

Safety Among Dragons: East Asia and Maritime Security

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I. SECURITY MEASURES

Since the events of September 11, 2001, the United States has led the world toward the goal of establishing a more secure transportation industry. The results of this U.S.-led initiative have significantly affected the marine transportation world. The most direct impacts have been felt by companies that rely on international transportation for manufactured parts and/or finished goods. Those companies have seen firsthand the impact of new security protocols implemented by the United States Transportation Safety Administration (“TSA”) and the Department of Homeland Security (“DHS”). Most significantly, companies that transport goods by ocean freight have been impacted by new procedures and security initiatives that broadly regulate international trade.

More so than in most other regions of the world, trade in East Asia is greatly dependent on the seas and oceans. With the exception of China, no country in the region has a large enough land mass facilitate transportation by land. The maritime transport industry is thus of particular importance to the economic stability of that region.

This paper inspects the scope of recent American cargo and port se-

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curity measures and their impact within the East Asia region. Specifically, this analysis will address efforts towards compliance by the International Maritime Organization (“IMO”) within Asia, and the effectiveness of these new rules in protecting that region, and possibly the world, from future terrorist attacks

II. HISTORICAL BACKGROUND

Maritime law, as we know it, began with the Egyptians, Phoenicians and Greeks, who traveled extensively on the Mediterranean.¹ The earliest known surviving laws were designed simply to settle disputes between seafarers.² As time passed, these settlements became codified under Roman influence and eventually became customary rules followed by any seafarer in the Mediterranean.³ Early maritime law, thus, developed as a customary law of the sea, not a product of each nation’s territorial sovereignty.⁴

Eventually the maritime trade world expanded, and so did maritime law. With the growth of the northern European ports came more developed sea codes. The *Laws of Wisby*,⁵ the *Laws of Hansa Towns*,⁶ and the

1. Admiralty & Maritime Law, Homepage of George d’Angelo, Esq., History, <http://members.aol.com/DangeLaw/admir2.html> (last visited Mar. 25, 2006).

2. *See id.*

3. *See id.*

4. *Id.*

5. *See generally* J.B. Munger, *Notes on the Genealogy and Biography of Theodore Chapin Munger* (Sep 4, 1839 – Mar 19, 1912), from THE MUNGER BOOK: SOMETHING OF THE MUNGERS, 1639-1914 (1915), <http://opus95.com/TCM/index.htm> (last visited Mar. 25, 2006) (follow the “As to the Munger Name” hyperlink).

‘Wisby is the capital of Gotland and lies on the west coast at about its middle. It was a city of merchants, and during the 12, 13, and 14 centuries, attained great importance, and accumulated vast wealth. The trade of Northern Europe with the East passed through Wisby, which was a free port, and was trans-shipped thence to Russia, and went overland by caravan, and the goods of India, Persia and China came down the great rivers of Russia, and were passed on through this town. Merchants settled here in large numbers; so numerous were the ships that came to this port that a code of maritime laws was framed, known to the legal profession to this day as the Laws of Wisby.’

Id.

6. *See generally* WIKIPEDIA ENCYCLOPEDIA *Hanseatic League*, http://en.wikipedia.org/wiki/Hanseatic_League (last visited Mar. 25 2006) (discussing the history, foundation, expansion, zenith, downfall, and the end of the Hanseatic League).

The first impulse to mercantile union came from the dangers of traveling in the early Middle Ages. In those days mariners had neither chart or compass to guide their course, and were forced to creep timidly along the shore and to avoid as much as possible the open sea. The merchants had also to dread more positive dangers than those of storm and wreck. The coasts of northern Germany harbored numbers of rovers and pirates, who regarded the peaceful trader as their natural prey. To increase their power of resistance, it was usual for merchants to undertake their voyages in more or less numerous companies. The union thus began on sea, was still further cemented on land. In those days law was personal, and not territorial. The foreign merchant had no share in the law of the land in which he sojourned; he brought with him his own law and

*Laws of Oleron*⁷ were all created during the medieval period and are said to be the principal foundation of maritime law.⁸ As the European nations began to expand their pursuits and travels in the world, new sea courts were established in order to administer justice for disputes.⁹ By the 1600's, admiralty courts were established in most colonial states, including the early American colonies.¹⁰

Modern maritime law is a blend of the ancient doctrines and newer national and international laws. Many traditional principles such as marine insurance, salvage rights and general average are still in place.¹¹ The older doctrines remain relevant and applicable because the overall problems and risks associated with seafaring have changed little over time.¹²

III. UNITED STATES ENTITIES AND POLICIES OVERVIEW

A. ENTITIES

The DHS was created in response to the terrorist attacks of September 11, 2001 to ensure the nation's security by managing all facets of national protection. In regards to maritime security, including cargo container security, the two entities primarily responsible, are the Bureau of Customs and Border Protection ("CBP") and the United States Coast Guard.

The Coast Guard is responsible for protecting more than 361 ports and 95,000 miles of coastline.¹³ The Coast Guard coordinates its efforts with the DHS and CBP to ensure the security of the security of ports, waterways and maritime borders. Its role with the DHS includes:

administered it as best he could. The legal customs of northern Germany were substantially alike; and this similarity strengthened the bonds of union among the merchants who found themselves for a time settled in a foreign land.

Munger, *supra* note 5.

7. See generally Royal Australian Navy, The Gun Plot, The Articles of War and the Laws of Oleron, <http://www.gunplot.net/navalhistory/originsofnavy2.html> (last visited Mar. 25, 2006) (providing that "[t]he 'Laws of Oleron' were the laws which governed the seafaring nations of the West, and were derived from the code formulated in the Republic of Rhodes and received and confirmed by the Romans and neighbouring [sic] states bordering on the Mediterranean . . .").

8. Admiralty & Maritime Law, *supra* note 1.

9. See *id.*

10. *Id.* However, in England, admiralty courts had been functioning since the mid-14th century. *Id.*

11. *Id.*

12. *Id.* There are still the concerns about pirates, the sinking of ships and rights to salvage. The ancient concept of "maintenance and cure" for a seaman is still enforced, among many others. *Id.*

13. United States Coast Guard, The Coast Guard & Homeland Security, <http://www.uscg.mil/hq/g%2Dcp/history/homeland%5Fsecurity.html> (last visited Mar. 25, 2006).

[1] [p]rotect ports, the flow of commerce, and the marine transportation system from terrorism[;] [2] [m]aintain maritime border security against illegal drugs, illegal aliens, firearms, and weapons of mass destruction[;] [3] [e]nsure that [the United States] can rapidly deploy and resupply [its] military assets, both by keeping Coast Guard units at a high state of readiness, and by keeping marine transportation open for the transit [of] assets and personnel from other branches of the armed forces[;] [4] [p]rotect against illegal fishing and indiscriminate destruction of living marine resources, prevention and response to oil and hazardous material spills – both accidental and intentional[;] [5] [c]oordinate efforts and intelligence with federal, state, and local agencies.¹⁴

The Coast Guard also occupies a unique role within the concept of homeland security since it is both a law enforcement agency and part of the military armed services.

Since the Coast Guard is simultaneously, and at all times, both an armed force of the United States (14 U.S.C. 1), and a law enforcement agency (14 U.S.C. 89), its capabilities are extremely relevant, valuable, and needed for Maritime Homeland Security, whether the threat is termed a military or terrorist attack.¹⁵

The CBP is the unification of the U.S. Customs, U.S. Immigration, Animal and Plant Health Inspection Service and the entire U.S. Border Patrol into one agency for the dual purpose of protecting the United States borders from terrorists and the smuggling of weapons into the country while also creating a stable and secure system by which commerce, travel and trade can occur.¹⁶ The CBP also works with foreign counterparts to improve that country's security and international trade, and by doing so, lessens the need for security inspections on those goods coming into the U.S.¹⁷

14. *Id.*

15. THE U.S. COAST GUARD, MARITIME STRATEGY FOR HOMELAND SECURITY 9 (2002), available at http://www.uscg.mil/news/reportsandbudget/Maritime_strategy/USCG_Maritime_Strategy.pdf (last visited Mar. 25, 2006).

16. U.S. Customs & Border Prot., Protecting Our Borders Against Terrorism, <http://www.cbp.gov/xp/cgov/toolbox/about/mission/cbp.xml> (last visited Mar. 26, 2006).

17. *Id.*

CBP has implemented joint initiatives with our bordering countries, Canada and Mexico: The Smart Border Declaration and associated 30-Point Action Plan with Canada and The Smart Border Accord with Mexico. The Secure Electronic Network for Travelers' Rapid Inspection (SENTRI) allows pre-screened, low-risk travelers from Mexico to be processed in an expeditious manner through dedicated lanes. Similarly, on our northern border with Canada, we are engaging in NEXUS to identify and facilitate low-risk travelers. Along both borders, CBP has implemented the Free and Secure Trade (FAST) program. The FAST program utilizes transponder technology and pre-arrival shipment information to process participating trucks as they arrive at the border, expediting trade while better securing our borders.

Id.

B. POLICIES

On November 25, 2002, President Bush signed the Maritime Transportation Security Act ("MTSA").¹⁸ The MTSA was also created to improve the level of maritime security throughout the world and create the discussion for a universal automatic identification system, a long-range vessel tracking system, overall increase in security for the maritime transportation industry, and the effective sharing of maritime intelligence. It was passed to protect United States ports and waterways and minimize the risks of a terrorist attack. The MTSA requires maritime facilities and vessels that are or may be involved in any type of transportation to implement increased security plans, increase the use of technology for accurate inspection of containerized cargo, enhance overall maritime security, and implement the use of a risk-based system to better target those sections of the maritime transportation industry that are at higher risk.¹⁹ The MTSA also specifically provides that "[c]urrent inspection levels of containerized cargo are insufficient to counter potential security risks. Technology is currently not adequately deployed to allow for the non-intrusive inspection of containerized cargo."²⁰ The CBP and Coast Guard have partnered together and divided the requirements of the MTSA. The CBP has taken on the role of implementing improvements in cargo container security and inspections. The Coast Guard has assumed taken the role of improving security for American ports and waterways.

The CBP, in order to meet its responsibility of strengthening maritime security, has developed several programs specific to that goal. The Container Security Initiative ("CSI"), and the Customs-Trade Partnership Against Terrorism ("C-TPAT") were both created to address potential security problems or inabilities of the maritime industry. Both programs aim to identify and remove any gaps in security that terrorists might exploit.

Implemented by the CBP in January 2002, the CSI is a response to fear that sea cargo containers bound for the United States could be used to facilitate a terrorist attack by providing direct access to a United States port.²¹ Approximately forty percent of the yearly value of all United

18. Maritime Transportation Act of 2002, Pub. L. No. 107-295, § 101, 116 Stat. 2064 (2002); see also U.S. Coast Guard, Maritime Transportation Security Act of 2002, <http://www.uscg.mil/hq/g-cp/comrel/factfile/factcards/MTSA2002.htm> (last visited Apr. 19, 2006).

19. *Id.*

20. 46 U.S.C. § 70101(k)(8) (2002).

21. NIGEL BREW, DEP'T OF THE PARLIAMENTARY LIBRARY, RIPPLES FROM 9/11: THE U.S. CONTAINER SECURITY INITIATIVE AND ITS IMPLICATIONS FOR AUSTRALIA (2003), available at <http://www.aph.gov.au/library/pubs/CIB/2002-03/03cib27.pdf> (last visited Apr. 18, 2006). U.S. Customs and Border Protection is an agency within the Department of Homeland Security that unifies U.S. Customs, Immigration, and Agriculture Inspectors and the U.S. Border Patrol. U.S. Customs & Border Prot., *supra* note 16.

States imports arrive via sea cargo containers which means that the protection and increase in the security measures of those ports is key to American economic interests.²² CSI is designed to increase the security of cargo containers and ships bound for the United States before they leave their international ports.²³ Those containers that are deemed high-risk are identified and thoroughly inspected by United States Customs officers stationed at foreign ports. The CSI is highlighted by the following four directives:

1. Establish Security Criteria for identifying high-risk containers based on advance information.
2. Pre-screen containers at the earliest possible point.
3. Use technology to quickly pre-screen high-risk containers.
4. Develop secure and "smart" containers.²⁴

An additional core element of CSI is that United States custom officials are to be placed at foreign seaports to oversee the security procedures at those ports and to work with the foreign officials posted there.²⁵ Another core element emphasizes the advanced transmission of cargo manifests to the destination port to ensure accuracy of goods being shipped.²⁶ More than 48 million cargo containers move annually among the world's top seaports.²⁷ Overall, the CSI is currently enforced in forty-one international ports and the government hopes to increase its international presence in the future to make the maritime industry more secure.²⁸

The second program initiated by the CBP, C-TPAT, was implemented in November of 2001 with the goal of improving the physical security of shipping containers as they move through international commerce. "Under C-TPAT, Customs officials work in partnership with

22. U.S Customs & Border Prot., Fact Sheet (2006), http://www.cbp.gov/linkhandler/cgov/border_security/international_activities/csi/csi_fact_sheet.ctt/csi_fact_sheet.doc (last visited Apr. 18, 2006).

23. *Id.*

24. U.S. CUSTOMS & BORDER PROT., CSI IN BRIEF (2006), http://www.cbp.gov/xp/cgov/border_security/international_activities/csi/csi_in_brief.xml (last visited Apr. 19, 2006).

25. *Id.*

26. Press Release, U.S. Customs & Border Prot., U.S. Customs to Require Advance Cargo Manifests from Sea Carriers to Protect Global Trade (Aug. 7, 2002), [http://www.cbp.gov/xp/cgov/PrintMe.xml?xml=\\$/content/newsroom/press_releases/2002/august/08072002.ctt&location=/newsroom/press_releases/archives/legacy/2002/82002/08072002.xml](http://www.cbp.gov/xp/cgov/PrintMe.xml?xml=$/content/newsroom/press_releases/2002/august/08072002.ctt&location=/newsroom/press_releases/archives/legacy/2002/82002/08072002.xml) (last visited Apr. 18, 2006).

27. Press Release, U.S. Customs and Border Protection, United Kingdom Signs Declaration of Principles to Join U.S. Customs Container Security Initiative, Strengthening Anti-Terror Coalition (Dec. 9, 2002), http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/legacy/2002/122002/12092002.xml (last visited Apr. 21, 2006). "Each year more than 16 million containers arrive in the United States by ship, truck, and rail." *Id.*

28. U.S. Customs & Border Prot., Ports in CSI (2005), http://www.cbp.gov/xp/cgov/border_security/international_activities/csi/ports_in_csi.xml (last visited Apr. 18, 2006).

private industry, reviewing supply chain security plans and recommending improvements.”²⁹ In exchange for their participation, C-TPAT member businesses receive the benefit of a reduced likelihood that containers traveling along their international supply chains will be stopped and inspected for weapons of mass destruction (“WMDs”) or held up for additional inspections.³⁰ The goal of the program is to ensure that the flow of goods is both secure and unimpeded through the international supply chain.

IV. THE INTERNATIONAL MARITIME ORGANIZATION

The International Maritime Organization (IMO) is a global cooperative that resulted from an international conference held in Geneva in 1948.³¹ The IMO Convention became effective in 1958, and the new organization met for the first time the following year.³² The IMO is the United Nations’ specialized agency responsible for the safety and security of shipping and the prevention of marine pollution by ships. The first task undertaken by the IMO was the adoption of the International Convention for the Safety of Life at Sea (“SOLAS”).³³ After the initial version of SOLAS was completed in 1960,³⁴ the IMO then turned to other matters such as the facilitation of international maritime traffic, load lines, the carriage of dangerous goods, and revising the system of measuring the tonnage of ships.³⁵ “With a staff of 300 people, IMO is one of the smallest

29. U.S. GEN. ACCOUNTING OFFICE, CONTAINER SECURITY: EXPANSION OF KEY CUSTOMS PROGRAMS WILL REQUIRE GREATER ATTENTION TO CRITICAL SUCCESS FACTORS 3 (2003), available at <http://www.gao.gov/new.items/d03770.pdf> (last visited Apr. 18, 2006).

30. *Id.*

31. International Maritime Organization, About IMO, Introduction to IMO, <http://www.imo.org/home.asp> (last visited Apr. 18, 2006) [hereinafter Introduction to IMO]. The International Maritime Organization (“IMO”) was formerly known as the Inter-Governmental Maritime Consultative Organization, or IMCO, but the name was changed in 1982 to IMO. *Id.*

32. *Id.*

33. *Id.*

The SOLAS Convention in its successive forms is generally regarded as the most important of all international treaties concerning the safety of merchant ships. The first version was adopted in 1914, in response to the Titanic disaster, the second in 1929, the third in 1948 and the fourth in 1960.

International Maritime Organization, International Convention for the Safety of Life at Sea (SOLAS), 1974, http://www.imo.org/Conventions/contents.asp?topic_id=257&doc_id=647 (last visited Apr. 19, 2006) [hereinafter SOLAS]. “[SOLAS] has 155 Contracting Governments which together are responsible for more than 98 per cent of the world shipping fleet by tonnage.” International Maritime Organization, Maritime Security on Agenda as USCG Commandant Visits IMO, at n.2, http://www.imo.org/About/mainframe.asp?topic_id=892&doc_id=4714 (last visited Apr. 19, 2006) [hereinafter Maritime Security].

34. SOLAS was subsequently amended in 1974 and most recently 2005. SOLAS, *supra* note 33.

35. Introduction to IMO, *supra* note 31.

of all United [Nations'] agencies."³⁶ Nevertheless, it has achieved considerable success in accomplishing its aim of "safer shipping and cleaner oceans."³⁷ "Ship casualty rates have declined and the amount of oil entering the sea from ships has been cut."³⁸

One of the newest and most complex challenges facing the IMO is the issue of security. The IMO's responded to the attacks on September 11, 2001 by enacting Assembly resolution A.924(22) in November 2001, which "called for a review of the existing international legal and technical measures to prevent and suppress terrorist acts against ships at sea and in port, and to improve security aboard and ashore."³⁹ Amendments were added to SOLAS, namely the new chapter "XI-2" on special measures to enhance maritime security and the International Ship and Port Facility Security Code.⁴⁰ "The International Ship and Port Facility Security Code ("ISPS Code") is a comprehensive set of measures [designed] to enhance the security of ships and port facilities, developed in response to the perceived threats to ships and port facilities"⁴¹ The new code "contains detailed security-related requirements for [g]overnments, port authorities and shipping companies in a mandatory section (Part A)," and a series of guidelines regarding the implementation of these requirements in a second, non-mandatory section (Part B).⁴² These new provisions became effective as of July 1, 2004.⁴³ "The biggest change is that the Contracting

36. *Id.*

37. *Id.*

38. *Id.*

39. Hartmut Hesse & Nicolaos L. Charalambous, *New Security Measures for the International Shipping Community*, 3 W. MAR. U. J. MAR. AFF. 123, 125 (2004), available at http://www.imo.org/Safety/mainframe.asp?topic_id=551 (last visited Apr. 18, 2006).

40. SOLAS, *supra* note 33.

41. International Maritime Organization, FAQ on ISPS Code and Maritime Security, What is the ISPS Code, http://www.imo.org/Safety/mainframe.asp?topic_id=897 (last visited Apr. 18, 2006) [hereinafter What is the ISPS Code].

42. Press Release, International Maritime Organization, IMO Adopts Comprehensive Maritime Security Measures (Dec. 2002), http://www.imo.org/Newsroom/mainframe.asp?topic_id=583&doc_id=2689 (last visited Apr. 18, 2006).

43. See International Maritime Organization, FAQ on ISPS Code and Maritime Security, http://www.imo.org/Safety/mainframe.asp?topic_id=897 (last visited Apr. 18, 2006) [hereinafter FAQ on ISPS Code]. When the first report came on July 1, 2004 there was only a 69% appearance of compliance. INT'L MAR. ORG., SECURITY COMPLIANCE SHOWS CONTINUED IMPROVEMENT (2004), available at <http://www.uscg.mil/hq/g-m/mp/pdf/securitycompliance.pdf> (last visited Apr. 21, 2006). Yet, on February 17, 2005, IMO Secretary-General, Efthimios E. Mitropoulos, issued an ISPS update, which provided:

[T]hat figures for ships subject to the ISPS Code the information available indicates a high degree of compliance and almost no disturbance of the world trade while, for ports, information suggests that almost 94% of the Contracting Governments to the SOLAS Convention have approved security plans for 97% of the declared port facilities, which in total number in excess of 9,600 worldwide.

Maritime Security, *supra* note 33.

Governments to the 1974 SOLAS Convention are able to formally exercise . . . control over ships in accordance with the provisions of chapter XI-2 and of the ISPS Code.”⁴⁴ The Contracting Governments are also required to address all requirements under the ISPS Code and to ensure that adequate security measures are in place in the ports and waterways within their nation’s territorial control.⁴⁵

The new regulatory maritime security regime will be a significant burden for those port facilities and ship operators who had not already responded to the increased threat to maritime security in the current climate.⁴⁶ “They will need to catch up, according to the rules and guidelines in the ISPS Code.”⁴⁷ This will cost both time and money and may cause some shippers to suffer under the increased economic requirement. In contrast, those governments and ship operators who have already implemented enhanced security regimes will be more prepared to assist in the establishment of a more standardized security system, under the ISPS, for maritime shipping.⁴⁸ By being prepared to comply, or complying with such regulations, businesses will benefit because the process will be smoother and they have less likelihood of having their cargo being flagged for security inspections.

In addition to the security interests that promulgated these new regulations, they also have the advantage of offering potential commercial benefits to the maritime industry.⁴⁹ In the long run, the implementation of the Code should provide a tremendous cost-benefit for the entire maritime industry.⁵⁰ “By putting in place an effective and compliant security regime, ports will be able to continue to participate fully in global trade and, of course, the potential economic consequences of a major security breach, which might result in disruption or even port closure, are serious indeed.”⁵¹ Overall, the SOLAS XI-2 and ISPS codes have been updated and implemented in order to create a basic standardized system for ensuring security for both ships and ports. This system has also impacted businesses and commercial traffic by the creation of a more organized and systematic process for the processing of cargo.

The IMO’s “new requirements form the international framework through which governments, ships and port facilities can co-operate to

44. International Maritime Organization, FAQ on ISPS Code and Maritime Security, What has changed since 1 July 2004, http://www.imo.org/Safety/mainframe.asp?topic_id=897 (last visited Apr. 18, 2006) [hereinafter What has changed].

45. *Id.*

46. *Id.*

47. *Id.*

48. *See id.*

49. *Id.*

50. *Id.*

51. *Id.*

detect and deter acts which threaten security in the maritime transport sector.”⁵² There is still a very large challenge ahead for the IMO and its 164 Member States to continue to effectively address the enormous change occurring in shipping due to the increased security requirements of the United States and other countries around the world.⁵³ A determination must be made by the IMO regarding how risk management of ships and ports is to be accomplished in light of the new rules, and what sort of time line for compliance should be imposed.

V. SECURITY IS KEY

Security is the top issue for many countries throughout the world. The maritime industry is no different. Very real threats exist, and the IMO has had security on its radar for some time. The 1985 terrorist hijacking of the Italian cruise ship *Achille Lauro* brought this issue to the forefront of the maritime security world.⁵⁴ Since the *Archille Lauro* incident, the IMO has developed a series of technical measures in order to protect passengers and crews on board ships.⁵⁵ Yet, attacks on maritime

52. *Id.*

53. For instance:

The Advances (Added Value Network Concerning European Shipping) Thematic Network is intended to be an arena in which all the relevant actors; shippers, ports, shipping operators, and land transporters meet to achieve a common understanding of how to combine the industrial concept of total logistics quality with the IMO and European desire for improved safety at sea into one, coherent operational platform. The knowledge base generated in the Thematic Network will be used to co-ordinate relevant European and national research.

National Technical University of Athens Maritime Transport, Advances, Added Value Network Concerning European Shipping, <http://www.maritime.deslab.naval.ntua.gr/research/projects.asp?id=advances> (last visited Apr. 18, 2006).

54. See generally WIKIPEDIA ENCYCLOPEDIA *Achille Lauro*, http://en.wikipedia.org/wiki/Achille_Lauro (last visited Apr. 18, 2006) (discussing the hijacking of the *Achille Lauro*).

On October 7, 1985, six men representing the Palestine Liberation Front (PLF) took control of the liner off Egypt while she was sailing from Alexandria to Port Said within Egypt . . . Holding the passengers and crew hostage, they directed the vessel to sail to Tartus, Syria, and demanded the release of 50 Palestinians then in Israeli prisons. Refused permission to dock at Tartus, the hijackers shot one wheelchair-bound passenger – an American named Leon Klinghoffer – because he was Jewish and threw his body overboard, leaving him to die. The ship headed back towards Port Said, and after two days of negotiations the hijackers agreed to abandon the liner for safe conduct and were flown towards Tunisia aboard an Egyptian commercial airliner. The plane was intercepted by United States Navy fighters on October 10 and directed to land at Naval Air Station Sigonella, a NATO base in Sicily, where the hijackers were arrested by the Italians after a disagreement between US and Italian authorities. The other passengers on the plane (possibly including the hijackers’ leader Abu Abbas) were allowed to continue on to their destination, despite protests by the United States.

Id.

55. INT’L MAR. ORG., WORLD MARITIME DAY 2004, IMO: FOCUS ON MARITIME SECURITY (2004), available at http://www.imo.org/includes/blastDataOnly.asp/data_id%3D9885/English/message.pdf (last visited Apr. 18, 2006).

[The IMO] in March 1988, adopted the Convention for the Suppression of Unlawful

infrastructures have continued in other parts of the world such as Yemen and Iraq. The purpose of the ISPS is to reduce the vulnerability that the industry faces and prevent future attacks by reducing the risk of occurrence.⁵⁶ Shoring-up all aspects of border security is a standard concern of every country in the world, especially in the wake of September 11, 2001. At the same time, many countries realize that transport is key to socio-economic development and competitiveness in the international community.

With the distribution of goods through a transportation system, comes the need for a maintained interest in the security of those transportation routes. Regional organizations like the Association of Southeast Asian Nations (“ASEAN”)⁵⁷ realize this fact and are committed to doing what they can to comply with the IMO’s new regulations without sacrificing their own economic growth. ASEAN was organized on August 8, 1967, under an agreement between five Member countries: Indonesia, Malaysia, Philippines, Singapore and Thailand.⁵⁸ Later countries to join were: Brunei Darussalem in 1984, Vietnam in 1995, Laos and Myanmar in 1997, and, most recently, Cambodia in 1999.⁵⁹

The following sections of this paper distinguish the various countries in Asia and what each is specifically doing in order to protect the international community from breaches in security that could be exploited by terrorists.

VI. ASEAN COUNTRIES

ASEAN has taken steps to respond to the threat of terrorism. The maritime order is mostly maintained within East Asia by the United Na-

Acts Against the Safety of Maritime Navigation - the SUA Convention - and its Protocol relating to offshore platforms. The principal purpose of the SUA instruments is to ensure that persons committing unlawful acts against ships will not be given shelter in any country but will either be prosecuted or extradited to a State where they will stand trial. Unlawful acts covered by the SUA Convention include the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it.

Id.

56. What has changed, *supra* note 44.

57. Association of Southeast Asian Nations, About ASEAN, Overview, <http://www.aseansec.org/64.htm> (last visited Apr. 18, 2006).

The ASEAN Declaration states that the aims and purposes of the Association are: (i) to accelerate the economic growth, social progress and cultural development in the region through joint [endeavors] in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian nations, and (ii) to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter.

Id.

58. *Id.*

59. *Id.*

tions Convention on the Law of the Sea.⁶⁰ Within the last few years, a number of conventions have specifically addressed the problem of terrorism and its regionally-oriented solutions.⁶¹ ASEAN is working with its members and other world leaders in coordinating a response to combat terrorism.⁶²

There are many different nation/state perspectives in Asia, but the goal of secure maritime shipping lanes and ports throughout the region is common to all. Through programs like the CSI, ASEAN, under the auspices of the IMO regulations, is the coordinative group that may enable the region to be stable and secure from terrorist activity. ASEAN has seen overall success in at least beginning the discussions and implementing foundational plans to increase security and combat terrorist activity.

A. THAILAND

Thailand has begun implementing the SILAS and ISPS per the IMO's requirements. Though there have been some technical and financial setbacks that have held up implementation, Thailand has received assistance from international sources in order to improve its maritime security.⁶³ "Thailand also continues to promote strengthening of domestic coordination and international cooperation to suppress piracy and armed

60. Zou Keyuan, *Implementing the United Nations Convention on the Law of the Sea in East Asia: Issues and Trends*, 9 SYBIL 1, 1 (2005), available at <http://law.nus.edu.sg/sybil/downloads/current/Zou.pdf> (last visited Apr. 22, 2006). The LOS convention is commonly regarded as the constitution governing the oceans. It incorporates almost all previous conventions and customary rules and norms concerning oceans. *Id.*

61. See generally ASS'N OF SE. ASIAN NATIONS, ASEAN REGIONAL SECURITY FORUM ANNUAL SECURITY OUTLOOK 2004, SINGAPORE, at 62 (2004), available at <http://www.aseansec.org/aso2004/singapore.pdf> (last visited Apr. 18, 2006).

The ASEAN Leaders Declaration on Terrorism at the 8th Summit in 2002 built upon the ASEAN Declaration on Joint Action to Counter Terrorism released by ASEAN leaders at the 7th Summit in November 2001. A Special ASEAN Ministerial Meeting on Transnational Crime or AMMTC on Terrorism was held in Kuala Lumpur in May 2002 as a concrete follow-up to address terrorism. The meeting produced a workplan for the ASEAN Plan of Action to Combat Transnational Crime (Terrorism Component) At the 4th AMMTC Meeting in January 2004, ASEAN further declared its commitment to undertake a comprehensive and coordinated approach in addressing various areas of transnational crimes that have links to terrorism and to accelerate the implementation of the Terrorism Workplan.

Id. at 63.

62. *Id.*

The Foreign Ministers of ASEAN and the US adopted a *Joint Declaration for Cooperation to Combat International Terrorism* in August while ASEAN and China issued a *Joint Declaration of ASEAN and China on Cooperation in the Field of Nontraditional Security Issues* in November 2002. ASEAN and India also adopted a *Joint Declaration for Cooperation to Combat International Terrorism* at the Bali Summit in October 2003.

Id.

63. MINISTRY OF FOREIGN AFFAIRS, KINGDOM OF THAILAND, PROGRESS REPORT ON THAILAND'S IMPLEMENTATION OF COUNTER-TERRORISM ACTIVITIES, available at <http://www.mfa.go.th/internet/document/Terrorism%20Report.doc> (last visited Apr. 19, 2006).

robbery.”⁶⁴ Overall, while Thailand may have problems,⁶⁵ it appears to be on the right track and is within full compliance of its membership responsibilities in the IMO and SOLAS.

B. SINGAPORE

Singapore appears to be a leader in security management, and continues to help lead the international community in promoting counter-terrorism efforts. In January 2003, Singapore and the United States co-hosted a workshop on counter-terrorism and the economic financing necessary to combat terrorism.⁶⁶ Singapore also co-hosted another workshop with Australia in June 2003.⁶⁷ Singapore continues to promote counter-terrorist approaches to ASEAN and the creation of a network of intelligence communication with meaningful exchanges of information between the members of ASEAN.⁶⁸

Singapore is a member of the IMO and the SOLAS convention. It has stated that it is committed to implementing all approved amendments and will continue to do what it can to prevent terrorists from attacking again.

Singapore was the first port in Asia to meet the CSI requirements.⁶⁹ Since March 2003, it hosts the largest transnational port with shipments destined for the United States that has been in compliance with the CSI initiative and is deemed “essential to securing global trade against terrorist exploitation.”⁷⁰ It was the first Asian port to reach compliance and is

64. *Id.*

65. *Bomb kills two in southern Thailand*, WASH. TIMES, Feb. 2, 2006, <http://www.washingtontimes.com/upi/20060202-012359-6753r.htm> (last visited Apr. 18, 2006).

More than 1,200 people have died in violence in the predominantly Muslim provinces of Yala, Patani and Narathiwat in the past two years. The attacks, which mostly have targeted security officials, are blamed on an Islamic separatist movement.

Id.

66. Ministry of Foreign Affairs Singapore, *The Singapore-US Partnership*, <http://app.mfa.gov.sg/ussfta/sguspartnership.asp> (last visited Apr. 19, 2006) [hereinafter *The Singapore-US Partnership*].

67. Australian Government, Department of Foreign Affairs and Trade, *Background on the ASEAN Regional Forum*, <http://www.dfat.gov.au/artf/background.html> (last visited Apr. 19, 2006).

68. See *The Singapore-US Partnership*, *supra* note 66.

69. *Container Security Initiative Now Operational in Singapore*, WASH. FILE (Info. Warfare Site), March 18, 2003, <http://www.iwar.org.uk/news-archive/2003/03-18-3.htm>.

CSI consists of four core elements: 1) using intelligence and automated information to identify and target high-risk containers; 2) pre-screening those containers identified as high-risk, at the port of departure, before they arrive at U.S. ports; (3) using detection technology to quickly pre-screen high-risk containers; and (4) using smarter, tamper proof containers.

Id.

70. *Id.*

illustrative of Singapore's serious and effective approach to counter-terrorism.

Singapore is focused on ensuring safety and security for its shipping and transportation of goods by sea.⁷¹ Singapore is continually concerned about maritime security as it prospers from its good standing in Asia and relies upon peace in the region to maintain that prosperity. Not only has Singapore met the SOLAS and ISPS regulation requirements, but it also continues its leadership in the security and stability of the region and it asks that the issues continue to be discussed at future ASEAN Regional Forum ("ARF") meetings.⁷²

C. MALAYSIA

Malaysia depends heavily on the safety of seaborne transport as approximately 90% of its trade is by water.⁷³ Malaysia's biggest industries and commodities, oil and gas, are found offshore, while the fishing industry accounts for about 2% of the nation's labor force. As a result, maritime security is a high priority for Malaysia.⁷⁴ To monitor the interests of the government in matters that related to sea shipping, the government set up the Maritime Institute of Malaysia ("MIMA"), a policy research institute that serves as a national focal point for research in the maritime sector.⁷⁵

Malaysia also announced its implementation of the CSI in March 2004.⁷⁶ The CBP has deployed officers "to the port of Klang to work with their Malaysian counterparts to target cargo containers destined for

71. See The Singapore-US Partnership, *supra* note 66; see also Ministry of Foreign Affairs, Foreign Policy, Association of Southeast Asian Nations (ASEAN), Recent Bilateral Highlights, http://www.mfa.gov.sg/internet/foreignpolicy/io_asean.htm (last visited Apr. 19, 2006) [hereinafter Recent Bilateral Highlights].

72. See Recent Bilateral Highlights, *supra* note 71.

The ASEAN Regional Forum (ARF) is an informal multilateral dialogue of 25 members that seeks to address security issues in the Asia-Pacific region. The ARF met for the first time in 1994. The current participants in the ARF are as follows: ASEAN, Australia, Canada, China, European Union, India, Japan, North Korea, South Korea, Mongolia, New Zealand, Pakistan, Papua New Guinea, Russia, East Timor, and the United States.

WIKIPEDIA ENCYCLOPEDIA *ASEAN Regional Forum*, http://en.wikipedia.org/wiki/Association_of_Southeast_Asian_Nations (last visited Apr. 19, 2006).

73. Maritime Institute of Malaysia (MIMA), Malaysia's Maritime Resources, <http://www.mima.gov.my/mima/htmls/admin/intro.html> (last visited Apr. 19, 2006).

74. *Id.*

75. Maritime Institute of Malaysia (MIMA), Introduction, <http://www.mima.gov.my/mima/htmls/admin/intro.html> (last visited Apr. 19, 2006).

76. Press Release, U.S. Customs and Border Protection, Malaysia Joins Container Security Initiative (Mar. 8, 2004), available at <http://www.globalsecurity.org/security/library/news/2004/03/sec-040308-usia01.htm> (last visited Apr. 19, 2006).

the United States.”⁷⁷ Officials of the Malaysian government will be responsible for “examining any container identified jointly with CBP officers as a potential terrorist risk.”⁷⁸

D. BANGLADESH

Bangladesh has had problems with securing its maritime industry and the waters that it claims as territory. While it has long been ranked among the five greatest problem countries in the Southeast Asian region it has recently begun to work on its record and to protect itself.⁷⁹ “[The International Maritime Bureau (“IMB”)] reported 68 piracy incidents in 2003 in Bangladesh” and identified its territorial waters as the second most dangerous place after Indonesia in Asia.⁸⁰ From 2003 to 2004, incidents of piracy and armed robberies decreased by two-thirds.⁸¹ Bangladesh’s program for reducing criminal acts shows a desire to comply with the SOLAS and ISPS standards.

E. VIETNAM

In the past, Vietnam has had difficulty meeting the requirements set for it by the international community. Such requirements as the IMO’s Global Maritime Distress and Safety System (GMDSS), which was to be implemented by January 1999, were not actually completed in Vietnam until September 2001.⁸² As such, it is possible that while Vietnam is attempting to comply with the SOLAS amendments and the ISPS, it may be having a hard time meeting those objectives, and therefore its ports and shipping may offer good targets for terrorists.

VII. NON-ASEAN COUNTRIES

China, Japan, and the Koreas, who are not members of ASEAN and have chosen not to become members, function as individuals or occasionally as an advisory bloc. However, they are all members of the IMO. The

77. *Id.*

78. *Id.*

79. Maritime Protective Services, Inc., Bangladesh Improves Maritime Security Record, <http://www.mpsint.com/newsletter/02182005.html> (last visited Apr. 19, 2006).

80. *Id.*

81. *See id.*

82. JAPAN BANK FOR INT’L COOP. (JPIC), VIETNAM COASTAL COMMUNICATION SYSTEM PROJECT 3 (2003), available at http://www.jbic.go.jp/english/oec/post/2004/pdf/2-33_full.pdf (last visited Apr. 19, 2006). The GMDSS was “based on 1988 revisions of the SOLAS convention (International Convention for the Safety of Life at Sea). Vietnam did not possess the facilities to support GMDSS, and so the country’s measures were inadequate for observing the provisions of the SOLAS convention and complying with the regulations of the SAR convention (International Convention on Maritime Search and Rescue).”

Id. at 1.

most likely reason that they have not become a part of ASEAN is because they are the strongest economies in the region and do not yet see the benefit of being bound by such an international agreement. Still, they are constantly involved in ASEAN negotiations and conferences, because decisions by that organization may have a profound impact on their dealings in the world.

A. CHINA

China is a very significant and involved member of the IMO that has committed itself to strictly meet the IMO guidelines.⁸³ China helped draft and is a signatory to the new amendments to SOLAS.⁸⁴ As such, China states it is completely committed to combating terrorist organizations within the stipulated framework of the United Nations and will do whatever is deemed necessary to comply with the new regulations.⁸⁵

China has experienced significant economic growth, especially in the last decade. That means that their shipping ports have had to develop very rapidly. There is concern that terrorists may see these new busy ports, that are still adapting to their new size and increased security needs, as prime targets.⁸⁶ A successful attack would greatly affect the flow of foreign trade from China, and would certainly impact the world economy. In order to prevent such attacks, a new system of security measures must be installed and implemented by the port administrators.⁸⁷ "There are more than 130 ports open to foreign trade in China with more than 10,000 port facilities. There are around 2,000 national flagged ships serving international routes. Therefore, the security work for the ships and the port facilities is very heavy."⁸⁸ In order to coordinate all the various groups involved in port security (government, port administrators,

83. ZHANG SHOUGUO DEPARTMENT OF WATER TRANSPORT, MINISTRY OF COMMUNICATIONS, PLAYING AN ACTIVE ROLE IN FULFILLING MARITIME SECURITY OBLIGATIONS 1 (2004), available at <http://www.oecd.org/dataoecd/19/61/33949707.pdf> (last visited Apr. 19, 2006).

84. *Id.*

85. *Id.*

86. *See id.*

87. *Id.*

The Port Law of the People's Republic of China came into effect on 1 January 2004. Its implementation provides the legal basis for the security management role played by the port administrative agencies. It also makes the port administrative agencies responsible for maintaining port security by law. Security management is an important aspect of port administration. It also gives full power to the port administration agency to manage the port In accordance with the Amendments to the SOLAS Convention and the ISPS Code, and having taken our ships and ports situation into consideration, the Code for Port Facilities Security and the Code for Ship's Security and the relevant documents came into force in November 2003 and March 2004 respectively. The requirements for port facility security and ship's security in the Amendments to the SOLAS Convention have been encoded in these two codes and the relevant documents.

Id. at 1-2.

88. *Id.* at 2.

shipping companies, individual boat owners, etc.), the Chinese government established a coordination workgroup in 2003 to begin the process of securing the foreign trade ports.⁸⁹ “[The agency] is responsible for the guidance of the implementation by the port industry, the appraisal of port facility security as well as the approval of security plans.”⁹⁰ On June 30, 2004, China conducted a security test of its facilities and found them to be in compliance with the SOLAS and ISPS conventions.⁹¹

Now that China has met the amendments to SOLAS and the ISPS, their main task is to maintain their current level for implementation of the rules and to upgrade in the future. “The Chinese government will, taking the implementation of the Amendments to the SOLAS Convention and the ISPS Code as an opportunity, strengthen port facility and ship security management and guarantee the normal operation of both Chinese and foreign flagged ships in Chinese ports.”⁹² Their hope now is that other countries will comply and meet the same or better levels of security. China jumped on-board the CSI in July 2003. CBP officials are stationed in the ports of Shanghai and Shenzhen to oversee the security of cargo containers heading to United States ports.⁹³

B. JAPAN

Japan depends on international import shipments to supply a vast portion of its food and energy needs. Because Japan is such an influential country in the world economy, any sort of detrimental impact or stoppage of maritime shipments to Japan could greatly impact the entire world. Therefore, the security of their ports is of key importance to all.

Japan became part of the IMO in 1958 and, behind Panama and Liberia, is the third highest contributor at about five percent of the IMO’s budget.⁹⁴ Japan was a contributor and officer to the SOLAS and ISPS conventions and has begun implementing the associated regulations. The Ministry of Construction and Transportation took the initiative in January 2004 and proposed a new law to control the flow of foreign traffic in and out of Japanese ports.⁹⁵ The new law, which became effective in July

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. Press Release, U.S. Customs and Border Protection, China Signs Declaration of Principles With Container Security Initiative to Target and Pre-Screen Cargo Destined for U.S. (July 29, 2003), http://www.customs.gov/xp/cgov/newsroom/press_releases/archives/cbp_press_releases/072003/07292003.xml (last visited Apr. 19, 2006).

94. The Ministry of Foreign Affairs of Japan, Maritime Pollution Prevention and Japan’s Contribution, <http://www.mofa.go.jp/policy/maritime/safety/pollution.html> (last visited Feb. 26, 2006).

95. *Japan strengthens port state control*, THE MARITIME ADVOCATE.COM, Jan. 2004, http://www.maritimeadvocate.com/i25_japa.php (last visited Apr. 19, 2006).

2004, corresponds to the SOLAS convention. It includes provisions allowing Japanese port authorities to refuse foreign vessels entry to Japanese ports if they are deemed to represent a security threat, and will also allow the port authorities to remove any such vessels already in port.⁹⁶ Also, the Japanese government joined CSI and implemented its requirements per the American demands as of March 2003.⁹⁷ Also, the Ministry of Land, Infrastructure and Transport approved various port facility plans to be implemented in compliance with the conventions in April 2004.⁹⁸

In addition to complying with the SOLAS convention and the new ISPS rules, the Japanese Maritime Self Defense Force (“JMSDF”) is responsible for the security of Japanese ports and the surrounding waters in order to ensure that the trading of goods by ship is not hindered in any way. Any stop or hindrance on the shipping of goods could be detrimental to the government and the nation’s economy. The JMSDF is, thus, responsible for not only protecting Japan from enemy submarines and surface ships, but also for maintaining the security in vital shipping lanes.⁹⁹ Of particular concern is the Malacca Strait, since it is the main route for ships bound for East Asia and Japan will continue to ensure that this passage remains a safe navigable waterway.¹⁰⁰

VII. PARTICULAR PROBLEM AREAS

Indonesia represents the greatest potential risk in the East Asia region, both as the world’s largest archipelago and as 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. There does not appear to be any negative impact on the business world or insurance rates, due to this upsurge in risk assessment, but insurance companies who cover ships that dock at Indonesian ports have begun to require

96. *Id.*

97. See Press Release, U.S. Customs and Border Protection, Japan Implements the Container Security Initiative and Begins to Target and Pre-Screen Cargo Destined for U.S. (Mar. 20, 2003), http://www.customs.gov/xp/cgov/newsroom/press_releases/archives/cbp_press_releases/032003/03202003.xml (last visited Apr. 19, 2006). The ports of Tokyo, Nagoya, and Kobe are all CSI port operational. They join the already operational CSI ports of Rotterdam, LeHavre, Bremerhaven, Hamburg, and Antwerp in Europe, Singapore in Asia, and Vancouver, Montreal, and Halifax in Canada. See *id.*

98. Ministry of Land, Infrastructure and Transport, ISPS Compliant Port Facilities, http://www.mlit.go.jp/kowan/port_security/00.html (last visited Apr. 19, 2006).

99. Nihon Kaijyo Jieitai Global Security.org, Japan Maritime Self Defence Force, <http://www.globalsecurity.org/military/world/japan/jmsdf.htm> (last visited Apr. 19, 2006).

100. Efthimios Mitropoulos, Secretary General, Int’l Transp. Inst., Lecture at the Japan International Transport Institute (Oct. 21, 2004), http://www.imo.org/Newsroom/mainframe.asp?topic_id=847&doc_id=4402 (last visited Apr. 19, 2006).

specific underwriting approval before docking is permitted.¹⁰¹

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. In 2004, Philippine authorities uncovered active terrorist cells of the Indonesian-based JI in the country and subsequently discovered a money trail leading to al-Qaeda. The American authorities, along with Philippines officials, are working to combat terrorists in the Southeast Asian region.¹⁰²

Of vital importance to the stability and maintenance of the security of strategic sea lanes is the protection and safety of such waterways as the Straits of Malacca.¹⁰³ Piracy is one of the most grave problems persisting in East Asia. Since the attacks of September 11, 2001 there has been considerable interest in the acts of pirates and to classify them as terrorists.¹⁰⁴ “[E]xperts, however, fail to realize that the popular perception that the international community has eliminated sea piracy is far from true. Not only has piracy never been eradicated, but the number of pirate attacks on ships has also tripled in the past decade-putting piracy at its highest level in modern history.”¹⁰⁵ More than two-thirds of piratical attacks worldwide occur in Asian waters.¹⁰⁶ In 2000, the region accounted for 65% of piracy worldwide.¹⁰⁷ In 2003, 42% of pirate attacks took place

101. The Malacca Straits, Steve’s Vital Marine Canals, <http://www.geocities.com/uksteve.geo/canal6.html> (last visited Apr. 19, 2006).

102. ASS’N OF SE. ASIAN NATIONS, ASEAN REGIONAL FORUM ANNUAL SECURITY OUTLOOK 2004, at 77 (2004), available at <http://www.aseansec.org/aso2004/usa.pdf> (last visited Apr. 19, 2006).

103. The Malacca Straits, *supra* note 101.

Linking the Indian and Pacific Oceans, the Straits of Malacca is the shortest sea route between three of the world’s most populous countries – India, China, and Indonesia – and therefore is considered to be the key choke point in Asia The narrowest point of this shipping lane is the Phillips Channel in the Singapore Strait, which is only 1.5 miles wide at its narrowest point. This creates a natural bottleneck, with the potential for a collision, grounding, or oil spill (in addition, piracy has historically been a regular occurrence in the Singapore Strait, but over the past 15 years has grown alarmingly).

Id.

104. See GAL LUFT & ANNE KORIN, INST. FOR THE ANALYSIS OF GLOBAL SECURITY, TERRORISM GOES TO SEA, (2004), <http://www.iags.org/fa2004.html> (last visited Apr. 19, 2006).

[T]he International Maritime Bureau (IMB), a piracy watchdog, suggest that both the frequency and the violence of acts of piracy have increased in recent years. In 2003, ship owners reported 445 attacks, in which 92 seafarers were killed or reported missing and 359 were assaulted and taken hostage. (Ships were hijacked in 19 of these cases and boarded in 311.) From 2002 to 2003, the number of those killed and taken hostage in attacks nearly doubled.

Id.

105. *Id.*

106. Ministry of Foreign Affairs of Japan, Present State of the Piracy Problem and Japan’s Efforts, <http://www.mofa.go.jp/policy/piracy/problem0112.html> (last visited Apr. 19, 2006).

107. *Id.*

in the Strait of Malacca between Malaysia and Indonesia.¹⁰⁸ Piracy is a problem in Asia, not only because of the region's geographical constraints, but because there is no clear definition demarking piracy for "private ends" as opposed to piracy as a terrorist acts made for political ends.

The IMO Council approved a "high-level conference to consider ways and means of enhancing safety, security and environmental protection in the Straits of Malacca and Singapore."¹⁰⁹ The event, which took place in Jakarta, Indonesia, in July 2004, featured much discussion about what exactly should be done to combat terrorism.¹¹⁰ There was a great deal of concern that the Straits of Malacca would be a target for terrorist activity, resulting in a huge worldwide impact on the shipping of goods.¹¹¹ In an attempt to at least temporarily deter such an event, Malaysia and Singapore have begun using their navies to escort oil tankers and increase their overall presence and visibility.¹¹² Japan also has a great interest in the continued operation of the Straits because an estimated eighty percent of the country's oil coming from the Middle East goes through those waters.¹¹³ Japan has offered its own naval forces to help patrol the area, but so far Malaysia and Indonesia have refused Japan's offer.¹¹⁴ The Straits of Malacca is a security issue that needs to be resolved in the near future, perhaps with the involvement of ASEAN and the IMO.

The last problem area in Asia is the constantly-disputed right to ownership of the South China Sea. This area is another vitally important transport channel for ships. "It is the second most used sea lane in the world."¹¹⁵ The dispute arises out of the United Nations' 1982 Law of the Sea Convention, which permits a country to have an Exclusive Economic Zone ("EEZ") extending 200 nautical miles beyond the nation's territorial waters. With that dictation, every country whose coast touches those waters makes a claim to at least part of it. China makes the claim that it owns all of the area and has stirred both diplomatic and physical disputes over such statements.¹¹⁶ There are also constant disputes over who has claim over the series of islands called the Spratly Islands,¹¹⁷ and with the

108. Luft & Korin, *supra* note 104.

109. Press Release, International Maritime Organization, IMO to take Straits Initiative (Nov. 19, 2004), <http://www.imo.org/home.asp> (last visited Apr. 19, 2006).

110. *Id.*

111. The Malacca Straits, *supra* note 101.

112. *Id.*

113. *Id.*

114. *Id.*

115. WIKIPEDIA ENCYCLOPEDIA *South China Sea*, http://en.wikipedia.org/wiki/South_China_Sea (last visited Apr. 18, 2006).

116. *Id.*

117. *Id.*

knowledge of large oil and natural gas reserves contained beneath the waters, there is little doubt that the South China Sea will continue to be an area of concern.

IX. CONCLUSION

The September 11, 2001 attack against the United States was one of the most influential events in recent times. They caused the IMO to push up the schedule for the resolution of the SOLAS amendments and the ISPS. The United States is one of the leaders for a more secure and safe maritime industry. The SOLAS convention and the ISPS rules are the newest stepping stones in a long history of Maritime law. All 164 IMO member countries are now implementing their own procedures in order to meet and be in compliance with these conventions. The question remains whether these measures will be enough to stop a terrorist attack on a port or protect a container from being infiltrated, but really only time will answer that question. The United States and the IMO have led the way in new regulations concerning the safety of ports and ships. The amendments to the SOLAS convention, the adoption of the ISPS Code, and the implementation of the CSI will all help to protect and standardize the maritime industry. Still, the United States is worried that these measures are simply not enough, and has put forth proposals concerning long-range tracking of ships, and the importance of access to shore leave for seafarers. The IMO's continued technical cooperation in such activities to enhance maritime security is greatly appreciated and wanted.

There has been some implementation of the CSI at the busiest ports in Asia, but there are still many busy ports that need to implement it to ensure more up to date security measures. Overall, the CSI is a great program that will help to create a more standardized and secure maritime industry. It should be implemented throughout the world, especially in Asia where so much of the region depends upon maritime shipments.

Despite the general optimism over implementation, there remain other regional pockets in which progress has not been as rapid as might be hoped. "The statistics suggest Africa is falling behind other continents in complying with the new regulations, with just over half of the 30 countries in Africa to which the Code applies reporting approved port security measures."¹¹⁸ "Countries in the former Soviet Union and Eastern Europe have also been slow to implement the measures."¹¹⁹ In order to help

118. The International Maritime Organization, Security compliance shows continued improvement, http://www.imo.org/Newsroom/mainframe.asp?topic_id=892&doc_id=3760 (last visited Apr. 19, 2006).

119. *Id.*

IMO launched its global technical co-operation programme on maritime security in January 2002

meet this gap in implementation and compliance, in January 2002 the IMO began the Global Program on Maritime and Port Security.¹²⁰ Numerous seminars and workshops at both the regional and national level along with private functions have helped train and enable individuals to begin meeting compliance.¹²¹ Originally the program was focused on raising awareness of various security threats to the maritime industry, but the focus has shifted to emphasize specific operational measures that need to be taken in order to safeguard the security of everyone on-board a ship (crew and passengers).¹²² To better accomplish this within the Global Program, a sub-program has been developed. A "Train-the-Trainer" program was developed by the IMO to assist governments in strengthening their maritime security implementation by having well trained instructors capable of delivering quality training to others.¹²³ The Train-the-Trainer program got underway in the second half of the 2004 and will be targeting instructors from national institutions responsible for maritime security training.¹²⁴

These are the newest procedures that the international community has to offer in order to help standardize the protection of the entire maritime industry and the secure the world for the future. Still, this writer has concerns about the effects of the overhaul of the United States Customs office and Border Protection when those agencies were combined under the roof of the Department of Homeland Security. United States Customs, for a very long time, was simply the pencil-pushing accountant of the shipping industry. It would only find reason to interfere in commercial matters if there was some sort of tax payment error. Now, the customs service is expected to become guards, with the responsibility of protecting millions of people from the possibility of a terrorist attack, without having the resources of the other interior and exterior security agencies (CIA, NSA, TSA, FBI, etc.). This change in direction is most-likely not something that can easily be accomplished. The United States authorities will have to work extremely hard to ensure the transition is smooth, thorough and effective in order to protect the nation from possible terrorist attacks facilitated through the shipping industry.

. . . The aim of the global programme initially was to raise awareness of maritime security threats and of the possible future regulatory measures that were being developed at that stage. Press Release, International Maritime Organization, IMO's Global Programme on Maritime and Port Security – the work (June 17, 2004), http://www.imo.org/About/mainframe.asp?topic_id=848&doc_id=3656 (last visited Apr. 19, 2006).

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*