates the initial costs incurred by ship operators in implementing the ISPS Code to be at least US\$ 1, 279 billion with an additional US\$ 730 million each successive year.⁷⁸ This does not even include any expenditure borne by port facilities. Malaysia has estimated the ISPS Code will require an initial outlay of US\$7.09 million and US\$ 4.05 in annual expenses.⁷⁹ Although the ISPS Code is by far the most comprehensive of the three initiatives, covering port, ships, and companies, it has nonetheless fallen prey to costs, with many ships and ports having been unable to meet the deadline. The CSI too requires an extensive cost outlay. The U.S. earmarked \$35 million for the CSI in the first year and an additional \$90 million designated for portal radiation detection and monitoring technology. This does not include the costs of hiring and training the 270 new maritime port inspectors of which 100 will be deployed to foreign ports. The cost of an x-ray scanner for the CSI operation is between US\$1-5 million. The Thai government initially planned an investment of 1 billion Thai baht for five x-ray scanners, around US\$24.5 million.⁸⁰ The Australian Customs Service estimated the installation of x-ray facilities to match CSI needs in all Australian ports would increase inspection rates by 5 percent.⁸¹ With increased technology, staff, and training costs of what might effectively scan only an additional 5-6 percent of U.S.-bound cargo, it is not surprising more countries are not in a hurry to sign on.

Chart 1.

**International Container Logistics Chain Vulnerability Assessment:
Places in the logistics chain**



Source: OECD Maritime Transport Committee, *Security in Maritime Transport*, p. 25.

⁷⁸ OECD Maritime Transport Committee, *Security in Maritime Transport*, p. 56.

⁷⁹ Wong Hin Wei, "Economic Impacts and Implications," p. 7.

⁸⁰ Srisamorn Phoosuphanusorn, "Port Authority of Thailand Calls U.S. code on Terrorism Impractical."

⁸¹ Nigel Brew, "Ripples from 9/11: the US Container Security Initiative and its Implications for Australia," 13 May 2003 <http://parlinfoweb.aph.gov.au/piweb/repository1/library/prspub/70g960.pdf>, p. 5.

These particular initiatives fail to address problems outside of port security, maritime terrorism, or the possibility of illegal proliferation onboard transport craft; in other words they focus on a very narrow range of maritime security threats. There are many more threats to maritime security than terrorism, threats that do not involve major ports, and additional aspects of maritime transport security open to exploitation. The PSI, CSI, and ISPS do not for instance tackle the issue of Flags of Convenience (FOCs) states or the problem of protecting or certifying seafarers. A FOC ship flies the flag of a country other than the country of ship's ownership and can provide a means of secrecy and convenience akin to offshore bank accounts. FOC states provide cheap registration fees, faster registration, low or no taxes, and provide the freedom to contract cheaper labor. The International Transport Worker's Federation (ITF) has identified 29 FOC countries,⁸² but the majority of FOC operations are located in Panama, Bermuda, St. Vincent, the Bahamas, Liberia, Malta, Cyprus, and the Marshall Islands as evidenced by Chart 2. Such open registers tend to have lower standards of safety and higher levels of accidents, crew casualties, and cargo losses.⁸³ In a study conducted by the Seafarers International Research Centre at the bequest of ITF, these primary FOC registers scored amongst the lowest in effectiveness of regulation.⁸⁴ Although NGOs such as the ITF have lambasted the IMO for its failure to crackdown on FOCs, it is clear from the chart that major shipping countries have also maintained a vested interest in keeping FOCs in business. In 2000 the U.S. registered 55 percent of its merchant marine fleet with the Bahamas and Liberia, Japan registered 78 percent of its fleet with Panama, Norway registered 57 percent with the Bahamas and Liberia, and Greece registered 54 percent of its vessels in Malta and Cyprus.⁸⁵ Pirates already take advantage of the FOC open registration system when re-registering hijacked vessels; it is not a great leap to assume terrorists may do the same.

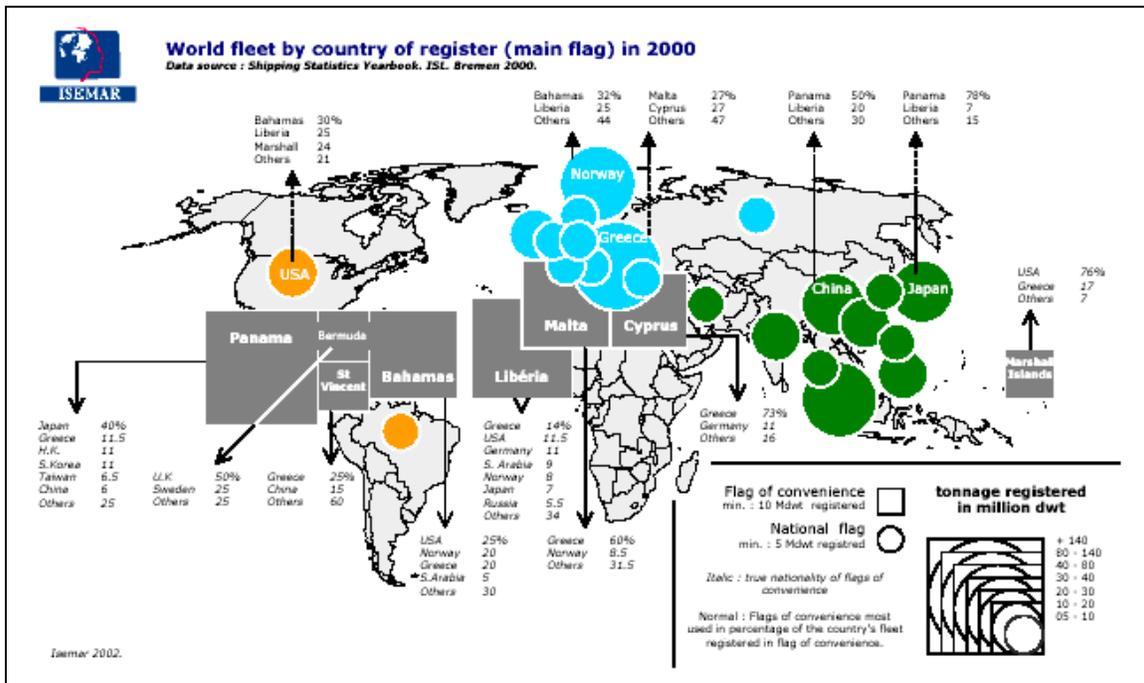
⁸² Antigua and Barbuda, Bahamas, Barbados, Belize, Bermuda (UK), Bolivia, Cambodia, Cayman Islands (UK), Comoros, Cyprus, Equatorial Guinea, German International Ship Register (GIS), Gibraltar (UK), Honduras, Jamaica, Lebanon, Liberia, Malta, Marshall Islands (USA), Mauritius, Mongolia, Myanmar, Netherlands Antilles, Panama, St. Vincent & the Grenadines, Sao Tome E Principe, Sri Lanka, Tonga, Vanuatu. <http://www.itf.org.uk/english/flagsconvenience/reports/2002/section01/which-flags-focs.html>.

⁸³ <http://www.globalpolicy.org/nations/flags/guide.htm>.

⁸⁴ Flag State Audit 2003 <http://www.sirc.cf.ac.uk/fsa.html>.

⁸⁵ As of January 2002, Greece, Japan, Norway and the United States were the top four countries with beneficial ownership of the world's fleet, at 19.2 percent, 13.53 percent, 8.25 percent, and 5.55 percent respectively. <http://www.itf.org.uk/english/flagsconvenience/reports/2002/section01/which-flags-focs.html>.

Chart 2.



Source: <http://www.isemar.asso.fr/english/pdf/carto/carte09.pdf>

Ship personnel are also another maritime security risk factor not taken into consideration in the three initiatives. Not only are seafarers often targets or victims of maritime pirate or terrorist attacks but they can also serve as perpetrators or accomplices in such attacks. Ten nations, mostly within Asia – the Philippines, Indonesia, China, Turkey, the Russian Federation, India, the U.S., Ukraine, Greece, and Japan - supply almost 60 percent of the world’s seafarers. Of the 1.227 million total seafarers in 2000, 25.5 percent came from the Philippines and Indonesia.⁸⁶

Southeast Asians are acutely aware there are far more threats to maritime security than terrorism. The ASEAN Secretariat identifies eight major forms of transnational crime – illicit drug trafficking, arms smuggling, money laundering, sea piracy, cyber crime, international economic crime (including international copyright infringement and pirated goods), trafficking and smuggling of persons, and terrorism. Most, if not all, have maritime components. In a region of vast maritime space and waterways, it is fairly easy to avoid the major ports in conducting these crimes. With the exception of the RMSI, which is mired in its early stages over the question of U.S. involvement, the initiatives do not address other, more prevalent, regional maritime security threats.

⁸⁶ OECD Maritime Transport Committee, *Security in Maritime Transport*, p. 48.

The proposed U.S. State Department crew visa requirement legislation that would limit the shore leave of crew from particular countries of concern would particularly affect seafarers from Indonesia and the Philippines considering terrorist activities in those countries.

Recommendations

Greater Regional Cooperation. ASEAN has already shown a willingness to increase cooperation in maritime security, and this has increased since the U.S. introduced the concept of the RMSI. ASEAN issued a joint Communiqué at the conclusion of the 37th ASEAN Ministerial Meeting held 29-30 of June 2004 underlining the nations' commitment to the establishment of an ASEAN Security Community. The ministers noted "maritime cooperation is vital to the evolution of the ASEAN Security Community" and ASEAN countries would "explore the possibility of establishing a maritime forum."⁸⁷ However, even more effective would be an East Asian regional effort. The recent agreement by the nations of the FPDA is a step in the right direction, but considering the number of large ports in Northeast Asia as well as Southeast Asia and the importance of Southeast Asian waters to Northeast Asian trade; it certainly makes sense to further expand maritime security cooperation. Although the ministers agreed it is too premature to work on an East Asian Security Community, they did agree to strengthen security ties with China, Japan, and South Korea.

Japan has long been involved in maritime security cooperation with Southeast Asia. Japan has hosted regional workshops on piracy and maritime security, financially supported regional initiatives, conducted joint training exercises with regional Coast Guards and marine police, and invited marine officers from Southeast Asian countries for training.⁸⁸ Singapore has already approached South Korea to discuss assisting in the safeguarding regional waters.⁸⁹ At an ASEAN-China seminar held in Singapore on June 23, Chinese officials signified China's interest in increasing its maritime cooperation with ASEAN nations.⁹⁰ A senior Chinese colonel suggested China would be involved in "substantive cooperation in such areas as anti-terrorism intelligence exchange, cooperation and coordination in handling legal cases, and deportation of suspects." He also proposed subsequent cooperation on counterterrorism, piracy, and other maritime security issues with possible joint maritime exercises including search and rescue, humanitarian assistance, mine sweeping, and anti-drug trafficking activities. ASEAN + 3, the Asia-Pacific Economic Cooperation (APEC), the ASEAN Regional Forum (ARF) and CSCAP can serve as forums to operationalize such cooperative security activities.

Increase Burden Sharing, Technology Cooperation, and Capacity Building. Instead of simply requesting compliance with regulations, greater cooperation in sharing the cost-burden of equipment and training, the exchange of information and intelligence, and

⁸⁷ The Joint Communiqué is available at <http://www.aseansec.org/16193.htm>.

⁸⁸ For example, since the establishment of the Japanese Coast Guard (a renaming of the Japanese Maritime Safety Agency) in 2000, the JCG has enrolled Southeast Asian students in the JCG Academy. Sam Bateman, "Coast Guards: New Forces For Regional Order and Security," *Asia Pacific Issues* 65, January 2003 <http://www.eastwestcenter.org/stored/pdfs/api065.pdf>, p. 3.

⁸⁹ "Singapore Urges S. Korea to Help Boost Regional Maritime Security," *Channel News Asia* 14 June 2004 <http://www.channelnewsasia.com/stories/singaporelocalnews/print/89961/1/.html> [14 June 2004].

⁹⁰ Lee Kim Chew, "China Could Play Part in ASEAN's Maritime Security," *Straits Times Interactive* 24 June 2004; Jane Macartney, "China Under Pressure to Boost Malacca Strait Safety," *Reuters AlertNet* 23 June 2004 <http://www.alertnet.org/thenews/newsdesk/SP114529.htm>.

providing more opportunities to conduct joint training activities will help to foster international security collaboration.

One way to increase the capacity of Southeast Asian nations to deal with maritime security threats is to facilitate the expansion, creation, and cooperation of national Coast Guards or Marine Police. Few nations in East Asia have well-established Coast Guard units.⁹¹ Those that do exist are relatively new, small, underfunded, and have poorly defined or overlapping duties with domestic navies. Countries in the region most often use naval vessels for patrols and surveillance. According to Commodore Sam Bateman, a maritime security expert specializing in Asia Pacific affairs, Coast Guards have several advantages over navies.⁹² Coast Guards do not reveal as much naval intelligence information to other parties. They are smaller, and thereby do not overwhelm prospective partners. They are paramilitary rather than military, therefore reducing sovereignty concerns.⁹³ Finally, the use of Coast Guards for maritime security measures may reduce the possibility of a naval arms race.

The U.S. Coast Guard (USCG) has a long history guarding the U.S. coastline from a number of security threats, from drug smuggling to environmental safety. It has recently pioneered a new security program called Maritime Domain Awareness (MDA). The MDA works to provide “comprehensive information, intelligence, and knowledge of all relevant entities within the U.S. Maritime Domain - and their respective activities - that could affect America's port security, safety, economy, or environment.” With the USCG as a model, the U.S., Japan, and other regional partners could assist Southeast Asia in developing their own Coast Guards. Joint patrols and training opportunities with the USCG, rather than U.S. navies, would spell a new range of maritime cooperation activities. Building up the capacity for regional forces to combat maritime security threats on their own will signal longer-term maritime security than the presence of U.S. forces that will come and go.

A Truly Regional RMSI. One of the most promising initiatives under consideration is the RMSI because it acknowledges the prevalence of maritime transnational criminal activities other than terrorism. As part of the proposed ASEAN Security Community, the nations of Southeast Asia should consider creating an ASEAN-led RMSI. Financial and equipment support, technological and training assistance, and information and intelligence sharing on the part of the U.S. and Northeast Asian countries would be far more welcome than troops.

UN/IMO Conventions. In the 2003 ARF Statement on Cooperation against Piracy and Other Threats to Maritime Security, member nations commit to joining the UN’s relevant maritime conventions if they have not already done so. Although several Southeast Asian nations have

⁹¹ Brunei, Indonesia, Malaysia and Thailand have Marine Police; Philippines, Singapore and Vietnam have Coast Guards; Cambodia and Myanmar do not have maritime paramilitary services; Laos is land-locked.

⁹² Bateman, “Coast Guards: New Forces For Regional Order and Security,” pp. 4-6.

⁹³ For instance, although Malaysia, Indonesia, and Singapore originally reached agreement at the end of June to begin year-round joint naval patrols of the Strait of Malacca, Malaysia and Indonesia have decided against joint patrols. Now each country will step up patrols in their respective territorial waters in a more “coordinated” way but will not patrol together. The use of Coast Guards instead of Navies could change this attitude. Also the signing of the SUA Convention by Malaysia and Indonesia, which allows law enforcement to enter a neighbor’s territorial waters when in “hot pursuit” of criminals.

joined the SUA Convention, several still have not. Indonesia and Malaysia are of particular concern.

In addition, new international conventions on maritime security should be proposed and implemented through the International Maritime Organization. Circumvention of international organizations only weakens them. The problems of FOCs and seafarer registration need to be addressed. The PSI is a method of last resort. With greater transparency in international weapons sales and transportation, the incorporation and management of appropriate export controls, and improved port security and regional maritime surveillance, the PSI interdiction becomes unnecessary.

Obstacles

Many obstacles lie in the path of implementing these and other security proposals. First is the lack of trust between stakeholders. Although Indonesia and Malaysia were particularly unhappy with the possible deployment of U.S. troops to the Strait of Malacca, China's proposal to implement joint naval exercises with ASEAN nations was met with equal dismay. JN Mak called maritime security cooperation between even ASEAN members "difficult at best."⁹⁴ The recent decision to drop the previously announced joint naval exercises between Malaysia, Indonesia, and Singapore is but one example. Undelimited maritime boundaries and territorial disputes also stand in the way of increased maritime cooperation. Although there have been some recent successes, such as the recent delimitation of the Vietnam-China maritime border and the International Court of Justice's decision on the Sipadan and Ligitan Islands dispute, disputes over the Spratly Islands and the delimitation of Chinese and Taiwanese waters will remain stumbling blocks for some time to come. Another impediment to implementing proposals is the dilemma between Asia's propensity to take part in much dialogue but produce little action – its reputation as a proverbial "talk shop." Finally, there must be the political will to find and execute multilateral solutions and provide the financial means to do so. Transnational issues such as terrorism, proliferation, and maritime security require multilateral solutions.

VII. Conclusion

There is still a long way to go before maritime security measures match security in other sectors, and only time will tell if the current procedures are effective. Perhaps regional members are not moving as quickly on securing their ports as the U.S. might prefer, but in truth, even the U.S. is having difficulty meeting the ISPS deadline and the financial commitment necessary to upgrade port security to expected levels. In recent years, Southeast Asia has placed greater priority on cooperation on transnational security threats, including terrorism, nuclear proliferation, and maritime security. The impact of September 11 and these three port security initiatives have galvanized ASEAN and its members to even greater national, regional, and international security collaboration. Although there are obstacles to increasing regional and international security cooperation and implementing proposed solutions, these obstacles can be surmounted. Ten years ago, Southeast Asian nations did not even admit there was a piracy problem. Today cooperation on counter-piracy activities has

⁹⁴ Lee Kim Chew, "China Could Play Part in ASEAN's Maritime Security."

become routine. As the war on terror and proliferation moves forward, great challenges lie ahead for Southeast Asia and the international community. Hopefully the progress attained thus far shows they can be met.

About the Author

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Appendix A

Proliferation Security Initiative: Statement of Interdiction Principles

The Proliferation Security Initiative (PSI) is a response to the growing challenge posed by the proliferation of weapons of mass destruction (WMD), their delivery systems, and related materials worldwide. The PSI builds on efforts by the international community to prevent proliferation of such items, including existing treaties and regimes. It is consistent with and a step in the implementation of the UN Security Council Presidential Statement of January 1992, which states that the proliferation of all WMD constitutes a threat to international peace and security, and underlines the need for member states of the UN to prevent proliferation. The PSI is also consistent with recent statements of the G8 and the European Union, establishing that more coherent and concerted efforts are needed to prevent the proliferation of WMD, their delivery systems, and related materials. PSI participants are deeply concerned about this threat and of the danger that these items could fall into the hands of terrorists, and are committed to working together to stop the flow of these items to and from states and non-state actors of proliferation concern.

The PSI seeks to involve in some capacity all states that have a stake in nonproliferation and the ability and willingness to take steps to stop the flow of such items at sea, in the air, or on land. The PSI also seeks cooperation from any state whose vessels, flags, ports, territorial waters, airspace, or land might be used for proliferation purposes by states and non-state actors of proliferation concern. The increasingly aggressive efforts by proliferators to stand outside or to circumvent existing nonproliferation norms, and to profit from such trade, requires new and stronger actions by the international community. We look forward to working with all concerned states on measures they are able and willing to take in support of the PSI, as outlined in the following set of “Interdiction Principles.”

Interdiction Principles for the Proliferation Security Initiative

PSI participants are committed to the following interdiction principles to establish a more coordinated and effective basis through which to impede and stop shipments of WMD, delivery systems, and related materials flowing to and from states and non-state actors of proliferation concern, consistent with national legal authorities and relevant international law and frameworks, including the UN Security Council. They call on all states concerned with this threat to international peace and security to join in similarly committing to:

1. Undertake effective measures, either alone or in concert with other states, for interdicting the transfer or transport of WMD, their delivery systems, and related materials to and from states and non-state actors of proliferation concern. “States or non-state actors of proliferation concern” generally refers to those countries or entities that the PSI participants involved establish should be subject to interdiction activities because they are engaged in proliferation through: (1) efforts to develop or acquire chemical, biological, or nuclear weapons and associated delivery systems; or

- (2) transfers (either selling, receiving, or facilitating) of WMD, their delivery systems, or related materials.
2. Adopt streamlined procedures for rapid exchange of relevant information concerning suspected proliferation activity, protecting the confidential character of classified information provided by other states as part of this initiative, dedicate appropriate resources and efforts to interdiction operations and capabilities, and maximize coordination among participants in interdiction efforts.
 3. Review and work to strengthen their relevant national legal authorities where necessary to accomplish these objectives, and work to strengthen when necessary relevant international law and frameworks in appropriate ways to support these commitments.
 4. Take specific actions in support of interdiction efforts regarding cargoes of WMD, their delivery systems, or related materials, to the extent their national legal authorities permit and consistent with their obligations under international law and frameworks, to include:
 - a. Not to transport or assist in the transport of any such cargoes to or from states or non-state actors of proliferation concern, and not to allow any persons subject to their jurisdiction to do so.
 - b. At their own initiative, or at the request and good cause shown by another state, to take action to board and search any vessel flying their flag in their internal waters or territorial seas, or areas beyond the territorial seas of any other state, that is reasonably suspected of transporting such cargoes to or from states or non-state actors of proliferation concern, and to seize such cargoes that are identified.
 - c. To seriously consider providing consent under the appropriate circumstances to the boarding and searching of its own flag vessels by other states, and to the seizure of such WMD-related cargoes in such vessels that may be identified by such states.
 - d. To take appropriate actions to (1) stop and/or search in their internal waters, territorial seas, or contiguous zones (when declared) vessels that are reasonably suspected of carrying such cargoes to or from states or non-state actors of proliferation concern and to seize such cargoes that are identified; and (2) to enforce conditions on vessels entering or leaving their ports, internal waters or territorial seas that are reasonably suspected of carrying such cargoes, such as requiring that such vessels be subject to boarding, search, and seizure of such cargoes prior to entry.
 - e. At their own initiative or upon the request and good cause shown by another state, to (a) require aircraft that are reasonably suspected of carrying such

cargoes to or from states or non-state actors of proliferation concern and that are transiting their airspace to land for inspection and seize any such cargoes that are identified; and/or (b) deny aircraft reasonably suspected of carrying such cargoes transit rights through their airspace in advance of such flights.

- f. If their ports, airfields, or other facilities are used as transshipment points for shipment of such cargoes to or from states or non-state actors of proliferation concern, to inspect vessels, aircraft, or other modes of transport reasonably suspected of carrying such cargoes, and to seize such cargoes that are identified.

Appendix B

UN Security Council Resolution 1540

United Nations
New York City, New York
April 28, 2004

Adopted by the Security Council at its 4956th meeting, on 28 April 2004

The Security Council,

Affirming that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery,* constitutes a threat to international peace and security,

Reaffirming, in this context, the Statement of its President adopted at the Council's meeting at the level of Heads of State and Government on 31 January 1992 (S/23500), including the need for all Member States to fulfil their obligations in relation to arms control and disarmament and to prevent proliferation in all its aspects of all weapons of mass destruction,

Recalling also that the Statement underlined the need for all Member States to resolve peacefully in accordance with the Charter any problems in that context threatening or disrupting the maintenance of regional and global stability,

Affirming its resolve to take appropriate and effective actions against any threat to international peace and security caused by the proliferation of nuclear, chemical and biological weapons and their means of delivery, in conformity with its primary responsibilities, as provided for in the United Nations Charter,

Affirming its support for the multilateral treaties whose aim is to eliminate or prevent the proliferation of nuclear, chemical or biological weapons and the importance for all States parties to these treaties to implement them fully in order to promote international stability,

Welcoming efforts in this context by multilateral arrangements which contribute to non-proliferation,

Affirming that prevention of proliferation of nuclear, chemical and biological weapons should not hamper international cooperation in materials, equipment and technology for peaceful purposes while goals of peaceful utilization should not be used as a cover for proliferation,

Gravely concerned by the threat of terrorism and the risk that non-State actors* such as those identified in the United Nations list established and maintained by the Committee established under Security Council resolution 1267 and those to whom resolution 1373 applies, may acquire, develop, traffic in or use nuclear, chemical and biological weapons and their means of delivery,

Gravely concerned by the threat of illicit trafficking in nuclear, chemical, or biological weapons and their means of delivery, and related materials,* which adds a new dimension to the issue of proliferation of such weapons and also poses a threat to international peace and security,

Recognizing the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security,

Recognizing that most States have undertaken binding legal obligations under treaties to which they are parties, or have made other commitments aimed at preventing the proliferation of nuclear, chemical or biological weapons, and have taken effective measures to account for, secure and physically protect sensitive materials, such as those required by the Convention on the Physical Protection of Nuclear Materials and those recommended by the IAEA Code of Conduct on the Safety and Security of Radioactive Sources,

Recognizing further the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery,

Encouraging all Member States to implement fully the disarmament treaties and agreements to which they are party,

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Determined to facilitate henceforth an effective response to global threats in the area of non-proliferation,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides that* all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;
2. *Decides also* that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;
3. *Decides also* that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

- (a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;
- (b) Develop and maintain appropriate effective physical protection measures;
- (c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;
- (d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

4. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, for a period of no longer than two years, a Committee of the Security Council, consisting of all members of the Council, which will, calling as appropriate on other expertise, report to the Security Council for its examination, on the implementation of this resolution, and to this end calls upon States to present a first report no later than six months from the adoption of this resolution to the Committee on steps they have taken or intend to take to implement this resolution;

5. *Decides* that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons;

6. *Recognizes* the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists;

7. *Recognizes* that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;

8. *Calls upon* all States:

(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral nonproliferation treaties;

(c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

9. *Calls upon* all States to promote dialogue and cooperation on nonproliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery;

10. Further to counter that threat, *calls upon* all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;

11. *Expresses* its intention to monitor closely the implementation of this resolution and, at the appropriate level, to take further decisions which may be required to this end;

12. *Decides* to remain seized of the matter.

* Definitions for the purpose of this resolution only:

-- Means of delivery: missiles, rockets and other unmanned systems capable of delivering nuclear, chemical, or biological weapons, that are specially designed for such use.

-- Non-State actor: individual or entity, not acting under the lawful authority of any State in conducting activities which come within the scope of this resolution.

-- Related materials: materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery.

Appendix C

1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA)

THE STATES PARTIES to this Convention,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

RECOGNIZING in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

DEEPLY CONCERNED about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

CONSIDERING that unlawful acts against the safety of maritime navigation jeopardize the safety of persons and property, seriously affect the operation of maritime services, and undermine the confidence of the peoples of the world in the safety of maritime navigation,

CONSIDERING that the occurrence of such acts is a matter of grave concern to the international community as a whole,

BEING CONVINCED of the urgent need to develop international co-operation between States in devising and adopting effective and practical measures for the prevention of all unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators,

RECALLING resolution 40/61 of the General Assembly of the United Nations of 9 December 1985 which, inter alia, “urges all States unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security,”

RECALLING FURTHER that resolution 40/61 “unequivocally condemns, as criminal) all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security,”

RECALLING ALSO that by resolution 40/61, the International Maritime Organization was invited to “study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures,”

HAVING IN MIND resolution A.584(14) of 20 November 1985, of the Assembly of the International Maritime Organization, which called for development of measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews,

NOTING that acts of the crew which are subject to normal shipboard discipline are outside the purview of this Convention,

AFFIRMING the desirability of monitoring rules and standards relating to the prevention and control of unlawful acts against ships and persons on board ships, with a view to updating them as necessary, and, to this effect, taking note with satisfaction of the Measures to Prevent Unlawful Acts against Passengers and Crews on Board Ships, recommended by the Maritime Safety Committee of the International Maritime Organization,

AFFIRMING FURTHER that matters not regulated by this Convention continue to be governed by the rules and principles of general international law,

RECOGNIZING the need for all States, in combating unlawful acts against the safety of maritime navigation, strictly to comply with rules and principles of general international law,

HAVE AGREED as follows:

ARTICLE 1

For the purposes of this Convention, “ship” means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

ARTICLE 2

1. This Convention does not apply to:
 - a. a warship; or
 - b. a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or
 - c. a ship which has been withdrawn from navigation or laid up.
2. Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

ARTICLE 3

1. Any person commits an offence if that person unlawfully and intentionally:
 - a. seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
 - b. performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or

- c. destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
 - d. places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
 - e. destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
 - f. communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
 - g. injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).
2. Any person also commits an offence if that person:
- a. attempts to commit any of the offences set forth in paragraph 1; or
 - b. abets the commission of any of the offences set forth in paragraph 1
 - c. perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
 - d. threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

ARTICLE 4

1. This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.
2. In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

ARTICLE 5

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

ARTICLE 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:
 - a. against or on board a ship flying the flag of the State at the time the offence is committed; or
 - b. in the territory of that State, including its territorial sea; or
 - c. by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:

- a. it is committed by a stateless person whose habitual residence is in that State; or
 - b. during its commission a national of that State is seized, threatened, injured or killed; or
 - c. it is committed in an attempt to compel that State to do or abstain from doing any act.
3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as “the Secretary-General”). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.
 4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.
 5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.
3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:
 - d. communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;
 - e. be visited by a representative of that State.
4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 8

1. The master of a ship of a State Party (the “flag State”) may deliver to the authorities of any other State Party (the “receiving State”) any person who he has reasonable grounds to believe has committed one of the offences set forth in article 3.
2. The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.
3. The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 1. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.
4. The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master's possession which pertains to the alleged offence.
5. A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.

ARTICLE 9

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

ARTICLE 10

1. The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.
2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.

ARTICLE 11

1. The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 3. Extradition shall be subject to the other conditions provided by the law of the requested State Party.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 3 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
4. If necessary, the offences set forth in article 3 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.
5. A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 7 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.
6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.
7. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

ARTICLE 12

1. State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 3, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford each other assistance in accordance with their national law.

ARTICLE 13

1. States Parties shall co-operate in the prevention of the offences set forth in article 3, particularly by:
 - a. taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;
 - b. exchanging information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3.
2. When, due to the commission of an offence set forth in article 3, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or

passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 14

Any State Party having reason to believe that an offence set forth in article 3 will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 15

1. Each State Party shall, in accordance with its national law) provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:
 - a. the circumstances of the offence;
 - b. the action taken pursuant to article 13, paragraph 2;
 - c. the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.
2. The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.
3. The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the International Maritime Organization (hereinafter referred to as “the Organization”), to the other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.
3. Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.
- 4.

ARTICLE 17

1. This Convention shall be open for signature at Rome on 10 March 1988 by States participating in the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and at the Headquarters of the

- Organization by all States from 14 March 1988 to 9 March 1989. It shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
 - a. signature without reservation as to ratification, acceptance or approval; or
 - b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - c. accession.
 3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ARTICLE 18

1. This Convention shall enter into force ninety days following the date on which fifteen States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof.
2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Convention after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 19

1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

ARTICLE 20

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.
3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

ARTICLE 21

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
 - a. inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
 - i. each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

- ii. the date of the entry into force of this Convention;
 - iii. the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
 - iv. the receipt of any declaration or notification made under this Convention;
 - b. transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.
3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 22

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

DONE AT ROME this tenth day of March one thousand nine hundred and eighty-eight.

Appendix D

IMO Summary of ISPS Code and SOLAS Amendments

Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974: 9 - 13 December 2002

A new, comprehensive security regime for international shipping is set to enter into force in July 2004 following the adoption by a week-long Diplomatic Conference of a series of measures to strengthen maritime security and prevent and suppress acts of terrorism against shipping. The Conference, held at the London headquarters of the International Maritime Organization (IMO) from 9 to 13 December 2002, was of crucial significance not only to the international maritime community but the world community as a whole, given the pivotal role shipping plays in the conduct of world trade. The measures represent the culmination of just over a year's intense work by IMO's Maritime Safety Committee and its Intersessional Working Group since the terrorist atrocities in the United States in September 2001.

The Conference was attended by 108 Contracting Governments to the 1974 SOLAS Convention, observers from two IMO Member States and observers from the two IMO Associate Members. United Nations specialized agencies, intergovernmental organizations and non-governmental international organizations also sent observers to the Conference.

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

Speaking at the end of the conference, IMO Secretary-General William O'Neil strongly urged all parties concerned to start putting in place all the necessary legislative, administrative and operational provisions needed to give effect to the decisions of the Conference as soon as possible. In a call for continued vigilance, he added, "In the meantime, all involved in the operation of ships and ports should continue to be aware of the potential dangers to shipping through acts of terrorism and the need to be extremely vigilant and alert to any security threat they might encounter in port, at offshore terminals or when underway at sea."

The Conference has been referred to in the United Nations General Assembly. At its current session, the General Assembly adopted a resolution on "Oceans and the law of the sea," which specifically welcomed initiatives at the International Maritime Organization to counter the threat to maritime security from terrorism and encouraged States fully to support this endeavour.

The International Ship and Port Facility Security Code

In essence, the Code takes the approach that ensuring the security of ships and port facilities is basically a risk management activity and that to determine what security measures are appropriate, an assessment of the risks must be made in each particular case.

The purpose of the Code is to provide a standardized, consistent framework for evaluating risk, enabling governments to offset changes in threat with changes in vulnerability for ships and port facilities.

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

This risk management concept will be embodied in the Code through a number of minimum functional security requirements for ships and port facilities.

For ships, these requirements will include:

- ship security plans
- ship security officers
- company security officers
- certain onboard equipment

For port facilities, the requirements will include:

- port facility security plans
- port facility security officers
- certain security equipment

In addition the requirements for ships and for port facilities include:

- monitoring and controlling access
- monitoring the activities of people and cargo
- ensuring security communications are readily available

Because each ship (or class of ship) and each port facility present different risks, the method in which they will meet the specific requirements of this Code will be determined and eventually be approved by the Administration or Contracting Government, as the case may be.

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

The preamble to the Code states that, as threat increases, the only logical counteraction is to reduce vulnerability. The Code provides several ways to reduce vulnerabilities. Ships will be subject to a system of survey, verification, certification, and control to ensure that their security measures are implemented. This system will be based on a considerably expanded control system as stipulated in the 1974 Convention for Safety of Life at Sea (SOLAS). Port facilities will also be required to report certain security related information to the Contracting Government concerned, which in turn will submit a list of approved port facility security plans, including location and contact details to IMO.

The Company and the Ship

Under the terms of the Code, shipping companies will be required to designate a Company Security Officer for the Company and a Ship Security Officer for each of its ships. The Company Security Officer's responsibilities include ensuring that a Ship Security Assessment is properly carried out, that Ship Security Plans are prepared and submitted for approval by (or on behalf of) the Administration and thereafter is placed on board each ship.

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

Ships will have to carry an International Ship Security Certificate indicating that they comply with the requirements of SOLAS chapter XI-2 and part A of the ISPS Code. When a ship is at a port or is proceeding to a port of Contracting Government, the Contracting Government has the right, under the provisions of regulation XI-2/9, to exercise various control and compliance measures with respect to that ship. The ship is subject to port State control inspections but such inspections will not normally extend to examination of the Ship Security Plan itself except in specific circumstances.

The ship may, also, be subject to additional control measures if the Contracting Government exercising the control and compliance measures has reason to believe that the security of the ship has, or the port facilities it has served have, been compromised.

The Port Facility

Each Contracting Government has to ensure completion of a Port Facility Security Assessment for each port facility within its territory that serves ships engaged on

international voyages. The Port Facility Security Assessment is fundamentally a risk analysis of all aspects of a port facility's operation in order to determine which parts of it are more susceptible, and/or more likely, to be the subject of attack. Security risk is seen a function of the threat of an attack coupled with the vulnerability of the target and the consequences of an attack.

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

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

Responsibilities of Contracting Governments

Contracting Governments have various responsibilities, including setting the applicable security level, approving the Ship Security Plan and relevant amendments to a previously approved plan, verifying the compliance of ships with the provisions of SOLAS chapter XI-2 and part A of the ISPS Code and issuing the International Ship Security Certificate, determining which port facilities located within their territory are required to designate a Port Facility Security Officer, ensuring completion and approval of the Port Facility Security Assessment and the Port Facility Security Plan and any subsequent amendments; and exercising control and compliance measures. It is also responsible for communicating information to the International Maritime Organization and to the shipping and port industries.

Contracting Governments can designate, or establish, Designated Authorities within Government to undertake their security duties and allow Recognised Security Organisations to carry out certain work with respect to port facilities, but the final decision on the acceptance and approval of this work should be given by the Contracting Government or the Designated Authority.

Amendments to SOLAS

The Conference adopted a series of Amendments to the 1974 SOLAS Convention, aimed at enhancing maritime security on board ships and at ship/port interface areas. Among other things, these amendments create a new SOLAS chapter dealing specifically with maritime

security, which in turn contains the mandatory requirement for ships to comply with the ISPS Code.

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

The existing SOLAS Chapter XI (Special measures to enhance maritime safety) has been re-numbered as Chapter XI-1. Regulation XI-1/3 is modified to require ships' identification numbers to be permanently marked in a visible place either on the ship's hull or superstructure.

Passenger ships should carry the marking on a horizontal surface visible from the air. Ships should also be marked with their ID numbers internally.

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

New Chapter XI-2 (Special measures to enhance maritime security)

A brand-new Chapter XI-2 (Special measures to enhance maritime security) is added after the renumbered Chapter XI-1.

This chapter applies to passenger ships and cargo ships of 500 gross tonnage and upwards, including high speed craft, mobile offshore drilling units and port facilities serving such ships engaged on international voyages.

Regulation XI-2/3 of the new chapter enshrines the International Ship and Port Facilities Security Code (ISPS Code). Part A of this Code will become mandatory and part B contains guidance as to how best to comply with the mandatory requirements.

The regulation requires Administrations to set security levels and ensure the provision of security level information to ships entitled to fly their flag. Prior to entering a port, or whilst in a port, within the territory of a Contracting Government, a ship shall comply with the requirements for the security level set by that Contracting Government, if that security level is higher than the security level set by the Administration for that ship.

Regulation XI-2/4 confirms the role of the Master in exercising his professional judgement over decisions necessary to maintain the security of the ship. It says he shall not be constrained by the Company, the charterer or any other person in this respect.

Regulation XI-2/5 requires all ships to be provided with a ship security alert system, according to a strict timetable that will see most vessels fitted by 2004 and the remainder by 2006. When activated the ship security alert system shall initiate and transmit a ship-to-shore security alert to a competent authority designated by the Administration, identifying the ship, its location and indicating that the security of the ship is under threat or it has been compromised. The system will not raise any alarm on-board the ship. The ship security alert system shall be capable of being activated from the navigation bridge and in at least one other location.

Regulation XI-2/6 covers requirements for port facilities, providing among other things for Contracting Governments to ensure that port facility security assessments are carried out and that port facility security plans are developed, implemented and reviewed in accordance with the ISPS Code.

Other regulations in this chapter cover the provision of information to IMO, the control of ships in port, (including measures such as the delay, detention, restriction of operations including movement within the port, or expulsion of a ship from port), and the specific responsibility of Companies.

Resolutions adopted by the conference

The conference adopted 11 resolutions, the main points of which are outlined below. The full text of each is available on request.

Conference resolution 1 (Adoption of amendments to the annex to the international convention for the safety of life at sea, 1974, as amended), determines that the amendments shall be deemed to have been accepted on 1 January 2004 (unless, prior to that date, more than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not less than 50% of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments) and that the amendments would then enter into force on 1 July 2004.

Conference resolution 2 (Adoption of the International Ship and Port Facility Security (ISPS) Code) adopts the International Ship and Port Facility Security (ISPS) Code, and invites Contracting Governments to the Convention to note that the ISPS Code will take effect on 1 July 2004 upon entry into force of the new chapter XI-2 of the Convention;

Conference resolution 3 (Further work by the international maritime organization pertaining to the enhancement of maritime security) invites the International Maritime Organization to develop, as a matter of urgency, training guidance such as model courses for ship security officers, company security officers and port facility security officers; performance standards for ship security alarms; performance standards and guidelines for long-range ship identification and tracking systems; guidelines on control of ships; and

guidelines on “Recognized security organizations”, and to adopt them in time before the entry into force of the amendments to the Convention adopted by the Conference.

Conference resolution 4 (Future amendments to Chapters XI-1 and XI-2 of the 1974 SOLAS Convention on special measures to enhance maritime safety and security)

recommends that future amendments to the provisions of chapters XI-1 and XI-2 of the Convention should be adopted by either the Maritime Safety Committee of the International Maritime Organization or by a Conference of Contracting Governments to the Convention.

Conference resolution 5 (Promotion of technical co-operation and assistance) strongly urges Contracting Governments to the Convention and Member States of the Organization to provide, in co-operation with the Organization, assistance to those States which have difficulty in meeting the requirements of the adopted amendments; and to use the Integrated Technical Co-operation Programme of the Organization as one of the main instruments to obtain assistance in advancing effective implementation of, and compliance with, the adopted amendments.

It also requests the Secretary-General of the Organization to make adequate provision, within the Integrated Technical Co-operation Programme, to strengthen further the assistance that is already being provided and to ensure that the Organization is able to address the future needs of developing countries for continued education and training and the improvement of their maritime and port security infrastructure and measures; and invites donors, international organizations and the shipping and port industry to contribute financial, human and/or in-kind resources to the Integrated Technical Co-operation Programme of the Organization for its maritime and port security activities.

It also invites the Secretary General to give early consideration to establishing a Maritime Security Trust Fund for the purpose of providing a dedicated source of financial support for maritime security technical-co-operation activities and, in particular, for providing support for national initiatives in developing countries to strengthen their maritime security infrastructure and measures.

Conference resolution 6 (Early implementation of the special measures to enhance maritime security) refers to the difficulties experienced during implementation of the International Safety Management (ISM) Code and draws the attention of Contracting Governments and the industry to the fact that chapter XI-2 of the Convention does not provide for any extension of the implementation dates for the introduction of the special measures concerned to enhance maritime security. It urges Contracting Governments to take, as a matter of high priority, any action needed to finalize as soon as possible any legislative or administrative arrangements, which are required at the national level, to give effect to the requirements of the adopted amendments to the Convention relating to the certification of ships entitled to fly their flag or port facilities situated in their territory. It also recommends that Contracting Governments and Administrations concerned designate dates, in advance of the application date of 1 July 2004 by which requests for certification should be submitted in order to allow for completion of the certification process and for companies and port facilities to rectify any non-compliance. It also recommends that Contracting Governments

and the industry should take early appropriate action to ensure that all necessary infrastructure is in place in time for the effective implementation of the adopted measures to enhance maritime security on board ships and ashore.

Conference resolution 7 (Establishment of appropriate measures to enhance the security of ships, port facilities, mobile offshore drilling units on location and fixed and floating platforms not covered by chapter XI-2 of the 1974 SOLAS Convention) invites Contracting Governments to establish, as they might consider necessary, appropriate measures to enhance the security of ships and of port facilities other than those covered by chapter XI-2 of the Convention; it also encourages Contracting Governments to establish and disseminate, in an appropriate manner, information to facilitate contact and liaison between company and ship security officers and the authorities responsible for the security of port facilities not covered by Chapter XI-2, prior to a ship entering, or anchoring off, such a port;

Conference resolution 8 (Enhancement of security in co-operation with the International Labour Organization) invites the ILO to continue the development of a Seafarers' Identity Document as a matter of urgency, which should cover, among other things, a document for professional purposes; a verifiable security document; and a certification information document, and invites IMO and the ILO to establish a joint ILO/IMO Working Group to undertake more detailed work on comprehensive port security requirements.

Conference resolution 9 (Enhancement of security in co-operation with the World Customs Organization) invites the WCO to consider urgently measures to enhance security throughout international closed CTU movements and requests the Secretary-General of IMO to contribute expertise relating to maritime traffic to the discussions at the WCO.

Conference resolution 10 (Early implementation of long-range ships' identification and tracking) recalls that long-range identification and tracking of ships at sea is a measure that fully contributes to the enhancement of the maritime and coastal States security and notes that Inmarsat C polling is currently an appropriate system for long-range identification and tracking of ships. It urges Governments to take, as a matter of high priority, any action needed at national level to give effect to implementing and beginning the long-range identification and tracking of ships and invites Contracting Governments to encourage ships entitled to fly the flag of their State to take the necessary measures so that they are prepared to respond automatically to Inmarsat C polling, or to other available systems. It also requests Governments to consider all aspects related to the introduction of long-range identification and tracking of ships, including its potential for misuse as an aid to ship targeting and the need for confidentiality in respect of the information so gathered.

Conference resolution 11 (Human element-related aspects and shore leave for seafarers) urges Governments to take the human element, the need to afford special protection to seafarers and the critical importance of shore leave into account when implementing the provisions of chapter XI-2 of the Convention and the International Ship and Port Facility (ISPS) Code. It also encourages Governments, Member States of IMO and non-governmental organizations with consultative status at the Organization to report to the

Organization any instances where the human element has been adversely impacted by the implementation of the provisions of chapter XI-2 of the Convention or the Code. It also requests the IMO Secretary-General to bring to the attention of the Maritime Safety Committee and the Facilitation Committee of the Organization, any human element related problems, which have been communicated to the Organization as a result of the implementation of chapter XI-2 of the Convention or the Code.

Appendix E

ARF Statement on Cooperation Against Piracy and Other Threats to Maritime Security

June 18 2003

The Chairman of the ASEAN Regional Forum (ARF), on behalf of the participating states and organization, issues the following statement:

1. Recognizing that:

- a). Piracy and armed robbery against ships and the potential for terrorist attacks on vulnerable sea shipping threaten the growth of the Asia-Pacific region and disrupt the stability of global commerce, particularly as these have become tools of transnational organized crime ;
- b). ARF Countries represents approximately 80 percent of the world's GDP and trade, and even more of maritime or container shipping trade;
- c). Maritime security is an indispensable and fundamental condition for the welfare and economic security of the ARF region. Ensuring this security is in the direct interest of all countries, and in particular the ARF countries;
- d). Most maritime armed-robberies in the Asia-Pacific region tend to occur in the coastal and archipelagic waters. Trends over the last few years indicate that piracy and armed-robbery against ships continue to threaten to be a significant problem in the Asia-Pacific region;
- e). To deal with this increasingly violent international crime, it is necessary to step up broad-based regional cooperative efforts to combat transnational organized crime, including through cooperation and coordination among all institutions concerned, such as naval units, coastal patrol and law enforcement agencies, shipping companies, crews, and port authorities;
- f). Such efforts must be based on relevant international law, including the 1982 Law of the Sea Convention;
- g). It is important that there be national and regional cooperation to ensure that maritime criminals and pirates do not evade prosecution;
- h). Effective responses to maritime crime require regional maritime security strategies and multilateral cooperation in their implementation;
- i). National, Regional and International efforts to combat terrorism also enhance the ability to combat transnational organized crime and armed-robberies against ships.

2. The Participants of ARF endeavour to achieve effective implementation of the relevant international instruments and recommendations/guidelines for the suppression of piracy and armed-robbery against ships, including the United Nations Convention on the Law of the Sea, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 and its Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; and the International Maritime Organization's recommendations and guidelines for preventing and suppressing piracy and armed-robbery against ships at sea; the International Convention for the Safety of Life at Sea, 1974 particularly the new Chapter XI-2 and the International Ship and Port Facilities Security (ISPS Code); and to enhance their coordination and cooperation to that end. The members of ARF express their commitment to become parties to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelves as soon as possible, if they have not yet done so.

3. The ARF Participants will work together to protect ships engaged in international voyages by:

a). Enhancing cooperation on fighting piracy and armed-robbery in the region between ARF participants' shipping and organizations such as the International Maritime Organization (IMO) and the Piracy Reporting Center of the International Maritime Bureau (IMB);

b). Early implementation of the comprehensive amendment to the International Convention for the Safety of Life at Sea, 1974, and the new ISPS Code adopted by the Diplomatic Conference on Maritime Security in December 2002; as called for in Conference Resolution 6.

c). Affirming their responsibilities to prosecute, in accordance with relevant domestic laws, perpetrators of acts of piracy and armed-robbery against ships.

d). Endorsing the development by the International Maritime Organization of the following instruments and recommendations/ guidance for use in preventing and suppressing piracy and armed-robbery against ships:

Recommendations to Governments for preventing and suppressing piracy and armed-robbery against ships, MSC/Circ. 622/Rev. I, 16 June 1999;

Guidance to ship-owners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed-robbery against ships, MSC/Circ. 623/Rev. 3, 29 May 2002; Directives for Maritime Rescue Coordination Centers (MRCCs), MSC/Circ. 967, 6 June 2000;

Interim Procedures for MRCCs on Receipt of Distress Alerts, MSC/Circ. 959, 20 June 2000;

Resolution A. 922 (22)- Code of Practice for the investigation of the crimes of piracy and armed-robberies against ships;

Resolution A. 923 (22)- "Phantom" ships and registration process; and

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

4. The ARF participants commit to undertake the following actions:
- a. Encourage bilateral and multilateral maritime cooperation among ARF members to combat piracy, including at the present increased personnel contact among personnel, information exchanges and anti-piracy exercises on the basis of respecting territorial integrity, sovereignty, sovereign rights and jurisdiction and in accordance with the principles of voluntary participation and agreement in line with the respective applicable international conventions.
 - b. Encourage ARF consideration and future discussion of new IMB proposals (10/23/02) on prescribed traffic lanes for large supertankers with coastguard or naval escort whenever and wherever possible on the high sea upon the consent of all ARF countries concerned. If considered feasible, forward to IMO for adoption as appropriate.
 - c. Provide, where and when possible, technical assistance and capacity-building infrastructure to countries that need help in developing necessary laws, extending training, and where and when possible, providing equipment.
 - d. Enhance ARF participants' ability to share information domestically and internationally as a vital component in the fight against maritime piracy and armed-robberies.
 - e. Institute regional ARF cooperation and training in anti-piracy and security. Cooperate with the world maritime university (under the IMO) as regards education and training of personnel engaged in anti-piracy and security.
 - f. Encourage greater ARF member states' transport industries and shipping community to report incidents to the relevant coastal states and to ships' flag administration for follow up action by the proper authorities as prescribed in MSC/Circ. 623. In addition to the IMO, ships may also report to secondary reporting centers such as the International Maritime Bureau's Piracy Reporting Center in Kuala Lumpur.
 - g. Encourage the ARF Chair to explore with the ASEAN Secretariat or an ARF participant whether it would be willing to coordinate logging of requests for assistance by ARF participants in implementing the provisions of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms on the Continental Shelf and other relevant instruments.
 - h. Review progress on efforts to combat maritime piracy and armed-robberies against ships at the 11 th ARF Ministerial meeting, in 2004 and share their experiences with member states of the IMO.

i. Endorse the ongoing efforts to establish a legal framework for regional cooperation to combat piracy and armed-robberies against ships.

j. Welcome the discussion in the IMO on various issues relating to the delivery of criminals who have committed crimes on a ship on the high sea or on the exclusive economic zone to the authorities of port state by the master of the ship, and hope to reach a conclusion as soon as possible. (IMO document “LEG 85/10”)

k. Nothing in this statement, nor any act or activity carried out in pursuant to this statement, should prejudice the position of ARF countries with regard to any unsettled dispute concerning sovereignty or other rights over territory